Islam: Law-makers and Philosophers

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My purpose in this 'talk' is to try to explain the unhappy relationship in Islamic history between law-makers and philosophers. While there is no conceptual reason why these should have been two different groups I will try to explain why they were, and how this difference came to have a deleterious effect on the life of Muslims –one that we can sense even today. Whether this story can be seen to have any relevance to contemporary discourse on whether and in what way religion and secularism can felicitously co-exist is something I will leave for you to think about, though I will add a note or two at the end expressing my views.

Let me start by explaining the first simple steps that came eventually to define an identity of gigantic proportions –that of being a Muslim. This is the story of the law-makers: their ontogenesis in Islamic history is simple to trace. Right after the death of the prophet in the 7th century, the obvious need arose in the nascent Muslim community for coming up with answers to questions about what the right thing for a Muslim to do was

in cases that seemed to have no ready-made answers but which needed on-the-spot decisions to be made. To begin with, these were probably quite direct and straightforward questions, such as that inquired by a first-time envoy to a foreign land wishing to know what he –now as a formal representative of this new religion- should do if he was asked to accept a gift from his hosts. Such questions had to be answered by someone in authority. In the first few years after the prophet's death (2, then 10, then 12), it was natural for Muslims to look to the prophet's successor himself to seek answers for these questions. After all, such a person, as a successor to the prophet, was expected both to rule as the prophet had done as well as to be able to judge on what the right things for Muslims to do were in those matters that were not covered by what the prophet himself had said or done. However, even from those first days, and where the Caliph himself might have been too preoccupied with the more weighty matters of governing this new political entity that was quickly growing, other authorities were also sought for answers, now in the persons of those other companions of the prophet, who were presumed to be as knowledgeable about the prophet's message as the Caliph himself was. Those companions, after all, were considered to be just as

knowledgeable about the Qur'an and the prophet's ways as the Caliph was, besides the other fact that the Caliph himself had been chosen by them. Indeed such persons, not overweighed by governing burdens, had more time on their hands to think about what the prophet might have said or done in those matters in quotidian life that needed answers. This trend –of seeking knowledgeable rather than political authorities for answers for the right things to do- quickly transformed into a set course for Muslims, especially as controversies began to develop in the community over rightful succession, as well as over the practices of those different rulers. It is worth recalling here that, following the first successor who ruled for only two years, the three Caliphs who succeeded him ended up being killed by fellow Muslims. Clearly, in the eyes of the community, politics and religious life –or political authority and religious authority- were parting ways from early on. For the latter, it must have felt safer and more reliable for the community to turn more and more to those non-political figures who were regarded with respect for their piety and religious knowledge, than to competing political rulers and figures. Religious credibility now lay clearly with them, and religious authority came to be vested in them by the members of the community, rather than by any official decree, or formal event. It was more

a case of a growing public creed that, to know what the right thing for a Muslim to do in cases where there was doubt, only pious religious scholars would have the right answer.

One cannot stress enough this significant circumstance in early Islamic history. There was no official separation of authorities here as we might find in democratic systems or constitutions. There was no 'wresting' of political from religious authority, as had been the case in Christianity. It was a natural development, and a bottom-up process of swelling up of conviction by members of the community that religious authority must be independent, and characterized by piety and knowledge rather than through any official office or decree. Political rule, one might say, was seen for what it really was, and while Muslims could accept living under the political rule of the powers that be, the matter was entirely different for them to accept their religious identity being ordained or prescribed by these rulers. Being a political subject was one thing. Being a religious Muslim was another.

While the matter at first of speculating what the right answers were may have been straightforward, with only few people being sought for guidance –these being the prophet's

companions- it grew more complex over time, both as the questions increased and became more varied in kind, and as the religious authorities being sought for answers, or who were offering them, also increased in number, and varied in their dispositions. It was therefore felt, over time, that some kind of policy guideline must be agreed upon –a system to define how rules of or judgments on ethical conduct could be determined. This did not happen overnight, nor, again, did it come about by political decree. Religious figures and legal scholars intent on studying the Qur'an, the language, as well as the prophet's sayings and deeds felt the need for, and managed to develop, during a cross-generational discourse, the outlines of what might be called 'a legal system'. Four classical phases in the history of this development are usually identified, the first associated with the prophet's companions, and the last with Andalusian scholar al-Shatibi, from the 14th century. I will turn back to him in due course. Also, four different schools of law in sunni Islam, and one main one in Shi'ite Islam are usually identified, all associated with prominent pious scholars and their followers. One could say the different schools adhered to the same system, of which I shall have more to say in a minute, with what could be regarded as minor differences between them.

