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

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

INTRODUCTION

Modern students of Islamic law have not sufficiently probed the relationship between law and theology. When jurists claim that their extrapolation of the rules from the sources constitute “Allah’s law” (Hukm Allah), one immediately realizes that the law in Islam involves a transcendental dimension. One of the more intriguing questions encountered in the study of Islamic law concerns the legal ruling or rule (Hukm). How is it possible for the jurist (faqih) to conclude at the end of a very empirical evaluation and research of facts and texts that his conclusions constitute a transcendental and divine authority?

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

LAW AND THE HISTORY OF RELIGION

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

Halal acknowledges that the legal theorists of Islamic law did have to countenance the presuppositions of theology, he argues that matters of theology in comparison to legal and juridical issues were few and marginal. While this point has to be accepted as moot, the overall impact of fundamental theological presumptions on juridical thinking still awaits a full examination. By contrast, scholars like Pazlur Rahman and Joseph Schacht seem to find a great interdependence between law and theology. See Pazlur Rahman, “The Functional Interdependence of Law and Theology,” in Theology and Law in Islam, ed. O. E. von Grunebaum (London: Harrassowitz, 1971), pp. 89–91; and Joseph Schacht, “Theology and Law in Islam,” in von Grunebaum, ed., pp. 3–23.

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


3 Ibid., pp. 90–91.
they were obligated something that humans heard. Thus, they were obligated to something that was revealed in a book. The idea of the book was that it was revealed in a book, which was the only way that humans could understand it. The idea of the book was that it was revealed in a book, which was the only way that humans could understand it. The idea of the book was that it was revealed in a book, which was the only way that humans could understand it. The idea of the book was that it was revealed in a book, which was the only way that humans could understand it.
law, conscience, and moral philosophy. None of these studies inquire how jurists know the moral imperative, in the form of the transcendent rule. In order to understand what the rule is and how it is known, part of this article will revisit the question of revelation and divine speech, since the eternal rule is inseparably linked to revelation.

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

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

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

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16 In the civil war of Islam, the zealous Khawārij (Seccessionists) sect popularized the centrality of the hukm of God in their epithet, lā hukm illa illāhā—“there is no rule (hukm), but the rule of God”—as part of their political slogan. In the late twelfth century, various Islamist groups in different parts of the Muslim world are demanding that a political order be established in which the hukm, rule of God, will substitute secular governance. In other words, the “rule of God” must apply as a complete code of life, where “rule” is a synecdoche to the revealed law, the sharī‘ah.


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

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

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

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19 Al-Ghazālī, *al-Mustaṣfā fi Ilm al-Uṣūl*, 2d ed. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1993), I:3. See also Muhammad Abū Zayd, *Uṣūl al-Fiqh* (Cairo: Dār al-‘Ilm al-Arabī, n.d.), p. 5; Abū al-Walāḥ Khallīf, *Ilm Uṣūl al-Fiqh*, 4th ed. (Beirut: Dār al-‘Ilm, 1401/1981), p. 12. Legal theory covers the domain of moral philosophy underlying the rule of acts, the epistemological categories that make up our knowledge of rules, the linguistic arguments as to how knowledge is signified, and the authoritative transmission, as well as the veracity of the sources of knowledge that produce the rules.
When making a finding regarding the status of a hypothetical or real-life question, the ruling or opinion provided by a jurist is often reflected in the legal theories. The term "hijrah" refers to the migration of the Prophet Muhammad (peace be upon him) from Mecca to Medina, which is considered a significant event in Islamic history. The term "ta'weekh" refers to the act of deviating from a rule or principle in Islamic law.

The figure of speech used to indicate that the jurist had exerted himself to provide a rule for a particular situation is the "hijrah" term. This often stands as a recognition that the rule has been extended beyond the specific context to which it originally applied. In the past, this concept was often used as an independent term, but in modern times, it has been integrated into the legal system to denote a new rule or principle that is applicable in a broader context.

