PART IV

Law, Politics, and the State
Justice between Islamic Sharia and Liberal Law: Remarks on the Egyptian Context

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INTRODUCTION: A FRAMING OF THE QUESTION

A common question discussed among Egyptian legal thinkers and practitioners today is how well the Egyptian law conforms to the Islamic Sharia. This was one of the questions I set out to investigate during the initial stages of my fieldwork, particularly with reference to lawyers. How did they compare the law with the Sharia? What role did the Sharia play in their case arguments? How did differences in their views about the law’s conformity (or lack thereof) with the Sharia make a difference in their actual legal practices? These questions were asked in an attempt to better understand how the framework of modern law conditioned the ways that the Sharia could be elaborated within it.

These questions always led to animated discussion and sometimes heated debate. Almost all of the lawyers I spoke with would compare statutes of Egyptian law with the rules of the Islamic Sharia, sometimes in great detail, in order to assert their claims for or against conformity. They would often discuss and debate at length the rights described in civil law tradition¹ (from which Egyptian law largely derives) in comparison to those of the Sharia. When I asked about how and when they employed the Sharia as part of their case arguments, one lawyer, Hamid, gave me a small book that he was sure would answer all my questions on this issue. The book,² written by a practicing lawyer, supplied lists of Qur’anic verses that could be used for different types of cases. There were verses for theft, homicide, assault, contracts, fraud, inheritance, criminal and civil procedures, appeals, and so on. I asked Hamid how often he used this book. His reply, to my surprise, was: “not much.”
He told me that only when he felt strongly about a case, that a profound perversion of the law had occurred and a deep injustice had been done, would he preface his legal briefs with a Qur’anic verse, to indicate to the judge the importance of that case. Otherwise, he said, he simply used the relevant legal statutes when he made his case arguments. Many lawyers I talked with told me the same thing. In other words, Qur’anic verses (and the rules of the Sharia that the lawyers often discussed and debated) were considered largely inessential to the actual substance of legal argumentation in particular cases, and used less to buttress already existing legal statutes than to gain a judge’s sympathy.

Moreover, as with many other lawyers I spoke to, Hamid expressed a reluctance, or discomfort, about using the Sharia in this way in his case arguments, even though he saw himself as a religious person. Over tea in a run-down office that he shared with other lawyers, Hamid explained to me that any verse that he used to make his case could be equally used by his opponent to make the opposing case. This, he felt, was somehow inappropriate to the Sharia. I responded that the Sharia had been involved in continual debates almost since its inception, that there were differing schools (madhhab) that, though they differed on certain points, were nevertheless considered acceptable perspectives. Differing and sometimes opposed viewpoints were part and parcel of Islam. Hamid acknowledged my point, but it was still somehow inappropriate, he insisted, to use the Sharia to prevail in civil litigation. Unable to explain further, he looked at me and shrugged. We sipped our tea in perplexed silence.

I will return to Hamid at the end of this chapter, to offer a tentative explanation of his reluctance and his silence. But for now I would like to recount another moment in my fieldwork, when I met with a prominent personal status lawyer. That meeting helped shed some light on my previous discussions with other lawyers, but also helped inaugurate the inquiries that I will attempt in the subsequent sections of this chapter.

As we sat in his spacious office lined with shelves filled with yellowed Sharia court judgments and volumes on the Islamic Sharia, this lawyer, whose father had been a lawyer and qadi (judge) in the Sharia courts of old, explained to me that legal thinkers and practitioners had gone about the problem of comparing the Egyptian law to the Sharia in entirely the wrong way. He gave me the example of personal status law, ostensibly derived from the Sharia. As a matter of fact, he said, the statutes of personal status law conformed to rules found in the Sharia. But this was not the problem.

The problem, he said, was that the process of judging and legal argument in the courts today no longer employed the well-established knowledge of the Sharia. For example, there is an entire field called, “ashab al-nuzul,” which gives historical context to the revelation of verses of the Qur’an to help interpret their meaning. There is also a field that helps identify which verses have historically taken precedence over others (“al-ayat al-nasikha wa’l-mansukha”). Today’s personal status judge, he said, is really just a civil law judge who has only taken the couple of requisite Sharia courses that everyone has to take at the university’s law faculty. Such judges know nothing of the diverse sciences of the Sharia. He implied that, while the statutes of personal status law might not conflict with the Sharia, the actual judgments of judges and arguments of lawyers very much might.

The comments made by this lawyer highlighted a point whose significance I had not fully registered earlier: that practically all of the lawyers I had spoken with saw the Islamic Sharia as having essentially the same form as the Egyptian civil law. That is, their grounds for comparison arose from the civil law tradition and were largely framed in civil
law notions of rules and rights. Thus, for example, lawyers would straightforwardly compare legal statutes and rights to Sharia rules and rights, assuming that “rule” and “right” were the same in both. Similarly, in the rare instances of the Sharia’s use in actual case argumentation, it was deemed adequate to simply pair Qur’anic verses with legal statutes, without their being rooted in the long-established Sharia sciences that might have framed their significance. In other words, lawyers simply assumed that the similarities and differences between Islamic Sharia and Egyptian law were commensurable.

I do not mean to imply here that these lawyers were somehow wrong in doing this, that they are not using the Sharia correctly. On the contrary: my concern was to understand some of the contemporary institutional and conceptual legal conditions under which the Islamic Sharia is elaborated in Egypt. The aim of my research was to understand how those conditions structure the Sharia’s practices, its modes of authority, and the problem-spaces it now inhabits. But what I realized from my discussion with this personal status lawyer is that the widespread assumption of the Sharia’s essential similarity of form to that of civil law tradition is one of those structuring conditions, one whose historical significance for the subsequent elaboration of the Sharia cannot be ignored. Especially because this condition is, no doubt, both a historically fashioned and relatively recent one. It is hardly likely that the Sharia was assessed on civil law grounds before the gradual reception of civil law in Egypt during the nineteenth and twentieth centuries. The reception of civil law, however, was part of an emerging historical project, to create a certain kind of order throughout the country, governed by criteria increasingly derived from European standards at that time. That is to say, it aimed at establishing a rule of law as the basis for a liberal polity. This process did more than marginalize the Sharia and reduce its jurisdictional scope. It also subsumed the Sharia under civil law’s conceptual and institutional forms, and thus refashioned it in highly significant ways. But, to understand how, we need to know more about this subsuming power, and its consequences.

This is where my experiences with these lawyers might provide a beginning insight. My discussions with them underscored a simple but important point: that (in)commensurability does not neatly map on to (dis)similarity. On the one hand, even their most acrimonious disagreements about the Sharia were staged on civil law grounds, where they straightforwardly compared and contrasted Sharia rules and rights with Egyptian legal statutes. On the other, they were reluctant to use Sharia sources—such as Qur’anic verses—in their civil law argumentation even when they were seen to coincide with the legal statutes. That is, it was precisely at the points of their greatest similarity that the Sharia and Egyptian civil law were deemed somehow incommensurable. And my talk with the personal status lawyer indicated that, while the Sharia and Egyptian legal rules and rights might in fact coincide, they were nevertheless potentially involved in historically different forms of knowledge and modalities of action. What my discussions with these lawyers reveal, then, is a complicated pattern of similarity, difference, commensurability, and incommensurability. What are the historical conditions that structure such patterns of (in)commensuration? How should we assess them? To put it more concretely, how is it that Hamid and so many lawyers like him were reluctant to use the Sharia right at the point of its seemingly greatest similarity to the Egyptian law? How should this reluctance be understood?

One might be tempted to see this reluctance as a kind of resistance to the subsuming power of liberal legal structures. But to speak of resistance at this point would be both too quick and too simple. What looks like resistance to a subsuming tradition might be
better understood as an expression of tensions that lie within it, ones that potentially arise from how that tradition has been appropriated by, embedded within, and perhaps profoundly shaped by longstanding historical projects. For example, civil law tradition has long been, and remains, an integral part of colonizing and modernizing projects. Those projects aim(ed), among other things, to establish a rule of law, facilitate particular forms of political control and governance, fashion liberal subjects, and appropriate land, resources, and finances to create and secure markets. It is well known that such aims often do not fully hang together, and they have bent civil law tradition in different, sometimes opposing directions—and are thus a source of various tensions within it. The indelible impact of these projects on the form of civil law is registered in the fact that it has attained global scope through them, so that it is now, along with Anglo-American law, the most widely used and known legal system in the world. Egypt has not been exempt from these projects or their consequences. In other words—and this is the point—we should not assume that a tradition is fully harmonious with itself, especially in relation to the broader, longstanding projects with which the presumptions of its practices, its senses of coherence or incoherence, and the structure and scope of its various goals have become historically, deeply, bound. That is why it is both too quick and too simple to speak of resistance—because it too readily presupposes what the subsuming power of a tradition looks like.

So, what might the subsuming power of a tradition—in this case, civil law tradition—look like? How does it depend upon the colonizing and modernizing projects with which it has become historically bound? Lurking behind this question is yet another, more difficult one. For if we dispense with the assumption of the similarity of form between traditions, a question arises as to how to characterize the differences and similarities between the Islamic Sharia and the civil law—not just what the differences and similarities are, but how to understand their significance for the respective traditions in question. Such an understanding is indispensable to adequately grasping the changes wrought by colonizing and modernizing projects upon the Islamic Sharia, and the consequences of these changes for it, in a place such as Egypt. Otherwise, we might not fully understand the mutual engagement between civil law and Islamic Sharia that continues there to this very day, and how the historical conditions of asymmetric power under which that engagement was established were both productive of and structured by complex patterns of (in)commensurability and (dis)similarity that continue to shape the present.