It is clear from the above history that two –one might say- elementary features –besides piety and honesty- characterized the religious authority being sought by believers for guidance: in-depth knowledge of the sources (of the Qur'an, as well as of the prophet's saying and deeds), as well as the ability to use this knowledge in order to elicit answers for newly arising situations. An arising situation could be one for which a general rule in the sources could be sought and found, such as the distribution of an inheritance after someone's death. Such rules in the Qur'an are quite definitive, and not in need of working out what *might* have been a judgment concerning the case in question. But an arising situation could also not be covered by a general rule. In this case, the religious authority or legal scholar would have to work out, from specific references in the sources, whether any one or more of them could be used as an example for the case in question. Clearly, using one case in the sources as an example to infer that another one now being considered falls in the same category, and should therefore be subject to the same treatment, would normally require more mental effort. Could a Jewish woman, for example, retain her religion if she became married to a Muslim? While there is no rule for such cases in the sources, a

legal scholar could easily argue that since the prophet himself did not impose on the Christian wife he married to change her religion, this should be enough as a basis to infer that it is allowable for Muslims to marry from among the so-called 'people of the Book' –meaning Jews and Christians- without the need for them to change their religion. Analogical reasoning, as this came to be called and employed, is distinct from inferential reasoning or induction, even though the mental move being made is from one instance to another, via a hypothetical rule. But it is a single move, sufficient unto itself for invoking that rule, rather than being considered a first step to be confirmed only after a reasonably sufficient number of other similar cases have been studied, and found or determined all to justify a conclusive judgment. All a scholar would need was one specific knowledge-item from the sources he worked with- for example how the prophet behaved on seeing a dog once being badly treated- to be able to pass the judgment that a Muslim ought to be kind to cats. The reasoning behind the prophet's behavior is drawn upon to infer what the right thing is for a Muslim to do. Before closing off this first chapter of my talk, I just wish to highlight the emphasis I gave in the above account on *acts,* or human behavior, in the context of what *it was the right thing for a Muslim to do.* As can be surmised, this covers a very wide

and variegated range of social behavior. Besides this, religious scholars would also converge on identifying both the ritualistic *practices* required of a Muslim –such as fasting, making a pilgrimage, and praying; as well as Islam's *articles of faith*- such as the belief in monotheism, prophecies and the Day of Judgment. Ritualistic practices clearly express visible or outward behavior, while the articles of faith express inner and private beliefs. But as can be seen, while both the articles and the practices add up to no more than twelve or so items, the range over which legal scholars could pass judgment on human behavior is unlimited except by contingent circumstance – whatever happens to arise that is thought to have no precedent. As I explained, two approaches were identified for making such judgments – a deduction from a rule and an inference-by-example. Were one to try to identify what is meant by a Muslim religious identity –a challenging task, to be sure- one would clearly have to draw upon this vast range of beliefs and behaviors, one part of which can be argued to be already established, but another part that is by necessity open to contingent circumstances.

So much now for law-making. I shall come back to explain a bit more about what I earlier called the 'legal system' that was

developed. But it is important even at this stage for my purposes in this talk to underline two critical features that identify this discipline: the first is the scholar's –and discipline's direct importance to and impact on the quotidian life of the Muslim, and the second is its politically-independent power or authority.

Turning to philosophy, its early development is normally associated with that time in Baghdad in the 9th century when Greek and Syriac manuscripts in science and philosophy and their Arabic translations were beginning to fill up the countless paper-shops spread throughout the Islamic capital, and with the interest scholars began to take in that literature, whether to satisfy a thirst for pure knowledge or for the more practical purposes of finding better and new ways to solve technical problems –such as, for example, how to raise the water-level in the Euphrates in a dry season, or produce better color dyes, or prevent winds from blowing candle-lit street lamps. Al-Kindi, often cited as the Arab progenitor of this discipline in Islam, reportedly had a library containing manuscripts in every conceivable subject, from metaphysics to machineries. But right from the beginning, if philosophers were useful to rulers as astronomers or engineers or (intellectual) companions, or to

these and to the general public as doctors, they were of little or no relevance to the overwhelming majority of Muslims as logicians or metaphysicians. In isolated cases -as in that of the famous astronomer Naseer Eddin al-Tusi, who moved over from Baghdad to the Assassins' fortress following the sacking of the sunni capital Baghdad in the 13th century- they wrote what may be regarded as ideological tracts in defense or exposition of the beliefs of their schismatic movements. But on the whole their involvement in public life was minimal, whether by choice –as in the case of Alfarabi, the 8th century philosopher who was first dubbed 'the second master' after Aristotle by Maimonides- or simply by nature of their esoteric pursuits. True, their writings may have been seen at some point as beginning to have a potential bad influence on growing educated circles –sufficient to prompt al-Ghazali in the 11th century to write a scathing attack on them- but both this attack, and others later by religious scholars, while of interest to scholars belonging to this discipline or that, and of interest certainly to other philosophers, like Ibn Rushd/Averroes from the 13th century who considered it important to respond to them, hardly concerned the masses, or touched their quotidian lives. Compared with the law-makers and the theologians, the philosophers were but a fleeting feature of the public

landscape. To be sure, they would sometimes be an object of hate and incitement for the crowds, as happened with Averroes at one point in his career, when his enemies managed to concoct heresy charges against him, leading to his trial and to having his books confiscated or burnt, and even to his becoming a favored target of vilification in vulgar street poetry. But such contact-points with the public could hardly be considered highlights of positive philosophical influence on quotidian life.

