Translating Capital: Islamic Law and the Making of Sharīʿa Compliance in Pakistan

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Abstract

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This dissertation studies the encounter of the Sharīʿa or Islamic law with capitalist modernity in South Asia. Focusing on the Deobandī clerical community in Pakistan, it studies their juristic and ethical contestations over the project of tailoring Islamic law to suit the needs of modern finance. The dissertation is based on a textually informed ethnography of Deobandīs working as jurists (*muftī*s) in *madrasa*s and as Sharīʿa Advisors in Islamic banks. It closely reads texts of Islamic commercial law and follows their movements within an institutional network of religious seminaries and financial corporations. In doing so, it documents interactive labors of scriptural interpretation and financial engineering that in turn translate classical Islamic contracts into modern, "Sharīʿa Compliant" financial instruments. The central argument of *Translating Capital* is that Sharīʿa Compliance secularizes Islamic commercial law by reengineering its discursive and disciplinary technologies according to logics of market governance. As polysemous texts of the Sharīʿa are formatted into standardized codes of financial conduct, Sharīʿa Compliance authorizes new financial disciplines that transform pious devotees of tradition into pragmatic calculative agents of the market. *Translating Capital* intervenes in key theoretical debates in Islamic legal studies, postcolonial theory, the anthropology of religion, and poststructuralism by tracing textual entanglements between scripture and finance. Further, it substitutes functionalist explanations for the resurgence of religion in a secular age with a fine-grained analysis of religious improvisation grounded in texts and ethnography. Finally, it provincializes Eurocentric narratives of secularization by investigating the seductive appeal of markets as a model for Islamic reform in postcolonial Muslim societies.

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Acknowledgments

Rabbi awzi‘nī an ashkura ni‘mataka ’l-latī an‘amta ‘alayya.

Even if one succeeds in cloaking pretentiousness with candor, it is impossible to write an acknowledgments section that can be adequate to its task. A piece of writing as apparently straightforward as an acknowledgments section is bound by institutionally sanctioned genre conventions. In so far as such conventions shape the formal properties of a text by offering stylistic guidelines, they make it possible to capture certain kinds of sensibilities in one’s writing while foreclosing others. In a typical acknowledgments section, secular protocols of academic writing demand that the author claim ownership of a text while admitting assistance from others in its history of production. But if the text belongs to the author alone, any attribution of credit to others must be truly gratuitous. Gratitude thus becomes akin to a gift from the sovereign, who shall bestow kindness on others but never share in his/her realm.

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Dedication

For *Ammī* and *Pappā*,

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Introduction

1. Translating Capitalism as a Concept: An Ethnographic Encounter

On a cold Thursday evening in January 2015, in the bustling metropolis of Karachi, I met one of my first interlocutors during the preliminary stages of fieldwork on Islamic finance in Pakistan. Muftī Ammar Qurayshi[1] was a success story for *madrasa* or Islamic seminary students seeking to bridge their traditionalist education with a career in finance. Qurayshi had become a *muftī*, an expert in Islamic law authorized to issue formal legal opinions on Islamic teachings, from one of the foremost seminaries of the Deobandī religious persuasion in Pakistan, Dār al-Ifhām Karachi. Along with his religious education, he had also earned an MBA from one of the oldest and most prestigious business schools in Pakistan. When I met him, Qurayshi had been working as a "Shariah Compliance Officer" at Insaf Bank Ltd., Pakistan's largest private Islamic bank. As a *madrasa* graduate employed in the corporate sector, Qurayshi was an ideal manifestation of the educational vision embraced by a major segment of Deobandī *madrasa*s: to produce scholars who, on the one hand, combined a pious disposition with philological mastery of the Islamic juristic tradition and, on the other hand, were also fluent in secular disciplines to be able to speak to the needs of the modern world.[2]

[1] Unless referring to prominent and well-known individuals, all names used throughout the dissertation are pseudonyms. I have also anonymized the institutional affiliations of my interlocutors, including names of institutions where I conducted my fieldwork.

[2] This vision did not grant *normative* assent to the presumed gap between a 'traditionalist' religious education and a 'modern' secular world. Rather, it perceived that gap as an historical rupture induced by Western secularization that had to be remedied. The normative reference for this remedy was to an Islamic age that preceded secularization, where a distinction between the religious and the secular did not hold.

I met Qurayshi outside a local mosque after the late afternoon (*'aṣr*) prayer. A young man somewhere in his late thirties, Qurayshi donned a long white tunic with a pair of loose pleated trousers (*shalwār kurta*)—the traditional attire of preference for South Asian religious scholars (*'ulamā'*) due to its simplicity.[3] As per the norm of dressing in accordance with Prophetic conduct (*sunna*), Qurayshi's trousers were above the ankles. He sported a patchy but well-groomed beard and his thin silhouette complemented the measured and temperate tone of his voice. Everything about Qurayshi's demeanor had the stamp of humility and composure that took years to cultivate in the ascetic lifestyle of the *madrasa*. He did not fit either the visible or temperamental profile of a conventional banker.

As is customary of the anxiety and incertitude one struggles with in the early stages of fieldwork, my imminent concern was to find out if Qurayshi could facilitate my access to Insaf Bank and his former seminary. I had a basic plan of wanting to study the transition of *muftī*s from *madrasa*s to Islamic banks and Qurayshi seemed the right person to both learn from and work out the logistics of my fieldwork. Qurayshi insisted that we discuss matters at the nearby Madanī *masjid* (mosque), where he regularly attended a Thursday evening sermon. The Madanī *masjid* was Karachi's largest center (*markaz*) of the transnational Deobandī movement known as the Tablīghī Jamā'at and attracted nearly twenty thousand visitors each Thursday night (*shab-i jumu'a*). I was reluctant to discuss research at a place where I couldn't have Qurayshi's undivided

[3] The tunic or *kurta* worn in South Asia usually comes in three collar styles: the rolled collar, the mandarin or band collar, and collarless. Whereas the latter two can complement a pious style of dressing, the rolled collar in any cut or form is despised by Deobandī *'ulamā'* for its European provenance. The shape of the rolled collar is seen as an iconic complement to the tie, which in turn is interpreted as a Christian symbol of crucifixion. To my knowledge, the idea of a symbolic association between the tie and the cross is perhaps unique to South Asia. Upon inquiring from *'ulamā'* in Morocco, Jordan, and Oman, they were unable to fathom as to how a symbolic connection could be drawn between a tie, which had a greater resemblance with a noose, and a cross. I examine the relationship between dressing, custom, and semiotic markers of piety in further detail in my discussion of imitation (*tashabbuh*) in Chapter 1.

attention. “It’s not *listening* to the sermon that matters,” he assured me, “I just don’t want to break with the habit of attending it.” The atmosphere was casual in the mosque’s immense courtyard, with people still settling in. We found a relatively less crowded spot to sit and talk. It didn’t take long for Qurayshi and I to connect. I had enough *madrasa* credentials of my own to be treated as a credible and trustworthy interlocutor. I had memorized the Qur’ān from a renowned Deobandī *madrasa* in Karachi, Jāmiʿa Fārūqiya, and had read texts in legal theory (*uṣūl al-fiqh*) privately with *madrasa* instructors. Qurayshi was pleased to learn about my background but also somewhat skeptical, and for good reason, of the benefits of reading arcane legal texts without a formal *madrasa* training. I, on the other hand, could only be amused as I listened to him talk effortlessly about “product customization” and other complex financial operations he facilitated at Insaf Bank.

When Qurayshi asked about my research and why I wanted to study Islamic finance, I stated my research agenda in the broadest possible terms: “I want to understand the relationship between religion and capitalism as it plays out in Islamic finance.” I could not have anticipated the reaction I got from Qurayshi. “Capitalism?” he retorted with puzzlement, “that’s a topic you usually study in Economics, right?” A category that figured centrally in my research and whose conceptual burden weighed heavily on my language was, for Qurayshi, a distant theoretical concept reserved for a specialized disciplinary context. Capitalism, either as an overarching conceptual framework or as an organizational logic of commercial relations, did not resonate with the technicalities of financial management, audit, and product design that Qurayshi was professionally trained to tackle every day. Despite all the ground we had covered in terms of our shared—though not for identical outcomes—*madrasa* heritage, in that moment the conceptual gulf between Qurayshi and I could not have been wider.

This interaction triggered a moment of reflexivity in me: was Qurayshi's response an indication of the failure to translate capitalism on my part? Afterall, us academics have a way of viewing and talking about the world that is too abstruse and incomprehensible for the non-specialist. Such reflexivity also carries an air of arrogance and superiority, unless it compels one to live with the inadequacy of one's own concepts. But my reflexivity quickly recoiled into that visceral—hence unintended—sensation of implicit condescension towards one's interlocutor. Shouldn't Qurayshi, someone who lived capitalism everyday, know what his work entailed? I could immediately taste that age-old temptation of attributing false consciousness to one's interlocutors and devising functionalist explanations for the discordance between their concepts and practices. The nominalist in me, however, gave a different reaction: capitalism is not the empirical manifestation of a realist entity or conceptual archetype. It is simply a linguistic convention without an objective referent and a way of talking about the world. Our expressions and concepts aren't any more "real" or "objective" than the ones used by our interlocutors in their language game. But nominalism creates too sharp a dissociation between the language we use and the things we talk about. Language itself, as Talal Asad (2018) reminds us, is embedded in particular forms of life. What was it about Qurayshi's form of life (and my own) that made capitalism both invisible and visible to us? I shall return to the significance of this encounter in my discussion of ethnographic reflexivity in the final section of this introductory chapter.

Chapter Outline:

The rest of the introduction proceeds as follows: in Section 1, I outline the dissertation project and state my argument. Section 2 situates the historical and ethnographic coordinates of my research project and describes the field sites. Section 3 summarizes the content and arguments of each of the 5 chapters of the dissertation. Both Sections 4 and 5 present an extended literature

review and an engagement with key theoretical issues in anthropology and postcolonial studies that animate this dissertation project. These lengthier sections can be read independently from the rest of the chapter. Finally, Section 6 concludes the chapter by discussing the ethical and epistemological challenges in conducting ethnographic fieldwork for this project.

2. The Project and the Argument

I approach the many-splendored phenomena of Islam and capitalism through a specific institutional configuration called Islamic banking and finance. Through a textually informed ethnography of Muslim jurists (*muftī*s) and bankers working in Pakistan's *madrasa*s and Islamic banks, I examine the creative strategies of translation by which capitalist ideas, institutions, and practices are transfigured into an Islamic juridical framework called "Sharī'a Compliance." The central argument of *Translating Capital* is that Sharī'a Compliance secularizes Islamic commercial law by reengineering its discursive and disciplinary technologies according to logics of market governance. The dissertation probes two modalities of secularization by showing how Sharī'a Compliance (a) reconfigures the textual architecture of Islamic commercial law and (b) fashions distinct ethical subjectivities by authorizing new forms of financial discipline.

In order to understand the complex operations that give Sharī'a Compliance its form and shape, I situate it within an institutional assemblage that is neither reducible to religious doctrine nor rational choice. Sharī'a Compliance thus conceived is the contingent outcome of a process of manufacturing that involves human experts, textual artifacts, and technical devices circulating in a network of religious and financial institutions. This perspective enables a more sophisticated understanding of how religious phenomena escape confines of places of worship and become intertwined with secular practices. Further, the activities and movements within this assemblage are not merely triggered by human ideas, intentions, and cultural resources, but also shaped by

textual inscriptions, material devices, and technical arrangements. For the specific purpose of this dissertation, I focus on two critical institutional sites of this assemblage: *madrasa*s and Islamic banks.

Instituted in the 1970s as an Islamic alternative to corporate governance, Sharī‘a Compliance is simultaneously a textual discourse, an ethical code of conduct, and a regulatory mechanism that ensures circumvention of interest in financial dealings. A Sharī‘a Compliant financial instrument is the outcome of a dense and multilayered process of collaboration between Muslim jurists and financial engineers. Through textual and ethnographic research in *madrasa*s and Islamic banks, *Translating Capital* decodes the disciplinary configurations of Sharī‘a Compliance to uncover two related transformations. The first entails the reification of the Sharī‘a from a polyvocal textual discourse into a standardized code of finance. The second affects an alteration of Islamic ethics from the work of cultivating pious dispositions to developing a pragmatic ethos of risk-taking and profit optimization. I broadly summarize this textual and ethical shift as a movement from the pre-modern Islamic discourse and practice of *mu‘āmalāt* (transactions) to modern Sharī‘a Compliance. In *mu‘āmalāt*, human transactions and social intercourse were suffused with ethical norms of the Sharī‘a. These norms instructed practitioners in virtue cultivation through the apt performance of transactions. In Sharī‘a Compliance , however, adherence to Islamic legal procedures becomes a market device geared towards achieving efficiency and competitiveness. To put the matter in Foucaultian terms, the movement from *mu‘āmalāt* to Sharī‘a Compliance marks a shift in Islamic ethics from a model of the care of the self to economic governmentality (Foucault 1978; 2010). It is a movement from Islamic law as nomos, a system of socially embedded norms, to Sharī‘a Compliance as logos, where Islamic law is sealed according to the logic of market governance. Sharī‘a Compliance seeks to optimize the

economic activity of Islamic finance practitioners by imposing a set of cost-effective enforcements.

I explain the abovementioned discursive and ethical shifts as enabled by acts of textual and economic performativity. A performative approach sees knowledge practices not as instruments of discovering the reality of objects, but as co-constitutive of the objects themselves. I use translation as a methodological rubric to capture the iterative effects of textual and economic performativity. Translation here is understood not in the limiting sense of the transposition of meaning and content from one linguistic register to another, but also as the movement and subsequent alteration of forms of knowledge, their mediums, and subject-practitioners across institutional contexts. Translation is always at work when Islamic legal texts and subjects are transformed through their circulation in *madrasa*s and Islamic banks.

Translating Capital draws on Islamic legal studies, postcolonial criticism, and anthropology to address the following questions: how does Shari'a Compliance stabilize the mimetic resonance between Islamic and conventional finance as a point of ethico-juridical distinction? How does it overcome the instabilities resulting from its multiple and often divergent textual and financial operations? Finally, how does Sharī‘a Compliance suture market practices and Islamic legal norms into a working juridical-economic ensemble of Islamic finance? The answer lies neither in the universal logic of Capital nor in the cosmopolitan "spirit" of Islam. The cohesiveness of Sharī‘a Compliance, I argue, is the result of regimented but well-orchestrated labors of textual interpretation, financial engineering, and ethical subject formation. It is only by examining connections within this discursive assemblage that we can understand *how* Sharī‘a Compliance , to invoke Talal Asad, *authorizes* Islamic finance as a religious alternative to interest-based banking.

Rather than resort to ideological analysis or conjure functionalist explanations for the legitimacy of Sharī'a Compliance, I explain its coherence as stemming from collaborative labors of translation and disciplinary practices between *muftī*s and financial engineers. In order to unpack Sharī'a Compliance into its constitutive elements, I examine the various stages of its formatting and production, from textual translation to financial codification. Contrary to the imitative embodiment of ethics observed in the *madrasa*, corporate institutions habituate subjects into a culture of risk-taking and pragmatic decision making. A discursive shift in the Sharī'a from polysemous text to standardized code thus becomes coterminous with the fashioning of a rationally calculating ethical subject. It is through these intricate processes of textual formatting and ethical subjectivation that *muftī*s and Islamic bankers grant coherence to the performative contradictions of Sharī'a Compliance. The mimetic resonance between Islamic and conventional finance is thus stabilized as a point of religious and ethico-juridical distinction.

Scholarship on Islamic banking and finance has yet to scratch the surface of juristic debates amongst Sharī'a scholars on the ethico-juridical validity of Islamic banking, especially owing to the latter's conspicuous mimicry of capitalist finance. For the student of Islamic law, these internal debates open up a rich discursive space in which hermeneutical principles of legal theory (*uṣūl*), particularly those pertaining to temporal transactions (*mu'āmalāt*), are reformulated in the context of late capitalism or what is now called neoliberalism. The Sharī'a's discursive entanglement with contemporary finance is therefore significant in two respects: it accentuates the epistemological effects of the Sharī'a's reconstitution in capitalist modernity, and, more importantly, it exposes the many ambiguities of financial capitalism. The calculative stability and rational self-sufficiency of financial capitalism, once taken to be categorically singular, is now subject to resemblances with an older discourse on capital.

3. Ethnographic Fieldwork and Sites

While capitalist institutions are globally integrated across varying geographies of financial power, ethnography allows one to approach the global through the local. My ethnographic rationale, however, isn't merely spatiotemporal. Islamic banking first emerged in the Middle East in the 1970s and has today grown into a $2 trillion global financial industry (Irfan 2015). Financial statistics do give us a narrative of growth, but do not provide an adequate explanation for it. According to the Islamic Finance Country Index (IFCI), Pakistan currently ranks #7 in terms of Islamic finance penetration (IFSB 2019). However, it is also unarguably the most vibrant intellectual hub of Shari'a jurisprudence on Islamic banking, owing largely to the country's vast network of traditional Deobandi *madrasa*s (Zaman 2010). Several Deobandi scholars, notable amongst them Taqi Usmani, have taken the international lead in providing Islamic banking its authenticating juridico-theological foundation. These Sharī'a specialists work simultaneously as jurists in *madrasa*s and as Sharī'a Advisors to financial engineers in Islamic banks, tweaking debt-based financial instruments and transfiguring them into "Sharī'a Compliant" products that are allegedly free of interest. The *madrasa* and the Islamic bank create a feedback loop in Sharī'a practices of legal reasoning as jurists weave together cultural practices, textual norms, and financial technologies to manufacture Shari'a Compliant replicas of financial instruments.

Some may question the very juxtaposition of Islam and capitalism as tantamount to committing a category error. After all, one of them is a religion and the other an economic system. To me, however, the demarcation of religion and economics is not an ontological division but a specific conceptual and empirical configuration of reality that is sustained by disciplinary practices (Callon 1998). The boundaries between religion and economics are not timeless or fixed, but are susceptible to continual realignment. Their distinction appears more convoluted once we consider

how Islamic law regulates commercial conduct and how capitalism perpetuates faith in the providence of free markets—often with apocalyptic consequences. My reason for conducting a multi-sited ethnography at the *madrasa* and the Islamic bank is based on a recognition that Sharī'a Compliance is the product of interdiscursive labors that connect Islamic legal texts, financial models, and business ethics.

The Deobandī Tradition:

The Deobandīs are arguably the most prominent Sunni sectarian denomination in South Asia, who take their name from the Deoband seminary that was founded in late colonial India. They are traditionalists who adhere to the authority of the Ḥanafite school, which is one of the four major Sunni schools of Islamic jurisprudence. Today, the network of Deobandī *madrasa*s spans India, Pakistan, Bangladesh, as well as major diasporic centers of South Asian Islam in South Africa and the United Kingdom. Pakistan, however, remains the bastion of Deobandī thought and practice. Of the country's estimated 35,000 *madrasa*s with more than 2 million students, 65% or more propagate Deobandī Islam. Responding to industrial demand, several Deobandī *madrasa*s have now added classes on finance and accounting in addition to classical texts on Islamic commercial law. The *madrasa* universe, however, is not without its critics of Islamic finance. For the past two decades, an internal schism has divided Pakistani Deobandīs between Usmani and his detractors. *Madrasa* critics denounce Islamic finance as a travesty of Islamic law, condemning it as a grand conspiracy to coopt Islam and use it as a tool of capitalist legitimation. Whereas Usmani and his supporters take an accommodationist approach with respect to translating Islamic contracts into modern financial iterations, their critics question the integrity of such translations. This discursive battle and its polemical contestations have generated a tremendous literature, both in Urdu and Arabic, on the juristic strengths and weaknesses of Islamic finance.