In fact, the authority of the empirical dimension is dependent on its relationship with the transhistorical dimension. It involves the authority of the empirical dimension being applied to the transhistorical dimension. If we do not understand how the authority of the empirical dimension is applied to the transhistorical dimension, we will be unable to make sense of the concept of hijrah. The hijrah concept is a key element in the understanding of the authority of the empirical dimension in Islamic law.

Realist perspectives, in general, maintain that there are correct rules of conduct and compliance with laws and regulations. This is often supported by evidence that the major concepts and ideas on which the law is based are true. However, we should not be surprised to discover that, in some cases, jurists have been interrogated for their political and ideological motivations.

LAW AND COSMOLOGY

Surely, myths, ontology, and metaphysics provide a complex picture of the world, including the human experience of the divine. The way that Islamic law is related to myths and creative activities in life is complex. Law is related to myths in various ways, including the use of metaphor and symbol in the legal system.

As the legal system unfolds, it also provides us with a collective framework of the universe and moral values. This collective framework is shaped by the cosmic myths that have been generated. As the law system unfolds, it also provides us with a collective framework of the universe and moral values. This collective framework is shaped by the cosmic myths that have been generated.

WEB OF THE ḤUKM

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

Reinforcing his description of a ḥukm as denoting the dictum of revelation, al-Ghazālī adds: “Know that once we have realized by speculative reasoning (al-nazār) that the source (aṣl) of rules (aḥkām s. hukm) is only one, namely, the statement (quwāl) of Allāh the Sublime, then the statement of the Messenger of Allāh is not a rule (ḥukm) [on its own], nor [is such a statement] binding in any sense. [More accurately] he [the prophet] is an informant from Allāh the Sublime, that He determined this or that. The rule [of things] belongs to Allāh alone.”30 He could not have been more explicit in linking ḥukm to the “statement of Allāh,” meaning the Qurʾān. Therefore, he can confidently proclaim that Allāh alone is the Supreme Assessor (ḥakim). According to al-Ghazālī then, the rule is entirely transcendent. In this passage, al-Ghazālī also seemed to suggest that the dictum of revelation encompasses both linguistic and nonlinguistic conceptual elements. The linguistic elements are obviously the five rules. “If there is no such dictum of revelation,” says al-Ghazālī, “from the Lawgiver (sharīʿ) then there is no rule (ḥukm).”31 The nonlinguistic elements are less clear. This is because some of the key concepts, such as sharīʿa, “dictum” (khīṭāb), and “rule” (ḥukm), lack precise definition.32 They may not have aroused any significant controversy in the milieu of medieval Islam but they do so today. Al-Ghazālī himself was extremely cryptic and offered no further explanation for either ḥukm or khīṭāb. In al-Mustaṣfā, he discusses the rule in the context of how acts are assessed to be morally good or detestable.33 In our attempt to tease out the significance of the rule, we discover that the concept is located within a web of meanings. One of the most significant concepts on which it depends is the notion of the “revealed dictum” that unfolds into two categories: (1) “verbal or phonic speech” (al-kalām al-luṭfī) and (2) “inner or psychic speech” (al-kalām al-naṣīfī).

ASSESSING THE INNER SPEECH

Since we are interested in the nonlinguistic and transcendental dimension of the rule, we pursue al-Ghazālī when he mentions the concept of “revealed dictum” in the context of moral liability (taḥṣīl). In this instance, he describes moral liability as “a special type of inner speech” [nawz khāṣṣ min kalām al-naṣīfī].34 And, he goes on to say, “since there is a certain amount of obscurity in understanding the origin of inner speech, understanding its condition of being would even more abstruse.”35