I mentioned Alfarabi before, and now Averroes, both considered representative of the Aristotelian tradition in Islamic history by many scholars, and to whom I shall return below for a comparative assessment that is of relevance to the argument I am trying to build up in this talk. For now, and to add a few more strokes to these introductory remarks on the development of the philosophical discipline, I should perhaps just mention that historians tend to see it divided into different phases and schools, in light of the nature of the influence on it of earlier Greek philosophies. A budding phase is associated with al-Kindi, who is regarded by some as having been more influenced by the neo-Platonist tradition than by Aristotle; a second, more established phase is associated with Alfarabi and

others in Baghdad, but also later with Averroes and others, who are regarded as having brought Aristotle back into the discipline in a more vigorous manner; a third phase –regarded as being somewhat indeterminate but perhaps more Plotinian- is associated with Ibn Sina/Avicenna, and a fourth illuminationist phase is associated with Suhrawardi, leading up to the so-called Shiraz school and to Mulla Sadra, of the 17th century. I would generally caution against this tendency –more characteristic of early Western scholars of the discipline- for either lumping people together or apart in terms of pre-defined categories or perspectives: these often rather blind students to what there is rather than help them see it. Finally, I should perhaps also add the relevant note here –relevant, that is, to this talk- that practitioners of this discipline during the said period may or may not have been Muslim, or to have considered themselves such. Some, indeed, were Christian, some polytheists, and some, like Abd al-Latif Baghdadi, Jews who converted to Islam just before he died, more likely for practical reasons to do with inheritance laws than with a last-minute religious epiphany. Being a 'member of the club' simply meant to engage in the studying and writing of philosophy, mostly in Arabic, this being the language of the Empire of the

time. This might of course explain a lot about their marginality to Islamic quotidian life.

Having laid out the general landscape for this talk, which, I will remind you, seeks to identify the unfortunate circumstance of the mutual estrangement between philosophy and law-making, I would like now to spell out why I think this circumstance was unfortunate, as well as to explain why I think the blame for it lies squarely, or primarily on the philosophers. First, then, while philosophers were immersed in explaining what the moral life consists in, and how political governance should be or look like, all the time taking their cue from the relevant passages from Plato and Aristotle they felt important, law-makers engaged themselves in the practical affair of prescribing that life for the ordinary Muslim. At the end of the day, what being a Muslim meant in practical terms came to be defined wholly by the law-makers than by the philosophers. Given what was said about law-making –and, therefore, religious identity- having been chiseled by politically-independent scholars as a *sui generis* authority, what we have been left with to face today –in spite of a circumstance I shall mention forthwith- is that same separation between political and religious legitimacy, where the former as a political

authority is being challenged for not properly representing the latter, or for being secular –even heretical- instead of being religious; and where the latter, to all intents and purposes, has become captive to religionists upholding rigid, if not even a recessive, or regressive understanding of the legal discipline- and who are therefore devoid of creative moral thinking. This circumstance leads one to wonder whether, had religious identity been carved differently, that is, with the active input of the philosophers, this harrowing gap which is unscrupulously being exploited today between politics and religious identity might not have existed, or not existed in the manner it is being exploited at present by extremists. It is telling, for example, that ISIL's use of terrorism as a means to an end cannot be countered by an established legal tradition that forbids the use of such means however noble the ends may be viewed. It is more telling that Muslims today seem divided between those who are repulsed and others who are enchanted by IS's vision and tactics, with a large sector of the population in-between who have consciously disengaged themselves from the need to ponder how this vision might or might not constitute their own identity.

In a recent book *Islam and the Secular State* by legal scholar and historian Abdulilahi Na'im, the relatively recent circumstance I just alluded to as a caveat in my account of law's development as an independent field is highlighted of when and how Islamic law finally came to be 'appropriated' by political authority, this leading to an non-felicitous marriage between the two. The circumstance in question is marked by the so-called Ottoman 'capitulations' of the 19th century, when expanding colonial power in the region and colonial commercial interests and concerns led the Caliphate for the first time to institute laws to govern public life, in which items from the Islamic law were selectively included or excluded to address a newly forged relationship between the Caliphate and those colonial powers. To be sure, state law-making had its ontogenesis in previous occasions and under different circumstances, whether as conciliatory gestures to accommodate relations with neighbors or as positive political efforts to better organize the economy, prominent among the latter efforts being that of the Ottoman Sultan Sulayman of the 16th century. Perhaps what really marks the 'capitulations' on the other hand mark as being, to all intents and purposes, the first time in Islamic history when Law suspiciously becomes the provenance of the State, i.e. of political authority, is its

manifest attempt to appease colonial power in an era of Islamic decline. At the risk of belaboring this point, judicial authority in Islam had up to this point been totally independent of state authority –the latter only being an executive arm. Islam's 'supreme court judges', so to speak, neither had to be appointed by a Caliph nor to be approved by some State legislature. Their legitimacy derived directly from the people, and attested to by their piety and knowledge, as well as by the respect owed them by their peers. The Ottoman capitulations therefore signaled a major sea-change. While these capitulations were revoked when the Ottoman Caliphate was finally defeated in the First Word War, the emergence of the new 'European-modeled' -and sometimes 'crafted' -nation states in the Arab world that emerged in the last century essentially followed the same rule of instituting laws, thereby relegating Islamic Law (and Muslim identity) to the sphere of personal as opposed to public life. In effect, Muslim countries were 'cajoled into' adopting one form or another of the by-then Western practice of distinguishing between State law and canon law. Once again, the suspicion of their being primarily motivated by some form or another of submission to colonial or western demands remained a thorn in their genesis. In any case, Muslims continued and still continue to identify

themselves as Muslims by the various legal schools and their founders, rather than by any of those politically-formalized laws.