During the first leg of my research, I took classes in *fiqh* with *muftī*s at the Jami'a Akramiyya seminary in Lahore. Jami'a Akramiyya was founded in 1947 by Deobandī stalwart Mufti Muhammad Hasan, who had migrated to Pakistan right after the partition of British India. It is one of the most prestigious Deobandī *madrasa*s of South Asia and a number of its faculty serve as Shari'a Advisors in Islamic Banks. Some of the major texts I studied at Jāmi'a Akramiyya were *Al-Ashbah wa'l-Naza'ir*, a 16th century text on legal theory by the Egyptian Ibn Nujaym, and *Sharḥ 'Uqud Rasm al-Mufti*, a systematic guide to *fatwā* writing by the 19th century Syrian-Ottoman jurist Ibn 'Ābidīn. Whereas the texts I read were in classical Arabic, classroom discussions were conducted in Urdu. I also observed practices of *fatwā* writing and religious counseling in Jami'a Akramiyya's Dār al-Iftā'—a place where *muftī*s applied their knowledge of Islamic law by responding to questions from common Muslims on how to practice their faith in specific social contexts.

Islamic Banking in Pakistan:

Islamic banks in Pakistan are still a niche but gradually growing industry. Currently they constitute about 10% of the country's banking sector. Their primary competition is with full-fledged conventional banks. Despite the Islamization projects initiated by successive Pakistani governments, Islamic finance has faced institutional hurdles towards growth, mainly because the State Bank of Pakistan, the country's lender of last resort, functions as a conventional bank. Furthermore, Pakistan's indebtedness to the World Bank and the IMF poses structural constraints in transforming the banking sector along Islamic lines. Since 2008, however, the State Bank of Pakistan has promulgated a Sharī'a Governance Framework that establishes rules and regulations specific to Islamic Banks. The second leg of my research was conducted at the Karachi headquarters of Pakistan's largest private Islamic bank, Insaf Bank Ltd. I worked in their Sharī'a

Compliance department, which was primarily responsible for getting new banking products and services ratified by Insaf's Sharī'a Board.

4. Chapter Sequences

Each chapter of this dissertation performs a dual textual/ethnographic and theoretical task. At the textual and ethnographic level, I explore a facet of the Islamic discursive tradition through debates and contestations between Deobandīs. These debates are conducted in the language and textual terrain of the Sharī'a. I pay close attention to how different interlocutors within the Deobandī tradition mobilize and contest this textual terrain in specific institutional contexts. The second theoretical task is of contrapuntal reading. In each chapter, I pick up a key theoretical concept pertaining to religion, secularism, and capitalism in European thought and then relativize and problematize it in light of contending concepts in Islamicate thought. My invocation of 'Western' theorists is but an inevitable and expected outcome of the training I have received in the Humanities at the Anglo-American university. This theoretical inheritance is both indoctrinating and enabling of certain kinds of critique. It also dictates many of the choices I've made in terms of engaging specific authors and literature. The dissertation itself is authored under the auspices of the American institution of higher learning and written primarily for a Western academic audience—an obvious fact that can easily be forgotten under the globalist aspirations of world literature and cosmopolitanism. As I discuss in the proceeding section, a firm conviction underlying this dissertation project is the need for European thought to learn *from* Islamicate thought. I therefore consider it both an epistemic necessity and ethical responsibility to make the latter speak to the former at the level of *theory*. While I am wary of spatial metaphors of insider/outsider and emic vs. etic perspectives to describe our scholarly engagement with intellectual traditions, here it can serve a heuristic purpose in highlighting the argumentative

pattern adopted in each chapter: the invocation of an *emic* perspective from the Islamic discursive tradition to modify and push against the universalizing *etic* gaze of European thought.

The five chapters are divided into two parts, which reflect the work done in and insights drawn from my two ethnographic sites: the Jāmiʿa Akramiyya seminary in Lahore and Insaf Bank Ltd. in Karachi, Pakistan. The first two chapters are concerned with the ethical universe of the Sharīʿa both prior to modernity and its specific form taken in late colonial India. These chapters draw on the beginnings of the Deobandī *madrasa* movement in South Asia and the tradition of Ḥanafite jurisprudence it inherited prior to its transformative engagement with financial capitalism. Chapters 3, 4, and 5 are each situated in the domain of Islamic banking and Sharīʿa Compliance. These chapters do not abandon traditionalist jurisprudence but focus on its transformations and entanglements with the world of finance.

In addition to being historically prior to the formation of Sharīʿa Compliance, Chapters 1 and 2 also perform the conceptual groundwork for inquiries pursued in the remaining chapters. Chapter 1 on *tashabbuh* articulates an Islamic conception of imitation as a modality of ethics. It connects the heightened significance of mimesis in Islamicate thought with the experience of colonization. During this time, imitation was rearticulated as a crucial defense mechanism developed for the preservation of tradition and Muslim identity. Accordingly, Muslims were forbidden from imitating foreign cultural practices associated with the West. *Tashabbuh* was reimagined from an embodied practice of mimetic learning to a criterion of distinction between the friend and the theological enemy. As the chapter shows through the writings of prominent first-generation Deobandīs in late colonial India, the Muslim sartorial repertoire was theorized as a site of cultural authenticity and distinction from the European colonizer. Deobandīs re-read the canon of Hadith or prophetic conduct, Muslim history, and intra-communal relations to make imitation a

central dimension of Muslim self-preservation and subjectivity. Chapter 1, therefore, offers a glimpse of a world that was still connected through mimesis but faced an imminent crisis of dissolution. It also offers an instructive contrast between the first generation of anti-colonial Deobandīs and the accommodationist attitudes of contemporary Deobandīs towards the allegedly secular and value-neutral domains of finance, science, and technology.

Chapter 1 also engages early Deobandī discourses on imitation as a means to intervene in the prevailing theorization of ritual and ethics in the anthropology of Islam. I argue that the disciplinary emphasis given to bodily rituals as techniques of ethical self-cultivation does not preclude the semiotic function of rituals as a means of establishing social distinction. In effect, I question the longstanding bifurcation between performative and symbolic understandings of ritual in the anthropology of Islam. My critique of this bifurcation is based on an archaeological reading of the concept of *shi'ār* (symbol) as a battlefield marker in the work of a towering Deobandī figure, Qārī Ṭayyib (d. 1983).

Chapter 2 on *'āda* offers a theoretical critique of two significant binary oppositions that shape inquiries into religion in the disciplines of anthropology and religious studies: ordinary ethics vs. scriptural ethics and immanence vs. transcendence. The former opposition, more specific to the recent ethical turn in anthropology, is tied to a much broader distinction between immanence and transcendence that has defined Euro-Christian theology as well as secular post-Enlightenment thought. I critique these binary oppositions in the work of anthropologists who posit ordinary ethics as a phenomenon that is independent of scriptural and transcendental foundations of religion. My argument is that this binary opposition does not define an essence of religion but is a performative one that reifies a secular bifurcation between the religious and the mundane. As an alternative to this secular division of the world between the fixity of religious belief and the flexibility of

everyday life, I present a textual reading of discourses on custom (*ʿāda*) and tacit recognition (*ʿurf*) in traditionalist Ḥanafite jurisprudence. Contradicting claims made by anthropologist Webb Keane regarding the 'totalizing' character of ethics in religious traditions based on scripture, I show that the discourse and historical practice of *ʿurf* and *ʿāda* established a continuity between textually inscribed norms and practices of everyday life. These discourses also undercut disciplinary assumptions about the purely secular character of financial markets and establish what Wael Hallaq has called the "anthropological reflexivity" of the Sharīʿa (Hallaq 2013, 150).

Chapter 3 on corporate personhood transitions to Islamic banking and the internal schism within the Deobandī tradition over the legitimacy of Sharīʿa Compliance. I examine how Deobandī proponents of Islamic banking, led by Taqi Usmani, provide Islamic-juridical sanction to two core concepts and institutional forms of capitalism: corporate personhood and limited liability. Through a close reading of arguments and counter-arguments in the debate between Usmani and his Deobandī critics, I highlight the performative significance of a literary device used to forge connections between pre-capitalist Islamic institutions and the modern limited liability corporation: the juristic parallel (*naẓīr*). Reading Usmani's work contrapuntally with Giorgio Agamben's writings on connections between theology, economics, and government, I argue that the *naẓīr* operates as a signature of secularization that connects modern capitalist institutions to a set of pre-capitalist Islamic referents. Further, situating the Deobandī debate on corporate personhood and limited liability within the paradigm of what theorist Joshua Barkan calls "corporate sovereignty" (Barkan 2013), I argue that the move to legitimize the limited liability corporation registers the potency of juridical power in contemporary capitalism. This juridical power is reflected in the corporation's ability to exercise the sovereign exception in the form of legal immunity/limited liability and also to take on many of the functions that were primarily the

reserve of the state. In effect, I argue that Deobandī religious justifications for corporate personhood and limited liability both secularize the Sharī‘a and expose the political theology that underlies modern corporations.

Whereas Chapter 3 considers the juridical dimension of corporate sovereignty, Chapter 4 on standardization shifts the emphasis to governmentality as legal compliance. This chapter also focuses on the dynamics of textual translation by examining the decontextualization of Islamic legal discourse from its textual-social ecology based on the authority of traditionalist schools of jurisprudence (*madhāhib*) and their recontextualization into a standardized code of financial conduct. The chapter explores a new phase in the history of the codification of the Sharī‘a in the form of "standardization" under modern corporations and non-state international regulatory bodies. Chapter 4 also examines a concrete instance of secularization through the textual transformation of the Sharī‘a. Standardization effectively deracinates Islamic legal discourse from its socially embedded and intertextual foundations in regional schools and flattens it according to the objectivity-based criteria of transparency and financial decision-usefulness. I examine the mechanisms and processes of this textual translation with the help of the concept of 'transduction' developed in linguistic anthropology.

Finally, Chapter 5 on gift exchange moves from questions of textuality to the organization of social relations and moral technologies of the self in the Sharī‘a. Here I focus on the institutional corollary to Islamic banking: Islamic insurance or *takāful*. I outline the discursive architecture of *takāful* through a close reading of internal debates between Deobandī scholars over its legitimacy from the standpoint of Islamic jurisprudence. As with the discourse on corporate personhood, *takāful* justifies Islamic insurance by modelling it on institutionalized gift exchange in the Sharī‘a as practiced in the social welfare institution of the *Waqf*. I argue that *takāful* reconfigures the ethic

of social responsibility and generosity in the Sharī'a by appropriating gift exchange as a financial instrument for commercial insurance and wealth preservation. Further, it subverts the significance of gift exchange as a moral technology of the self by decentering it from (a) the work of cultivating intentional rectitude in acts of generosity and (b) engagement in charitable activities as an expression of gratitude to and a means of attaining proximity to God (*qurba*). In effect, I argue that *takāful* secularizes the Sharī'a's discourse and practice of reciprocal generosity by situating it within a market-based framework of utilitarian exchange.

Naturally, any discussion of gratuitous giving and intentionality in connection with gift exchange raises the question of the aporia of the gift, i.e. its contradictory character of an apparently selfless act that functions according to a compensatory logic by generating the burden of reciprocity. I therefore reconsider the aporia of the gift by reading Jacques Derrida's criticisms of Marcel Mauss (2002) in connection with Islamic discourses on the social significance of gift exchange. I argue that the notion of a pure gift as an act of oblation reveals a Eurocentric understanding of gift exchange. This understanding is itself premised on a metaphysical distinction between the immanence of social exchange and the transcendence of pure giving.

5. Islam and Capitalism: Contesting a European Genealogy

The Colonial Context:

The Sharī'a or Islamic law is one of the preeminent traditions of normative discourse and practice in the world, dating back to the 7th century CE. It is, in the words of a perceptive anthropological commentator, Talal Asad, a "discursive tradition" (2009). The Sharī'a is thus a coherent but evolving system of knowledge and its embodied practices whose normativity is both sanctioned and contested by reference to an authoritative past, textual sources, and exemplary models of conduct. As a historically paradigmatic, though not necessarily uniform, feature of

Muslim societies, one of the central domains of the Sharī'a's jurisdiction was that of commercial exchange and transactions (*mu'āmalāt*). Over the course of nearly a millennium, Muslim jurists theorized and developed elaborate rules of commercial conduct, notions of property, forms of business partnerships, contractual models for sales transactions and gift exchange, and institutions of social welfare towards the ideal of a just commercial order in Muslim societies. With the ascendancy of industrial capitalism and the aftermath of European colonialism in the 19th-20th century, however, the Sharī'a's premodern institutions and ways of commercial life were deracinated from Muslim societies (Hallaq 2009). In their place, new legal and financial institutions—codification, privatization of property, monetization, banks, and limited liability corporations etc.—were transplanted from Europe, depending on needs of governance by the metropole (Cohn 1996; Kuran 2013; Merry 1991, 2003).[4] These new institutional arrangements have persisted after decolonization and continue to shape the trajectories of postcolonial Muslim societies.

As newly independent Muslim states found themselves conscripted in a political and economic order governed by nation-states and industrial capitalism, Muslim sovereignty was re-imagined through various attempts at adapting, adjusting, resisting, and even subverting this order. Islamic banking and finance emerged in the 1970s as part of an aspirational project to 'Islamize' the economy. This project underwent successive stages, mainly from (a) an ideological posturing of the radical alterity of Islamic knowledge and practice with respect to Western capitalism to (b)

[4] Historians have generally distinguished between the institutional arrangements of two kinds of colonialism: settler and extractive. In the former, colonial rule established its footing by reconstituting indigenous infrastructures of law, culture, and commerce. The transplantation of legal and commercial institutions from the metropole was, therefore, far more systematic and comprehensive in settler colonialism. In cases of extractive colonialism, the relationship between the metropole and the colony was limited to natural resource extraction. Colonial domination in extractive colonies was undergirded by a logic of coercion and did not necessitate the transplantation of legal and educational institutions needed to establish colonial hegemony. See Wolfe (2006); Ostler and Shoemaker (2019).

an accommodationist approach driven by the technical reconfiguration of capitalist tools, institutions, and concepts within an Islamic framework (Tripp 2006). The terms of discourse framing Islam's relationship with capitalism, however, remained skewed towards a Eurocentric perspective. It is important to consider the terms of this relationship as a prelude to our inquiry into modern Islamic finance.

For both Muslim practitioners of reform and Western historical commentators, the primary relationship of Islam and capitalism was articulated in terms of a problematic of compatibility and reform. In this relationship, Islam and capitalism are conceived as two self-contained and mutually exclusive entities that are subject to comparison. Islam represents a parochial Eastern culture and an institutional laggard that has failed to catch up with the economic and technological advances of modernity. Capitalism, on the other hand, is a universalizable force of historical progress that is driven by an economic rationality. Importantly, this rationality, attained in post-Reformation Europe, has an isomorphic relationship with Western culture. As Islam reckons with capitalism, its traditionalist orientation must either be dissolved by adapting to capitalist modernity or it must overthrow capitalism by undergoing radical reform and self-transformation. According to this framing, Islam must change either way with reference to capitalism as an historical inevitability.

It is not difficult to see the teleological and historicist underpinnings of Marxist and Weberian thought—not withstanding their significant differences—on the terms of this relationship. Max Weber attributed Islam's failure to develop industrial capitalism to the despotic patrimonialism of Muslim societies—what he called "Oriental sultanism"—and its suppression of a rational legal order that was a necessary condition of capitalist emergence (Turner 1974; Weber 1978, vol. 2). Karl Marx's concepts of formal and real subsumption, on the other hand, have given many radical thinkers reason to believe that a universal logic of capital assumes control over labor

processes globally and transforms all pre-capitalist modes of production (Hardt and Negri 2009; Marx 1992, 1988, vol. 30).

Pan-Islamism and Muslim Difference:

Muslim reformists, regardless of their support or denunciation of capitalism, largely internalized its Western presentation as a potent force of modern civilization. This internalization affected their explanations for the crisis of Islam in modernity. To begin with, Pan-Islamism arose out of an acceptance of essentialist projections of a civilizational difference between Islam and the West. As the historian Cemil Aydin (2017) has provocatively argued, this civilizational difference was fomented by the indiscriminate racialization of Muslims as inferior subjects of colonial Empire.[5] Muslim reformists challenged the denigration of Islam under European imperial racism and its Orientalist justificatory discourse by asserting Muslim exceptionalism in the realms of science, culture, and economy. Modernist Muslims, ranging from late colonial thinkers such as Jamaluddin Afghani (d. 1897), Syed Ahmad Khan (d. 1898), Syed Ameer Ali (d. 1928), and Muhammad Iqbal (d. 1938) to postcolonial intellectuals including Sayyid Qutb (d. 1966), Abul A'la Maududi (d. 1979), and Ali Shariati (d. 1977), presented Islam as an autonomous civilizational order worthy of the dignity and advancements of the West. According to them, Islam was only prevented from realizing its potential owing to Muslim neglect and corruption of its message under the retarding influence of traditionalism.

For instance, in contradicting claims made by Ernest Renan (d. 1892) and Oswald Spengler (d. 1936) about Islam's cultural incapacity for scientific inquiry, the Persian reformist Afghani and Indian philosopher-poet Iqbal argued that intellectual progress and social dynamism were the

[5] By the early 20th century, the British, French, Dutch, and Russian empires ruled large swaths of Muslim North Africa, the Middle East, South Asia, and Southeast Asia. The British Empire alone was sovereign over nearly half of the world's Muslim population (Aydin 2017, 7).

defining essence of Islam. They decried the influence of Greek philosophy, mysticism, and the suffocating formalism of school (*madhhab*)-based jurisprudence that led to the precipitation of a "magian crust" over the true spirit of Islam (Diagne 2010, 2018; Iqbal 2013). On the other hand, postcolonial Islamists, including the Indian-Pakistani Maududi and the Iranian Shariati, devoted themselves to concerns of social justice and political governance under the newly established nation-states (Tripp 2006). Investing the state with the ultimate authority to implement the Sharī'a, they crafted the ideology of an Islamic economic system in sharp contrast with liberal capitalism and Marxism (Shariati 1980).

Europe as the Sovereign Subject of History:

For all the differences between the aforementioned Muslim reformists, they reconstituted Islam into a modernized monolith that could be pitted against an essentialized West (Aydin 2017).[6] In doing so, they unselfconsciously recognized Europe as the "sovereign, theoretical subject of all histories," including their own reconstructed histories of Islam and aspirational projects for its future (Chakrabarty 2000, 27). In defending Islam against the onslaught of colonial and capitalist modernity, Muslim reformists inevitably reformulated Islam as a "variation" of the "master narrative" of European history (ibid). Europe was henceforth the normative point of reference against which the historical deviations of Islam could be measured and compared. The question of Islam's compatibility with capitalism is also not innocent of the aforementioned history and its presupposition of a European master narrative of modernity. In fact, it is the structural framing of

[6] I am not persuaded by Aydin's contention that both Islam as an abstraction and the idea of a transnational Muslim *ummah* are unprecedented constructs of modernity. However, Aydin's brilliant study opens a window into the historical and political conditions that facilitated a re-signification of the pre-modern concept of Muslim *ummah* into the Pan-Islamism of the late colonial era. Aydin perceptively notes that the "Muslim modernist strategy to defeat the notion of racial inferiority and articulate Muslim belonging in a universal humanity counterintuitively contributed to a rigid Orientalist conception of Muslims as essentially different from the rest of humanity. Ironically, in both the colonial and postcolonial contexts, this assumption further racialized Muslim societies." (Aydin 2017, 11)

an asymmetrical relationship between Europe and its others that makes the question of their compatibility possible. Other similarly pressing inquiries of our times, such as "Is Islam conducive to secular democracy?" or "Does the Sharī'a guarantee human rights?" are not innocent of this history either. The fact that they seem to have an intuitive appeal and that their premises are taken to be self-evident speaks to the hegemony of a certain way of thinking about Islam. All such inquiries partake in a structural comparison between a master category of European provenance—capitalism, secular democracy, and human rights etc.—and what is demanded as its Islamic instantiation. In this unequal relationship, the latter can only be assessed, evaluated, and, if need be, reformed according to the terms of the former.