If we drop the assumption of commensurability, how then are we to characterize differences and similarities between the Islamic Sharia and civil law tradition, and the broader colonizing and modernizing projects with which the latter remains intertwined? This is the question I want to address, and I propose to do it with reference to the concept of justice. Why justice? Simply because justice remains a central theme within the tradition of liberal law, if not the very point of its existence. So it is a good place to start if one wants to highlight the significance of potentially (in)commensurable similarities and differences.

Let me stress at the outset that this is a first, brief attempt at such an inquiry, and as such, is partial and tentative at best. It is true that, in what follows, I make a sustained comparison of justice between the Islamic Sharia and liberal law. Nevertheless, what I offer here is perhaps best described as a series of variably related, ethnographically inspired, historical–theoretical reflections, all aimed at opening up new lines of questioning. It is an attempt to sketch a conceptual landscape within which these questions fit, and to point to some of the directions their pursuit can take.
JUSTICE BETWEEN ISLAMIC SHARIA AND LIBERAL LAW

How, then, given the experiences and considerations described in the preceding text, might I compare justice between the Islamic Sharia and liberal law? If I were to use a traditional comparative law approach, I would extract statements about justice from liberal legal literature and compare them with statements about the same topic within the Sharia literature. But in so doing, I would be making the highly questionable assumption that literatures across potentially very different traditions are straightforwardly comparable, and that statements taken from them can be treated at face value—that is, as constatives somehow equivalent to each other, without regard to the language games, or the games of truth and power that they may arise from or be a part of. And that is a questionable assumption which arises from another equally questionable, but well-entrenched, assumption in the field of comparative law, which is that there is a cross-cultural notion of law, or that law is an object that has roughly the same form across different cultures, traditions, and times. As discussed in the last section, this is precisely the kind of assumption that must be avoided.

We might, then, more usefully take a different track: to explore justice from the standpoint of action, that is, as involved in the process of judging, the act of pronouncing—as something involved in a performative. In saying this, however, I want to avoid being misconstrued by the weight of conventional usage. I do not, for example, mean to invoke the typical distinction between “law-in-the-books” and “law-in-action” that critically grounds legal realist approaches. Neither do I propose simply comparing court judgments from today’s Egyptian courts with judgments from the Sharia courts of the past in cases that seem similar. We should not assume that the courts of today are necessarily like the courts of old, and that their acts are somehow equivalent, especially when they are embedded in and part of potentially quite different traditions. Put another way, we should not assume that court judgments today are the same kinds of performative, with the same kinds of felicity conditions, as the judgments of the Sharia courts of the past. They may have had entirely different felicity conditions, and a different force, due to their different institutional connections, and depending on the sets of practices they were embedded in.

Moreover, in proposing to explore justice from the standpoint of action, I do not mean to forward the now conventional idea that the law must be necessarily performed, as though it were on a stage. It is not that this idea is necessarily wrong, but that the way it is typically formulated rests on assumptions about the nature of authority, suspicion, and publicity that, while they might obtain in some legal settings, are certainly inadequate to others. Rather (and as is perhaps evident from the terminology I have been using), the approach that I propose here rests heavily upon those aspects of philosopher J. L. Austin’s work typically associated with his ordinary language philosophy, and from which the theory of speech acts is derived. And yet I do not wish to be unduly narrowed into a comparative investigation of legal speech acts, even as I acknowledge the importance of such an investigation. My emphasis here is upon action and its modalities. It is worth remembering that Austin was concerned not just with the uses of words but also with the nature of deeds, and we might understand his ordinary language philosophy as part of a broader philosophical project in which he was engaged: an inquiry into the varieties and styles of action within everyday life. Importantly, he warned against taking all actions as equivalent, “composing a quarrel with striking a match, winning a war with sneezing.” Aspects of the vocabulary and approach he
developed for ordinary language might usefully apply to action more broadly, and help us explore its various modalities.

If we adopt this expansive Austinian perspective, looking at justice from the standpoint of action can lead us to consider a set of useful questions: what are some of the presuppositions, themes, conditions of felicity—conceptual and institutional—that make judging and judgments the performatives that they are? What kinds of knowledge do they express, and how are they embodied? And how might differences in such presuppositions and conditions, and the ways they are embodied, bear upon our understanding of justice across traditions? These questions are useful because they point to the ways that practical and embodied knowledges within different traditions might create resistances and affinities for translation between them. Such forms of knowledge tend to be downplayed in even the most recent approaches in comparative law. These are the questions I hope to consider in the following sections.

**Presuppositions and Styles of Judging**

Let me continue, then, with a scene of judging in the Egyptian courts. In nearly every court that I attended, the judge was a fearsome figure, direct, loud, impatient, and often dismissive. In one court that I was allowed to regularly attend, the power, control, and suspicion of the judge was both palpable and visceral. One could feel the fear and anxiety that one often saw on the faces of litigants. The judge, in most instances, would not outright humiliate litigants, but their sense of humiliation could eventually be seen, as their backs bent slightly and their necks stretched forward into a position of pleading as they stated their cases, where they were often interrupted, admonished, or dismissed for not having the right papers or not expressing themselves clearly. Even lawyers would get angry at their treatment at the hands of the judge, as he often ignored them and went straight to their client to extract the plea or argument directly from him or her. Yet, rarely would he take litigants' testimonies for granted, continually probing them, as if nothing they said was ever quite right. Neither was court staff immune to his severity and suspicion. With piercing tones, he would pronounce his considered judgments; the litigants in the room would often wince as he did. In between cases, before litigants entered the courtroom, the judge would have a smile on his face, but this would gradually transition into a grimace as the litigants came in and started pleading their cases. At first, I thought that this was a persona he donned, just for show; but as I attended the court over time, I became less and less able to distinguish his smile from his grimace. Though he was always friendly with me, I eventually found myself, for no reason I could fully explain, terrified of this judge.

Now, the manner of this judge, though distasteful, is not entirely peculiar, in that it fits into the well-known Western legal tropes of blind justice, swift justice, impersonal justice, and strict justice. And what these tropes evoke is an equally familiar association of law with violence. One of the symbols of Egyptian law, a balance with a sword through its center, also evokes this familiar association. Robert Cover, in a now famous essay titled "Violence and the Word," highlights violence as an essential fact of judicial interpretation. Judicial interpretation, he says, sets in motion a mechanism that deals out pain and death, and this makes judging different from other kinds of interpretive activities. This is because judicial interpretation is necessarily constrained by its reliance on violence, that is, on the social organization and the set
of social commitments by which that violence is carried out in an organized manner. All judging, all judicial interpretation, he says, takes place with this idea in the background, and thus, in a situation where this social organization of violence is limited or precarious, then judicial decision will limit itself appropriately or else risk its own credibility. For Cover, this was a peculiar paradox because, according to him, law as a normative interpretive activity was necessarily “world-making,” while the violence it relied upon was intrinsically “world-breaking.” Thus, the violence of the law undermined its authority. I will return to the question of violence and authority later in the chapter; it is considerably more complex than even Cover makes it out to be. But the important point for us now is that the act of judging and judicial interpretation presupposes its own violence, and that this presupposition can be seen as a felicity condition for the judgment as a performative.

In saying this, I do not mean to say that such presuppositions somehow, or in some way, determine the style and manner of the judge described earlier. But I do mean to suggest that such presuppositions supply criteria and standards delimiting what counts as appropriate in a style of judging, and so that different presuppositions might change the limits of what counts as appropriate. Here is a scene where some other presuppositions might be in play, which not only delimit what counts as appropriate, but even make possible an entirely different style of judging. The scene, from Muhammad Asad’s *The Road to Mecca*, describes Ibn Mussad, an amir and judge of a province in Arabia of the time:

...such an informal court of justice would be inconceivable in the West. The amir, as ruler and judge, is of course assured of all respect—but there is no trace of subservience in the respect which the Bedouins show him. ...the plaintiffs’ and the defendants’ ...gestures are not hesitant, their voices are often loud and assertive and everyone speaks to the amir as to an elder brother, calling him—as is Bedouin custom with the King himself—by his first name and not his title. There is no trace of haughtiness in Ibn Mussad’s bearing. ...He is grave and curt. With authoritative words he immediately decides the simpler cases and refers the more complicated ones, which require learned jurisprudence, to the qadi of the district.

It is not easy to be the supreme authority in a great Bedouin region. An intimate knowledge of the various tribes, family relationships, leading personalities, tribal grazing areas, past history, and present idiosyncrasies is needed to hit upon the correct solution in the excited complexity of a Bedouin plaint.

...two ragged Bedouins are now presenting their quarrel before him with excited words and gestures. ...But now I can see how Ibn Mussad parts their seething passions and soothes them with his quiet words. One might think he would order the one to be silent while the other pleads for what he claims to be his right: but no—he lets them talk both at the same time, out shout each other, and only occasionally steps in with a little word here and a question there—to be immediately submerged in their passionate arguments; he gives in, and seemingly retreats, only to cut in again a little later with an appropriate remark. It is an entrancing spectacle. ...The amir approaches [his goal] by fits and starts, draws out the truth, as if by a thin string, slowly and patiently, almost imperceptibly to both plaintiff and defendant—until they suddenly stop, look at each other in puzzlement, and realize judgment has been delivered—a judgment so obviously just that it requires no further explanation. ...whereupon one of the two stands up hesitantly, straightens his abaya and tugs his erstwhile opponent by the sleeve in an almost friendly manner: “Come”—and both retreat, still somewhat bewildered and at the same time relieved, mumbling the blessing of peace over the amir.”
Ibn Mussad, as described by Muhammad Asad, displays an entirely different style of judging, one where the power to coerce is not so clear cut, depending partly on what Asad describes as the judge’s intimate knowledge of social relationships, histories, and particularities in the area. Other mechanisms of compliance seem to be at work, and one gets the sense that these are presupposed in this style of judging, that here needs only to clarify a truth rather than explicitly pronounce judgment. Again, such presuppositions do not determine this style of judging, but they are among the conditions that make it possible. Moreover, one also gets the impression that the style of the Egyptian judge described earlier would be utterly inappropriate, and ineffective, in Ibn Mussad’s milieu. Neither would it be considered a dispensation of justice.