Na'im draws on this circumstance to explain why tension exists in the Muslim world, and why religious activists may seek to wrest control of political power from the State. Unlike the past, when politics was not the source of law, and therefore not an object of contention, it has now become a legal power-source – he argues- that Islamicists see they must take control of in order to reclaim and safeguard religious identity. To redress the problem, and release the tension, Na'im suggests that the only way is for the State to retain that part of the law that would guarantee pluralism and basic human and civic rights, while releasing charge of the rest of the law, thereby returning this charge (and the charge, more generally, of defining religious identity) to religious scholars. While such a suggestion, in light of the historical circumstance explained, may now seem a logical way forward to release the aforesaid tension, my previous observation stands that this tension might not have existed if philosophers had not stayed aloof from law-making in the first place. It continues to hold –I submit- with respect to the present, where the seeds of conflict

can be contained not only if universal human values are set, so to speak, as a legal security belt encircling the boundaries of religious life: but if they more importantly come to identify that religious life. There is no enduring protection the State can make for itself, in other words, against its own public. Such a security can only be found if the public finds its identity commensurate with that of the State. I will return to these melodramatic statements at the end of my talk, but it may be worth mentioning meantime that, among the changes introduced alongside the Ottoman capitulations was the institution of what was called 'the millet system' –a politicized articulation of the pre-existing *dhimmi* provision in Islamic Law, which was initially established to define the collective status of the Jewish and Christian communities under Islam, but was eventually extended to apply to members of other religious communities. In one manner or another, this distinction between religious autonomy for minorities and State law is still operational under varying limitations in those regions that formed part of the Ottoman empire, including Israel.

So now we should ask ourselves, why did philosophers on the whole (and there is an exception to which I shall return later)

remain aloof from law-making, and generally from those other indigenous or religious disciplines, like that of what is sometimes referred to as 'dialectical theology', whose contact points with the general public were much more open and numerous? Why did the philosophers, in other words, sequester themselves rather than try to impact life around them, especially in view of the fact that a major part of their efforts were dedicated to political and moral theory, and to determining what the virtuous ends of human society are? Would they, in any case, have been able to make a positive impact on the work of the law-makers? Or would their discourse have been –to use an expression much used over the past few weeks, but also by Habermas in this kind of context- 'un-translatable' into religious language? Indeed, given the mention of the latter, didn't the burden of seeking such a translation in any case –if it was needed- fall on the religious scholars rather than on them?

Perhaps this raises in our minds the more general question concerning the role of philosophers –how 'connected', or 'disconnected' to real life they view their discipline and role to be. Perhaps, also, and in relation to that particular phase of philosophy's history we are considering, one may look for the

answer in the particular circumstance of the philosophers' self-definitions as Muslim or otherwise, and in terms of those same definitions as viewed by their communities. Perhaps, in other words, they did not on the whole feel they *belonged* to the societies in which they lived anyway –that they were, as Alfarabi or the Andalusian Ibn Bajjah/Avempace would say, drawing on an image from Plato, more like independently growing *weeds,* and therefore not a natural part of the ordered landscape around them.

These explanations are of course all possible, but what helped *actualize* them was that unfortunate circumstance –primarily associated with philosophy's formalized second phase and Alfarabi- of actually believing that they possessed, in the works of Aristotle, *the key* to Reason and knowledge – a key which in most cases they should keep to themselves, as this would only work for a door that opens up to an already emancipated society- a kind of imagined virtuous city; or a key to a special and scientific language that, if it were to be used for deciphering, would do so only in the sense of simplifying it sufficiently for the lesser minds to understand. For otherwise, in the society as that in which they lived, discourse between them and theologians and law-makers would simply amount to

speaking in two different and incommensurate languages, that of Reason, and an inferior one of rhetoric or dialectics or poetics. More importantly, they probably felt, they themselves as philosophers were not called upon to engage in such a dialogue, nor indeed to engage in the 'second-rate' conversation taking place at the 'plebian' level where laws were being crafted. And were they to dabble in such matters, they additionally thought, then that would in all likelihood just land them in trouble. Alfarabi may in addition have also had in mind that Aristotle himself, after all, had legitimated a second-best life for the philosopher, or one where, either for lack of resources or friends, or even disposition to the seeking of honors or status, the philosopher could still lead a fulsome or happy theoretical life – away, that is, from politics.