I do not mean to suggest that antecedent structures of European thought categorically discredit all inquiries about the place of Islam in modernity or prescriptions for Islamic reform. My concern is with the discursive domain to which such inquiries belong and how its conceptual abstractions, interpretive protocols, and codes of representation frame Islam as an object of discourse.[7] Afterall, this dissertation, its language of scholarship and theoretical sources are also

[7] It is no secret that answers provided to questions and solutions devised for problems critically depend on how the questions are framed and how the problems are understood. One, therefore, cannot simply plead for the necessity of Islamic reform without consideration of the justificatory structures of reformist discourse. These discourses often signal Islam as carrying a lack or an absence—in relation to a European master category—that can only be mended through reformist intervention. Heidegger's response to Karl Marx's famous admonishment of philosophers—for their inability to change the world—correctly stresses the importance of knowing the justificatory structures that articulate the need for change:

> The question of the demand for world change leads us back to Karl Marx's frequently quoted statement from his "Theses on Feuerbach." I would like to quote it exactly and read out loud: "Philosophers have only interpreted the world differently; what matters is to transform it." When this statement is cited and when it is followed, it is overlooked that changing the world presupposes a change in the positing of the world. A positing of the world can only be won by adequately interpreting the world. That means: Marx's demand for a "change" is based upon a very definite interpretation of the world, and therefore this statement is proved to be without foundation. It gives the impression that it speaks decisively against philosophy, whereas the second half of the statement presupposes, unspoken, a demand for philosophy. (Hemming 2013, 18-19)

deeply embedded in a tradition of Anglo-American scholarship, even if not entirely exhausted by it. I therefore find it imperative for a scholarly project on Islam authored at an elite Anglo-American institution of higher learning to confront the constraints and possibilities of the dominant discursive tradition to which it belongs. Simply asserting the epistemological falsity of the universal categories of European thought—now a truism of post-Enlightenment Humanities scholarship—does not extricate one's scholarly enterprise from its position in a hierarchy of knowledge and the institutional politics by which such knowledge is produced and circulated.

As historian Dipesh Chakrabarty has noted, the discursive protocols of scholarship in the Anglo-American academy do not transparently convey non-European life worlds in all their cultural richness and metaphysical density but transmute them into secularized representations. One can always make a conscious effort to push against the codes of representation that structure one's disciplinary language, but it is not possible to transcend the institutional structures in which one operates or its systemic effects that authorize particular forms of knowledge.[8] Chakrabarty, therefore, acknowledges the "simultaneous indispensability and inadequacy" of European knowledge to the task of understanding non-European life worlds (6). On the one hand, one needs to recognize the ethnocentric moorings of the European knowledge tradition and challenge its claims to universality. On the other hand, since one cannot demarcate the limits of European knowledge by standing outside of it, one must work through its analytical apparatus by leveraging, modifying, and even subverting its master categories and concepts to make it critically responsive to non-European thought. These insights don't seem to resolve the intractable problem of understanding historical difference through European concepts and categories of thought. However, in the least, they provide a fairly accurate assessment of the constraints of any

[8] This is quite contrary to the aspirational gesture of transcendence that informs Edward Said's notion of "secular criticism." (Gourgouris 2013)

knowledge enterprise that engages non-European traditions while being situated in European traditions of knowledge. Let me be more specific and consider the implications of Chakrabarty's insights on provincializing European knowledge for scholarship that has studied Islam in relation to capitalism.

Analyses of Islam and capitalism that take for granted the indispensability of European thought, but without recognizing its inadequacy, have thoroughly scrutinized Islamic economic history or commercial practices as a variant of capitalism. However, such analyses do not extend critical scrutiny to capitalism as a universal category of European thought, leaving the latter intact as their normative and conceptual frame of reference. The outcome of such studies is usually a demonstration of the degree to which Islam may be considered hospitable (Rodinson 1974) or historically unreceptive—if not intrinsically hostile—to capitalism (Kuran 2013). Alternatively, scholars may argue whether Islam was an evolutionary pre-cursor to capitalism (Koehler 2014) or a late collaborator with "indigenous roots" in the global industrial revolution (Gran 1979). What these otherwise meticulous works of scholarship don't do—at least to the extent of recognizing as an important scholarly objective—is reflexively diagnose the polemical and performative effects of capitalism as a master concept in informing their expectations and questions about Islam.

Anthropology and the Question of Engaging Indigenous Knowledge Traditions:

More recent anthropological studies of Islamic banking and finance, though not invested in a postcolonial project of provincializing European knowledge, have shown greater sensitivity to contingencies of history, knowledge, and practice by refusing to categorize relations between Islam and capitalism in a historicist framework. Notably, ethnographic projects by Daromir Rudnyckyj and Bill Maurer gesture towards the inadequacy of European theories and concepts of capitalism by treating the latter as an emergent rather than predetermined phenomenon.

Rudnyckyj's studies of state-led economic development in Indonesia (2010) and Islamic finance experiments in Malaysia (2018) examine the creation of a "neoliberal Islam" through convergences between financial technologies of subjectification and Islamic virtues and practices in Southeast Asia. For Rudnyckyj, neither capitalism nor Islam are self-standing entities; they take form and shape within a global assemblage of financial infrastructures, state institutions, religious expertise, and technologies of subjectification.[9] Bill Maurer's study (2005) of Islamic banking and alternative currencies maps oscillations of difference and sameness between 'Islamic' and 'conventional' finance to reflect on the indeterminacies of ethnographic representation. For Maurer, Islamic finance operates 'laterally' with respect to dominant modes of capitalist finance: it neither approximates capitalism from a safe distance nor adequately captures a pristine Islamic reality of commerce. Maurer finds such "lateralization" instructive for both ethnography and social inquiry in general, which remain stuck in a Western metaphysics of representationalism, i.e. the view of knowledge as an inferential relation between mental concepts and empirical reality. Maurer suggests that social inquiry should substitute the posture of adequation towards an antecedently existing world for a praxis of entanglement, circulation, and lateral movement with a multitude of alternating subjects and objects. In a truly lateral fashion, social inquiry should work as a "paralanguage" that "lies alongside" the languages and worlds of those it seeks to engage; it should not be "hovering above" as a "metalanguage" that can explain it all (xv). Rudnyckyj, on

[9] It is admittedly difficult to reconcile the irreducible contingency of assemblages with Rudnyckyj's foreboding sense of the inevitable expansion of capitalism expressed in the following passage:

> Thus, in contrast to accounts that represent Islam in conflict with modernity; [sic] spiritual reformers suggest a certain reconciliation between Islam and modernity. However, this should not be understood as a celebratory account of transnational harmony brought about through the panacea of globalization. There is no small measure of caution in this tale. My intention is to inspire reflection on what is per-haps the most fateful force of our time: the increasing extension of economic rationality and calculative reason into diverse domains of human life. (Rudnyckyj 2010, 24)

the other hand, advocates a "para-ethnographic" approach to fieldwork in which one's interlocutors are treated as collaborators in knowledge and as those who also share the questions and concerns of the anthropologist (Holmes and Marcus 2005; Rudnyckyj 2010).[10]

Both Rudnyckyj and Maurer, withstanding their divergent theoretical and methodological orientations, find value in learning *from* the languages and worlds of expertise inhabited by their ethnographic interlocutors.[11] In doing so, they at least aspire towards attaining parity with their interlocutors by acknowledging the partiality of their own disciplinary languages. Indeed, since the reflexive turn of the 1970s, sociocultural anthropologists have largely abandoned pretensions of producing objective knowledge about other cultures by recognizing the play of subjective bias in the field and the creative capacities of ethnographic writing (Clifford and Marcus 1986). However, conceding the partiality of one's disciplinary language does not stand in for a serious engagement with the disciplinary language of the other. Mere recognition of the inadequacy of European thought does not compensate for the all-too normalized dispensability of non-European traditions of knowledge. It is admirable for anthropologists studying alternative and non-dominant

[10] To quote Holmes and Marcus,

> In sum, within traditional ethnography one never would have asked for the para-ethnography of the Trobriand Islander or the Nuer. The need for radical translation was assumed. . . . What does it mean to substitute the "para-ethnographic" for this traditional apparatus of ethnographic knowing? As we have suggested, it means that when we deal with contemporary institutions under the sign of the global symptom, as we have termed it, we presume that we are dealing with counterparts rather than "others"—who differ from us in many ways but who also share broadly the same world of representation with us, and the same curiosity and predicament about constituting the social in our affinities. At base, then, the postulation of the para-ethnographic is a somewhat veiled, maybe even hesitant, overture to partnership or collaboration with our counterparts found in the field. (Holmes and Marcus 2005: 241, 250)

[11] The legacies of Orientalism make it no secret that learning from the language and expertise of non-Europeans may be done entirely for instrumental purposes. Even when such language and expertise is mastered with all the precautions of post-Enlightenment critical thought, it is always possible to subordinate or subsume it within a European metalanguage. Chakrabarty's call to "provincialize Europe," therefore, is not addressed to Orientalists per se but to inheritors of the post-Enlightenment critical tradition in European thought.

modes of finance—beyond the heartlands of global capitalism—to raise the voices of their interlocutors as meaningful commentary on capitalism. But these interlocutors are, more than often, the stuff of ethnographic descriptions, narratives, and data. They are not seen as producing theory or making arguments backed by the authority of a discursive tradition that outlives the individuals speaking in its name. Even when theories and critical epistemologies are extrapolated from the statements, practices, and affective dispositions of ethnographic subjects, the latter merely provide ethnographic instantiations of theories authored within European knowledge traditions.[12]

I do not contest the merits of subverting the realist—"God's-eye-view"—paradigm of anthropology for a more situated and interactive approach to the ethnographic encounter (Geertz 1988; McCarthy 1992, 639). In the latter, the anthropologist documents the travails of fieldwork experience and grants the uncertainties and ambiguities of ethnographic knowledge. Further, to undermine the sovereignty of the ethnographer's authorial perspective, anthropologists have even experimented with "polyphonic," "dialogic," and "heteroglossic" writing styles to animate native voices within the ethnographic text (Rabinow 1986, 245-246). All of these measures, notwithstanding disagreements over their effectiveness and relative success (ibid), are admirable

[12] To take a concrete example, Saba Mahmood's pathbreaking ethnography (2005) of the women's mosque movement in postcolonial Egypt challenges liberal notions of autonomous personhood and individual agency by reinterpreting Muslim sartorial practices. While Mahmood engages notions of morality and subject-formation in Aristotelian, Kantian, and Foucaultian traditions, omitted from her discussion are elaborate theories of the semiotic and performative dimensions of Muslim sartorial practices within Islamic religious discourse (discussed in Chapter 1). Mahmood's ethnographic subjects would be surprised to discover the Aristotelian significance and genealogies of their religious piety—at the exclusion of those historically effective explanations and genealogies from within their own discursive tradition. The point here is not to argue whether the anthropologist's theorizations must be identical or even agreeable to the self-understandings of their ethnographic subjects. It is to note that the theoretical sources used to explain the 'empirical' realities of the field, even in the critically reflexive work of anthropologists like Mahmood, are rarely drawn from indigenous sources of knowledge. A significant part of this imbalance between European theory and non-European ethnography, as Brinkley Messick has perceptively noted, stems from a general disciplinary reluctance on the part of anthropologists to engage with written culture.

outcomes of the reflexive turn in anthropology. I would argue, however, that reflexivity is a necessary but still insufficient condition for an ethnography of non-European life worlds. While reflexivity may facilitate openness and critical responsiveness towards one's ethnographic interlocutors in the field, it does not guarantee the same dialogical interaction with indigenous systems of knowledge in ethnographic writing.

Despite all the critical reflexivity vis-à-vis European thought, the latter maintains its privileged status as the only "alive" tradition of knowledge in the humanities and social sciences (Chakrabarty 2000, 5). Temporal distance with the "founders of discursivity" of European thought—Foucault uses Marx and Freud as examples and we could add many more—does not seem to affect their contemporary relevance and the importance given to their concepts and categories (Foucault 1984, 114). In contrast, non-European traditions of knowledge, their contemporary manifestations and past remnants are presumed to be dead. By and large, these traditions and their reservoirs of knowledge are mined by specialists as relics of the past that can be subjected to our gaze but cannot speak back to us; they are archaeological and ethnographic artifacts awaiting discovery and theoretical elaboration through European knowledge. This difference in the afterlives of European versus non-European authors and their texts is, of course, a function of power that organizes the disciplinary practices of the Anglo-American academy. As is true for discursive traditions in general, authorities of the past are never strictly confined to their historical contexts but are always made to speak to the present and the future.[13] Today, in the

[13] In the Deobandī *madrasa* in Pakistan, for instance, teachers and students still refer to Muslim jurists from the 8th century CE in the *present* tense. It is not uncommon to hear, for instance, the stating of a dialog between Abu Ḥanīfa (d. 767) and Ibn Taymiyyah (d. 1328) as if they were contemporaries arguing in the next room. Note that the temporal distance between these two jurists is still not as long as that between Aristotle (d. 322 BCE) and Michel Foucault (d. 1984), two founders of discursivity whose arguments are invoked by Giorgio Agamben to shed light on modern economy and governmentality (Chapter 3 of the dissertation).

Anglo-American academy, only European knowledge commands such discursive authority where its theoretical concepts could be extended and applied to any time and place.[14]

I presented Maurer and Rudnyckyj's ethnographic projects as examples of scholarship on Islam and capitalism that affirm the inadequacy of European thought. However, their affirmation also doesn't prevent them from enacting the normalized asymmetry between European thought as an indispensable guide for contemporary theoretical reflection and the Islamic discursive tradition as ethnographic artefact. In the case of Islamic finance, the non-European counterpart to the language of commerce, contracts, and exchange is that of Islamic jurisprudence (*fiqh*). In Maurer's work, both the content of *fiqh* and the work of its specialists, i.e. "*fiqh* scholars" or "experts in *shari'a*" [sic], receive mention but are not given any substantial treatment—barring some discussion of the basic outlines of Islamic contracts (Maurer 2005, 31, 73-74). Rudnyckyj, on the other hand, meticulously outlines the intersecting "cultures of expertise" that constitute the global Islamic finance assemblage (Rudnyckyj 2018, 52). He specifies "shariah [sic] scholars who are schooled in branches of the classical Islamic educational disciplines, especially fiqh" as one amongst four categories of experts in the Islamic finance industry. His ethnography also treats specialists of Islamic law as interlocutors whose presence and actions have a critical influence on the workings of Islamic finance (55, 72-73, 128).[15] But while the sociological fact of religious expertise is recognized and engaged with, the Islamic discursive tradition itself is not mobilized as an authoritative source of theoretical reflection.

[14] This dissertation also unmistakably partakes in such an extension of European knowledge, but it does so without effacing the Islamic discursive tradition or forcing it into silence.

[15] Arguably, in the recent anthropology of finance, Rudnyckyj's work has gone the farthest in registering Islamic expertise as an intellectual tradition in its own right. His most recent monograph, *Beyond Debt* (2018), describes the formal architecture of Islamic contracts—though without engaging their juristic bases of construction—and provides a glossary of crucial Arabic terms.

Anthropologists could make a plea that scholarship written and produced for the Anglo-American academy must speak the theoretical language of its audience. But my provocation is not a negative one of disallowing European sources from framing the theories and methods of ethnography—which, at least for this project, would be self-contradicting. It is, rather, a positive one of elevating non-European knowledge traditions from their passive status as artefacts of knowledge to an active status of knowledge producing systems. Maurer has argued, correctly in my opinion, that anthropologists need to move beyond "interdisciplinarity"—scholarship driven by a dialog between two or more European metalanguages—towards "acquiring knowledge and expertise" in the "lateral knowledges that run parallel" to what anthropologists do (Maurer 2012, 458). Importantly, he distinguishes this call for knowledge acquisition from the classical anthropological pursuit of figuring out what the "natives think"—a task that has often been premised on the dispensability or non-existence of an indigenous knowledge tradition.[16] What Maurer asks for, instead, is "a deeper knowledge as coresident expert" within one's ethnographic domain (ibid). Making these suggestions in the general context of an anthropology of finance, Maurer fears that a lack of expertise in financial knowledge and systems would not only result in an anthropological failure to "translate finance to other audiences" but will also reinforce a cynical tendency of "falling into old denunciations or a critical perspective born more of a pre-commitment

[16] I should note that even the goal of simply reading the 'native's mind' through observation, direct questioning, or Socratic dialog is often driven by a cognitivist fallacy, i.e. the notion that human cognition and consciousness operate independently of affective dispositions and the "visceral registers of being" (Connolly 2008, 70). Even if we grant the mind/body distinction and provisionally bracket cognition from the multiple circuits linking it to extra-rational modalities of sensibility and perception, we cannot guarantee *unmediated* access to an individual's cognitive universe except through the total transposition of the anthropologist into the 'native's mind.' This epistemological difficulty, however, is secondary to the more sinister aspect of understanding the 'native' for instrumental purposes of exerting power and control. As Talal Asad has correctly noted, "Attention to 'the native's point of view' as such is, after all, compatible with an entirely instrumental approach— with viewing the native's form of life simply as information to be translated for a purpose entirely foreign to it" (Asad 2018, 9).

to certain theories at the expense of the object itself" (ibid). By the same token, it only makes sense for a researcher on Islamic finance to acquire knowledge and expertise in the discursive traditions of the Sharī'a. The goal is not just to prevent one's "pre-commitment to certain theories" of European provenance from obscuring Islam as an "object" of study; it is to reverse the subordinated status of Islam from a mere object of theoretical reflection to a necessary contributor of theoretical discourse.