I should stress here that my point in making this comparison is not to contrast an ideal “Western” judge with an ideal “Islamic” one. Indeed, Ibn Mussad is not a qadi of a Sharia court, as indicated in the preceding passage, and the Egyptian judge I described presides over a personal status court, which is governed by Islamic Sharia. My point is simply to highlight how different practical and embodied knowledges make for different styles of judging, ones that presuppose equally different forms of sociality, modes of authority, and structures of coercion. The contrast also alerts us to the ways that the modern state’s configurations of law and violence might be presupposed and embodied in the Egyptian judge’s style of judging.

But how do different presuppositions about sociality, authority and coercion, and the ways they are embodied bear upon our understanding of something such as justice across different traditions? Maybe we can begin with the presupposition of violence often highlighted in liberal legal tradition.

**The Problem of Violence for Justice in Liberal Law**

For many contemporary legal theorists, violence has constituted an almost irresolvable problem for law. That law requires violence is made clear by most; a law that could not enforce itself through organized violence would often not be called law. And yet, the practice of violence seems to threaten, in a way at least not immediately obvious, the practice and possibility of justice. This was not always so. During the medieval European period discussed by legal historian James Whitman, violence was also seen as a problem for justice, but in a way very different than it is now. The problem then was that judges and jurors faced the danger of polluting their souls upon the pronouncement of “blood judgments”—those that led to mutilation or death. This was even and especially in cases where the accused was obviously guilty. What judges and especially jurors doubted was their moral authority to judge, and they were deeply worried at the potential moral pollution that judgment entailed. As a result, they were extremely hesitant to pronounce guilty verdicts. One solution to this problem, especially after the decline of the judicial ordeal, was the development of highly elaborate procedures of proof, which included disciplined judicial torture. The procedures, however, were not aimed at finding the facts of a case, as is often thought. In most cases, it was well known whether a suspected culprit was in fact guilty. What judges and especially jurors doubted was their moral authority to judge, and they were deeply worried at the potential moral pollution that judgment entailed. As a result, they were extremely hesitant to pronounce guilty verdicts. One solution to this problem, especially after the decline of the judicial ordeal, was the development of highly elaborate procedures of proof, which included disciplined judicial torture. The procedures, however, were not aimed at finding the facts of a case, as is often thought. In most cases, it was well known whether a suspected culprit was in fact guilty. What judges and especially jurors doubted was their moral authority to judge, and they were deeply worried at the potential moral pollution that judgment entailed. As a result, they were extremely hesitant to pronounce guilty verdicts. One solution to this problem, especially after the decline of the judicial ordeal, was the development of highly elaborate procedures of proof, which included disciplined judicial torture. The procedures, however, were not aimed at finding the facts of a case, as is often thought. In most cases, it was well known whether a suspected culprit was in fact guilty. What judges and especially jurors doubted was their moral authority to judge, and they were deeply worried at the potential moral pollution that judgment entailed. As a result, they were extremely hesitant to pronounce guilty verdicts. One solution to this problem, especially after the decline of the judicial ordeal, was the development of highly elaborate procedures of proof, which included disciplined judicial torture. The procedures, however, were not aimed at finding the facts of a case, as is often thought. In most cases, it was well known whether a suspected culprit was in fact guilty. What judges and especially jurors doubted was their moral authority to judge, and they were deeply worried at the potential moral pollution that judgment entailed. As a result, they were extremely hesitant to pronounce guilty verdicts.
Thus, during the medieval era that Whitman describes, the problem that violence posed for justice was one of moral and spiritual pollution, and the solution was to place that violence squarely within the law, so it was the law that killed. It was placing that violence *within* the law that endowed judges and jurors with the moral authority to pronounce blood judgments. In other words, it was the violence of the law that marked its moral legitimacy and made justice possible. But today, this is quite the reverse: it is precisely the violence within the law that marks it for potential illegitimacy and somehow threatens the possibility of justice. Hence,

Violence, indispensable as it is to the generation of law, casts a persistent shadow over it. … While the threat of force provides a constant justification of and apology for law, it is also a constant reminder of what all law really is. “[I]n this very violence,” [Walter] Benjamin writes, “something rotten in law is revealed.”

All too often, all too much legal theory has asserted and attended to the alleged legitimacy of the law’s violence without paying heed to the “rottenness” that violence reveals and to the price that it extracts from law.⁹

The problem of legal violence and justice thus has a different form today than it did before, but one that, as mentioned in the preceding text, is not immediately obvious. It follows that we should explore this form, the presuppositions that shape it, and the historical conditions under which it arises and is sustained. This is not an approach, however, taken by most legal and political theorists who discuss legal violence.

Take, for example, the philosopher Giorgio Agamben. For him, violence is logically intrinsic to law.¹⁰ Law acquires its peculiar force, he writes, following Carl Schmitt, by the fact that it defines sovereignty as its own suspension. That is, the sovereign, the one who establishes and maintains the law, is legally defined as the one who can make the exception to it. The best image of the form of the exception is the state of emergency, where the sovereign has at his immediate disposal the entire force of the police and the army combined. The sovereign is the one who has at his disposal the most violence, allowing him to establish and maintain law. That is why law has its peculiar force for Agamben: it maintains the possibility of its application precisely through its suspension, in the figure of a sovereign who can exercise the most violence. And since that violence is understood as the capacity to kill, life is brought into a relationship with the law, but solely in a negative form, that is, in its capacity to be killed.

Agamben sees himself as writing an ontology of law. He notes that his remarks apply equally to positive law, Jewish law, and Islamic law. He therefore partakes of the questionable assumptions mentioned earlier in this chapter, that there is an object called law that remains in roughly the same form across cultures, traditions, and times. And, as the medieval example cited in the preceding text demonstrates, the logic that he claims to constitute law’s essence is also highly questionable. The point here, however, is not to show Agamben wrong; on the contrary, his conception of law tracks a contemporary reality, and the presuppositions from which it arises also undergird legal thought and practice today. It might therefore be more useful to historicize his ontology, not just to parochialize it, but to bring out important presuppositions about the problem that violence poses for contemporary notions of justice.

Consider, then, an interesting example that follows the conceptual structure that he outlines but which leads to different conclusions: the Truth and Reconciliation
Commission (TRC) of post-apartheid South Africa. The TRC was empowered to grant amnesty in cases where the violations committed during apartheid could be determined to have been political in nature. In such cases, the law grants amnesty through a process by which it suspends itself; that is, by granting amnesty, the law negates the possibility of its current or future application in particular cases. Similar to what is described by Agamben, law partakes of the structure of the exception—it suspends itself through a legal process; however, because it is done through the figure of amnesty (instead of through the figure of the sovereign\(^\text{11}\)), it *decouples* law from violence. And yet, the point of the entire process was to establish a post-apartheid community that would subsequently follow a liberal rule of law, one that guarantees equal liberty for all. Thus, in the example of the TRC, amnesty is seen to be no less intrinsic to law than is violence; and neither is amnesty any less paradoxical to law (and justice through law) than is violence, as law is seen to suspend itself in relation to both. However, the underlying problem presupposed by both Agamben’s discussion and the example of the TRC is the one of founding a liberal political community. In other words, the peculiar structure that law exhibits has less to do with amnesty or violence *per se* than with the issues involved in *founding* a properly political community, one that guarantees liberty and equality under the law.\(^\text{12}\) This suggests that, to better understand the problem that legal violence poses for justice, we should look at how it has become historically related to concepts and practices of founding.

Here we might recall the insights of Hannah Arendt. She too was interested in the idea and process of founding, and saw it as integral to an important concept in Western political traditions: the concept of authority.\(^\text{13}\) The concept of authority, she writes, was developed by the Romans in response to a central question posed within the Greek thought that they had inherited: how to model relations between members of the *polis*, understood as the space where people could live in freedom. However, what the Greek philosophers could not resolve for the small scale of the *polis*, the Romans were able to achieve in the context of *imperium*: they developed an idea of a founding that required immense human effort and skill, and that, as such, needed to be remembered, preserved, extended, and developed—a constant process of augmentation. Members of the polity were to relate to each other in light of these tasks.

But modern times, Arendt argues, have been characterized by a widespread disappearance of authority in more and more aspects of everyday life. It is not, according to her, simply that there are no longer any authorities. Rather, she points to a profound *conceptual* loss: in modern times, the very concept of authority has disappeared, so that most people today no longer know what it is, or even ever was. Although this loss is dramatically evident in contemporary times, Arendt argues that it began long ago, with the rise of those distinctively Enlightenment-period conceptions of politics and freedom that are historically associated with the development of liberalism. One significant symptom of this liberal conception of politics is that authority and freedom are often seen to be diametrically opposed, so that, the more there is of the one, the less there is of the other. And so, politics, to the extent that it is identified with authority, is also seen to be opposed to freedom. The result is a situation where politics is at once a space of freedom *and* its attenuation, where the freedom that politics protects must nonetheless be protected from politics.