In all fairness, not all philosophers were of that bent of mind. Alfarabi's predecessor al-Kindi, for example, in his *On First Philosophy* –a commentary on Aristotle's Metaphysics- like Ibn Rush centuries later, would argue that Greek philosophy should be worked on side by side with the traditional disciplines. But it was Alfarabi's outlook that, in due course, came to brand philosophy, especially insofar as its practitioners viewed their discipline to be dependent on pure

Reason, as opposed to the indigenous disciplines of dialectics and jurisprudence, which they viewed as being a transmitted tradition dependent on Faith. However, it was not the Reason versus Faith issue that mattered, in my view, as it was the one kind of Reason versus the other kind that prevented the emergence of a potentially useful discourse: the contraposition between what Alfarabi saw as the ultimate Reason machine Aristotle had invented, and the inferior reasoning methods of dialectics and analogical syllogisms of the theologians and the law-makers. While that magical Reason machine dealt with certainties and truths, it was only with opinions and inconclusive beliefs that the dialecticians and law-makers, by virtue of their reasoning methods, worked. To be sure, Aristotle's magical machine could be used, as Aristotle had explained, by the practitioners of the more inferior sciences, such as the dialecticians or the rhetoricians. But it is best used, and for best results, by none other than the philosophers themselves, who only use certain truths to produce certain results. One could almost say that Alfarabi viewed Aristotle's logical apparatus in the same way Turing saw his machine –as the only means of reaching conclusive results from intelligence; or, as we were given to believe at the beginning of this summer session- the digital humanities advocates are

beginning to look upon their methodology for analyzing literatures.

Without otherwise undermining from Alfarabi's and the other philosophers' achievements –often underrated by historians wearing Greek spectacles- one could see how this self-esteeming attitude for his discipline and profession would make him totally unconcerned with real life around him, and likewise how irrelevant his views on moral philosophy would be to those opinion-leaders who were engaged in the real-life debates that were cumulatively carving Muslim identity. His superior and condescending attitude to these other disciplines was shared by many other philosophers although some who shared this view, like Averroes, thought it necessary nonetheless –perhaps because of his appointment at one point as judge in Cordoba- to engage the discipline of law-making by actually writing on the subject, in the hope of impacting it.

I said I would juxtapose Alfarabi with Averroes, and perhaps this is an opportune time to do so: it is interesting to note that Alfarabi's self-isolation, caused by his sense that philosophers had no purchase value in real life, meant that he only came to prominence in the wider intellectual landscape in the Muslim

world more than a century after his death. A famous contemporaneous historiographer mentions him in passing, in a few lines, as some student of philosophy he came across in Baghdad poring over some manuscripts in one of the famous paper-shops there. Clearly, the man who later came to be known as 'the second master' after Aristotle, did not at the time deserve more than such a passing mention. In contrast, 'the Aristotelian commentator', as Ibn Rushd came to be known in the Latin West, as we saw provoked a major public incident during his own lifetime. Clearly, Ibn Rushd's predicament lay precisely in his attempt to involve himself in public affairs. Whether to do so or not, and when and how, essentially a Socratic dilemma, was clearly on these philosophers' minds, from which each drew their different conclusions. It is a secondary matter for us to inquire whether Ibn Rushd was predisposed to this engagement before his appointment as judge, but worth mentioning nonetheless that the philosopher-mentor who introduced him to the court, and paved the way for his appointment as judge, was none other than Ibn Tufayl, the author of the famed allegorical tale 'Hayy bin Yaqzan', in which, pointedly, the student of philosophy has no alternative in the end but to cut himself off public life. In this tale, politics and philosophy cannot have a felicitous relationship with one

another. Averroes, it seems, might have thought differently, and besides his famous *Decisive Treatise* where he attempted to bring philosophy and religion together, he in fact made the effort at writing on jurisprudence himself. His impact on legal scholars, however, was unfortunately intangible. Well, the Alfarabi and Averroes stories perhaps prove the point in Ibn Tufayl's allegory; but, returning to Socrates, the question for him, we recall, was not one of *if,* but of *when* and *how* the philosopher *should* speak truth to power.

So, now we should perhaps ask ourselves the question of how justified Alfarabi was in derogating the reasoning methodology used by the law-makers and dialecticians? (Perhaps, for those whose minds operate 'laterally', this question can be translated as, How justified is Habermas in second-rating religious to secular discourse?). This attitude, it must at once be said, was not by the way mutual: religious scholars –even Ibn Taymiyyah among them, from the 13th/14th century, often flagged nowadays as the legal source for many Islamicists- thought that Aristotle's syllogistic methodology, given certain logical caveats he pointed out, was useful; and we know that classical Aristotelian logic –in its stale form- was and continues to be part of the core curriculum of studies at al-Azhar University in

Cairo –the foremost religious educational institution in the Muslim world. But deductive reasoning, as I mentioned at the beginning, would simply not have worked for the law-makers, as theirs was not primarily a matter of applying already existing general rules. A major part of their work consisted in determining –with respect to a question they had to find an answer for- which of the Qur'an's or the prophet's *particular* statements or deeds to use as a guideline for answering that question, and in what manner it should be so used. As already said, to make that kind of inference from one example rather than as one might through an inductive process that features sameness and repetition in several cases or examples on the basis of which the inference can be drawn- is an effort that requires its own guidelines. Otherwise, the inference could be subject to haphazard as opposed to reasoned guesses. So, while analogical reasoning was necessary as a tool for the law-makers, they had to come up with an accepted guideline for the methodology of inference-by-example. In searching for such a guideline –that is, for the reasoning that must be used by them to pronounce judgments, they hit upon the logical answer that they could do this only if they first determined what the Law was for. If they clarified that to themselves, they believed, they would be better positioned to make the inferences called for.

For, they could then simply follow that very same reasoning for which the Law was revealed in the first place –that is, they would be guided in their judgments by the general purpose of the Law. Theirs would be rationally justified judgements.