In light of these arguments, I propose an increment to Chakrabarty's admission of the "simultaneous indispensability and inadequacy" of European thought (Chakrabarty 2000, 6). We may recall that Chakrabarty's project of provincializing Europe is precisely a struggle against the latter's metalanguages of representation that frame non-European life worlds as passive objects of knowledge. As I have been arguing, merely registering the inadequacy of European thought is a necessary but ultimately insufficient step towards redressing the epistemological asymmetry between European and non-European traditions of knowledge. The task of critiquing Europe as the sovereign agent of history and theory, therefore, requires not only asserting but also performing the *indispensability* of non-European traditions of knowledge. By "performing" the indispensability of non-European thought, I simply mean deploying the generative capacities of its theories and concepts in ways that speak to us by imparting knowledge about ourselves, the histories we inhabit, and the futures we aspire to.[17] Making non-European thought indispensable to the study of non-European life worlds also means that no study of a particular non-European

[17] Since Michel Foucault's paradigm-shifting interventions in post-Enlightenment critical thought, the inextricable connections between power, knowledge, and subjectification are no longer a reality that would shock academics. Nevertheless, the nearly exclusive reliance on European thought for theoretical reflection continues to betray the impression that European theories and concepts are grounded in a universalist epistemology. The deference given to European "founders of discursivity" and the edificatory function of their writings in academic life point to the moral and affective attachments of European thought.

region be conducted without a concerted effort to engage its knowledge traditions and theories and epistemologies *qua* theory and epistemology. This treatment of non-European thought as authoritative knowledge that is also theoretically instructive *to us* radically differs from the philological mastery of non-European textual traditions in Orientalism. In the latter, the non-European Other was studied not for the reflexive purpose of self-alteration but to instruct, dominate, and discipline the Other into a position of subordination (Hallaq 2011, 439).[18]

For anthropology, performing the indispensability of non-European thought would entail supplementing the important work of field-based "para-ethnographic" collaborations with literacy in the knowledge traditions of one's interlocutors. This second task necessarily pushes against disciplinary habits of treating textual knowledge as secondary or, much worse, irrelevant to ethnographic study. As the anthropologist Brinkley Messick has argued, reluctance by anthropologists to engage with texts stems in large part from the classical anthropological tradition of studying 'non-literate' cultures (Messick 2018, 25). While geographical and topical interests of the discipline have expanded and anthropologists today are increasingly studying literate cultures as well as sophisticated institutions of modernity, the presumed epistemological divide between textual and ethnographic knowledge continues to inform fieldwork methodology. This methodological refrain from textual study may even be undergirded by an implicit cultural realism, where true culture is assumed to lie outside disembodied textuality. It is not difficult to see how such bias, when applied to non-European cultures, may even further perpetuate the asymmetry

[18] Orientalism is, of course, only one extreme degree of the instrumentalization of knowledge of the Other. The mere fact of having temporally proceeded European colonialism and its Orientalist forms of knowledge is not a guarantee of immunity from instrumentalist approaches to knowledge. The Anglo-American academy remains embedded and enmeshed in structures of power that both legitimize and perpetuate catastrophic violence against the environment and human societies beyond the North-Atlantic. For a systematic treatment of the refracted continuities of Orientalism, the "systemic thought structure" to which it belongs and its implications for modern forms of violence, see Hallaq (2018).

between European cultures as possessing canonized knowledge and their non-European counterparts as divested of a written culture. Messick has, therefore, argued for the making of a "literate anthropology" by concentrating on the figure of the "anthropologist as a reader" (34). For Messick, the anthropologist should be a distinctive kind of reader who undoes the dichotomy of text and culture. Reading Islamic texts with an ethnographic sensibility should attune one not only to embodied dimensions of reading—what Messick calls the "textual habitus" (Messick 1993, 251)—but also to dialogical relations between textual artefacts belonging to distinct discursive formations.[19] In my reading, Messick's incitement towards an anthropology of written sources also lends support to the idea of the indispensability of non-European knowledge to the study of non-European culture. Lack of engagement with non-European textual traditions only perpetuates a conception of non-European cultures as intellectually impoverished in comparison with the theoretical sophistication of European thought. It is my hope that the analysis of Sharī'a Compliance in the proceeding chapters shall partly redress this asymmetry of knowledge.

6. Performative Contradictions of Sharī'a Compliance: Theoretical Interventions

The relationship between Sharī'a Compliance and conventional finance is particularly difficult to theorize owing to its internal ambivalence. In order to remain profitable in a competitive financial industry, Sharī'a Compliance must replicate standards of efficiency in conventional finance. Yet, it must do so without violating scriptural restrictions on interest. In other words, Sharī'a Compliance is burdened by a dual and conflicting imperative: it must meet demands of efficiency in a financial industry driven by interest, all the while maintaining fidelity to Islamic injunctions *against* interest. Efficiency is needed to survive in a competitive and innovative

[19] Messick terms these discursive formations as the "library" and the "archive." I discuss them in more detail in Chapter 2.

business, whereas fidelity to textual norms assures the religious authenticity of Sharī‘a Compliance. Islamic bankers are aware that meeting functional considerations of efficiency brings their products dangerously close to their conventional counterparts. They thus work relentlessly to prevent their adequation of conventional finance from collapsing into equivalence with it. Yet, their attempts at being decisively *different* from conventional finance are undermined by efforts at replicating efficiency standards of the market.

I call this a performative, as opposed to logical, contradiction because the contradiction itself does not stem from an incompatibility between two propositions that are the inverse of one another—such as the statement "this is a square-circle." The contradiction is *performative* because it is played out in the practice of Islamic finance experts themselves. Further, it has particular effects on the very subjectivity and attitudinal dispositions of Islamic finance practitioners. Finally, it is *contradictory* in that the intended effect of the performance, which is to maintain distinction from conventional finance as a point of comparison, is thwarted by the performance itself. In trying to continually define itself in opposition to conventional finance, Islamic finance ends up becoming similar to its other.

Ethnographic excursus:

During my fieldwork at Insaf Bank Ltd., I befriended a diligent banker by the name of Sameem Ghani. Unlike Muftī Ammar Qurayshi mentioned earlier, Ghani did not boast an elitist education from the country's top business school. Working his way in the organization from bottom up, Ghani had proved his business acumen and interpersonal skills in Karachi's competitive and somewhat chaotic commercial environment. My conversations with Ghani mostly took place in the bank's Sharī‘a Compliance and Product Development (PDSC) department, where he worked as an Assistant Manager. Since the focus of my research was on the work done by

Sharī'a Advisors (*muftī*s) in collaboration with finance professionals, I usually did not venture outside corporate headquarters to study bank/client interactions. Ghani, however, had recently got hold of a major client in the telecommunications industry, for whom he needed to work out the details of a less commonly used financial product called "Tijarah" (lit. trade). I already had a basic idea of Tijarah from Insaf Bank's official product manual, but witnessing Ghani explain it to a potential client was an opportunity I couldn't miss. This was my chance to document those overlooked conversational linkages within a chain of "circulating references" that constituted a financial artefact (Latour 1999).[20]

Ghani and I drove to the head office of Signa Engineering Pvt. Ltd. on a hot May afternoon. Signa were mainly importers and occasional manufacturers of telecommunication devices and wireless paraphernalia, such as digital radios, radars, CCTV equipment, and walkie talkies etc. They had offices in 5 major cities of Pakistan and served a vast clientele, including media and production houses, banks, private home security, and public law enforcement etc. Signa had been running a lucrative business for the past 35 years and were based in one of Karachi's relatively affluent residential and commercial areas, the Pakistan Employees Cooperative Housing Society (PECHS). Ghani himself had a fascination with tech gadgets and was excited to meet Signa's Managing Director, Wajid Akram. But more importantly, Ghani knew that getting business from

[20] The French philosopher-ethnographer of science Bruno Latour posits "circulating references" as an alternative to the representationalist understanding of knowledge as correspondence between word and object. Countering this simplistic dichotomy of mind vs. matter, Latour argues that the constitution of a complex material artefact, such as a text of case-law or a field report of a forest's soil composition, involves multiple stages of epistemic activity across variations of form and matter (Latour 1999; 2010). Each of these processual stages of extraction, alignment, measurement, inscription, standardization, and narration etc. is linked in a chain of circulating references that constitutes the material artefact. There is no single one-to-one correspondence or resemblance between, for example, the product manual I had read and the range of material exchanges, monetary calculations, and legal agreements involved in an actual Tijarah transaction.

Signa bode well for his prospects at Insaf Bank. The Tijarah was a high risk product and was only assigned to seasoned bankers.

Ghani filled me in on the background details of our meeting with Akram as we drove to Signa's head office. Akram had a major incoming shipment of two-way radios (walkie talkies) from Motorola Solutions in the US and he needed financing to shore up Signa's working capital, pay for the incoming shipment, and meet overhead costs. Akram had done business with Motorola before; he would import equipment from them and sell it to a wide network of local clients within Pakistan. In the past, Akram would just go to a conventional bank and secure a loan based on Signa's credit-worthiness. The loan would help finance Signa's imports and manufacturing but would have to be repaid with interest. As an Islamic bank, however, Insaf couldn't make income from interest and had a different solution for Signa's financing needs.

Upon arrival, we sat comfortably in Akram's air-conditioned office—electricity outages were frequent in Karachi—and were soon joined by Saad, a relationship manager from Insaf Bank's local PECHS branch. Saad was the one who had arranged this meeting between Ghani and Akram. He was Akram's first point of contact from Insaf Bank, but he needed an expert from the head office to allay Akram's concerns about working with an Islamic bank. All three of us were served a chilled bottle of soda, the prime beverage offered to honor business guests in Pakistan. Ghani began laying out the potential benefits and procedures of Insaf Bank's Tijarah product by starting with basics, "Since we are 100% Sharī'a Compliant, we do not deal in interest. As an Islamic bank, we are going to trade in commodities with you and make a *ḥalāl* (permissible) profit on the sale of those commodities." Islamic banks identified themselves as "trading houses" rather than as banks in the strict sense. Immense emphasis was given to this "trading house" identity and it was ingrained in employees during training sessions. Ghani's formulation of Insaf Bank as a

trading house rested on a fundamental distinction between two kinds of commercial exchange: money exchanged for money and money exchanged for commodities. Making surplus money on a monetary loan constituted interest (*ribā*), which was impermissible (*ḥarām*) and a cardinal sin in Islam. In contrast, the Qur'ān had made it permissible (*ḥalāl*) to make surplus money through the sale (*bay'*) of commodities.

Having laid out this basic distinction, Ghani began a step-by-step explanation of the Tijarah product. To ensure that Akram clearly understood the difference between Insaf Bank's financing solution and that of conventional banks, Ghani juxtaposed the two at each step of his explanation. The Tijarah was a "sale and agency" financing facility designed for clients who sold finished goods on a credit basis. Signa was one such client: it either manufactured or imported finished goods and sold them in the market on a deferred payment basis. The difficulty with this business model was that the client—here Signa—may face imminent liquidity problems due to not receiving payments on the spot for its sold goods. As opposed to offering a loan with an interest premium as conventional banks did, the Tijarah provided an alternative two-step solution for clients like Signa, enabling them to both sell their finished goods while 'enjoying the benefits of cash sales' (PDSC 2012).

In the first step of Tijarah, Insaf Bank would purchase the incoming shipment of goods from Signa by making immediate payments on spot. In the second step, Insaf Bank would appoint Signa as its agent (*wakīl*) to sell the same goods—now under Insaf Bank's ownership—for a profit in the open market. These two sales transactions would allow Signa to meet its financing needs and Insaf Bank to make a profit without partaking in interest. In the first sale, i.e. from Signa to Insaf Bank, Signa would receive immediate funds to cover its administrative and/or manufacturing overheads and working capital needs. In the second sale, Insaf Bank would recover its initial

expenditure of purchasing the shipment of goods from Signa and also make a profit. Additionally, Insaf Bank would pay Signa an agency fee for selling the goods in the open market on its behalf. When both sales are concluded, the profits accrued to Signa would be the same as it would have made after paying interest on a loan and Insaf Bank's income would match prevailing interest rates in the market. In other words, the monetary outcome in terms of costs and benefits would remain the same for both parties. The crucial difference is that neither party will have paid or earned interest. Ghani made it clear to Akram that this was the "Sharī'a Compliant" way of financing as it involved no loans and financial interest. Moreover, it was certified and approved by Insaf Bank's reputable Sharī'a Advisory Board.

Ghani also reassured Akram that the procedural difference between Insaf Bank's Tijarah and a conventional loan was not insignificant simply because their monetary outcomes were identical. He was familiar with the all too common refrain against Islamic banking that it unnecessarily complicated operational procedures—in this case, substituting a single loan transaction with two sales transactions—to arrive at the same outcome.[21] Islamic banking skeptics referred to this inconsequential maneuvering with the colloquial expression, "it doesn't make a difference whether you hold your left ear with your left hand or go over your head to hold it with your right hand."[22] The expression was almost always accompanied by a comic gesticulation for

[21] The Economist Mahmoud El-Gamal (2006) expresses his frustration with such operational maneuvering and denounces it as wasteful and efficiency-compromising. In his Law and Economics framework of analysis, each added step to a financial transaction increases "transaction costs" and makes it less efficient. He correctly notes that most Sharī'a Compliant alternatives to conventional financial transactions tweak the latter by adding more conditions and procedural requirements. For Gamal, however, efficiency is a cardinal value that should be given priority over what he calls "pietist antirational" considerations of Islamic finance (26). Ultimately, Gamal re-reads the entire corpus of classical Islamic commercial law as governed by efficiency-enhancing considerations, thus implicitly affirming the latter's desirability as a universal value (10, 46-63).

[22] Text (Urdu): *kān kō idhar sē yā udhar sē pakarnā ēk hī bāt hai*

added emphasis. Ghani understood the importance of preempting such skepticism. He told Akram that unlike conventional banks, who would simply issue a loan to their clients and be solely concerned with receiving interest payments on time, Insaf Bank would stay with Signa until the latter's merchandise was finally sold in the open market. By purchasing the shipment of goods from Signa in the first sale, Insaf Bank would also assume the risks of ownership of those goods. No conventional bank would ever want to entangle itself in the business of its clients by assuming risks of its inventory. In summary, Ghani wanted to convince Akram that not only did Insaf Bank's model evade sinful interest, it also functioned on the principle of mutuality that conventional banks shied away from.

Akram was an astute businessman and readily appreciated the design and components of Tijarah as an Islamic alternative to loan financing. Throughout Ghani's explanations, Akram kept nodding with the affirmations "very good" (*bohot acchā*) and "got it" (*samajh gayā*) at regular intervals. It was difficult not to be impressed by Ghani's presentation. The Tijarah product was semiotically fashioned as an Islamic alternative to the minutest detail. In place of everyday financial terminology that was familiar to bankers and businessmen, Ghani used Arabic terms—derived from Islamic commercial law (*fiqh al-muʿāmalāt*)—to differentiate Tijarah from conventional financing options. The contract thus became *ʿaqd*, finished goods for sale became *mabīʿ*, price became *thaman*, and possession of goods after delivery became *qabḍ*. None of these Arabic terms were familiar to an ordinary Urdu speaking businessman in Pakistan. Ghani had to translate them for Akram, but these were not translations intended for interlingual understanding. Ghani's invocation of Arabic terms gave Tijarah an aura of authenticity and signaled its brand identity. A conventional bank entered into a contract, but only an Islamic bank could be party to an *ʿaqd*.

Ghani had seemingly overcome the primary obstacle faced by Islamic bankers when marketing their products to potential clients and consumers, i.e. skepticism over the *real* difference between conventional and Islamic finance. Resemblances between the two threatened the authenticity of Sharī'a Compliance and clients had to be convinced that they were being sold a genuinely Islamic alternative to conventional finance—not some counterfeit product that claimed to be something that it wasn't.[23] Islamic bankers, therefore, were always at pains to highlight technical, procedural, and operational differences between a Sharī'a Compliant product and its sinful interest-based counterpart. Their apparent similarities had to be overcome with an emphasis on underlying differences. Some commentators likened this Islamic banking approach with the mantra "God is in the details" (Gamal 2006). In Ghani's case, however, those details were quite obvious to his client; they lay on the surface of the Tijarah product and weren't mysteriously hidden beneath the threshold of observable difference.

While Akram seemed satisfied with Tijarah's Sharī'a Compliant basis, he still had many questions about the risks and practical steps involved in following through the transaction with Insaf Bank. Ghani now proceeded to walk Akram through the procedural sequence of the multi-staged Tijarah transaction, its practical implementation, and paperwork. He showed Akram three documents. First, to initiate the transaction, Signa and Insaf Bank would have to sign a "Master Finished Goods Agreement." This document specified the type, quantity, and price of finished goods that Insaf Bank would purchase from Signa. It also specified the time period of their delivery

[23] What comes to be defined as a counterfeit depends on the citational effects of an artefact and the differential uptake of its similarities and differences with a related entity. With the increasing penetration of intellectual property rights under neoliberal market governance, counterfeits are defined and determined by legal sanction. The anthropologist Rosemary Coombe was amongst the first to argue that legal sanctions themselves do not put an end to the work of signification. Counterfeits continue to circulate through creative appropriation and imitations that slip away from the regulatory regime of copyrights and trademarks (Coombe 1998).

and payment. Then came the "Agency Agreement," according to which Signa would agree to sell the shipment of goods—now under Insaf Bank's ownership—on the latter's behalf. Finally, there was the "Corporate Guarantee" that Signa would have to provide Insaf Bank. This document would include a "List of Credible Buyers" to whom Signa planned to sell the finished goods as an agent of Insaf Bank. The "Corporate Guarantee" also had to mention the creditworthiness of Signa's potential buyers. More importantly, it entailed a promise on behalf of Signa to compensate Insaf Bank in case of failure to sell the finished goods or to secure their agreed upon price from the market.

Ghani further informed Akram that rules of Sharī'a Compliance required that the sale of goods from Signa to Insaf Bank not be 'fictional.' This meant that once Signa received its shipment of goods from Motorola Solutions and sold them to Insaf Bank, the ownership of those goods would have to be transferred to the latter. Only after assuming the risks and liabilities of those goods as their owner could Insaf Bank appoint Signa as its agent and have the goods sold in the market. Without an actual transfer of ownership of goods from Signa to Insaf Bank, the 'sale' would be deemed fictional with only money changing hands between the two parties. Further, transfer of actual ownership required the buyer's possession (*qabḍ*) of goods. For purposes of Tijarah, however, physical possession was not necessary as that would burden both parties with the cost of moving goods from Signa to Insaf Bank and then vice versa. It was sufficient to establish 'constructive possession' of goods by Insaf Bank. But this further required that the incoming shipment from Motorola Solutions be kept separately from other goods in Signa's warehouse. Those goods that were to be sold to Insaf Bank needed to have an identifiable packaging. In order to ensure that Signa complied with these requirements, Insaf Bank would position an overseer, called a *muqaddam*, in their warehouse. The *muqaddam* would track the

delivery and placement of the specified goods and maintain a "Goods Receiving Note" for this purpose.

After learning about all these details and procedural requirements, Akram's enthusiasm for Tijarah had visibly declined. Not only did the paperwork and procedure sound tedious, the idea of having a *muqaddam* from Insaf Bank monitor movements in his warehouse made Akram uncomfortable. The conventional banks he was used to dealing with were far less intrusive. Since they had nothing to do with their debtor's inventory or method of sales, they simply concerned themselves with questions of credit and payment schedules. Akram did not want to dismiss the authenticity of Tijarah as a Sharī'a Compliant product, but he couldn't help make the comparison: "I like your model very much and I am not questioning its Sharī'a basis. But when I do business with Habib Bank, I don't have to sign all this paperwork and they don't get involved in my business process." Ghani bore a sympathetic smile on his face, as if he had been anticipating Akram's reservations. He proceeded with a reassuring tone, "I know these details can seem overwhelming, but in reality you're not doing any more work with us than you would do with Habib Bank." "And what about the *muqaddam*?" asked Akram. Ghani clarified, "His sole responsibility is to ensure that the goods you've sold to us are physically present as per their specifications. This is important for Sharī'a Compliance because we are not allowed to trade commodities that don't exist." At this point, Saad, the relationship manager from the local branch who had been patiently listening to Ghani's presentation also jumped in: "Sir, all our processes are streamlined according to industry standards. You are not doing anything 'extra' with us." He elaborated, "Even Habib Bank makes you sign other kinds of agreements to guarantee their loans and secure collateral. Our agreements are focused on buying and selling your inventory, but the amount of paperwork is the same and there is practically no difference for you in terms of transfer of goods and money." In effect, Ghani

and Saad wanted to give their potential client the peace of mind that a move from conventional to Islamic finance did not require any functional readjustments. From a business standpoint, Akram did not have to make radical changes or recalibrate his operations to a new economic regime. Whether he went with Habib Bank or Insaf Bank, he would still receive the shipment of goods from Motorola Solutions in his warehouse and sell them in the open market for a profit. Insaf Bank was just offering him a Sharī'a Compliant business solution at a competitive price. What did Akram have to lose?