This, for Arendt, is a direct consequence of the steady disappearance of authority, which has made it increasingly difficult to distinguish founding as the source of authority from founding as a form of tyranny that is the arbitrary imposition of one’s
will over others. And here lies the key, I think, to the problem that violence poses for justice: that the inability to distinguish between founding as authority and founding as the arbitrary will of a tyrant introduces a level of arbitrariness into the very foundation of law, and hence, of justice seen as the completed outcome of law and legal process. Whether as exception in the case of Agamben, or world-breaking pain in the case of Cover, or the indistinction between law-founding and law-sustaining violence of Benjamin, the problem that violence introduces for justice is arbitrariness, which turns it into an infelicitous performative and creates an ever-present threat of uncontrolled violence in its name.

We can see how profoundly different this is, in form and substance, from the problem that violence posed within the medieval legal tradition cited earlier, which was bound up with issues of personal conscience and potential dangers of moral and spiritual pollution posed by the shedding of blood. By contrast, the problem of violence and justice in liberal legal tradition today presupposes, and is bound up with, the underlying question of how to found and sustain a domain of the political—as a space of liberal freedom and the proper relationships characterizing it—in the face of the disappearance of authority.

This disappearance has had profound consequences for how law is understood today. Legal theorist Marianne Constable, for example, outlines a fundamental problem in contemporary historiographies of positive law: that they can never seem to find its authoritative origin, no matter how hard they try. The reason for this, she says, is that, on the one hand, an ostensible origin is found in a conquering will, and yet, on the other hand, an attempt is always made to find a precedent in the previous practices and customs of the people subject to the conquering power. And so, the ostensible origin is pushed back to another founding moment, in another conquering, yet another imposition. In the process, law comes to be seen as something always potentially open to another founding.

What is the source of this disappearance of authority? How is it related to the rise of a conception of politics as a space of liberal freedom? The fascinating story that Arendt outlines throughout her writings is nevertheless too broad, and in some ways too conventional, to be fully persuasive—involving how the reign and fall of Christianity first obscured and then transformed an original concept and experience of political freedom that arose in antiquity, and how the concomitant erosion of tradition and the links to the past that it enabled called to question the very idea of augmentation on which authority was based. The story she tells is not fully adequate to her own ideas, serving to obscure the deeply provocative implications of the claims she makes. For Arendt distinguishes two different conceptions of politics. The first refers to that domain of human experience associated with performative spontaneity and excellence, the capacity to bring and sustain something anew into the external world. For her, this is the original definition of freedom. Then there is the more contemporary notion of politics as a space of freedom defined primarily by equal rights and legal equality, and anchored in a concern for private and social needs whose fulfillment and defense typically drives public action. What Arendt provocatively suggests is that it is this conception of liberty and equality under the law that is historically bound up with arbitrary violence. But how is the blurring of authority with coercive violence connected to liberty and equality under law? To answer this question, I submit, we need a genealogy of founding, one that addresses: (1) how liberty became linked to (a distinctive, abstract notion of) equality when, earlier, justice was also deeply tied up with inequality; (2) how the law
came to be seen as established by the very violence that its purpose was to regulate, and (3) how fear and suspicion became the central dispositions in a rising conception of “the political” that still remains with us.

Such an account is certainly beyond the scope of this chapter. But we can see the dilemma of founding poignantly demonstrated by events in Egypt between the years 2011 and 2013, between the ouster of President Mubarak and the removal of President Morsi. The fierce debates sparked in the first days after the military’s forcible removal of Morsi amid massive protests against him cast confusion not only upon the nature of that event but of the 2011 uprising as well. Was it, as some said, a continuation and extension of 2011 and the principles it represented, which had been increasingly derailed over the subsequent 2 years? Or was it, as others claimed, a coup—a reversal of the principles of the 2011 uprising and the ethos that it expressed? Supporters of the military intervention drew parallels with 2011. In both cases, the heads of state were accused of autocratic tendencies, stifling democracy, and the obstruction of social justice. In both cases, there were massive protests demanding that they step down. In both cases, they refused to acquiesce to the people’s demands. In the face of this intransigence, the military forced their removal; the military’s intervention was subsequently met with widespread approval. If anything, the removal of Morsi made evident the military’s indispensable role in the removal of Mubarak, which may have been obscured due to the largely non-violent nature of the protests at that time. Thus, supporters of Morsi’s removal argued that, if one supported the events of 2011, one ought to support the military intervention of 2013.

Those opposed to the military intervention argued that Morsi, unlike Mubarak, was a democratically elected head of state, and the military intervention undermined democratic processes and possibilities. But what if a head of state begins to show autocratic tendencies, assuming extra-judicial powers and stifling democratic principles? And if the majority of the population believes this to be so, and people take to the streets to demand his abdication, is it wrong for the military to intervene on their behalf, forcing him to acquiesce to their demands? Does that undermine or rather guarantee the possibilities of the democratic process? But then, is it legitimate to forcibly remove a democratically elected head of state whenever his or her approval ratings dip below 50%, or 40%, or whatever percentage, and when people protest for just a few days? If that is so, what is to prevent it from happening over and over again, in arbitrary fashion? After all, approval ratings are highly volatile and constantly shifting. Are they enough to force down a head of state and rewrite a democratically ratified constitution? Can any new founding be so easily upended?

It quickly became clear that support for the military intervention was not at all as widespread as was initially claimed. Though perhaps smaller than the protests against him, the protests and sit-ins in support of Morsi’s presidency were both large and sustained throughout the country, until the military violently suppressed them. People were clearly divided. While this may have strengthened the hand of those who argued for the democratic process, it also raised even more difficult questions. Morsi won the presidential elections with barely over 50% of the votes. Many who voted for him did so only to prevent a Mubarak regime representative from winning. Morsi arguably had much less than 50% support, and certainly nothing like the mandate represented by the ostensible unity of the 2011 uprising. Under such divided circumstances, what authorizes and constrains his acts? More specifically, would the legitimacy of his actions derive from previously existing law, that is, law that was enacted during the previous regime
and interpreted by a judiciary still strongly associated with that regime—namely, all that the 2011 uprising aimed to sweep away? Or did he have the right and responsibility to assume the extra-judicial powers needed to wipe away past legislation and establish new law, especially in the face of stiff judicial resistance? Existing law, it could be argued, was enacted during successive autocratic regimes sustained primarily by the coercive apparatuses of the military. Why, then, should such law have been the basis for assessing the legitimacy of his actions? But if Morsi did not win the elections with the popular mandate of the 2011 uprising, then what basis did he have to enact extra-judicial powers to eliminate old regime-based law? It was difficult to locate a source of authority for Morsi’s actions.

There is, however, one thing that remained largely unchanged throughout the tumultuous events of that period. The very same structures of coercive violence that backed old regime law were the ones that enabled the removal of both Mubarak and Morsi: the military. What authorizes its violence? Is it the law? But the initial intervention was not legal: the military forced Mubarak to declare, through his newly appointed vice president Omar Sulaiman, that he had transferred ruling authority to its ruling council. This was an instance of the military authorizing itself. Its removal of Morsi was not legal either; and, as became clear, it was not with a widespread consensus. Part of the military’s public rationale was the need to forestall a potential outbreak of factional violence in the country—an admission of popular dissensus. In this case too, the military authorizes itself to act. All political factions in Egypt, at one point or another during the years 2011–2013, turned to and relied upon the military for support. But neither law, nor democratic process, nor clear consensus authorizes its violence. Is it simply, then, the success of its violence?

I should emphasize that my point is not to take sides on the truth of what transpired during these events. It is only to show how they boldly highlight the loss of authority and dilemmas of founding that Arendt described, where authority seems to blur into coercive violence and where any founding seems to render itself arbitrarily open to any other past or future one. It is worth noting that what brought on the events of 2013 was the suspicion and fear that Morsi and his political allies sought to impose the Sharia as the law of the land, and that this would strike against liberal conceptions of equality and rights. That is, the events of 2013 and all the dilemmas that came with it were brought on by concerns to found a properly liberal polity.

Let me summarize the points made so far about justice within liberal law. First, justice is seen as a completed outcome of a legal process. Second, the problem that violence poses for justice is that it introduces arbitrariness into it. And third, the problem of arbitrariness arises not out of violence per se, but out of a modern difficulty (arising out of the loss of the concept of authority) in defining and demarcating the domain of politics as a space of freedom understood in terms of legal equality and equal liberty, a problem presupposed by contemporary legal theorizing about justice.

While these are important features of liberal legal tradition, they need not be so for other traditions. Thus, we can ask: why must justice be understood as the completed outcome of a legal process? Must it presuppose a domain, or a problem of the political, and must it be tied to the underlying problem of freedom? What might it look like without these presuppositions of violence? What sorts of problems arise about justice from within other traditions? How have those problems changed in the face-modernizing pressures? With these points and questions in mind, let me turn to aspects of the notion of ‘adl, typically translated as “justice,” as found in the Islamic Sharia.
“What is justice (‘adl) in the Sharia?” I asked one of the sheikhs who helped run the Al-Azhar mosque. “What is justice,” he repeated, his voice trailing away, after which he grew silent, his eyes distant. But, before he could answer, he was distracted by mosque affairs. Then there was the call to prayer, so he left the room to make ablutions. He returned with a pensive look on his face. “I think that justice means the enjoining of what is right and the forbidding of what is wrong.” He waited for me to respond; I stayed silent. He waved in the direction of the Al-Azhar fatwa council, where I had been doing some research; “the fatwa is justice, because it enjoins what is right and forbids what is wrong.”