I believe it was a significant measure of their rationally bold and creative work in answering that challenge that they converged on the decision, first of all, that there must be *a purpose* for the Law. Granted, this was God's Law, not positive law, but even so they decided that Law without a purpose is not Law. Having deciphered or uncovered that purpose- something which they believed they could do through their scholarly study of the sources; and having defined and clarified this to their consensual satisfaction, they could then use that purpose as a beacon to help them do the analogical work required of them.

I think it is unlikely that we shall find, in other legal traditions, a precedent for a discourse over law among legal scholars that would conclude with the consensus that Law must have a purpose, and that Law is not Law simply by virtue of its enactment –that is, its history- or of its propagator. Even though this was God's Law, and had to be obeyed, still it must

have a reason or a purpose, defining which would enable them to draw the right inferences from it.

But having decided that Law was purposive, their second –I believe, quite stunning- conclusion was to define that purpose as being the welfare or 'good' of the individual Muslim. Of itself, and given Islam is thought to be the best religion for all, this definition of its purpose should not be understood to be exclusionary of all human beings. In other words, it should not be understood, in theory, to be a discriminatory rather than a comprehensive purpose. But what I take to be its stunning feature is the fact that it reduces God's law to being that whose whole purpose is to serve the individual. One can imagine the purpose to have been defined in many other ways- the one most ready to mind, for example, that having to do with God Himself, or that having to do with the Muslim community of believers, that is, with the collective entity rather than with the individual herself. Its focus on the individual is both significant, and to my mind, one of its most appealing –and potentially resourceful- features.

However, having defined the welfare or the 'good' of the individual as Law's purpose, the next step for these scholars

was to try to identify what that welfare or these 'goods' might consist in, and whether and in what way an order of priority between them could be identified. Over time, five major items came to be identified by general agreement, while other secondary items that have been proposed have not been excluded. The five major items, listed in a priority ordering on which there is general agreement, are the individual's religion, her life, her intellect, her progeny and her material wealth.

Let me make a few observations on this list of 'goods' for the individual that the Law is supposed to nurture and protect: the first item on the list, the individual's religion as a Muslim, essentially refers to the Muslim's freedom to live her religious life undeterred or proscribed by political authority. Today, a conservative scholar might claim that the call here is for the protection and nurturing of the religion itself, Islam, rather than for the protection and nurturing of the Muslim individual's religious beliefs. But this claim would be circuitous: religion's purpose couldn't be its own self-protection. Besides, it was already explained that the said purposes of the Law were defined as those pertaining to the individual herself. Furthermore, one must take into account the circumstances surrounding the identification of this

particular item as a purpose. As was said, the fathers of Islamic religious law, respected and followed long after they were dead, were often at odds with rulers, and it may be worth noting that at least two of the fathers of the legal schools I mentioned were harassed by the rulers, imprisoned, interrogated, tortured, with one of them ending dead in prison. In both cases, the rulers sought to impose on them the renunciation of the religious beliefs they held. Above all, therefore, it was the freedom to hold on to their religious beliefs or convictions that was uppermost in these legalists' minds as they identified this item first on the purposes list. It was, in modern parlance, their freedom of conscience. True, the beliefs in question can be argued to be Muslim-indexed, as they could only be given the context, but the right of the individual to have that freedom without fear of repercussion or intimidation is one that recognizes the primacy of the spiritual life –the creed that a human being's primary value consists in that dimension of their existence, in their freedom of conscience, in their right to hold and express their convictions freely. Significantly, it must be added, neither of the two views these legal founders were imprisoned for touched on either the articles of faith or the ritual practices. They had nothing to do with their faith as Muslims. One was over the disputation

whether the Qur'an was eternal, while the other was over whether it was legitimate to rebel against the ruler –a theme we find in countless non-Muslim literatures (compare the opposing views of Hobbes and Locke on this subject, for example). This understanding of what the first purpose of the Law is about in a way explains why life itself was considered by them only to come second on the list, as if to say that a life deprived of that spiritual freedom is not a life worth living, or to say that a life without a spiritual or moral value is without value.

It is no surprise, then, that the individual's intellect comes only in third place on the list. That it is there among the primary goods is significant, as is its order of priority. It is as if to say that what essentially defines a human being in the first place is the spiritual or moral rather than their intellectual dimension. Even so, that it is placed above the individual's ego-centered concerns, such as those having to do with progeny and material wealth, gives prominence to the value of the intellect, making the need for its nurture and protection as closely associated with life as possible without, however, undermining from that life's spiritual or moral purpose. Placing material possessions and progeny at the bottom of this list at once

recognizes their value for the individual, but points to the appropriate balance that needs to be kept between these and the moral life, ensuring that practices such as nepotism and corruption are kept at bay. If one were today seeking to extrapolate a policy from the significance of the Intellect's place on this list one would underline the value of universal education, across gender, ages, and academic levels- and the value, likewise, of the freedom of opinion. Much can be made of –but is not- in contemporary Muslim societies of this listing of the Intellect as one of Islam's five major purposes.