At the conclusion of our meeting, Akram stated he had to look at some comps. and needed more time to make up his mind. He still kept his promise of giving us a tour of the warehouse and showed us Signa's labs and testing facilities. Ghani couldn't be happier. On our way back, we stopped for lunch at a local *biryani* joint. Ghani seemed optimistic about the deal with Signa, but he kept teasing Saad to not steal Insaf Bank's clients. Apparently, Saad had accepted an offer to work as a Sales Manager at another conventional bank. He would now be managing his own team of relationship managers rather than having to run after clients himself. It seemed impolite to ask, but I proceeded tactfully so as to not sound judgmental: "Would it be difficult for you to transition to a conventional banking environment after having dealt with Sharī'a Compliant products at Insaf Bank?" Saad took the opportunity to justify his shift to conventional banking: "It won't be difficult at all. Selling Sharī'a Compliant products means that you must understand conventional banking first and foremost. Our products are mostly variations based on conventional banking and we make comparisons between Islamic and conventional options with clients all the time." Saad didn't need to present evidence as we had just witnessed such a comparison at the Signa office moments ago. He also made sure to placate Ghani by affirming his commitment to Islamic banking: "I'm not

saying I don't believe in Sharī'a Compliance. I just feel right now this move is good for me professionally. I plan on getting back into Islamic banking after gaining more experience."

This entire ethnographic encounter serves as a synecdoche of what I want to call the performative contradiction of Sharī'a Compliance. What Ghani effectively did in his meeting with Akram was to distinguish Sharī'a Compliance from conventional finance while, at the same time, aligning them in terms of functionality. He began by describing Tijarah as an alternative to a conventional financing loan and highlighted its religious markers of distinction. But in order for Tijarah to be a *practicable* alternative, it needed to fit within the structural framework of conventional finance. Ghani, therefore, proceeded to present Tijarah as a substitute that also met the functional needs of a conventional loan. In other words, while Tijarah could afford relational difference from a conventional financing option, it could not be *incommensurable* with it. Ghani had to strike a workable balance between difference and similarity in order to sell Tijarah as a Sharī'a Compliant alternative to Habib Bank's interest based loan.

This conscious play of difference and similarity is built into the design and functionality of Sharī'a Compliant products such as Tijarah. Architects of the Tijarah, as well as other Sharī'a Compliant products, take as given an economic structure within which conventional financial instruments operate. They then work within the constraints of that structure to design alternative products that mimic the functionality of their conventional counterparts but without partaking in interest. A Sharī'a Compliant product thus takes a conventional financial instrument as its point of reference and reflexively differentiates itself from the latter. This reflexivity with respect to conventional finance ensures that Sharī'a Compliance is inextricably tied to the latter. The difference between a Sharī'a Compliant product and its conventional counterpart, therefore, cannot be one of radical alterity. Since one is designed as a substitute for the other, their mutual

resemblance is inescapable. Yet, the same reflexive ability of Sharī‘a Compliance to differentiate itself from conventional finance prevents their similitude from collapsing into equivalence. They resemble each other, but they are never identical or virtually indistinguishable.

How does one make sense of this play of difference and similarity within Sharī‘a Compliance with respect to conventional finance? Does it reflect a general indeterminacy/ambivalence that is intrinsic to financial operations or is it guided by identifiable mechanisms of causality and control? Further, what are the consequences of Sharī‘a Compliance’s simultaneous appropriation of and distinction from conventional finance? How does it affect both Sharī‘a Compliance as an alternative and conventional finance as the status quo from which an alternative is sought? In order to answer these questions, I mine theoretical resources on the question of mimesis and imitation from structuralist and post-structuralist traditions in anthropology and postcolonial studies.

a) Structuralism, Native Agency, and the “Indigenization” of Capitalism:

A simple representationalist framing of Sharī‘a Compliance would view it as an adequation of an objective reality. This objective reality, which Sharī‘a Compliance tries to approximate, is both external and anterior to it. As per the correspondence theory of truth, the veracity or truthfulness of Sharī‘a Compliance will then be a function of its degree of conformity or congruence with that objective reality. In such a representationalist inquiry, the task of the scholar is reduced to determining how accurately Sharī‘a Compliance corresponds to the reality it purportedly represents. Questions and statements of the order of “Is Islamic finance truly Islamic?” or “Islamic finance is essentially conventional finance dressed in an Islamic garb” belong to this representationalist framework of adequation of truth to reality. Bill Maurer (2005) has critiqued precisely this representationalist framing of Islamic banking as correspondence with a pristine and

predetermined reality. Instead of a metaphysics of representational adequacy, Maurer emphasizes the entanglements, oscillations, and lateral movements of Islamic finance with respect to its conventional counterpart.

I fully endorse Maurer's dismantling of representationalism and the constraints of its dualistic framework of inquiry, but I should also note a key factor overlooked in Maurer's critique. As we witnessed in the ethnographic encounter narrated above, what Islamic bankers Ghani and Saad were enacting was not simply a lateral movement between Sharī'a Compliance and conventional finance. They were executing a kind of double movement, where Sharī'a Compliance was being linked to both an authentic Islamic foundation and to the functional efficiency of conventional finance. The very inadequacy of the representationalist framework of inquiry is its dualism: it only allows us to gauge a representation, i.e. Sharī'a Compliance, with respect to one referent. We are thus stuck with the bilingual model of translation, in which linguistic exchange takes place between Sharī'a Compliance and conventional finance. The modalities of such exchange may vary, but at the end of the day there are only two languages in town. In this dualist conception, the language of the pre-capitalist Sharī'a and Islamic commercial law (*mu'āmalāt*) is either ignored or conveniently subsumed under Sharī'a Compliance. My contention is that this language needs to be considered as a discursive tradition in its own right, both as a precursor to Sharī'a Compliance and as a constraining influence on the latter's trajectory. We cannot appreciate the transformations brought forth by Sharī'a Compliance without understanding the languages of Islamic law that it draws on. For this very reason, a representationalist model based on the static dualism of Sharī'a Compliance and conventional finance alone will not do for us.

Let us now consider the value of a structuralist framework to understanding the ambivalence of Sharī'a Compliance. Dismissing caricatures of structuralism by post-structuralists

as a closed and static system, the anthropologist Marshall Sahlins contends that a dialectical "mediation" between, on the one hand, contingent actions as "instantiations" of a system and, on the other hand, their systemic amplifications in the form of "totalization" sustains a dynamism internal to structures (Sahlins 2005, 321). For Sahlins, structuralism facilitates an integrated treatment of the macrocosmic forces at work in a historical and institutional formation and its micro-historical particulars. We can thus make sense of the interplay between the larger course of history, which is always greater than the sum of individual historical agencies at work, and the contingent effects of individual historical projects. The "movement from instantiation to totalization," Sahlins tells us, is akin to "a sequence from metonymy to metaphor, as the acts of the person who stands for the historic group become icons of concepts that pertain to the totality as such, to structures of that higher level" (322). Sahlins's emphasis, however, remains on the formation of concepts and meaning making within the symbolic order through individual actions.[24]

For Sahlins, local responses to the global hegemony of capitalism have increasingly appeared in the form of a reification of cultural identity—in the form of nationalism, religion, ethnicity etc. (474-475). Cultural defiance leads not to the dismissal of capitalist forms,

[24] Like many other varieties of structuralism, Sahlins's structuralist analysis too draws its primary inspiration from Saussurean semiology as a science of linguistically mediated meaning-making. In fact, he explicitly argues for the dualism of culture as modeled on Saussure's division of language into the levels of langue and parole/speech. The former level corresponds to "culture-as-constituted," whereas the latter level corresponds to "culture-as-lived":

> I am suggesting that the classic distinction between language and speech be expanded into an argument about culture in general—that culture likewise has a dual mode of existence. It appears both in human projects and intersubjectively as a structure or system. Intentionally arranged by the subject, it is also conventionally constituted in the society. But, as a symbolic process, it is differently organized in these two dimensions.
>
> … Culture-as-lived has a different kind of phenomenal existence than culture-as-constituted. The sign enjoys an actual being, *in praesentia*, only as it is inscribed in human action. As a scheme of relationships between symbolic categories, the "system" is merely virtual. It exists in *absentia*, in the way that the English language, as distinct from people's utterances, exists perfectly or as a whole only in the community as a whole. We can say that, as lived, the symbolic fact is a phenomenal "token," whose "type" is its mode of existence in culture-as-constituted. (Sahlins 2005, 286)

institutions, and commodities but to their appropriation and domestication in peripheral cultures. In a semantic key, Sahlins claims that "capitalist forms in these alien contexts acquire novel local accents" (485). Sahlins is careful to contrast this dialectical mediation between, on the one hand, the diversity of capitalism's local-cultural "instantiations" and, on the other hand, the "totalization" of its symbolic order with what he views as a vulgar Gramscian tendency to posit resistance as a logical and necessary response to capitalist hegemony.[25] In other words, Sahlins would have us view Sharī'a Compliance as a local cultural instantiation of global capitalism but not as a subversion of capitalist forms. To my understanding, this refusal to entertain the possibility of subversion through operations of power is a significant limitation of structuralist analysis. Sahlins himself appears to marvel at capitalism's ability to sustain and be extended through infinite cultural

[25] With biting sarcasm, Sahlins denigrates analyses of power-relations in anthropology as trading a more rigorous and substantive discussion of "cultural contents" for functional explanations based on a dialectic of domination and resistance:

> This is a no-lose strategy since the two characterizations, domination and resistance, are contradictory and in some combination will cover any and every historical eventuality. Ever since Gramsci, posing the notion of hegemony has entailed the equal and opposite discovery of the resistance of the oppressed. Just so, the anthropologist who relates the so-called grand narrative of Western domination is also likely to invert it by invoking local discourses of cultural freedom. Cultural differences thrown out the front door by the homogenizing forces of world capitalism creep in the back in the form of an indigenous counterculture, subversion of the dominant discourse, or some such politics (or poetics) of indigenous defiance.
>
> … So nowadays all culture is power. It used to be that everything maintained the social solidarity. Then for a while everything was economic or adaptively advantageous. We seem to be on a great spiritual quest for the purposes of cultural things. Or perhaps it is that those who do not know their own functionalism are condemned to repeat it. (Sahlins 2006, 506-507)

The first paragraph quoted above is an attack on Gramscian "politics of anthropological interpretation" that valorize subaltern resistance to colonial and capitalist domination (2002, 52). The second paragraph is a damning reflection on Foucault's "pancratic vision of power" (67). The sort of objections Sahlins has raised here and elsewhere, particularly in his polemical tract *Waiting for Foucault, Still* (2002), over the use of power as an all-encompassing category of cultural analysis were anticipated and addressed by Foucault in the *The History of Sexuality* series. See, in particular, Foucault 1978, 92-97. Foucault devises a "nominalistic" escape from the realist-universalist trap of totalizing power as an omnipresent substance or causality: "One needs to be nominalistic, no doubt: power is not an institution, and not a structure; neither is it a certain strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society" (93). Whether one finds this nominalistic solution satisfactory or not, it is amusing that Sahlins does not consider the potential for an epistemological straitjacketing of culture through his own structural dialectic of 'cultural instantiation vs. totalization.'

differentiation: “Western capitalism in its totality is a truly exotic cultural scheme, as bizarre as any other, marked by the subsumption of material rationality in a vast order of symbolic relationships” (484) The question here is not an empirical one of whether Sharī‘a Compliance actually subverts conventional finance or not. It is a question of the analytical closure of structuralism, which makes it impossible to conceive a paradigmatic shift or historical rupture from within the structure itself.

Despite these limitations, Sahlins’s structuralist analysis offers a potentially attractive explanation for what I identified as Sharī‘a Compliance’s ambivalent play of difference and similarity with respect to conventional finance. Sahlins argues that the assertion of cultural identity in the peripheries—triggered by Western capitalist domination—and its appropriation of capitalist forms is marked by “a peculiar ambiguity” that gives the “dual appearance of assimilation and differentiation” (493). The simple reason for this ambiguity is that the “local people articulate with the dominant cultural order even as they take their distance from it, jiving to the world beat while making their own music” (ibid). Sahlins is correct to note that this ambiguity often elicits contradictory assessments from the left and the right—the former casting is as “political resistance” and the latter reading it as “ideological sellout” (ibid). As we will read in the proceeding chapters, similar judgments are also passed regarding Sharī‘a Compliance ’s “assimilation and differentiation” with conventional finance by its supporters and critics. But Sahlins tries to rise above the fray of hasty dismissals and celebrations of such ambiguity by seeking to understand its structural logic.

Sahlins begins by invoking anthropologist Gregory Bateson’s classic thesis of “complementary schismogenesis,” i.e. the tendency of cultures in contact to develop and accentuate their mutual differences for purposes of identification and mutual recognition (Bateson

1935; Sahlins 2005, 494). Bateson argued that this complementary generation of cultural schisms was subject to a set of restraints. It was "generally limited or counteracted," according to Sahlins, "on pain of total separation and potential destruction" (Sahlins 2005, 494).[26] We witnessed this dynamic at work in Ghani's promotion of Tijarah as a Sharī'a Compliant alternative in a competitive market dominated by conventional modes of financing. Ghani could not assert the difference of Sharī'a Compliance from conventional finance to the point of "total separation" of the former from market competition. He asserted the uniqueness of Sharī'a Compliance and its religious distinction from conventional finance. At the end of the day, however, Sharī'a Compliance needed to be compatible with the financial environment in which it functioned. Ghani understood that there were limits to the mutual differentiation between Sharī'a Compliant and conventional finance. Being too radical in one's defiance of conventional finance would spell the "potential destruction" of Sharī'a Compliance . As Sahlins put it, "oppositions between peoples in contact are balanced by resemblances as each strives to be as good as and better than—thus the same as and different from—the other" (ibid). Ghani's strategy was to convince his client that Tijarah, as a Sharī'a Compliant product, would do the work of a conventional loan from Habib Bank while also offering the promise of religious integrity. Sharī'a Compliance , in other words, was designed to be *both* "as good as and better than" conventional finance. The being "as good as" part reflects the functional compatibility between Sharī'a Compliance and conventional finance. On the other hand, the being "better than" part is what sets Sharī'a Compliance apart from conventional finance owing to its religious distinctiveness.

[26] I should note that Bateson's analysis was mainly concerned with three types of differentiation between comparable cultures: symmetrical; complementary; and reciprocal (Bateson 1935, 181). Sahlins somewhat problematically extends Bateson's thesis to a situation of radical asymmetry between two cultures.

To my understanding, what Sahlins reads as the "indigenization of modernity" through the reinvention of local cultural traditions is one different way of describing the subsumption of alternative life forms under global capitalism. Indigenization is simply the local cultural meaning given to that adjustment which, from the perspective of Western capitalism, is subsumption. Unfortunately, Sahlins's structuralist framework offers no way out of this endless dialectical mediation between indigenization and subsumption. Each local cultural 'instantiation' of indigenization only further amplifies the 'totalization' of subsumption. Differentiation and assimilation acquire an almost Newtonian law-like motion between an action and its reaction. My dissatisfaction with Sahlins's explanation doesn't stem from a counter-claim of the subversion of capitalism by Sharī'a Compliance. It is safe to argue that the empirical grounds for such a claim do not exist. However, Sahlins's structuralist framework, notwithstanding its elegance, imposes an abstract symmetry on the oscillations of difference and similarity between Sharī'a Compliance and conventional finance. We require an explanation for the ambivalence of Sharī'a Compliance that is not only sensitive to its historicity but also to the "multiplicity of force relations" (Foucault 1978, 92) that regulate its mobilities in relation to conventional finance. We require a move away from cultural logics and a preoccupation with schematized systems of meaning-making to an understanding of practices of representation as mediated and shot through with unequal relations of power. We need to appreciate both the conditions in which it becomes possible to produce particular representations and the differential effects of such representations in multiple fields of application—including the construction of meaning but not as a privileged locus of truth. To sum up, a more historically grounded understanding of the ambivalence of Sharī'a Compliance requires a transition from the dualism of structuralist analysis to the messiness of discourse.

Talal Asad's (1993) critique of Sahlins and the anthropological community's enthusiasm for recovering native agency can provide such a discursive template to think about the asymmetrical relationship between Sharī'a Compliance and conventional finance. More importantly, Asad's discussion allows us to see how the ambivalence of Sharī'a Compliance and its play of difference and similarity vis-à-vis conventional finance is inextricably tied to the question of agency. To begin with, Asad argues that claims about the indigenization of modernity cannot be inflated to affirm the history-making capacities of cultures at the periphery. He agrees with Sahlins that such local cultures are not 'passive objects of their own history.' But this disclaimer, Asad warns, does not warrant the counterclaim that local cultures dominated by Western capitalism must have authorized their own histories (3). The mere ability to give new meaning to one's condition of domination is not the same as having the authority to alter or subvert relations of domination. The former, Asad tells us, is a function of consciousness (16). In so far as consciousness is an irreducible aspect of human subjectivity, the subjects of peripheral cultures aren't that different from their Western counterparts: both possess the cognitive capacity to not only attribute meanings to things but also to adjust their 'web of beliefs' according to changing circumstances (4). When it comes to consciousness and meaning-making, Asad argues that "even the inmates of a concentration camp are able, in this sense, to live by their cultural logic" (ibid). In contrast to this consciousness driven subjectivity, agency is a function of effectiveness (16). Not every subject of history is also an historically effective agent. The former often exists in a relation of subjection to particular historical projects and their master-narratives authorized by politically effective actions of the latter. European colonialism, capitalism, modernization, secularization, and

now climate change are all such epoch-making projects of history to which the world's peripheral populations must adjust.[27]

If one takes a relational, i.e. non-representationalist, view of power as the "moving substrate of force relations," one understands that power is not possessed or exercised unilaterally from an historically effective agent onto a subject of consciousness (Foucault 1978, 93). This relational understanding of power undercuts the dualism entailed in the liberal juridical concept of agency that takes "consent and repression" as "the two basic conditions of political domination" (Asad 1993, 15). "Relations of power," Foucault tells us, are the effect of "divisions, inequalities, and disequilibriums" that occur in different relationships—including, but not limited to, "economic processes"—and also the "internal conditions of these differentiations" (Foucault 1978, 94). In so far as power is both the effect and a condition of differentiation, we only speak of agency in relative terms as the varying degree of intensity and effectiveness of an action. Power, in other words, is not the exercise of absolute control over a completely passive object. In fact, Foucault's identification of power as a government of "conduct" is premised on the existence of spaces of

[27] Even the term 'adjustment' can be somewhat misleading as it betrays a kind of voluntary accommodation made by peripheral cultures towards these historical projects. The impact and consequences of each historical project is different and the tactical responses from peripheral cultures varies accordingly. The key point, however, is that recognition of native agency cannot be abstracted into a form of cultural autonomy. Michel de Certeau's distinction between the "strategies" of an apparatus of power and the "tactics" of resistance offers a helpful way to conceptualize this differential of agency (de Certeau 1984). There is no better example of historical distortions enacted by the liberal impulse to democratize agency than the rhetoric of 'universality' one finds in Western discourses on climate change. Asad notes the internal contradiction in Western civilizational discourse of positing climate change as humanity's 'collective' responsibility:

> I find it a remarkable irony, incidentally, that up to about the end of the Second World War, if not later, European (or Christian) civilization was triumphantly declared to be the creator of the modern world but that now, confronted with a menacing future, it is more common to hear people talk about humanity's self-destruction—as though the peasants and working classes of the world had the same responsibility for that future as the industrialists, politicians, military careerists, bankers, and arms manufacturers. My point, however, is not to identify who is to blame ("modernity," "European civilization," "humanity") but to stress the obvious need to identify the languages and forms of life that may lead us into disaster. (Asad 2018, 10)

freedom, described as "a field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realized" (Foucault 1983, 221).[28] A subject's enmeshment in relations of power, therefore, doesn't necessarily lead to a mind/body distinction where consciousness works independently of one's ability to act.