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27 George Makdisi, “Al-Ghazālī, disciples de Thālīqāt et droit et en théologie,” in his Religion, Law and Learning in Classical Islam (Hampshire: Variorum, 1991), pp. 45–55, is of the opinion that al-Ghazālī was less of an Ashʿarī and was more inclined to Shāfiʿīs in both his law and theology.
28 Al-Ghazālī, al-Mustaṣfā, 1:55; Muhammad b. al-Ḥasan al-Badakhshi, Ḥanawi al-ʿUqul (Beirut: Dār al-Kutub al-Imāmiyya, 1405/1984), printed with Jamāl al-Dīn ʿAbd al-Rahmān al-Imāmī, Niḥayat al-Sil silsilat al-Dabbakhshe, 1:40. Al-Badakhashi says that the shariʿa meaning of ḥukm according to al-ʿĀṣarī is khīṭāb Allāh. One should bear in mind that this definition resembles in part the standard definition of fiqh (positive law) as: “That body of knowledge that deals with the five rules (aḥkām) when they relate to the actions of those made responsible.” See Ahmad b. Muhammad al-Ḥasan al-Shaʿrānī, Qawānīn al-ʿUṣūl al-Aḥkām Sharīʿah al-Aḥkām al-Bākhiyya wa l-Nawzāʾīr (Beirut: Dār al-Kutub al-Imāmiyya, 1405/1985), 1:18. Al-Ghazālī says fiqh is that body of knowledge that deals with those established rules that relate to the actions of those made responsible” (1:40).
29 See ʿALĪ al-Dīn al-Ṣamārānī, Miṣṣāṣ al-Uṣūl al-ʿUṣūl al-ʿUṣūl, ed. ʿAbd al-Malik ʿAbd al-Rahman al-Saʿdī (Baghdad: Maṭbaʿat al-Khalīlī, 1407/1987), which confirms the difference between the Ashʿarī and Māturīdī definitions of the ḥukm. According to the Māturīdī school, ḥukm Allāh is “the eternal attribute of Allah and His action” (ḥukm allāh tālīla ʿaṣṣa allāhya lahu wa rīḥuha) (p. 112).
30 Al-Ghazālī, al-Mustaṣfā (n. 19 above), 1:100.
31 Ibid., 1:55.
32 Smith, in “Islamic law: Sharīʿah and Sharīʿah,” says: “The evidence I have collected strongly suggests that sharīʿa is not a major concept for classical Islamic thinkers . . . the sharīʿah is a concept with which Islamic thinkers in the formative and classical periods were not concerned” (pp. 90–91).
33 See Reinhart (n. 14 above), for a detailed discussion of these topics.
34 Al-Ghazālī, 1:88.
35 Ibid., italics added.
The notion of inner speech as raised by al-Qazwini and others stems from a larger debate that raged in the ninth century over the concept of the Qur'an's speech (kalāma al- Qur'ān). This debate was not well understood by earlier scholars, and it was not until the work of al-Qazwini that the issue was properly addressed. The debate centered on whether the Qur'an itself was the source of Islamic teaching, or whether the teachings of the Qur'an were elaborated by the Prophet Muhammad and the early community. The debate was further complicated by the issue of the authority of the Qur'an in relation to other sources of Islamic law and theology.

The Qur'an was considered to be the word of God, as revealed to the Prophet Muhammad. However, the issue of the Qur'an's speech, or kalāma al- Qur'ān, was a matter of great controversy, and it was debated whether the Qur'an itself contained any speech or whether it was merely a recitation of divine words. The debate was complex and involved various interpretations, and it continues to be a matter of debate among scholars today.

The debate was not only a matter of theology, but also a matter of law and ethics. The issue of the Qur'an's speech was closely tied to the question of the authority of the Qur'an in relation to other sources of Islamic law and theology. The debate was also influenced by the development of Islamic legal thought, and the issue of the Qur'an's speech was a key factor in the development of the concept of the ijma, or consensus of the Muslim community.

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The debate between Christianity and Islam is often referred to as the "clash of civilizations." For Christians, the central theme of the Christian faith is the person of Jesus Christ, who is believed to be the Son of God and the only way to salvation. For Muslims, the central theme is the Quran, which is considered the word of God revealed to the Prophet Muhammad. The two faiths have many similarities and differences, and understanding these can help us to appreciate the complexity of interfaith relations.

In this chapter, we will explore the ways in which Christianity and Islam have interacted with each other, focusing on the role of reason and logic in both religions. We will examine how the Quran and the Bible have been interpreted and used to support different theological positions, and how these interpretations have shaped the development of Islamic and Christian thought. We will also consider the ways in which reason and logic have been used to address the challenges posed by the other religion, and how these efforts have sometimes led to conflict and sometimes to cooperation.