I had not associated the fatwa with justice or the concept of enjoining the right and forbidding the wrong (a technical concept often discussed today under the rubric of hisba). As with many scholars in Islamic legal studies, I had thought of justice, enjoining the right and forbidding the wrong, and the fatwa as three different things within Islam, each with their own technical specifications. Yet, here was an Azhari sheikh seeing them together. It was he, along with the mutāfis of the fatwa council, who often explained to me that the role of the fatwa was to “facilitate people’s affairs.”

The variety of purposes for which I saw them employ the fatwa (which I have detailed elsewhere) has led me to characterize the fatwa practice of the Azhari council as a form of the care of the self. Such a conception of the fatwa is rarely invoked in Islamic studies scholarship, much less explored, although it is consistent with Muslim religious literature. But here, the concept of justice, the facilitation of people’s affairs, and enjoining the right and forbidding the wrong are all seen to hang together within a practice—the fatwa—that can be understood as a form of the care of the self. We often miss such potential connections because we focus so narrowly on the technical specifications of these concepts and the fine lines of difference between and within schools of thought. We do not consider the potential resonances between these concepts and practices and the various ways in which they might have been historically connected. As with the sheikh mentioned earlier, these resonances subsist at a largely tacit, presuppositional level that often goes unarticulated, but that imbue a wide variety of seemingly different concepts and practices within the tradition with a kind of collective intelligibility, a sense of overall coherence. One need not focus on such resonances at the expense of the technical. Theorists such as Talal Asad, Brinkley Messick, and Wa’el Hallaq have, in different ways, long articulated an approach to Islamic tradition that pays attention to the technical aspects of its constitutive concepts and practices, but also the potential resonances between them—the various and changing ways they can and do historically hang together. But such an approach has only begun to influence a scholarly orientation that remains fixated at the level of the purely technical. In what follows, I will explore such resonances and the ways they have historically changed, with respect to the notion of justice (‘adl) in the Islamic Sharia.

‘Adl in Arabic, and its conjugate ‘adala, are often translated into “justice,” or “justness,” but can be also translated into “integrity” or “uprightness.” Today, ‘adl would be translated as “justice,” while ‘adala would be translated as “integrity” or “uprightness”—and so the two terms, though linguistically overlapping, could also be seen as separate from each other. That of course is because both ‘adl and ‘adala inhabit a rich semantic and conceptual field, with a range of overlapping associations that have changed over time. We can see those shifting semantic and conceptual associations in
Arabic dictionaries from different time periods, for example, between *Lisan al-Arab* and *Taj al-Arus*. Such shifts are also evidenced, in more subtle ways, through *fiqh* manuals of different times. But, rather than lifting definitions out of such texts, I would like to see how these concepts were intertwined through the weave of longstanding *Sharia* practices. So, let me try to describe the interconnected senses of ‘*adl* and ‘*adala* through a particular *Sharia* court practice called *tazkiya*, which was used to ascertain the veracity of ‘witnesses’ testimony.

Every time witnesses were brought forth to testify in a case, the presiding judge would appoint at least one member of his trusted circle to investigate their ‘*adala*. This person, called the *muzakki*, would investigate the witnesses’ ‘*adala* through a discreet inquiry into various aspects of their lives, including their upholding of their religious duties and beliefs, their particular profession and their past activities, their relationships with others in their community, the ways they spend their time, and the general opinion people had of them. If the witnesses were found to possess ‘*adala*, then their testimony would, precluding clear contradiction, be accepted by the judge. If their ‘*adala* was questionable, then either they would be disqualified as witnesses or their testimony would be subject to doubt. What is important here is that ‘*adala* and ‘*adl* are qualities that collect a wide range of virtues expressed in the heterogeneous activities of one’s everyday life, and that their existence is ascertained, in the judicial arena, through a specific technique, one that allows the judicial process to proceed.27

The judge’s trusted circle, often called the *shuhud ‘udul*, or “upright witnesses” (possessed of ‘*adala*), did much more than enact *tazkiya* to ascertain the ‘*adala* of witnesses. They were indispensable to the entire range of judicial proceedings, including the authentication of litigants’ identities, the collection of circumstantial evidence relevant to the court, the corroboration of agreements recorded in documents—and hence the use of documentary evidence, and, importantly, the witnessing and verification of the court’s proceedings and the judgments of the judge. ‘*Adala*, as embodied in the *shuhud ‘udul*, was therefore at the core of all the court’s practices.

But ‘*adala* was not just important for the courts; it is listed as a prerequisite for nearly every defined post in the *Sharia*, be it judge, witness, court staff, *mufti*, sheikh, *khatib* (preacher), *muhtasib* (the official who enacts *hisba*), and so forth. Moreover, ‘*adala* plays an integral role in securing the foundations of *Sharia* knowledges, the best example of this being the *hadith*, or the sayings of the Prophet Muhammad that have been transmitted over time. Each link in the long chain of transmitters of any particular *hadith* had their backgrounds carefully examined for ‘*adala* in a process called *al-jarh w’al-ta’dil* (the “wounding” and justifying of one’s reputation). It was the resilience of the ‘*adala* of the transmitters through this investigation that secured the authority of a particular *hadith*.28 This process also contributed to the growth of biographical sciences (‘*ilm al-rijal*) from which biographies of the prophet’s companions have been compiled, and which could be used for pedagogical purposes. We could say that the concepts of ‘*adl* and ‘*adala* were crucial for a whole range of diverse practices that included court witnessing, the proper transmission and authoritative interpretation of legal and religious texts—including central ones such as the *hadith*, the development of historical biographical sciences, and even methods of instruction. The possession of ‘*adala* is also an important prerequisite (although not the only one) for the practice of *ijithad*—a form of Islamic interpretation less constrained by the rulings of authoritative religious texts. In this sense, we could say that ‘*adl* and ‘*adala* provided a foundation for the formation of systematic knowledges about life and for living.
These processes to secure ‘adala, which developed early on in the formation of the Sharia, helped stave off the problem of ra’y, or opinion, which threatened to introduce a level of arbitrariness into Islamic discourses and practices. Recourse to the notion of ‘adala thus provided a remedy against this arbitrariness.

Practices such as tazkiya and al-jarh w’al-ta’dil can be seen as a subset of a broader range of analogous practices that were central to Islamic tradition and its forms of coherence, and which I call “techniques of moral inquiry”: disciplined methods that were used to secure, uphold, and embody the diverse virtues considered necessary for the living of Muslim life and the maintenance of Islamic practices. These techniques included bisba, which is technically defined in the Sharia as “the enjoining of the good when it is manifestly neglected, and the forbidding of evil, when its practice is manifest,” and nasiha, which is a disciplined practice of Muslim advice-giving. Since these techniques involved sustained inquiry into, and engaged criticism of, the heterogeneous activities of daily life, enacting them involved a concomitant danger of violating a person’s sanctity, treading upon people’s reputation, and spreading rumor among the people, all of which were seen to cause corruption and hence threaten the very purpose for which these techniques were established. To mitigate these dangers, restrictions were placed on these methods so as to prevent, for example, the sin of spying (tajassus) in the case of bisba, and of speaking ill of someone in their absence (ghiba) in the case of nasiha (Muslim advice-giving). Such restrictions were an integral aspect of their discipline.

What is striking about these techniques of moral inquiry, although no one I am aware of has remarked on this, is that they all are, or are involved in, disciplined forms of truth-telling. As such, they remind us of Foucault’s discussion of the ancient Greek practices of parrhesia. While there remain aspects of parrhesia that powerfully resonate with contemporary sensibilities, many of the basic assumptions underpinning its practices are no longer practically intelligible today. Thus, Foucault writes:

It would be interesting to compare Greek parrhesia with the modern (Cartesian) conception of evidence. For since Descartes, the coincidence between belief and truth is obtained in a certain (mental) evidential experience. For the Greeks, however, the coincidence between belief and truth does not take place in a (mental) experience, but in a verbal activity, namely, parrhesia. It appears that parrhesia, in this Greek sense, can no longer occur in our modern epistemological framework. … I should note that I never found any texts in ancient Greek culture where the parrhesiastes seems to have any doubts about his or her own possession of the truth. And indeed, that is the difference between the Cartesian problem and the parrhesiastic attitude. For before Descartes obtains indubitable clear and distinct evidence, he is not certain that he believes is, in fact, true. In the Greek conception of parrhesia, however, there does not seem to be a problem about the acquisition of the truth since such truth having is guaranteed by the possession of certain moral qualities; when someone has certain moral qualities, then that is proof that he has access to the truth—and vice-a-versa. The “parrhesiastic game” presupposes that the parrhesiastes is someone who has the moral qualities which are required, first, to know the truth, and secondly, to convey such truth to others.

Of course, parrhesia in its details and historical contexts shows important differences from the techniques of moral inquiry described earlier. But in their emphasis on moral virtue for the certainty of truth and its discernment, their complex relations with the notion of the care of the self, the forms of sociality they entail, and the ways they
depart from what Foucault calls a Cartesian epistemological framework, they bear a strong resemblance. And this raises the question of the consequences of shifting epistemological frameworks and forms of sociality for these techniques of moral inquiry. That is what I pursue in the next section.