Sahlins's fault is that he renders agency too abstract by lodging it in a structuralist framework of meaning-making and dissociating it from the specificity of power relations. Once agency is abstracted as meaning-making and untethered from the specificity of practices and their differential effects, it becomes possible to read the same piece of historical and ethnographic evidence as signaling an exercise of agency or lack thereof. Sahlins himself lamented how this indeterminacy pervaded debates over causes and effects of the colonial encounter: did the natives alter themselves to resist colonization or was their alteration determined by colonizers?[29] But

[28] The "complicated interplay" between power and freedom or power and resistance via the 'reversibility of power relations' (Foucault 1983, 221; 2005, 252) is an intricate discussion in Foucault's work and a subject of much theoretical contestation (Allen 2011). It suffices for our purposes here to note that "freedom" is not posited as the opposite of power, signaling a state of existence that is completely evacuated by any and all force relations. It is, rather, "the condition for the exercise of power" (Foucault 1983, 221). The following passage best captures the Foucaultian qualification I want to make in connection with Asad's distinction between subjects and agents:

> …It should also be noted that power relations are possible only insofar as the subjects are free. If one of them were completely at the other's disposal and became his thing, an object on which he could wreak boundless and limitless violence, there wouldn't be any relations of power. Thus, in order for power relations to come into play, there must be at least a certain degree of freedom on both sides. Even when the power relation is completely out of balance, when it can truly be claimed that one side has "total power" over the other, a power can be exercised over the other only insofar as the other still has the option of killing himself, of leaping out the window, or of killing the other person. This means that in power relations there is necessarily the possibility of resistance because if there were no possibility of resistance (of violent resistance, flight, deception, strategies capable of reversing the situation), there would be no power relations at all. (Foucault 1997, 292)

[29] Sahlins's polemical framing of a "pseudo-politics of interpretation" that divides "colonizing" and "decolonizing" approaches in anthropology is worth quoting in full:

> Given the secular shifts in the politics of interpretation, an argument can change radically in moral-political value without changing in intellectual content. Consider the opposing interpretations that may be, and have been, functionally attached to the proposition that European colonials were the determining agents of early modern Pacific history. Originally, this was advanced as an imperialist position, and more recently it was criticized as such, on one and the

Sahlins's solution of coding agency into structural logics of meaning-making through a dialectic of differentiation (instantiation) and assimilation (totalization) remains inadequate. Instead, we ought to ascertain *relative* degrees of agency through the multi-directional and interdiscursive labors involved in authorizing Sharī'a Compliance as an Islamic alternative to conventional finance. Agency, in other words, is neither a constant nor the binary opposite of passivity. Its modality and movement are synonymous with the heterogeneous relations of power described above.

While Asad registers a far more sophisticated understanding of "agentive complexity" (Asad 2003, 12), he remains skeptical of the subversive potential of actions by local actors in the face of the capitalist juggernaut. After negating the equation—though not relationship—between consciousness and agency, Asad further notes that a key feature of agentive capacities is that they are liable to be subsumed into the projects of others: "beyond a certain point," Asad tells us, "an act no longer belongs exclusively to its initiator" (Asad 1993, 15). For Asad, this "subsumability" of actions is made possible owing to the 'translatability' of certain largescale historical projects (13, 15). Capitalism is one such historical project that has been translated into a wide range of geographical and cultural contexts. The metaphor of translation here is instructive, primarily because it defies both the teleological logic of transition and the presumption of replicability entailed in transference. Comparing the translation of historical projects with the translations of texts, Asad tells us that the former doesn't yield "a reproduction of identity" (13). This is now a

> same grounds—that it deprives the indigenous peoples of any historical autonomy. Yet for a long time in between the same argument was championed by critics of imperialism, because it spoke of the arrogant domination of the peoples by White men. (Sahlins 2005, 354-355)

More than an indictment of the lack of epistemological grounding in decolonizing approaches to history and knowledge, the passage reflects Sahlins's own post-Enlightenment devaluation of morality as a kind of subjective judgment-mongering. For a critique of the equation of moral evaluation with "emotivism" as a form aestheticism and psychological intuitionism, see MacIntyre 2007, especially 6-35.

truism for textual translations: the translation of a work is neither a perfect replication of the original nor something completely novel.

Apart from the textual comparison, Asad relates a crucial but often overlooked aspect of the translation of such historical projects: "When a project is translated from one site to another, from one agent to another, versions of power are produced" (ibid). This is an important insight. The translation of a hegemonic project in a local context is not, as Sahlins imagined it, simply an 'indigenization' of the former into the 'cultural logic' of the periphery. Such translations also transmit the effects of hegemonic projects in local contexts. Transmission here should not be understood in linear terms of causal determination but in terms of relations of power. As we noted above, "relations of power" are not only "the immediate effects of the divisions, inequalities, and disequilibriums" between unequal relationships but also "the internal conditions of these differentiations" (Foucault 1978, 94). The translation project of capitalism is both premised on and also generative of massive "divisions, inequalities, and disequilibriums" between the local culture and the Western agent of modernization. It is, therefore, impossible for a translation project of such magnitude to not be permeated by relations of power. In so far as what Sahlins calls the "indigenization" of modernity involves the remodeling of local cultures around some aspect of market governance, such remodeling cannot be a one-sided process of appropriation subject to the designs and machinations of native agency. The encounter with capitalist modernity and its appropriation also alters the recipient culture by shaping the latter's "field of possibilities in which several ways of behaving, several reactions and diverse comportments may be realized" (Foucault 1983, 221). Asad registers this fact with greater specificity: "The acquisition of new forms of language from the modern West—whether by forcible imposition, insidious insertion, or voluntary

borrowing is part of what makes for new possibilities of action in non-Western societies" (Asad 1993, 13).

b) Mimesis/Imitation:

I made an argument in the beginning of this introduction for conceiving Sharī'a Compliance in Pakistan as a multi-tiered translation project. Attending to translation involves, at the level of discourse, a study of the mutation of concepts through the interaction between discursive traditions—local and foreign—and their disciplinary languages. Our discussion in this section thus far alerts us to the fact that Sharī'a Compliance as a translation project is permeated by relations of power between the postcolonial Sharī'a and neoliberal financial capitalism. These relations of power condition the terms of the encounter between these two traditions and, consequently, their dynamics of discursive exchange. Prior to determining the discursive exchanges involved in such a translation project, Asad reminds us to always consider the conditions of possibility in which subjects and their actions are constituted (ibid). In the case of translation projects that are marked by asymmetrical relations of power between the recipient culture and its Western-modern counterpart, Asad alerts us to the mimetic modality taken by the discursive encounter. He lays out the field of possibilities open to the recipient culture seeking to appropriate the fruits of modernity: "There are varieties of knowledge to be learnt, but also a host of models to be imitated and reproduced. In some cases, knowledge of these models is a precondition for the production of more knowledge; in others, it is an end in itself, a *mimetic gesture of power*, an expression of *desire for transformation*" (191; italics added). Asad doesn't expand on two critical ideas presented in this passage: the "mimetic gesture of power" and the "desire for transformation." This insight partially resonates with what Foucault identified as "positions of desire in relation to discourse" that determine the theoretical choices and strategies

involved in the making of a discursive formation (Foucault 1972, 68). We need to delve deeper into the question of mimetic desire—and mimesis more generally—as it offers a crucial alternative to structuralist explanations of the ambivalence of Sharī'a Compliance and its play of difference and similarity with respect to conventional finance.

René Girard's influential work on mimetism or imitative behavior provides an ambitiously expansive gloss on the role of desire in generating forms of competition (Girard 1979). His basic idea is that desire is not an object-driven phenomenon but is essentially mimetic. One's desire is never directly triggered by an object; it is always generated mimetically from the desiring behavior of others, who in turn also imitate other desiring subjects.[30] Here, the desiring subject that one imitates acts as a model through whom the desire for an object is mediated. The object of desire itself is always secondary in relation to the model. Even though the desiring subject essentially imitates another subject of desire as his/her model, s/he remains under the illusion of desiring the object itself. As a result, the desiring subject treats his/her model as a rival. The false illusion of desiring a common object leads to an antagonistic reciprocity between the two desiring subjects (146). Both rivals try to overcome each other in the struggle for a common object. Yet, this rivalry gradually intensifies into a war of attrition in which the alleged object of desire fades away. The more the rivals combat each other's actions through reciprocal counter-moves, the closer and more similar they become: "One combatant's action calls for the adversary to do something that is both

[30] There is a quality of infinite regress to the irreducible mimetism of desire as it can never be traced to an object as its direct referent. For Girard, this problem of the mimetic circularity of desire is addressed by its universal nature. Mimetic desire is "a fundamental trait of all human relations" that "must correspond to a primary impulse of most living creatures" (Girard 1979, 147, 182). In his seminal essay extending Girard's mimetic theory to Economics, "The Ambivalence of Scarcity," Paul Dumouchel resorts to the same universality of mimetism to answer the question of the first desiring subject: "Yet while mimesis is first, while it emerges before the object, and even, at the limit, creates the object, it is inseparable from the illusion that the object comes first… It is always the other who began, but in reality, there is no beginning, because mimetic desire is first and universal" (Dumouchel 2014, 25).

identical and opposite to block the blow. Thus, paradoxically but logically, the effort they put into differentiating themselves makes the rivals resemble each other more and more" (Dumouchel 2014, 27). Consequently, the mimetic rivals are reduced to near identical "doubles" of each other (Girard 1979, 79). Worse, since these mimetic rivals never realize that their desires are not oriented towards a common object but are simply a "reflection" of the desires of the other, they are inevitably caught in a "mimetic double bind": they imitate the desires of their respective models only to enter into conflict with them over attaining a common object of desire (178).[31] In other words, they follow the contradictory imperatives of both imitating and thwarting their respective models.

A number of Girardians have skillfully extended Girard's insights to the domain of Economics and economic anthropology (Dumouchel 2014; Dupuy 2014). In marketing, brands constantly try to differentiate themselves and beat their competition by taking on the features of their rivals. Moreover, the continual refinement made to a product in relation to its competitor in what is called 'product differentiation' often marginalizes their difference.[32] As brands aggressively compete in the market for products, they are only led towards greater technological and aesthetic convergence. Girard also described this behavior of striving for difference and originality against one's rival as a form of "negative imitation" (Girard 1966, 100). The term, also

[31] Girard also describes this double significance of the model as both worthy of emulation and an object of resistance with the term "model-obstacle":

> Whenever the disciple borrows from his model what he believes to be the "true" object, he tries to possess that truth by desiring precisely what this model desires. Whenever he sees himself closest to the supreme goal, he comes into violent conflict with a rival. By a mental shortcut that is both eminently logical and self-defeating, he convinces himself that the violence itself is the most distinctive attribute of this supreme goal! (Girard 1979, 148)

[32] One could think of the differentiation between, for example, successive models of the iPhone and the Samsung Galaxy. Each successive iteration and enhancement of these products brings their comparative features closer to one another and narrows their mutual difference.

glossed as "anti-mimetic mimesis," captures a paradox in acts of differentiation that converge towards similarity (Palaver 2013, 68).[33] From Girard's perspective, the modern rejection of resemblance and imitation as signs of inauthenticity and, conversely, the valorization of individualism and originality are both symptoms of the intensification of mimetic desire. As mimetic rivalry reduces the moderns to "doubles" of one another, their misplaced yearning for originality compels them to resist each other with greater aggression. Yet, the more they try to assert their originality by enacting difference, the more identical they become.[34]

In predicting that the mimetic rivalry between a disciple and his/her model takes the form of antagonistic reciprocity, mimetic theory presupposes a symmetrical relationship between two rivals. This abstraction is not useful to explain the strategic behavior of actors whose relative capacities to influence each other are marked by asymmetrical relations of power. In the case of Sharī'a Compliance, mimetic behavior is always tempered and regulated by the power differential between Islamic financial institutions and their conventional counterparts. Imitative practices of conventional finance with respect to Sharī'a Compliance different in terms of degree and quality from attempts by Sharī'a Compliance to appropriate and reconfigure conventional financial products. Whereas conventional finance simply needs to capture Sharī'a Compliance as a niche market, as witnessed with the mushrooming of "Islamic banking windows" in giants of

[33] To quote Girard, "Modern society is no longer anything but a negative imitation and the effort to leave the beaten paths forces everyone inevitably into the same ditch" (Girard 1966, 100).

[34] The Austrian commentator on Girard, Wolfgang Palaver, captures the paradox of "anti-mimetic mimesis" through the example of advertising:

> Advertising promises originality. The consumer is supposed to believe that possession of the advertised product will guarantee the exceptional uniqueness embodied by those who model it. Only after purchasing the product can human beings escape the mundane horde. However, this promise remains steeped in contradiction, for imitation and originality are mutually exclusive. Only by imitating the desire of our original models—the heroes of advertising—are we able to enjoy the pleasure of an autonomous existence. (Palaver 2013, 69)

conventional banking, such as JP Morgan, HSBC, and Standard Chartered, Sharī'a Compliance faces the much more difficult challenge of surviving in an industry dominated by conventional finance while also rejecting the latter as religiously impermissible. As the much smaller industry player in Pakistan and globally, Sharī'a Compliance cannot always maintain an adversarial relationship with conventional finance. Rather than antagonistic reciprocity geared towards overthrowing and overcoming its rival, mimetism in Sharī'a Compliance often takes strategic forms of accommodation and compromise.

Anthropologist Michael Taussig's resuscitation of mimesis from the critical theory tradition of the Frankfurt school is particularly helpful in conceptualizing mimesis in capitalism. Drawing on Benjamin's insights on the resurgence of the mimetic faculty in modernity, Taussig argues that modern practices of representation and mass production transform the "contact-sensuous particularity" of mimesis into a disenchanted and "secular sense of the marvelous" (Taussig 1993, 23). In a capitalist representational economy, "general equivalence rules the roost" and "all particularity and sensuousity is meat-grinded into abstract entity and the homogeneous of quantifiable money-value" (22). In speaking of the transformation or rather secularization of the mimetic faculty in modernity, Taussig also gives in to the now widely questioned anthropological romance with pre-capitalist gift economies (cf. Appadurai 1988; Derrida 1992; Maurer 2006).[35] He contrasts the instrumental and depersonalized exchange of market societies with what he observes as an "intimate bond between the spirit of the gift and the spirit of the mime" (Taussig 1993, 93). The gift economy, according to Taussig, corresponds to a world of mimesis in which the subject of exchange is "a protean self with multiple images (read 'souls') of itself set in a natural environment whose animals, plants, and elements are spiritualized to the point that nature

[35] Chapter 5 presents an extended discussion of anthropological theories of the gift economy in relation to the distinction between commercial and gift exchange in Islamic jurisprudence.

'speaks back' to humans, every material entity paired with an occasionally visible spirit-double—a mimetic double!—of itself" (97). This "protean self" exists in sharp contrast with the preference maximizing self of modernity. Taussig's indictment of this latter self and her technologies of fashioning in Western capitalism is worth quoting in full:

> …Unlike the mimeticized world, this disenchanted one is home to a self-enclosed and somewhat paranoid, possessive, individualized sense of self severed from and dominant over a dead and nonspiritualized nature, a self built antimimetically on the notion of work as an instrumental relation to the world within a system wherein that self ideally incorporates into itself wealth, property, citizenship, and of course "sense-data," all necessarily quantifiable so as to pass muster at the gates of new definitions of Truth as Accountability. This latter feature especially might spell trouble for the mimetic faculty—accumulating sensation as private property and hence, like all commodities, incomplete without its necessary dose of abstraction that allows of general equivalence. (Ibid)

The sharpness of Taussig's contrast is heuristically useful, even if it could lead to an exaggeration of the degree and character of secularization enacted by capitalism in non-European contexts.[36] In order to determine the specific modality of mimesis and alterity between Sharī'a Compliance and conventional finance, it is helpful to consider an alternative theorization of the colonial encounter in the context of South Asia.

c) Mimicry and Hybridity in Postcolonial Criticism:

In contrast to mimesis as representation, the postcolonial theorist Homi Bhabha has theorized "colonial mimicry" as "the desire for a reformed, recognizable Other, as a subject of a difference that is almost the same, but not quite" (Bhabha 1994, 122). Colonial mimicry is 'threatening' to the colonizer in so far as it produces a corrupted and impure instantiation of the aesthetic sensibilities, material practices, and institutions of the colonizer. It is that counterfeit available in black markets that disrupts the universal circulation of its original. Bhabha, therefore,

[36] Taussig's invocation of the Weberian thesis of the "disenchantment of the world" is hardly transferrable to non-European contexts. Revisionist histories have even challenged the idea of disenchantment its applicability to a European historical context. See Josephson-Storm 2017.

finds in colonial mimicry a tremendous subversive potential. It does not challenge colonial authority or seek to displace it from the external position of an antagonistic rival. Rather, it is akin to a clandestine operation of the decaying and disruption of the structures of colonial authority from within.

Bhabha's insights on ambivalence and mimicry allow us a more modest appreciation of the subversive potential of Sharī'a Compliance when conceived as a mimicry of capitalism.[37] Firstly, the ambivalence that Bhabha identifies with colonial mimicry is structurally similar to the ambivalence I have been locating at the center of Sharī'a Compliance. Sharī'a Compliance is compelled to mimic the norms and practices of conventional finance by virtue of pragmatic necessity. This mimicry, however, is also a threat to the authenticity of Sharī'a Compliance itself and must be vigilantly guarded from collapsing into sameness with conventional finance as its model. Bhabha's own theoretical commitment to the "articulation of 'differentiatory'" identities (159)[38] and his lack of engagement with non-Anglicized and non-Francophone indigenous knowledge traditions leads to a crucial oversight: colonial mimicry is as much a subversive manipulation of the colonizer's authority as it is a strategy of self-preservation. If mimicry is a creative maneuver of the simultaneous appropriation of/differentiation from the ways of the other, it may also be used as a means of achieving discursive coherence within one's own tradition by responding to conditions of change, especially in colonial and post-colonial contexts.

Bhabha's theoretical ruminations on ambivalence and mimicry lead him to extrapolate a concept of "hybridization" that further obfuscates differentials of power and strategic capacity

[37] This subversive potential is denied within the structuralist framework of Sahlins and, in turn, highly exaggerated in Girard's mimetic theory.

[38] For an excellent critique of the colonizer-centric Hegelian determination of subaltern subjectivity in postcolonial theory more generally, see Ewing 1998.

between the colonizer and colonized. Hybridity, according to Bhabha, is an effect of the slippage of colonial power and its inscription of discriminatory identities between the colonizer and the colonized. These identities are themselves destabilized through acts of colonial mimicry—for instance, in the natives' demand for an "Indianized Gospel" as a condition for their baptism (169). In making these "intercultural, hybrid demands," Bhabha reads the natives as "both challenging the boundaries of discourse and subtly changing its terms by setting up another specifically colonial space of the negotiations of cultural authority" (ibid). In Bhabha's theoretical leap from colonial mimicry to hybridity, what begins as a "subversive strategy of subaltern agency" against colonial hegemony effectively ends with the "negotiations of cultural politics" (265, 333).