As we begin our exploration of the history of reason and logic in Christianity and Islam, it is important to remember that the development of these two religions has been shaped by a complex interplay of historical, cultural, and intellectual factors. The story of reason and logic in Christianity and Islam is a story of progress and regression, of innovation and stagnation, of dialogue and conflict. But it is also a story of human aspiration and human achievement, of a search for truth and justice that continues to this day.
Allegory of the Rule

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History of Religion

rails on which it was written was also uncrated. 3 For the Asfart, the
uncrated text is the literal speech, al-Gazzali's
kalam (speech) is an equivalent mean (masrak), and the
kalam (speech) is the literal mean (masrak) of expressions (shahada), which are
meanings of the expressions (shahada) of the heart (nafs). As it was said by the poet
and scholar al-Kindi al-Qadisi, "the whole world is a sign of what is in the heart." 4

In this passage, al-Gazzali only hints at the possible relationship between
inner speech and legal theory. But the relationship between these two is not explicit in this statement.

I have selected two legal theorists who are examples of this relationship between
inner speech and legal theory. Among the many legal theorists who explore the issue of inner speech,
I have selected two: th. and Jamali al-Din 'Abd al-Rahman
al-Hassan al-Badakshani (d. 772/1370). They expand on the work of their predecessors, al-Qatt al-Din Book of Law (965/128). Al-Baydawi and
al-Hassan al-Badakshani make a distinction between the two kinds of legal theories, and
they point out the difference between the two. In the case of these two, the distinction between
inner speech and legal theory is not explicit. But it is clear that the authors are aware of the
difference between the two. They both define the appearance of a rule as a rule of the creative and
transcendental concept. A rule, they say, is when a revealed text becomes attached to human sense
and the rule being attached to human sense signifies the realm of the empirical. I would argue that unless one
accepts the definition of the empirical, there is hardly a chance of ignoring
the term "human sense." The classical and medieval jurists, the term "human sense" was the
locus for understanding the place of the rule in the web of signs.

We need to cross a linguistic bridge and determine whether the terms

3 al-Haddad, al-Ma'il al-Aqrab (n. 19 above), p. 10, al-Badakshani's "human sense" is similar in what occurs in the context of


5. Al-Haddad, al-Ma'il al-Aqrab (n. 19 above), p. 11, on Corinthians, who refers to the "human sense" as the "emancipator of the

"revealed dictum" (khīṭāb) and "speech" (kalām) are identical and interchangeable. When al-Bayḍāwī and other Ashʿarī scholars construe the notion of "revealed dictum" as tantamount to being the "rule," then khīṭāb in this context means "inner speech" (al-kalām al-naṣfī). If this is the case, then the rule is nothing but the inner speech of revelation and a discourse of a transcendent order. The controversy over the creation of the Qurʾān also influences the language of the law. The Ashʿarīs view the ḥukm as eternal (qādīm), whereas the Muʿtazila view it as temporal (ḥādīth). Just as the "speech of God," the Qurʾān, is "created" and thus temporal, so it is the case with the ḥukm too, according to the Muʿtazila. Ashʿarī scholars in turn point out that it is incorrect to say that a rule is temporal, since an eternal discourse like the speech of God (including the ḥukm) can generate only an eternal rule. The Muʿtazila had erred, they say, by confusing and conflating two different things. They failed to distinguish between an eternal rule, on the one hand, and the temporal "attachment/linking" (taʿalluq) of such acts to an eternal rule, on the other hand. It is the human effort and labor, in short the empirical activity of "linking" acts to rules, which is a temporal and created activity, and not the rule itself. In the Ashʿarī view the rule only manifests (ibārāt/żuhūr) when the revealed dictum is attached to human actions. It is a kind of transcendental burst into history at the moment of action.