NOTES ON NINETEENTH-CENTURY TRANSFORMATIONS OF ‘ADL

The practice of *tazkiya* was formally abolished during the period just preceding the year 1931, when wide-ranging legal reforms of the Egyptian *Sharia* courts were enacted. But the social conditions enabling it and the broader set of disciplined methods of inter-personal and collective critical engagement that it was a part of had begun to be eroded, it seems, long before. This is especially the case with the establishment of a new police force during the nineteenth century as part of Egypt’s state modernizing project. According to historian Khaled Fahmy,35 this newly established police force relied on an extensive system of spies and informants in both the city and countryside in order to investigate cases that either could not be tried or had been initially dismissed by the *Sharia* courts for inadequate evidence. That network of spies and informants was far more extensive than any possessed by any previous Egyptian police force, increasing “the police’s ability to have closer, intimate knowledge in the smallest cul-de-sac in the various cities and in the tiniest villages throughout the country.”36 That is because the network included many local and provincial officials “who regularly reported to local police stations any suspicious person and/or activity.”37 Fahmy emphasizes how “this intricate network effectively transformed the police stations from stationary government buildings into vibrant nerve centers with tentacles spreading throughout the urban and social fabric eventually enabling the state to control and manipulate society in unprec- edented ways.”38

But the investigations of this novel police force were not conducted to prosecute cases in the *Sharia* courts. Rather, their results were to be presented in the “*siyasa* councils” or *majalis siyasiyya*—a newly developing, Ottoman-inspired judicial system that initially complemented the *Sharia* courts, and which implemented a mixture of local, Ottoman, *Sharia* and European-derived laws and principles. Judicial forms complementary to the *Sharia* courts, and which worked to circumvent some of its stricter procedural and evidentiary requirements, were standard fare in pre-modern Muslim polities and typically understood to have sanction from the *Sharia*. Starting from the Mamluk period, these judicial structures admitted circumstantial evidence that the *Sharia* courts could not, and could initiate trials and coercive punishments based on suspicion alone.39 What is historically distinctive here, however, is the vast expansion of the police, with their investigative networks and techniques, to the point of displacing and eventually replacing the procedures and jurisdictional range of the *Sharia* courts. This was even though the *siyasa* councils themselves eventually waned away, and were replaced by the Egyptian National Courts, which implemented a French-based civil law system. The police’s techniques of investigation were subsequently incorporated into the inquisitorial procedural forms that came with the reception of civil law into Egypt. The development of these new court systems thus went hand in hand with the expansion of police power and its organized modes of suspicion into a greater range of everyday life. But those organized modes of suspicion, it seems, relied precisely upon those practices that were restricted within the Islamic *Sharia*—rumor, gossip (i.e.,
ghiba), and spying (tajassus)—because they threatened to undermine some of its crucial disciplinary techniques and the virtues they aimed to secure. The expansive spy and informer networks of the police were not, it seems, required to abide by the Sharia’s strictures on suspicion.

Fahmy makes the point that even wealthy and powerful people who had been accused of crimes were not immune to the new, extensive, investigative powers of the police, and for that reason many people resorted to and relied on the police. To the extent that they relied on the police and their investigative networks, they thus relied upon forms of sociality that would have made the long-standing practical disciplines of the Islamic Sharia increasingly difficult to maintain. Whether or not these disciplines and restrictions were actually practiced in their entirety before the establishment of this new, modern-style police force, they still provided key reference points that authorized various forms of sociality within everyday life. But with the growth of the police, it seems, their authorizing power eventually came to be eroded, as shown by the formal abolishment of tazkiya in the Sharia courts.

I would like to suggest that the intricate networks of spies and informants that enabled the expansive scope of police investigative power were part of, and contributed to, a shift in the forms of sociality within which all Egyptian judicial structures would subsequently have to operate, one that foregrounded a particular affinity toward suspicion. This affective affinity can be partly discerned in the growing anxiety shown over the verification of people’s individual identities for official purposes, a task that was seen as increasingly difficult to enact. Several factors contributed to this suspicious attitude: from the British occupation and rising anti-colonial resistance—which created a growing need for secrecy; to the increasing range and variety of vested European interests—which made it difficult to ascertain who really represented whose interests; as well as the growing intricacies of longstanding capitulatory agreements—which enabled some to take on different citizenships. All of this made it easier to shift one’s official identity, and thus harder to pin it down.40 We should not, however, confuse the order of explanation. That is, it was not simply because it became easier to assume different identities that they became a problem, and that people became suspicious of them. We should not assume that suspicion is a natural or default response to growing social complexity. Rather, easily shifting identities became a problem for a state that was consolidating itself, that aimed to establish a certain conception of order, and that saw the verification of official identity as integral to that process.41 It recruited the police’s intricate and extensive networks of suspicion to do this. The rising affinity toward suspicion in Egypt, then, was not a natural response to growing social complexity, but historically fashioned, and increasingly purveyed by the state.42

Purveyed by the state, it also began to pervade Egyptian society. This is poignantly illustrated by the Arabic translation and massive reception of emerging European detective and crime mystery fiction, such as Sherlock Holmes, Arsene Lupin, and others, by a growing Egyptian reading public toward the end of nineteenth century.43 By the early 1920s, these genres were publicly familiar enough for Egyptian authors, some of them lawyers, to manipulate or parody them, pulp fiction style, in works that were about or featured prominently the practices of newly emergent judicial structures.44 This literature powerfully expressed the new sensibilities of suspicion intrinsic to these judicial structures and their investigative techniques. But it also expressed a suspicion of these techniques, in the way that they seemed to blur the legal and
illegal, the licit and illicit. The forms of suspicion intrinsic to them thus seemed to also potentially undermine their legitimacy, and the possibility that they can secure just outcomes.\footnote{45}

None of this is to say that suspicion was unknown before the new investigative networks and practices of the police and the judiciary. There were indeed long-standing forms of suspicion, and they were reflected in the various genres of Arabic literature. The new judicial structures and investigative techniques certainly amplified this suspicion, but they also gave it a distinctive shape, as noted earlier, and foreground it as part of a new, pervasive, sociality. This was reflected in the literature of the time. As Egyptian literary scholar Samah Selim shows, European detective fiction was adapted into existing Arabic literary forms in the process of translation. In the case of Arsene Lupin, she writes:

Lupin appealed to Egyptian translators and readers because he incarnates this new social experience, while at the same time evoking older heroic modes. \ldots In a world turned upside down, where corruption and colonial government render polity and citizenship into empty fictions, the Arabic Lupin is a very modern hero, if a somewhat ambivalent one. Then (as now) the law—and particularly the police—were objects of derision and satire.\footnote{46}

How did this new sociality, with its distinctive forms of suspicion, impact ‘adala, the techniques that constituted and relied upon it, and its relations to ‘adl? Here, we might return to tazkiya for some insight. Interestingly, the explanatory memorandum of the 1926 law abolishing tazkiya noted that part of the problem was that the judge could no longer find trustworthy people to enact it. As a result, a litigant would bring his own muzakki, who would testify to his ‘adala. Thus, the judge could neither ascertain the identity nor the ‘adala of either the litigant or the muzakki who testified on his behalf, and this turned the process into an absurdity that undermined its very purpose.\footnote{47} But if the judge could not find people trustworthy enough to enact tazkiya, then what of the shuhud ‘udul (upright witnesses), and the whole range of Sharia court functions for which they were so central? The explanatory memorandum suggests a deeper crisis in the intelligibility of the Sharia court’s practices. More importantly, it suggests that the new sociality was one for which the concept of ‘adala could no longer provide an authoritative reference point. In the face of this sociality, the techniques of ‘adala could no longer provide a practically intelligible way to verify identity or witness testimony within the courts. Put another way, ‘adala and the new forms of suspicion were practically opposed. If these forms of suspicion sought to better attain justice (‘adl), then ‘adala, as constituted through long-standing Sharia court practice, could not be part of them. What the memorandum shows, then, is a time when ‘adala came to be separate from ‘adl at the level of practice and practical intelligibility.

If the techniques of ‘adala could no longer provide a practically intelligible way for verifying identity or the trustworthiness of testimony, then different methods would have to be put in their place. These eventually became the ones put in place by the police. In another important article, Khaled Fahmy describes the documentary techniques employed by the police to verify individual identity.\footnote{48} He highlights how these methods presupposed a conception of identity that abstracted the individual from the community within which he or she was previously understood to be constitutively embedded. This “disembedding,” he argues, helped create a space for an abstract notion of individual legal equality to become conceivable as a practical possibility.
While Fahmy’s overall argument seems persuasive, other aspects of his work raise a more provocative possibility, about the relation of this emerging space for equality with the practices and possibilities of violence. That is because the investigative practices of the police came with structures of coercion that differed from those of the Sharia court. With the shuhud ‘udul and the centrality of ‘adala in the Sharia court, witness testimony—both its admissibility and its veracity—was completely tied up with witnesses’ status, religiosity, social reputation, and the expectations associated with these distinguishing characteristics. The investigative techniques of the police, however, did not rely upon shuhud ‘udul or ‘adala to validate witness testimony. In the place of ‘adala, they used witness interrogation, carefully probing the testimony for any potential contradictions that would throw doubt upon it. Fahmy has noted that, in some cases, police interrogation would involve the use of torture to extract testimony or confession—a practice that, though it became increasingly routine for the police, remained inadmissible for the Sharia courts.

Police investigative techniques therefore severed ‘adala from the validation of witness testimony. As with the practices of documenting identity that Fahmy describes, these investigative techniques helped create a space for a certain conception of legal equality. That is, since status and reputation were irrelevant, or at least secondary, to the veracity of witness testimony, witnesses were rendered principally equal to each other. Not only could everybody be subject to police interrogation, but also, potentially anybody could be made subject to judicial torture. No doubt, those of high status and reputation were more able to avoid interrogation and torture, while the low and the weak bore the brunt of these techniques. Moreover, the police found judicial torture to be inefficient and counterproductive to the truth that their investigations aimed to secure, and so, for a brief period, its practice was in decline. But what is important here is that conceptually the link between ‘adala and witness testimony was severed. So that, instead of status, reputation, and religiosity, the verification of testimony now depended on forms of interrogation and potential violence in front of which each person was ostensibly equal. The conception of legal equality made possible by the expansion of the police fit well with rule of law notions of equality and the inquisitorial procedures of civil law systems. However, it was also a form of legal equality that came with an increasingly routinized structure of coercion, one that made everyone a potential subject of police violence.