It is not surprising that Bhabha, as a literary critic, introduces his own theory of "cultural translation" as a framework for understanding how "newness enters the world" (303). Newness here is synonymous with the foreignness of the postcolonial migrant, whose cultural difference cannot be contained or registered within Western political and cultural configurations (325). Cultural translation is a process of 'borderline negotiation' that destabilizes existing spatial, temporal, and discursive boundaries in which discriminatory identities are couched (319). Further, since "cultural translation desacralizes the transparent assumptions of cultural supremacy," it also subverts all claims to cultural authenticity by enacting "a historical differentiation *within* minority positions" (Bhabha 1994, 327; italics original).[39] The weakness of Bhabha's concept of cultural

[39] Bhabha celebrates Salman Rushdie's work as a prime example of such cultural translation. According to him, Rushdie's *Satanic Verses* situates the migrant experience in a Western genre of literary expression while subverting the textual authority of indigenous tradition through the latter's literary displacement. For Bhabha, Rushdie's secular blasphemy is a "transgressive act of cultural translation" (Bhabha 1994, 323). He further describes the subversive potential of blasphemy in the following words: "Into the asserted authenticity or continuity of tradition, 'secular' blasphemy releases a temporality that reveals the contingencies, even the incommensurabilities, involved in the process of social transformation" (ibid). Bhabha does not delve into the Euro-Christian genealogies of blasphemy or its secularized racial politics in the contemporary West (cf. Asad et al. 2009). This neglect leads him to draw an indefensible symmetry between (a) Rushdie's disturbance of the literary genre of the novel through an inscription of migrant

translation is implicated in its strength. Effectively, a *theoretical* imperative of celebrating hybridity and the irreducibility of cultural difference is taken to stand in for an historical, ethnographic, and political assessment of the failures of subversive mimicry and the bulwarks impeding its realization.[40] This is the "is/ought" fallacy performed in reverse, where one's "commitment to theory" becomes coeval with a state of the world (28).[41]

A more concrete historical application of cultural translation that carries many theoretical affinities with Bhabha's project is Gyan Prakash's study of the development of "Hindu science" in late colonial India. Prakash's work offers an analytically instructive point of comparison to Islamic banking and Sharī'a Compliance. Unlike Bhabha, who largely focuses on the disruptive potential of mimicry for the colonizer, Prakash acknowledges the heightened anxieties of religious and cultural authenticity for the local elites who spearheaded the Hindu science translation project.

experiences and (b) his discursive contestation of the authority of the Qur'ān "within a perspective of historical and cultural relativism" (ibid). One would expect Bhabha to know better from the history of Orientalism that no discourse on the Qur'ān—written by an Anglicized Indian in English and primarily for a Western readership—can be carried out in an amoral and politically neutral framework of "historical and cultural relativism." Gil Anidjar uses an apt liberal-juridical metaphor to describe this tendency of flattening historical and political difference in secular critique: "equal opportunity criticism." In such secular critique, Anidjar notes that "the very same historical enemies upon which Christianity (aka Western Christendom, aka the West) showered its critical, universalist largesse continue to be the target of unyielding antagonism, to say the least, as they have in turn for centuries" (Anidjar 2008). Finally, Bhabha's categorization of blasphemy as cultural translation is at least internally inconsistent with his own championing of "negotiation rather than negation" as a non-antagonistic modality of subversion.

[40] To be sure, Bhabha foregrounds his theoretical analysis with a firm recognition of "the relations of exploitation and domination in the discursive division between the First and Third World, the North and the South" (Bhabha 1994, 29-30). My concern, however, is with the lack of substantiation—which is not the same as an empiricist demand for evidence—of concepts like hybridity and negotiation in connection with the very relations of power that make such 'exploitation and domination' possible.

[41] Here I am not positing another representationalist view of theory as correspondence with external reality. Theory is not transcendental thought; it is always shot through with relations of power and entangled in a network of multiple forces and materialities that determine its shape and form. Theoretical description, in this sense, is not an attempt at representational accuracy but a matter of achieving discursive coherence with an 'object' of study and its surrounding significations (Asad 1993, 176; Rorty 1990, 10, 126-150). Bhabha's assertion of hybridity carries heuristic value as an abstraction but it loses analytical traction when applied to concrete historical situations.

"At stake was the integrity of the Indian languages," notes Prakash, "which did not participate in the creation of modern scientific discourses but were obliged to incorporate them" (Prakash 1999, 50). This 'obligation to incorporate' is never simply a lustful will to power for the subordinate culture—though it can certainly evolve in that direction. It is also a function of pragmatic necessity and a strategy for survival in a world where the rules of the game are no longer determined by one's own tradition. Prakash thus captures the precarious dilemma of translation from the vantage point of the subordinate culture trying to appropriate the knowledge tradition of its dominating counterpart: "What were they to borrow and assimilate successfully without losing their fundamental character?" (ibid) It is precisely this challenge of maintaining the integrity of Islamic commercial law while recontextualizing it in the domain of contemporary finance that also confronts traditionally trained *muftī*s in the service of Sharī'a Compliance.

Yet, for all the attention given to the difficulties of translation between unequal languages, Prakash insists that the Hindu science project made possible "a realignment of power, a renegotiation of the unequal relationship between Western and indigenous languages" (51). The authorization of Hindu science as a local contender to the discourse of Western science is a massive project of "cultural appropriation that bears the mark of a contestatory negotiation between unequal languages and subjects" (52). One can read Bhabha's influence, duly acknowledged by the author, on the reading of translation as a kind of "negotiation." The mere repetition of a dominant discourse by local elites and its authorization in the language of Hinduism is nothing short of a threatening and potentially subversive mimicry. Consequently, rather than signaling "the colonizer's victory over the colonized," Prakash argues that the translation project of Hindu science "locates the formation of a modern Indian elite as a counterhegemonic force" (ibid). Hindu science thus yields the same fruit as the subaltern's colonial mimicry: hybridization. Prakash tries

to salvage the concept by offering a further gloss: "Such a notion of a hybrid, non-originatory mode of authority is profoundly agonistic and must be distinguished from the concept and celebration of hybridity as cultural syncretism, mixture, and pluralism" (84). This distinction of the agonistic modality of hybridity—as opposed to an antagonistic or submissive relation with an other—is informative.[42] But the trouble with hybridity lies not with the mode of reciprocity—whether it is agonistic or antagonistic—but with the assumption of symmetry and substitutability embedded in the idea of the "uncanny double" (5). Partha Chatterjee has effectively captured the limited analytical usefulness of the claim to hybridity:

> The trouble is that the characterization remains insufficient. In spite of making a plea for acknowledging variableness and contingency, it manages to impose, paradoxically, a quality of sameness upon all products of dissemination. How are we to distinguish between hybrid and hybrid? How do we pin down the location of the local? How define the discreteness of the discrete? Instead of negative qualifying prefixes, one now has recourse to metaphors of spatial transference such as realignment and relocation, but can we devise a language to describe the new topographies? Can we, in other words, find the means to distinguish, spatially as well as in time, between the products of dissemination? Can we then identify the specific genealogies of the formation of each of the separate "hybrid" disciplines? (Chatterjee 1995, 20)

Chatterjee raises the stakes of critique in postcolonial theory by asking us to move beyond the mere identification of hybridity. I take it for granted that Sharī'a Compliance is itself a hybrid product of Islamic commercial law and conventional finance. However, this observation alone doesn't give us a sense of the different levels of influence that Islamic commercial law and

[42] Could one not argue that secular forms of liberal tolerance and multiculturalism enforced by the rule of law also sustain agonistic relations across cultural difference? As anthropologist Elizabeth Povinelli (2002) expounds in her work on the liberal government of native difference in Australia, there are internal limits to liberal tolerance as well as institutionalized racism against ethnic and religious minorities. However, when liberal governmentality is effective in governing the conduct of its citizens and monitoring repugnant deviations from legally enforced norms of civility, Povinelli notes that "traditional and modern laws seem to coexist without producing conceptual violence or social antagonism. The legitimacy of native title is granted; its authority is rooted in ancient rules, beliefs, and practices predating the settler nation" (37).

conventional finance have on Sharī‘a Compliance. To begin with, there is no such thing as a pure presence or singularity that has not also been influenced and shaped through cross cultural encounter and relations of power. Not only does hybridity obscure the complex compositions and internal configurations of identities, it also doesn't give us a sense of the directionality and performative effects of a hybrid construction. The important question to ask for Sharī‘a Compliance is how a combination of Islamic commercial law and conventional finance alters its constitutive parts. What kinds of perceptions, sensibilities, and practices does it authorize? Asking these concrete questions gives us a better sense of the impact and consequences of the ambivalent play of differences and similarities between Sharī‘a Compliance and conventional finance.

d) Performativity:

A performative approach to language sees knowledge practices not as instruments of discovering the reality of objects, but as co-constitutive of the objects themselves. When seen from a performative lens, a Muslim jurist engaged in the act of finding a legal injunction in scripture also actively authors that injunction and a financial engineer trying to encapsulate a market transaction in an economic model ends up instituting new market practices. The performativity of Islamic legal texts stems from their iteration, which Derrida (1988) defined as the agency of language for self-alteration through repetition. It is owing to their iterability that Islamic texts are disrupted from their agrarian and mercantile contexts, and re-inscribed into contemporary finance. Like Islamic texts, codes of finance are also susceptible to iteration. As the sociologist of finance Michel Callon (1998) has shown, financial models meticulously framed by economists tend to "overflow" the limits and controls set upon them. In other words, they become entangled with other sets of relations. It is owing to the quality of overflow that muftīs and Islamic bankers are able to tie financial instruments with Islamic legal contracts. Both iteration and overflow are

powerful concepts that capture a key feature of all translation: it creates difference through repetition. The performative contradictions of Sharī'a Compliance are thus endemic to all acts of textual interpretation and financial engineering. These contradictions are not resolved into a truth-preserving logic. Instead, their discrepancies must be continually realigned through institutionally sanctioned strategies of translation and ethical discipline.

7. The Troubling Reflexivity of Native Ethnography

Given the cherished anthropological convention of conducting fieldwork in new and unfamiliar places, I cannot obviate the sense of irony in positioning myself as an ethnographer in places that I've called home for several years. The ethnographic encounter is one in which ethical and epistemological concerns meet. The epistemological challenge for the ethnographer is to provide an 'adequate' translation of the practices and concepts of the other. Yet, representation is also a treacherous task as one's knowledge practices are always implicated in relations of power. Since the publication of Edward Said's *Orientalism* (1978), it is now second nature for any scholar in the humanistic social sciences to know that representational practices can enact their own forms of violence against an object of representation. Knowing of representational violence, however, is not always sufficient to the cultivation ethically conscientious practices of representation. The anthropological canon on reflexivity at least offers valuable resources for thinking through some of the major epistemological and ethical challenges involved in ethnographic writing and practice. I do not concern myself here with the purely epistemological problems of representation, many of which I have addressed in Section 4. Rather, my concern is with the politics of representation as they relate to one's positionality and institutional authority with respect to the ethnographic other.

As I discussed in Section 4 above, a central problem for the postcolonial scholarly enterprise relates to secular translations. Dipesh Chakrabarty (2000) has confronted the difficulty

of capturing subaltern life worlds within the secular codes of representation of social scientific language. How can we faithfully describe subaltern life worlds and speak of their deities without at the same time negating the existence of latter with our secular language? The anthropologist Bhrigupati Singh has critiqued Chakrabarty for positing a dualist world view, separating the "supernatural" world of the subaltern with the secular world of the rational historian (Singh 2015, 34). Singh believes that the ethnographic encounter offers a rich opportunity to traverse difference not in the epistemological sense of self-contained and mutually incompatible worldviews but as different "thresholds" of life itself (34). If the ethnographic encounter is indeed akin to learning to new way of life, as Talal Asad (1993) has suggested, Singh's optimism may not be entirely unwarranted. Singh narrates a dream from his ethnographic experience that allows him to cross a religious and spiritual threshold beyond anything that can be encompassed by his academic training.

In a brilliant article that explores dream-reception as a form of ethnographic knowledge, Katherine Ewing has further argued that reluctance amongst anthropologists to take religious beliefs and spiritual experiences seriously as valid forms of knowledge stems from a disciplinary taboo against "going native" (1994). In other words, Ewing explains the existence of epistemological and psychoanalytical barriers towards spiritual experience as stemming from disciplinary and institutional sanctions. While it is impossible to occupy a scholarly position that is *not* produced and embedded in institutional sanctions and disciplinary power, the peculiar challenges one faces in the field are also contingent to one's identity and positionality as a scholar. Reversing Ewing's problematic, I therefore ask: how does the challenge of representation confront an ethnographer who is already a native?

As a first generation immigrant Muslim of color, my fieldwork experience did not lead me to an estranged land but to a place of belonging. The Deobandī *madrasa* tradition is an integral part of my upbringing as a Muslim and as a scholar. Yet, I am also internally split by more than a decade of training and cultivation of sensibilities in the secular academy. It would be disingenuous for me to feign unadulterated native belonging when I have undergone the "academia's professionalization," which is the fastest route to "socializing a certain kind of elite difference within all of its initiates, regardless of their supposedly nativist beginnings" (Jackson 2005, 157). My religious identity, on the other hand, is also not a pure presence that secures my convictions or reveals itself transparently to my own thoughts, feelings, and intentions. It is, after all, a post-Enlightenment secular myth that one cannot entertain doubt or agnosticism when shackled by the chains of religious belief.[43] Yet, this very characterization of religion as "belief" also reduces the complexity of one's "existential faith" and "spiritual affinities across creedal difference" (Connolly 2000) to the stability and transparency of a singular constative utterance.

In my own experience, in the field and in the academy, I have found myself repeatedly walking the tight rope between faith-based identification and analytical distance from the object of my study. In the former position, one becomes the local expert and purveyor of authentic knowledge. In the latter position, one wins praise for the reflexive ability to look back at one's 'former' worldview with a critical sensibility. The peculiar framing of this academic struggle as a choice between an insider's emic and outsider's etic perspective is itself an outcome of institutional sanction—not unlike Ewing's description of the taboo against going native. Yet, attributing ethical dilemmas to institutional sanctions alone does not exhaust the complexity of the problem. Further,

[43] I should note that one of the foundational theological topics of study in Deobandī *madrasa*s is the question of the variability vs. fixity of faith (*īmān*) called *mas'ala ziyādat al-īmān*. As I show in Chapter 1: *tashabbuh,* theological traditions are remarkably sensitive to the plasticity of human subjectivity and the precarity of "belief." For a problematization of the translation of *īmān* as "faith," see Chapter 2.

it prevents us from exploring creative possibilities of ethnographic reflexivity. How does an ethnographer in my position who both identifies as a Muslim—let us provisionally grant the strategic essentialism of religious identity—and shares the religious and cultural inheritance of his interlocutors stake a claim to "academic" representation?

Here I take a cue from the work of anthropologist John Jackson Jr., who describes the institutional framing of the problem of ethnographic representation from the standpoint of racial identity:

> Even if the native anthropologist might be said to understand his or her native population more intimately and intensely than the foreign researcher, the native anthropologist is still assumed to be less adept at creating the kind of objective detachment needed to properly interpret the *emic etically*, to turn humanistic rumination into true scientific fact. The native anthropologist can be sincere, is marked as such, but that same heartfelt sincerity is believed to foreclose the possibility of true ethnographic and etic authenticity. (Jackson 2005, 155)

Jackson later makes an argument for a "rigorous reflexivity" that shuns both (a) the pretensions of objectivity implied in the etic perspective and (b) claims to authentic representation celebrated in emic ethnography (162). A rigorous reflexivity, Jackson tells us, should be sensitive to the limitations of both. Jackson develops this idea as a further refinement of Kirin Narayan's well known thesis of "multiplex subjectivity," which argues for the need to embrace hybridity and shifting identity positions taken by an ethnographer (Narayan 1993).[44] I find myself in agreement with Jackson's insights, but I also think that conducting an ethnography that attends to religious practices within one's religious community raises its own peculiar set of problems.

The scholar of religion Ann Taves has framed this problem as one of academic posture. She notes that the difference between (a) a critical religious studies perspective on religion and (b)

[44] As I mentioned with reference to Bhabha and Prakash's conceptions of hybridity above, Jackson also finds Narayan's solution compelling but ultimately lacking as it "sidesteps the issue of power differentials that make certain embraceable identities more or less valid than others, more or less marked than others, more or less real" (Jackson 2005, 158).

a theologically committed approach taken in seminaries is often thought of in terms of detached/engaged approaches to religion. In the former, the reigning assumption is that the scholar has taken an agnostic position on the substance of religious claims whereas in the latter, the scholar is assumed to be committed to the truth of the subject matter. Taves argues for a reconsideration of the detached/engaged binary as well as the more liminal position of occupying an "in-between place" between critique and faith (Taves 2003, 5). In place of these spatial metaphors, Taves proposes a performative understanding of one's shifting approaches towards detached and engaged considerations of religion. She draws an example of pedagogy where a scholar using a detached approach to a subject restrains her own opinion and opens the space for competing ideas. The scholar may, on the basis of need, shift to a more engaged approach where she may take sides or endorse a particular position.

Taves correct to suggest that mastering such mobility between detached/engaged approaches and the particular forms of tact associated with them is a matter of cultivating a disposition. As one navigates the terrains of the secular academy and the religious seminary, one already learns norms of comportment and cultivates the sensibilities appropriate to forms of argument and critique in each tradition.[45] But Taves's argument is insufficient in so far as it appears

[45] In his magisterial work, *Democracy and Tradition*, the American pragmatist Jeffrey Stout counts the cultivation of such virtues as critical to democratic exchange. Stout's dismissal of the Foucaultian "system of power relations" as civilizational conspiracy-mongering is disappointing though not surprising (Stout 2003, 255-256). Yet Stout may be more Foucaultian on the question of ethics as a practice of the cultivation of the self than he realizes:

> …There are people who lack civility, or the ability to listen with an open mind, or the will to pursue justice where it leads, or the temperance to avoid taking and causing offense needlessly, or the practical wisdom to discern the subtleties of a discursive situation. There are also people who lack the courage to speak candidly, or the tact to avoid sanctimonious cant, or the poise to respond to unexpected arguments, or the humility to ask forgiveness from those who have been wronged. Such people are unlikely to express their reasons appropriately, whatever those reasons may be. When it comes to expressing religious reasons, it can take a citizen of considerable virtue to avoid even the most obvious pitfalls. I know of no set of rules for getting such matters right. My advice, therefore, is to cultivate the virtues of democratic speech, love justice, and say what you please. (85)

to treat these two approaches as a matter of scholarly volition. Detached and engaged approaches are differentially valued and are not equally sanctioned in each institutional environment. The ability of the *madrasa* to impose norms of scholarly engagement, for instance, is far weaker than the power of Anglo-American academy to fashion a secular sensorium in its subjects. More importantly, Taves's suggestion that detached versus attached approaches differ in their thought styles and modes of engagement seems to suggest that certain religious sensibilities are suspended by volition in a detached approach. This voluntarist view maintains a problematic dichotomy between personal agency as resistance to authority and the willful embodiment of norms of tradition.[46] Further, it underestimates the implicit institutional sanctions granted to certain approaches to scholarship over others. During my fieldwork at Jāmi'a Akramiyya, I would participate in the communal prayer at the *madrasa* mosque. This participation did not require a change in perspective from doubt to belief or an attitudinal shift from suspicion of authority to its deference. In contrast, while secular liberal norms of the academy make it possible to hold "different perspectives in tension," (5) it is almost always the minority culture that must compromise and shed its narratives and habits of thinking (Asad 2003, 175). My hope is that some of this epistemic suppression will be redressed with the 'intellectual commerce' I have tried to conduct between European theory and Islamicate thought in the proceeding chapters.

[46] The fact that this dissertation, for example, unlike a text written in the Islamicate tradition, does not begin with the *basmAllāh* is not simply a matter of choice, disciplinary convention, or even difference in thought style. It is also a product of the norms of comportment one subconsciously learns so as to not transgress into a zone of liberal repugnance. For an excellent study on repugnance as an affective technology of liberal governmentality and its limits of multicultural recognition, see Povinelli 2002.

Chapter 1: *Tashabbuh*: Muslim Ethics between Imitation and Subjectivation

"Whoever imitates a people is one of them."

~ Ḥadīth (prophetic tradition).