**LAW IN WRITING AND SPEECH**

Indirectly, the Ashʿarī preference for the eternal and divine inner speech meant that the "phonic speech" (al-kalām al-lafṣī) was devalued. Ashʿarī metaphysics thus constituted itself on this disavowal of the written word, while privileging the inner speech of the soul. It is only through the inner speech, in which "speech hears itself" via the "inner" psychic substance, that the divine presents itself as the nonexterior, nonmundane, nonempirical, and thus noncontingent signifier. It was important to know not only how an eternal rule got attached to a temporal act but also how the legal discourse comprehended both the transcendental and the empirical dimensions. At the empirical level, jurists would search for the imperatives in the textual sources of the law so that they could know what is right from wrong. The legal subject responds directly to the commands of the sharīʿa, revelation. When morality is derived from such imperatives, we call it a "deontological ethic." While some Muslim legal theorists did formulate the law in this fashion, that was not the end of the enterprise. Legal theorists were primarily interested in formulating a legal-moral epistemology. This was accomplished by marshaling proofs for the various forms of rational discourse. In this form of argumentation, morality stems from ontological or metaphysical imperatives. It is through reason that one discovers what is good or bad, axiology. In fact, in treatises of legal theory one finds that both axiology and deontology coexist side by side. But epistemology does not explain how the transcendent rule becomes manifest.

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

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

64 Al-Isnawi, 1:48.

65 Al-Isnawi, 1:52.


67 There are detailed discussions in Muslim juristic theology that deal with the question as to whether the rule (ḥukm) is an attribute that the legal subject deserves or whether it is a description of the essence of the legal subject. See al-Samarqandi (n. 29 above), 1:129.
Ash‘ari legal theorists and jurist-theologians were consistent in their commitment to the dual nature of language: inner speech versus outer speech. This dualism surfaces in the *hukm*, where the myth mediates the transcendent via the empirical. In effect, one can say that the *hukm* is in one sense the rule of humans, the empirical activity of rule finding by the jurist and in another sense the eternal rule of God. The story of God’s eternal decree in prefiguring the moral acts of human beings is an essential dimension to the discourse of Islamic law. This precreation myth makes it possible to speak of two realms existing simultaneously by simulating in the temporal realm what God had already decreed in a past without beginning, *al-azīl.*

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

In the cosmological narrative, religious memory or myth is privileged to a providential prehistory in which God had decreed certain things. Al-Azmeh has correctly described such narratives as taking on the modality of performative statements, and these are contained in the Qur‘ān and other texts of canonical status. Thus, he goes on to say, that the *hukm*, like the ‘*illa* (legal cause), is neither naturalist nor rational, but purely legal. By legal, he means, it follows the logic of a closed legal-moral system and is not based on rational foundations. The creator-God or *nomothete* has posited the legal rules or legal causes. If that is the case, then the answer to an ordinary legal question is then predetermined. What remains is for the rule to be disclosed in history. The implication is that the legal imaginary or aesthetics is self-referential. The rule, in its linguistic and nonlinguistic modalities, has no ground or reality as referent except its own. The rule is the “dictum of revelation” (*khiṭāb al-shar‘*), and only becomes “visible” at the moment it connotes human acts. In Ash‘ari discourse, it means that there is no intrinsic link between a rule, that is, the value of an act, and the act itself. The link is a theological and mythical one. The rule has no reality outside itself and has no grounds to be contrasted with the real. In fact, the *hukm* absorbs the “real” into itself. So the person intending to undertake the contract of marriage in order to make coitus permissible, stands before the mystical authority of the unknown transcendent law, that is, the *hukm*, and at the same time stands before the legal indicators that signify it. This is analogous to the theological proposition that the existence of the world discloses or points toward the existence of the primordial Creator, but the world cannot be confused with the Creator. Given the radical separation between the empirical and the transcendentals realms, it is impossible to ascribe error to the jurist, who may have failed to “hit” the correct transcendent rule. In terms of Muslim theology, jurists are protected from the moral consequences of bona fide error. A correct and an incorrect rule are both subject to reward, albeit that the correct one elicits more reward than the incorrect one. This is because the transcendent rule is “unknowable” and not subject to epistemological refinement. Derrida’s reflections on the law are perhaps apt here.