The establishment and expansion of the police in Egypt was integral to the project of consolidating state power. They were the expression of the sovereignty of a centralizing state, increasingly concerned with questions of order. The influence of the police (and particularly the Office of the Public Prosecution, al-niyaba al-‘amma) was further augmented by British colonial officials. This was not only to help the British secure order throughout the country but also to help further consolidate the state’s sovereignty against the broader international, especially European, legal and financial power that had entrenched itself there, and that made it difficult for even the British to realize their interests. In other words, within this historical period, one sees a coming together of state sovereignty, legal equality, and violence as part of the reception of civil law into Egypt, within the context of colonizing and modernizing projects.

Such transformations in the forms of sociality, modes of authority, and structures of coercion as a result of modern power, their consequences for Sharia disciplines, and the kinds of practical knowledges and embodied virtues they enabled—such as ‘adl and adala—require much more systematic investigation than they have so far been given.
Here, I have only pointed to some broad shifts within an enormously complex historical period, and only touched upon some of their potential consequences. Let me summarize the points I have made on 'adl and 'adala. First, 'adl and 'adala are inclusive terms that sum up a wide range of virtues expressed within everyday life. Second, these terms provided one foundation for the development of Sharia knowledges that were important to living life as a Muslim. Third, as a remedy to the problem of arbitrariness, 'adala and the techniques of inquiry used to ascertain it had an authorizing function, that is, they provided grounds and limits for the production of narratives, whether these be the testimonies of witnesses or the ijtibads of scholars. Fourth, the techniques used to guarantee 'adl were part of a broader set of disciplinary practices aimed at securing those virtues deemed necessary to Muslim life and proper Islamic practice. And fifth, the social conditions that enabled those practices had come to be eroded through a new configuration of law, violence, and suspicion—such as the new police force—that was established by Egyptian modernizing state projects. As 'adala and 'adl became separated at the level of practical intelligibility, a new concept of legal equality brought with it the practice and possibility of an arbitrary violence.

COMPARISON

At this point, we should be able to highlight some important contrasts between justice in liberal law and 'adl in the Sharia. I had noted previously that justice in liberal legal tradition was understood as the completed outcome of a legal process, that is, as the performative outcome of a judgment. In the Sharia, however, 'adl is rooted in 'adala, which facilitates the process of judgment; 'adala is what allows it to proceed. If justice is understood as a performative outcome of judgment, then 'adl, as rooted in 'adala, could be understood as a felicity condition for judgment. Moreover, I mentioned earlier that one of the fundamental problems for justice was the introduction of arbitrariness into it. Arbitrariness caused a crisis in the felicity conditions of justice as a completed outcome, and thus, in the authority of a judgment. 'Adl, on the other hand, and the techniques used to ascertain it, serve as conditions of felicity against arbitrariness, precisely because of their authorizing function. That is, while justice comes with a sense of authority as the final word, or pronouncement, 'adl comes with a sense of authority as a continual authoring, as a source and limit of ongoing narratives.

Also, in liberal legal tradition, justice was linked to an underlying concern about the political, about the domain, and the proper definition of human freedom. It was the modern inability to distinguish between violence and authority in the domain of politics that threatened justice with arbitrariness. 'Adala, however, and the techniques used to ascertain it, partook of a broader set of disciplined methods of interpersonal and collective critical engagement whose underlying concern was to ascertain and secure those virtues deemed necessary to Muslim living and the maintenance of Islamic practices. Consequently, the question of violence in relation to 'adl has not been a central one within the Sharia; rather, problems such as those of tajassus (spying) and ghiba (gossip, backbiting), and their potentially corrupting effects, may have been more important. I would venture here that the Sharia typically has not been preoccupied with the question of violence in relation to politics, at least not until relatively recently, with the immense pressures of the modernizing and colonizing state projects to which it has been, and continues to be, subjected.\(^{52}\)
Given the preceding discussion, and in keeping with the exploratory nature of this chapter, I would like to end with a few questions. First, considering the wide differences between ‘adl within the Islamic Sharia and justice within liberal legal traditions, how did ‘adl come to be understood, historically, as “justice” within Western languages as well as contemporary Egyptian legal discourse? What institutional and conceptual transformations allowed ‘adl to be understood in this very different way? How did they further separate the notion of ‘adl from ‘adala and the techniques and practices that authorized it? And how did they connect the notion of ‘adl with that of equality (al-musawa)? And what further changes in the forms of sociality were involved?

Second, how have particular practices of violence become incorporated into, or adapted by, that part of the Sharia that is still operative in the Egyptian courts? For example, a new provision was added in the 1897 reforms of the Egyptian Sharia courts that ensured obedience to court judgments through force. Why would such a provision need to be explicitly included? Importantly, the 1897 reforms restricted the jurisdiction of the Sharia courts to those issues that came to be defined as personal status and family issues. The reforms helped clear a space for a specific conception of “family.” But what are the consequences of connecting this newly emerging space of family with the police power that represents the sovereignty of the consolidating state?

And third, what have been the consequences of the dispensation of ‘adala and the techniques developed to ascertain it, as well as the incorporation of particular practices of violence in the courts, upon the Islamic Sharia’s modes of authority in Egypt? Has the Sharia’s incorporation into the liberal legal structure of Egyptian law imbued it with the same kinds of arbitrariness that have been described in this chapter? Does it now suffer from the same kinds of indeterminacy as positivist state law? If so, this might help us explain the reluctance of Hamid, the lawyer mentioned in the first section, to employ the Sharia in his case arguments. You will remember how he claimed that every verse he could use for his own case could be equally used to make the case of his opponent. Hamid was a practiced lawyer, so his discomfort could not have been about a mere exchange of conflicting views. So we might see his discomfort as tracking something deeper, that is, the arbitrariness and unstable authority that constantly haunt liberal legal structures, and which he felt was inappropriate to the Islamic Sharia. Hamid, as I noted earlier, saw himself as a religious person, and he would not, in principle, have rejected the idea of the implementation of Islamic Sharia in Egypt. However, in keeping Qur’anic verses separate from his legal argumentation at the very point where they coincided most, we could see him as tacitly making a practical distinction—reserving the Sharia to a space away from the arbitrariness he saw in law and politics. That is to say, we could see him as making a characteristically secularizing move, placing the “religious” in one domain, and the “legal–political” in another.

ENDNOTES

1 By civil law tradition, I mean the legal tradition that arose and remains dominant in Western Europe, excluding the United Kingdom, where what is called Anglo-American or common law tradition is dominant. As the chapter proceeds, however, I will refer to “liberal legal tradition,” which encompasses both, especially in their contemporary positivist versions and


3 This was even in the case of Personal Status law, which is explicitly governed by Sharia rules, and whose statutes sometimes reference specific verses. Even in these cases, he would typically use what was already in the legal statutes, and rarely anything extraneous to them to make his substantive arguments.

4 I have discussed this point more extensively in Questioning Secularism: Islam, Sovereignty and the Rule of Law in Modern Egypt, University of Chicago Press, 2012, chapter 4.


7 Cover relies upon Elaine Scarry’s argument that pain is “world-breaking,” but many have questioned her argument. See, for example, Talal Asad, “Thinking about Agency and Pain” in his Formations of the Secular: Christianity, Islam, Modernity, Stanford University Press, 2003.


11 I say this because the TRC can be seen as a continuation of the process that began with CODESA, of promoting the necessary national unity that a sovereign would, in the abstract, represent. And thus, the amnesty given here does not flow from a sovereign. Rather, it is through amnesty that national unity is made possible; in this case, then, the possibility of sovereignty flows from amnesty, and not the reverse. Indeed, the feared alternative was protracted civil war that would follow upon national disunity, that is, widespread, non-sovereign, violence.

12 For an extended discussion of these points, see the fascinating articles by Scott Veitch (2001), “The Legal Politics of Amnesty,” and Bert Van Roermund, “Rubbing Off and Rubbing On: The Grammar of Reconciliation.” Both articles are in Emilios Christodoulidis and Scott Veitch, eds., Lethe’s Law: Justice, Law and Ethics in Reconciliation, Hart Publishing, 2001. In the introduction to this book, the editors write: “But what presuppositions would underpin the victims’ attitude of forgiveness? Why would they engage in a process that is clearly at odds with some principles that, according to well established legal theory, derive from the rule of law? He [Van Roermund] argues that the paradoxical answer is that by doing so they establish the very basis of a legal order, in an account of human relationships that is radically different from the economics of social contract theories. This conceptual deep-structure (or ‘grammar’ in Wittgenstein’s sense) of reconciliation is neatly revealed by the various phenomena that occurred in the process of ‘truth and reconciliation’ presently taking place in South Africa.” While some of the paradoxes outlined in Van Roermund’s and Veitch’s articles parallel those outlined by Agamben, their resulting accounts of human relationships differ substantially from his. With Agamben, both, the one who enacts violence with impunity and the one upon whom violence is enacted with impunity, exist in
a zone of indistinction between the human and the non-human. Hence, homo sacer. For the authors, however, amnesty entails a fundamental recognition of the humanity of those who enacted the violence of oppression. According to Van Roermund, this recognition was found in the acknowledgment that the capacity to commit inhuman acts existed in all human beings. Not only is no one homo sacer, but the notions of sociality underlying the idea of humanity seem different.