In addition to defining what constitutes Law's purpose, legal scholars went on to develop what can be called 'rules for adjudication', aimed primarily at helping the scholar decide in cases where two goods might seem to conflict with one another. Many such rules were developed, among them, for example, the rule that preventing harm outweighs the imperative for realizing a good; or the presumption of innocence; or assessing the meaning of a word in an affidavit by recourse to its meaning in ordinary speech. As can be surmised all these and similar rules were developed by scholars through an open and rational inter-generational

discourse aimed at fine-tuning the realization of Law's purpose.

Western historians of Islam and of Islamic Law will often mention the Cordoban Ibn Hazm, of the 11th century, as evidence of the discipline's conservative nature, or of the conservative trajectory it took, given his critique of the analogical method and his insistence to keep to a literalist reading and understanding of the Qur'an. Fewer Western historians, however, will cite the Andalusian al-Shatibi, 14th century, who is regarded as a representative of the fourth resurgent phase of Islamic Law. If his predecessors had tried to define the above-mentioned rules for the use of analogical reasoning, and regarded as their sources only the Qur'an, the prophet's sayings and deeds, as well as the consensus of his companions, al-Shatibi pushed up the reasoning methodology employed to become a fourth source. With him, analogical methodology, complete with its definitions and rules, no longer was a method pure and simple; as an expression of human Reason it became a principle, alongside the other main sources of Law. Al-Shatibi, I must add, belongs to one of the four major Sunni schools of Law.

In sum, then, while not strict adherents of the Aristotelian figures and moods so revered by Alfarabi, it is hard, in retrospect, not to look upon those scholars as practicing precursors of what has come to be known as the field of the philosophy of law –a respectable philosophical field, I imagine.

Of course, historical counterfactuals only help to excite the imagination, but lessons can surely be learnt from them. One cannot help but speculate how far more open Muslim religious identity could have become had philosophers deigned to work hand in hand with the law-makers, putting their own moral ideas in the service of public life. I thus try to imagine a discourse that might have taken place between one of the jurists and -purposely for the example- the polytheist al-Razi, 9th/10th century, a famed scientist and philosopher who reportedly even denied prophecy altogether. Besides his acclaimed works in medicine, he also authored a treatise called *The Moral Life of the Philosopher,* where he addresses, among other things, the belief in an afterlife, and its accompanying doctrine of reward and punishment.

In the context of this treatise Razi formulates what he takes to be a primary ethical code – a rule- for felicitously conducting

one's life. In the imaginary discourse I am proposing, it is this rule that is up for discussion, rather than anything seemingly more substantial like, for example, the *moral* claim, that the properties of good and evil are intrinsic to acts and events rather than being accidental to them.

Here I wish to remind us of the great value to identity-formation of the ethical rules of conduct developed by the religious scholars. By this stage in the talk, we can identify two kinds of rules, those which the jurist will simply pick up from the sources, such as the rule on inheritance, and those which I called 'adjudication rules', which are rules set up by the legalists themselves to help them draw the right analogical inferences. Concerning the first type, the legalists would obviously use the sources: in the language of an Aristotelian deliberative syllogism, the universal premise they would use would be the general rule from the Qur'an, while their particular premise would be that relating to the case before them. Alfarabi –after Aristotle, of course- would as I said admit that legalists might have recourse to deductive reasoning, as here explained; but would claim, correctly, that when they do, it would be by relying on premises whose truths are uncertain, or which express beliefs only, rather than those truths reached

through theoretical philosophy. He would therefore, like Aristotle, not consider this practical kind of deliberation as one reflecting practical wisdom. Contrariwise, jurists would not have considered the premises he held dear as being reliable either. These being over *moral* matters that may be difficult if not impossible to reach a common understanding about, in my imaginary discourse Razi would not get anywhere by proposing any one of them for debate. Indeed, in real life, he was engaged in polemics with religious scholars over Islam's articles of faith, such as those of prophecy or monotheism- sufficiently to make Alfarabi speak scoldingly of him, and possibly to explain the near-disappearance of all his works. But, as I already indicated, besides moral or metaphysical claims, the jurists would open-mindedly entertain and decide upon adjudication rules, all of which are entirely Reason-based. Thus, in the 'peaceful' conversation with the legal scholars about ethical conduct and the afterlife, Razi would just put up the following rule, namely, that

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

Acting this way –Razi suggests in another work, his *The Book of Spiritual Medicine*- we would be guaranteed a just reward, given that 'the Original Source' (*al Bari* –his ambivalent reference to God) is absolutely knowledgeable, just and merciful.

There are two parts to this prescriptive rule, one relating to a *this*-life and the other to an *after*-life, which significantly are combined together. The *this*-life part can arguably stand on its own as a Reason-based rule that simply claims it is unreasonable for us to pursue a pleasure *for this life* whose realization will bring about more pain to us, whether measured in qualitative or quantitative terms. This is a rational claim if anything. It could be denied rationally only by a philosophical masochist. Indeed, it fits well with the jurists' own adjudication rule that the avoidance or prevention of a harm is preferable to the realization of a good. It would therefore go well with them, even as it stands so far. But it leaves an obvious loophole for the incontinent and others, common to us in real life, and which can only be countered by extraneous means, including the force of law and the fear of social reprobation. Even, however, if the realization of such pleasure can be argued to be realizable by stealthy stratagems- without therefore the risk of

incurring earthly pain (however we may define this)- one who believes in the afterlife would still regard this formula valid, and in fact to be consistent with the priority order of the 'goods' defining the welfare of the individuals as formulated by traditional Law: that the pursuit of material pleasures has to be moderated by the pursuit of spiritual and intellectual enrichment.