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

70 Reynolds and Tracy, eds., p. 180.
72 Muslim jurists generally talk about the legal causes (*‘illa*) that are derived from textual sources. The absence and presence of such causes are associated with certain legal rules. One must bear in mind that marriage, divorce, leasing, and commercial transactions are not in themselves legal causes but are human acts that activate and invoke specific revealed rules (*al-sibham al-shar‘īyya*). These acts are only “indicators” (*mu‘arrifat*) and point toward the appropriate rule. See al-Iṣāwī, 1:52.
73 Al-Iṣāwī, 1:48.
Rule As Simulacrum

Within an Ash'ari framework, one can safely say that the transcendent rule precedes the empirical one in time. A form of simulation is also at work, and a different configuration, one could say that the "model for" the hidden presence of reality in its Platonistic archetype. When the empirical rule is apprehended, and it is seen to be the transcendent rule (hidma), it remains unaffected and unchanged by reality itself. The empirical hidma is thus a more image of the transcendent hidma. So, when the journalist or judge interacts with the hidma, they establish these textual-as-symbols, through the process of simulation. It is in the space of this revised text—the other context, that, through the process of simulation, we use the words of Goodrich in a new and innovative way, to live within the written rule. This is not to say that the Aslan ruin is the same as the Aslan ruin, that the symbolism, in its textual or visual representation, is not in the form of a person. The Qur'an as its transformational grammar, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. Rather, we need to acknowledge the dual role of the hidma, that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol. This is not to say that the Qur'an as its transcendent and transformational role, and as practice, in its empirical guise, is the representation of symbol.
profession of law (fiqh) enjoys a privileged position in Islam. The association of the jurists (fuqahā’i) with transcendent knowledge (‘ilm) makes them part of the class of learned scholars (‘ulamā’). And, of course, there are prophetic reports that state that “the ‘ulamā’ (the learned) are the true heirs of the prophets.” This statement suggests that the prophets and the learned share knowledge of a transcendent origin. Therefore, the jurist consultant (mufti) is virtually God’s representative on earth. Past jurists explained that “the mufti makes clear the ruling of God, and he is the inheritor of prophethood.” Shihāb al-Dīn al-Qarāfī, a thirteenth-century Egyptian jurist, confirms this view: “When a judge rules, by God’s permission, and his ruling on behalf of God is substantively correct, this ruling becomes as a text from God [kāna ḍhālikka ʿaṣṣan wāridan min Allāh], the tongue of His representative, who is His representative on earth and successor to His prophet, regarding this particular case.” It is the tongue of the jurist, that is, his or her speech, that embodies the eternal rule. No wonder al-Ghazālī and other Ash’arī jurists also insisted that even the “recitation” (tilāwāt) of the Qur’ān/hukm was eternal (qadim).

CONCLUSION

It is important to recognize that a combination of mythical, theological, and metaphysical conceptions shape Islamic law. By looking at the texts of legal scholars who adhere to the Ash’arī theological school, one can begin to isolate the interface between law and theology. I have suggested that the rule, an essential element of legal discourse, has a dual character. It is simultaneously the carrier of both a transcendental and an empirical communication. It has been shown that the very nature of the hukm allows it to mediate the two realms by means of cosmogonic and cosmological myths. God, who prefigures all moral conduct in eternity, decrees the hukm that makes the divine presence felt in history. Value is conferred on all acts via the hukm. As the immanent speech of God, the rule as allegory represents the deity. In some way, the hukm and the Eucharist in the Christian tradition have resembling functions and effects. Both are concerned with the encounter between the human and the divine, albeit radically different modes in each. The hukm is best understood to be a hybrid event. It participates in the transcendent by means of mythology and intervenes in the empirical realm by means of epistemology. It is the meeting place of an overlapping human and divine judgment that is made possible by a religious cosmology enumerated above.

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

Ash’arī theology is rooted in this cosmology, which is generally ignored in favor of a rational and epistemological discourse.

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

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

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