13 Between Past and Future: Eight Exercises in Political Thought, Penguin Books, 1993. See chapter 3, “What is Authority?” For Hannah Arendt, authority and freedom are integrally connected, the recession of the one simultaneous with the recession of the other. And so, they are essential to her understanding of politics: “It is hardly fair to say that only liberal political thought is primarily interested in freedom; there is hardly a school of political thought in our history which is not centered around the idea of freedom, much as the concept of liberty may vary with different writers and different political circumstances” (p. 97).

14 It might be worth noting that the TRC considered acts that worked to maintain apartheid and acts aimed at resisting it as equally political. That is, they would not, or could not, distinguish between acts of oppression and acts of freedom within the sphere of the political. This refusal to distinguish was a pre-condition for amnesty, one that aimed to establish a liberal post-apartheid community. Yet it also threatened to undermine that very goal. This was because the TRC’s decisions were part of the process of forging a sphere of the political; if in that process the notion of freedom was separated from it, then what was its point?

15 Toward the end of the chapter, Arendt writes, “Authority as we once knew it, which grew out of the Roman experience of foundation and was understood in the light of Greek political philosophy, has nowhere been re-established, either through revolutions or through the even less promising means of restoration, and least of all through the conservative moods and trends which occasionally sweep public opinion. For to live in a political realm with neither authority nor the concomitant awareness that the source of authority transcends power and those who are in power, means to be confronted anew, without the religious trust in a sacred beginning and without the protection of traditional and therefore self-evident standards of behavior, by the elementary problems of human living-together.” Ibid., p. 141.


17 For a fascinating discussion that addresses this question, see Keechang Kim’s Aliens in Medieval Law: The Origins of Modern Citizenship, Cambridge University Press, 2000. He highlights a profound shift, from when the pre-eminent distinction in the law of persons was between free and not free, to that between citizen-born and alien-born. With that shift came profound transformation in the concepts of liberty and equality, all of which remain to be further explored.


19 See, for example Corey Robin’s Fear: The History of a Political Idea, Oxford University Press, 2004.

20 One could in principle extend this further and further back in time. Thus, if not the military regimes that began with Nasser, then why the laws that were forged under the era of British colonialism, however much an Egyptian elite might have been involved? But then, could not the Ottoman Empire also be seen as an imposition upon Egypt, even as Muhammad Ali broke off from it? This illustrates the problem of legal legitimacy that Marianne Constable describes. It indicates that, in Egypt too, the concept of authority has been largely lost.

21 The period between 2011 and 2013 was also fraught with significant popular opposition to military rule. It made for a confusing and contradictory situation, where many of those who claimed to revile Morsi and the Muslim Brotherhood for their deals with the military ended up supporting the military in its actions of removing them. Similarly, many of those who criticized the judiciary for tacitly supporting the old regime and obstructing investigations
against former Mubarak officials ended up opposing Morsi’s attempts to transform its structure. The constant shifting of alliances by all parties enabled constant accusations of hypocrisy, and fed into an increasingly vicious cycle of fear and suspicion.

22 Morsi and his political allies, for their part, viewed liberal and left activists with disdain and suspicion, as marginal and unrepresentative of the wishes of the majority of Egyptians, but who nevertheless sought to impose liberal principles upon them.

23 See Agrama, *op. cit.* chapter 5.


25 We could say for the potential dissonances between concepts/practices, and how they make for potential tensions and senses of incoherence. Such an investigation brings us close to the exploration of “problematizations” that characterized Foucault’s style of inquiry.

26 Such an approach has come to be accepted in fields outside of Islamic legal studies, due, in part, to the inaugural ethnographies of Charles Hirschkind and Saba Mahmood.


28 This, of course, was not the only criterion for ascertaining the authenticity of a particular hadith, but it was a crucially important one.

29 The Prophet’s companions, however, were never subjected to *al-jarb w’al-ta’dil* because they were automatically seen as possessing ‘adala. Thanks to Ovamir Anjum for alerting me to this point.


32 I have often wondered whether we could not see the actions of Chelsea Manning and Edward Snowden, and whistle-blowing more generally, as enactments of *hisba*. Would it be too far-fetched to see their acts in such terms? To see them as modern forms of parrhesia might, to some people, seem less far-fetched. (See, for example, Jonathan Lear, “Truth to Tell,” *New Republic*, 5/5/2011: http://www.newrepublic.com/article/politics/magazine/87893/pj-crowley-bradley-manning-state-department#primary-form) Could it be that, because *hisba* has become so strongly—and narrowly—associated in the minds of many with constraint and censorship, the idea that it can involve speaking truth against power is obscured?


34 In another passage, Foucault writes of the shifting relations between parrhesia as a political practice and a form of self care: “In the realm of political institutions, the problematization of parrhesia involved a game between logos, truth, and nomos (law); and the parrhesiastes was needed to disclose those truths, which would ensure the salvation of welfare of the city. Parrhesia here was the personal quality of an advisor to the king. And now with Socrates, the problematization of parrhesia takes the form of a game between logos, truth, and bios (life) in the realm of a personal teaching relation between two human beings. And the truth that the parrhesiastic discourse discloses is the truth of someone’s life, i.e., the kind of relation someone has to truth: how he constitutes himself as someone who has to know the truth through *mathesis* [moral formation], and how this relation to truth is ontologically and ethically manifest in his own life. Parrhesia, in turn, becomes an ontological characteristic of the basanos, whose harmonic relation to truth can function as a touchstone. The objective of the cross-examinations Socrates conducts in his role of the touchstone, then, is to test the specific relation to truth of the other’s existence.” *Ibid.*, p. 43.


One might be tempted to construe this as the erosion of trust-based personal relationships, as the breakdown of a trust-based society often seen as a prelude to a risk-based one, so that claims to identity could no longer be taken for granted. Indeed, we should not ignore the consequences of increasing capitalist penetration into Egypt, which may have profoundly impacted concepts such as *maslaha*, often now translated as interest, in ways similar to what Albert Hirschmann (2013) details for Europe, and which connected it to risk and calculability. But whatever truth there might be to this view, it is also too simple. Thus, it was never the case that one could simply take someone’s claimed identity for granted. After all, the verification of identity in court was precisely one of the long-standing functions of the *shuhud* (upright witnesses) and the practices of *tazkiya* that they conducted.

Selim, *op. cit.* See also Elliot Colla, “Anxious Advocacy: The Novel, the Law, and Extrajudicial Appeals in Egypt,” in *Public Culture*, v.17, n.3, 2005, pp. 417–443. Notably, this is the same reading public from which the various functionaries of the newly emerging judicial structures were taken, be these judges, lawyers, court staff, experts, the general prosecutor (*niyaba*), etc.


The aspects to which I refer to were presented in a talk that Fahmy gave in May 2010 at the University of California Berkeley as part of a workshop in its Center for Middle Eastern Studies. The talk was entitled “The Politics of Sharia: Some Lessons from Nineteenth Century Egypt.” The paper on which it was based seems not to have been published yet. However, a version of the talk, given at the American University of Cairo, can be viewed at: http://www.youtube.com/watch?v=Nz7txriclik (this version is entitled “Siyasa and Sharia: The Politics of Implementing Islamic Law in Egypt). My subsequent citations to Fahmy refer to this version of his talk.

Fahmy, *ibid.*

The *niyaba* is a judicial investigative authority, based on the French *parquet*. It is not the same as the police but relies upon and works very closely with them. Of its history in Egypt, Abdallah Khalil writes, “Because of the desire of the political authority to control the powers of the Office of the Public Prosecution, the British deliberately abolished the criminal investigation judge (*juge d’instruction*) and handed his powers to the Office of Public Prosecution with an 1895 decree.” What this meant was that the *niyaba* was now charged with contradictory functions. On the one hand, it was responsible to investigate, interrogate, and compile the evidence in order to uncover the truth concerning the accused under trial. On the other, it became responsible for *prosecuting* the case against him or her.
That is, it combined the powers of investigation and accusation. Khalil continues, “In fact, the investigation judge system was abolished because of the wish of the political authority to have full control over political cases and over the authorities of accusation and investigation in political crimes.” This contradictory arrangement continues into the present. Abdallah Khalil, “The General Prosecutor between the Judicial and Executive Authorities,” in _Judges and Political Reform in Egypt_ (Nathalie Bernard-Maugiron, ed.), The American University in Cairo Press, 2009, pp. 59–70.

There is, however, a classical Sharia discourse on violence and rebellion. That discourse distinguishes between rebellion (baghy) and brigandry (hiraba). The primary basis of this distinction was that the rebels were motivated by a difference of interpretation from the ruler on points of the Sharia. Though rebellion was illegal, it was not necessarily considered a sin, and rebels’ lives and property were not entirely forfeit, and neither were they to be held responsible for loss of life and property incurred during the rebellion. In this discourse, the notion of ‘adl played a very small and largely ambivalent role. These issues are discussed in great detail by Khaled Abou El-Fadl, _Rebellion and Violence in Islamic Law_, Cambridge, 2001. In the preface, Abou El-Fadl notes that it was the discourse of terrorism that motivated him to do this study. In this sense, the study could be seen as a response to the pressures of modern power, of which the discourse of terrorism is a part.

A provision in section 93 of the 1897 law authorized the use of coercion in implementation of Sharia court judgments. A copy of the law can be found in _Majmu‘at al-awamir al-‘ulya wa al-dikritat al-sadira fi sanat 1897_ (Bulaq, 1898), pp. 155–175.

**REFERENCES**