In my imagination experiment, then, such a negotiation between al-Razi and the legal scholars would have been constructive, and his prescriptive rule could well then have been added to the list of adjudication rules defining, ultimately, Muslim identity. As already said, Razi seems to have been quite happy and willing to engage his contemporary legal and religious scholars in open debates, quite unlike Alfarabi. But also, unlike Avicenna, or Averroes. Alfarabi as we said seems to have preferred to live the second-best life of the philosopher – that of self-sequestration. Averroes, on the contrary, took the view that public life must be engaged in, but that for this to happen felicitously it was necessary for the philosopher to develop the skill of living a double-life. From another angle, unlike the polemicist Razi, the reclusive Farabi, or the janus-faced Averroes, Avicenna's medicament was different and

entirely revolutionary: it was to *philosophize* society. Put in other words, it was to *philosophize* the language of the scholars and intellectuals. (Was he here playing the role of a translator, creating, as it were, a *common* language?). Centuries later, he would be accused by Ibn Taymiyah to have *kalamized* philosophy (*kalam* being the discipline of the religious scholars*),* and later still by Ibn Khaldun that his efforts were so successful that *kalam* itself had become philosophized.

Should philosophers have kept 'their ideas' to themselves? In a way, Averroes argued they should. Na'im also intimates, in proposing a dual existence for religious and political lives, they now both can and must. Why mix between metaphysics and ethics, we can almost hear Averroes and Na'im saying, when they can be felicitously kept apart?

Well, the reason they cannot be surgically separated is because- given their dual immanence in Muslim life- neither of them can guarantee for itself a healthy development independently of the possible negative influence on it from the other. As we have been made to see recently, even if the State lets go of religion by leaving its affairs to the scholars, hoping by this to hide its corruption and incompetence behind a

religious cloak of religious legitimization given by these, there is no guarantee that religion, so left on its own, will let go of the State. The State cannot hope to endure propped up by a security belt constituted with laws that are foreign to its own public. Its Muslim public, on the other hand, cannot be made to subscribe to those laws for as long as they appear to be foreign, not indigenously grown. To naturalize such laws –which, as we saw through my imagination experiment, was something eminently possible- the public at large, and the religious scholars in particular, have in some sense of the word or the other, to be 'philosophized' –that is, to be educated and therefore empowered to continue developing Islamic Law in the fashion conceived right from the beginning. Am I here, then, committing the Habermas sin of assuming that philosophical discourse is superior to that of religion, and that it is this that must be the standard for a felicitous conversation between the two?

In fact, and particularly in the context of the Islamic world, what I am suggesting is precisely the opposite. But I need to clarify a point or two before laying out my argument. Firstly, as I explained it, Islamic Law consists of two complimentary spheres, one of a certain set of articles of faith and practices,

and the other of prescriptive rules. While the former has a fixed boundary the latter is an open field where identity-construction is both necessary and possible- necessary because of continually arising contingencies, and possible because Law allows for it. Secondly, Islamic Law, both for the reason explained, as well as for its genealogy as a public construction –authority, as it were, coming to be vested in the scholars by the public- is by its nature public-sensitive. Therefore, in a communication context of abundant mediatic reach where the public is enabled to generate and participate in an echoing debate over Islamic values –what the right thing is for a Muslim to do- the effect of this on Islamic Law cannot then be avoided –as these debates would then have to reverberate either in the established legal institutions and corridors of power, or out of them. In both cases, the Muslim public has the power to frame its religious identity.

This is why or where public philosophy –that is, ethical deliberation by and before the public at large- is vital. And why, in consequence, education deserves the highest attention. The wonderful gift Muslims have in their possession is that education has been defined already as their Law's purpose. It is therefore by drawing on Islam's own foundations that Muslim society can in fact move forward in chiseling out the frame of a

future regime which would safeguard those values secularists believe are metaphysically or rationally sacrosanct, while at the same time allowing for that sufficiency of public space required for the lives of religious communities. In any case Islam's articles of faith and its ritualistic practices in now way prevent the continued development of Muslim identity by means, mainly, of lslam's system of jurisprudence, if the public demands it, or if it allows itself to build on its own legacy.

I might just add –in ending- that so essential is philosophy's public and –one might even say, Socratic role for it in the sense I just explained; that if it were to limit itself to an ivory-tower or exclusively theoretic existence as Farabi, for example, would have for it: then not only will it inevitably find itself left panting far behind social tsunamis sparked by nothing more than a matchstick lit by one of the wretched of the earth: even the official religious establishment itself will also discover it has been totally swamped over by a religious tsunami gushing forth from the underworld on the bloodied waves of butchered victims. Such situations cannot be avoided by establishing security belts for the states in the form of top-down imposed rules; or by requiring philosophers to wear *burqahs* as soon as they step outside their front doors.

Only by raising the level of pubic awareness and participation in the Law-facilitating moral debate –in making, in a sense, of each of the members of the public a moral philosopher of sorts- can such situations be avoided, foregoing the need both for security and for false modesty.