Imitating Muslims

> Question (*istiftā'*): I am an eligible bachelor struggling to get married. My proposal was rejected by two families on grounds that I wear a [Sunnah-styled] beard. Another family has agreed to accept my proposal on the condition that I shave off my beard. This has put me in a dilemma: I cannot remain single for the rest of my life and I fear my temptations will lead me to sin. I request your eminence to describe in detail the religious significance of marriage and that of keeping a beard. Which one of the two is considered more important? ... My parents counsel me that I can always grow a beard *after* I get married. But delaying marriage may not be an option as I will keep getting older. As you know, getting married these days is far more difficult [than keeping a beard].
>
> Response (*fatwā*): Marriage and wearing a beard each have their respective importance in Islam. Keeping a beard is the common practice (*sunnah*) of all Prophets, it is in accordance with masculine nature and is a symbol (*shi'ār*) of Islam. Prophet Muhammad, may the peace and blessings of Allah be upon him, repeatedly ordered Muslims to grow their beards and expressed anger over shaving it off. It is for these reasons that wearing a beard is considered obligatory (*wājib*) by consensus and shortening it lesser than the length of a fist is forbidden (*ḥarām*) and a major sin (*gunāh-i kabīrah*). Further, people who are repulsed by the beard and require that it be shaved as a condition for marriage are excluded from the faith. That is because they insult a Prophetic practice and a symbol of Islam. You should not worry about shaving your beard to get married; they are the ones who should worry about renewing their faith. (Ludhiyānwī 1999, Vol. 7, 86)[47]

[47] This exchange is an example of a fatwā in Islamic legal discourse. A fatwā is a non-binding legal opinion issued by a religious authority, known as a Muftī, in response to a question (*istiftā'*) posed on a matter concerning the Sharī'a. A lengthier analysis of fatwā writing is presented in Chapter 4.

Yūsuf Ludhiyānwī (d. 2000), the author of the abovementioned fatwā, was a Muftī who acquired prominence in Pakistan owing to his widely-read newspaper column "Your Problems and their Solutions" (*Āp Ke Masā'il Aur Un Kā Ḥal*). This was a fatwā column, published weekly in the mainstream Daily Jang for nearly a decade (1990-2000), in which Ludhiyānwī responded to letters from lay Muslims asking a variety of questions pertaining to religious practice.[48] Owing to Ludhiyānwī's popularity and the sheer magnitude of his writing in the fatwā genre, his fatwās were published posthumously in a 10-volume collection under the same title as the original fatwā column. The fatwā cited above appears in the 7th volume of *Āp ke Masā'il* under a chapter devoted to the Sunnah-styled beard. The term Sunnah refers to the normative conduct of Prophet Muhammad and a Sunnah-styled beard is generally determined as that which is grown at least until the length of a fist.

Why would Ludhiyānwī devote a full chapter to discussions of the beard? Firstly, the topical organization of *Āp ke Masā'il* is similar to the earliest compilations of statements attributed to Prophet Muhammad known as the Hadith (pl. *aḥādāith*). In order to facilitate legal understanding and practice, the earliest generation of the doctors of Hadith (*muḥaddithūn*) arranged and organized sayings of the Prophet thematically, not chronologically.[49] Indeed, it was the Basran *muḥaddith* Abū Dāwūd (d. 889), compiler of one amongst six of the most authentic Ḥadīth collections in Sunni Islam, *al-ṣiḥāḥ al-sitta,* who devoted an entire chapter on dressing (*kitāb al-libās*) in his canonical text (Abū Dāwūd n.d.). Along with matters of dress, the Hadith

[48] On the 18th of May in 2000, as Ludhiyānwī was returning home from an early morning prayer congregation in Karachi, his car was ambushed by gunmen and Ludhiyānwī immediately succumbed to gunshots. The Daily Jang hired other Muftīs to fill in Ludhiyānwī's place but none of them were able to revive the fatwā column.

[49] For a history of Ḥadīth literature and the emergence of topically organized collections known as *Musannad*s, see (Brown, 2009, 25-40)

collections also include numerous prescriptive statements on how to sport a beard as the Prophet did himself. The Sunnah-styled beard therefore carries religious importance as an imitable aspect of Prophet Muhammad's appearance. A heightened interest in the subject amongst Ludhiyānwī's audiences is evidenced by the sheer number of questions devoted to it in *Āp ke Masā'il*.[50] Given the beard's status as a major visible marker of piety for Muslim men, Muslim scholars or 'ulamā trained in the traditional sciences of the Sharī'a insist that sporting a Sunnah-styled beard is an essential part of the sartorial repertoire of a conscientious male Muslim.

Amongst Sunni traditionalists, the Deobandis are arguably the most prominent sectarian denomination in South Asia and they adhere to the Ḥanafite school of Islamic jurisprudence. For the Deobandis, wearing a beard is an obligatory (*wājib*) religious duty for all Muslim men. In the fatwā mentioned above, Ludhiyānwī praises the act of wearing a beard as a normative practice (Sunnah) that is common to all Prophets. He further calls it a *shi'ār* or a symbol of Islam. The act of shaving the beard, in contrast, is condemned by Ludhiyānwī as a major sin. In a subsequent lengthier iteration of the fatwā, he offers ample scriptural evidence for the significance of the beard by citing variants of the following *aḥādīth* (sing. Hadith): (a) "Oppose the polytheists; let the beard grow and trim the mustache" (al-Tabrīzī 1985, Vol. 2, 261);[51] and (b) "Whosoever imitates a people becomes one of them" (Abū Dāwūd n.d., Vol. 4, 44).[52] Ludhiyānwī uses both proof-texts to argue that not only is growing a beard in conformity with Prophetic injunction and a symbol

[50] The mode of expression of questions addressed to Ludhiyānwī as a Muftī varied from impersonal inquiries about rules and procedures of ritual to highly personalized and contextually rich questions situating religious practice in social and ethical entanglements. Questions about prayer, for instance, were often concerned with technicalities of apt performance. But questions about dressing modestly or sporting a beard were as concerned with the correctness of a practice as with its perception by others in society.

[51] Text (Arabic): *Khālafū al-mushrikīn: awfarū al-liḥā wa aḥfū al-shawārib*.

[52] Text (Arabic): *Man tashabbaha bi-qawmin fahuwa minhum*.

(*shi'ār*) of Islamic identity, shaving it off is tantamount to repudiating a Prophetic precedent in "imitation" (*tashabbuh*) of non-Muslims.

Imitation and Ethics:

Ludhiyānwī's *fatwā* is a distinct example of centering normative conduct in Islam on imitation or *tashabbuh*. Whereas the term *tashabbuh* literally means imitation, in Islamic legal discourse it carries a negative connotation and implies a reprehensible kind of imitation whereby a Muslim adopts the styles and representational practices of non-Muslims. The doctrine of *tashabbuh* forbids Muslims from engaging in reprehensible imitation whereas its legal discourse regulates and authorizes observable forms of distinction between Muslims and non-Muslims. A structuralist understanding of imitation presupposes a dialectical relationship between a subject imitator and an imitated object that is positioned as the model for imitation. Both subject and object are ontologically distinct entities that carry an inner essence. Through imitation, the imitator tries to copy, resemble, approximate and replicate the imitated object. The outcome of such imitation is the creation of a representation of the imitated object—a 'copy' to an 'original.' It is the differential between the representation and the 'reality' of the imitated object that helps us cue the former as an act of imitation (Lempert 2014, 381-381). In poststructuralist revisions of imitation or mimesis, the representationalist dialectic of imitation—between internal essence and its corresponding external appearance—has been reconceived in terms of power relations (Foucault 1980), iterability (Derrida 1988) and performativity (Butler 2007), whereas its outcome has been rethought as creating ambivalence, hybridity (Bhabha 1994) and simulacra (Baudrillard 1994) etc. In later sections of the chapter, we will explore in detail the complex notions of subjectivity and subjectivation that serve as theoretical foundations for the Deobandi discourse on *tashabbuh*. Here I seek to elaborate, in broad terms, the significance of *tashabbuh* as an ethical practice.

Not all acts of imitation seek proximity, similitude or convergence with the imitated model. For heuristic purposes, we could simplify imitation as carrying two valences: attraction and repulsion. A model that is revered as an object of veneration is often emulated, whereas a model that is taken up as an object of critique may be resisted, parodied or mocked. In traditional Islamic legal discourse, reprehensible imitation (*tashabbuh*) is contrasted with authorized imitation (*taqlīd*); their difference lies in the model one chooses to imitate. Imitating moral exemplars of the Islamic tradition is considered praiseworthy whereas aping the unauthorized ways of non-Muslims[53] is evidence of moral defectiveness, eventually resulting in one's defection from the Muslim community. In so far as imitation entails a form of striving to approximate an ideal, it functions as a modality of ethics in practices of the self (Foucault 1997) and virtue ethics (MacIntyre 2007). Here the ethical is not understood in terms of abstract moral principles or dilemmas of ethical decision-making, but of subjecting one's body to a disciplinary regimen for purposes of virtuous character formation.[54] In order to become a virtuous person, one has to cultivate the necessary dispositions associated with a specific virtue, say chivalry or modesty. This can be done by repetitively practicing virtuous acts and behaviors that make up a chivalrous or modest person—to the point that the virtues are internalized and become instinctive to one's

[53] Is a practice intrinsically reprehensible qua practice and therefore unauthorized by tradition or is it reprehensible by virtue of association with non-Muslims? The answer to this question is inextricably tied to Deobandis' determination of an other as the enemy and the discursive spheres that it belongs to. I pursue this inquiry in sections 3 and 4 of the chapter.

[54] I am fully aware of the lack of emphasis on the body as an ethical technology in Alasdair MacIntyre's theory of virtue ethics and I do not equate it with Foucault's reading of practices of the self in classical antiquity. However, despite their differences, a teleological conception of the ethical is at work in both MacIntyre and Foucault. According to this conception, the self requires work and improvement in order to attain a desired ethical formation. For an insightful analysis by Talal Asad on the limitations of MacIntyre's theory of virtue ethics, his disembodied conception of tradition and inattention to operations of power in the work of subject formation, see *Powers of the Secular Modern: Talal Asad and his Interlocutors*, eds. David Scott and Charles Hirschkind (Stanford: Stanford University Press, 2006), 233-235, 288-289.

character. When that repetitive practice is modeled on a human exemplar as opposed to an abstract paradigm, it takes the embodied form of imitation.

In the Islamic tradition of ethics or *akhlāq*, Prophet Muhammad is regarded as the worthiest of imitation by virtue of being a moral exemplar. The Qur'ān proclaims the Prophet as possessing the "highest morals"[55] and positions him as an "excellent model"[56] for Muslims to emulate.[57] Muslims seeking to embody Prophetic virtues must therefore practice Prophetic conduct or Sunnah through rigorous self-discipline. For traditionalists like Ludhiyānwī, seeking prophetic virtue requires more than a cognitive effort. One must imitate the Prophet in every aspect of their life and strive to mold oneself according to the Prophetic model in both appearance and character. Only thus could a Muslim acquire Prophetic dispositions and become the embodiment of Prophetic virtue. Sporting a Sunnah-styled beard becomes a crucial part of the project of self-fashioning as per the model of moral excellence embodied in the person of Prophet Muhammad.

Ludhiyānwī's prescription for wearing a beard, however, doesn't simply reference the Prophet as a model for positive imitation. Both his proof-texts also point to an 'other' that Muslims must renounce and distinguish themselves from. The Hadith commanding Muslims to grow beards doesn't simply make an affirmative statement. It prefaces the commandment with a rationale for contradistinction: "oppose the polytheists" (*khālafū al-mushrikīn*). A corollary of imitating Prophetic appearance by growing one's beard and trimming the mustache is, therefore, opposing the ways of the polytheists. Conversely, shaving the beard is not only an act of forsaking Prophetic conduct in imitation of non-Muslims, but also of making oneself indistinguishable from the latter

[55] Text (Arabic): *Innaka la'alā khuluqin 'aẓīm* (68:4)

[56] Text (Arabic): *Laqad kāna lakum fī rasūlAllāhi uswatun ḥasanatun* (33:21)

[57] Muslim mystics developed an entire philosophical anthropology of the "consummate human-being" (*al-insān al-kāmil*), a symbiosis of humanness and divine perfection, around the person of the Prophet.

by 'becoming one of them' (*fa-huwa minhum*). Imitating the Prophet entails alterity with disbelievers and vice versa. We can think of Ludhiyānwī's logic of imitation as operating in a representational economy where Islam and disbelief are substitutable but mutually exclusive goods. This substitutability and mutual opposition extends from the realm of belief to the realm of appearances: a Muslim cannot settle with either appearance without simultaneously disavowing and asserting difference from another. Wearing a beard therefore serves both as a semiotic[58] medium of identification—with the Muslim community—and a mark of distinction—from non-Muslims.

Disciplinary Context:

The two observations I have made thus far regarding the ethical significance of a religious practice in Deobandi discourse—embodied subject formation on the one hand and symbolic distinction on the other—connect with two seemingly incompatible approaches in the anthropological study of ritual. In recent anthropology of Islam, the relationship between religious rituals and ethics has been understood through the paradigm of ethical self-cultivation. This paradigm was largely developed in opposition to symbolic anthropology and rejected its claims regarding (a) ritual as meaning-making practice and (b) the human body as a medium of signification. Symbolic anthropology itself emerged as a hermeneutical alternative to the functionalist paradigm in anthropology.[59] The hermeneutical approach dismissed the notion of

[58] I use semiotic here in the minimalist sense of a practice or an object that lends itself to perception and observation in an interactive environment. I comment on some crucial metaphysical and methodological distinctions between semiotics, semiosis and symbolism in the proceeding section.

[59] As per functionalism, ritualistic performances were understood as serving a social purpose that was external to the performance itself. These purposes could vary from strengthening the grip of myth on to a community to legitimating its internal hierarchical order. The social function of ritual, however, was unbeknownst to those who undertook the performance of rights; it could, however, be deciphered by the anthropologist given sufficient knowledge of the contextual background in which the ritual was performed (Gellner 1970).

culture as ideological mystification and gave it the integrity of a "symbolic system" (Geertz 1973). Ritual was thus framed as meaning-embodying symbolic action. These meanings, however, were external to the surface-level performance of the ritual itself. The anthropologist thus had to come up with a "thick description" (ibid) that would disclose the relationship between the ritual as a symbolic act and the meaning it conveyed. In contrast to functionalism and interpretivism as two "*equally externalist*" approaches (Hirschkind and Scott 2006, 212) to the study of religious ritual and ethics, the ethical self-cultivation paradigm places emphasis on "subjectivation" (Foucault 1997) as a process of self-fashioning that requires subjecting one's body to the power of disciplinary techniques. The ethical project is therefore one of self-transformation in which the exercise of rituals is a necessary means of acquiring a set of skills, aptitudes and embodied dispositions appropriate to a desired ideal of personhood (Mahmood 2005).

The methodological distinction between symbolism and subjectivation, however, doesn't easily translate into an ontological one when mapped on to the ethnographic domain. Let us return to Ludhiyānwī's fatwā. The questioner situates the practice of wearing a beard in an intersubjective domain that he cohabits with a host of social others. This cohabitation and its modes of social interaction evidently shape the questioner's reflexive awareness on his having sported a beard, its religious significance and social consequences. He faces social pressure to improve prospects of marriage by changing his physical appearance and turns to a religious authority for guidance. In response, Ludhiyānwī produces an authorizing discourse with scriptural proof-texts to remind the questioner that his practice of wearing a beard is both a Prophetic Sunnah and an Islamic *shi'ār*. In other words, it is both a form of virtuous conduct and a show of resemblance with the physical appearance of Prophet Muhammad. By sporting a Sunnah-styled beard, a Muslim works on the body to acquire a pious disposition and simultaneously fashions his external appearance to mark

an association with Prophet Muhammad. Embodied practices of the self and semiotic markers of association come together in this economy of relating and belonging.

These observations raise a number of crucial questions for the study of religious rituals and ethics in contemporary anthropology. What kind of a religious subject is presumed by a tradition that hinges religious identity and character formation on appearance? What notion of the ethical underlies practices that index virtue with outward markers of religiosity? Is there room for "reflective freedom" (Laidlaw 2014) in such an ethics of character formation? Further, what does it mean for religious rituals to be symbolic? Are rituals merely an external manifestation of internally held religious beliefs, a routinized expression of collective identity, or are they productive of distinct behaviors, disciplines and ethical modes of conduct? Not only does the Deobandi discourse on *tashabbuh* offer theoretically creative answers to these questions, it also forces us to reconsider a disciplinary divide in anthropology—between symbolism and subjectivation—and its potential to obfuscate our ethnographic observations of religious ritual and ethics.

Chapter Thesis:

Appreciative of the contributions made by anthropologists within the paradigm of ethical self-cultivation, I argue that an emphasis on the operations of power in practices of the self need not be premised on a devaluation of the semiotic functions of bodily ritual. The semiotic medium of a particular ritual—its physical, visual, aural and sensory embodiment—is crucial to its legibility and recognition in an interactive environment.[60] This legibility of ritual, obtained through

[60] An interactive environment is not necessarily social in the sense of being inhabited by more than one person. It can be inhabited by non-sentient tools and objects or even be a solitary situation. In the case of interaction with non-sentient beings that are tools, such as riding a bike or using a hammer, one's perception, concentration, bodily posture, muscle responses and an entire range of sensorimotor skills must undergo readjustment and adaptation with the environmental constraints created by the object in use. This readjustment is in turn constrained by one's anatomy, bodily formation, somatosensory functions,

its repetition and materialization in perceptible form, is integral to the work of discipline as it inscribes the body with visible boundaries of distinction and association. In sporting a Sunnah-styled beard, for instance, a Muslim subjects himself to the authority of the Sunnah by undergoing a "stylized configuration" (Butler 2007, 192) of the body that marks his association with the Prophet. Undermining the role of semiotics in ritualistic practices thus blinds us to a crucial intersubjective dimension of the effectiveness of ritual. Moreover, it produces an impoverished understanding of the work of discipline as somehow independent of practices of signification. My claim is not that semiotic representation is connected to discipline as an ancillary *effect* of power, but that it is quite intrinsic to operations of power itself. In order to highlight the relevance of semiotics to the workings of ritual and its role in ethical self-cultivation, I undertake a textual and ethnographic study of Deobandi discourses on *tashabbuh* (imitation) that authorize wearing a beard in Islam. Since growing a beard is both a means of self-fashioning through bodily modification and a visible marker of presenting the self in society, it adequately captures both the disciplinary and representational aspects of an authoritatively sanctioned religious ritual.

The lack of attention that imitation as an ethical has received in the anthropology of Islam can be contrasted with its prominence in jurisprudential and theological discourses of ethics in contemporary Islamic traditionalism. Imitation should be of particular interest to anthropologists as it is also a significant aspect of everyday polemics and ethical contestations over questions of identity, belonging and cultural authenticity amongst Muslims. In light of these juridico-

cognition, aptitude and skills associated with using the tool in question. Even if the objects in one's presence aren't tools or prosthetic devices, they nevertheless create "affordances" to action by constraining one's physical and perceptual environment. A chair in a small room, for instance, might generate an impulse to sit and restrict the spatial configuration needed for lying down. In the case of a solitary position, one could engage with the self in reflexive contemplation by assuming the standpoint of a second person. For an excellent discussion of how tools, technologies and the physical environment affect our subjectivity and influence subjectivation, see Matthew Crawford, *The World Beyond Your Head* (New York: Farrar, Straus and Giroux, 2016).

theological discourses that I analyze in the proceeding sections, I define imitation as a semiotic modality of ethics: it is a disciplinary means of self-fashioning through expressive rituals that are productive of social distinction. Imitative rituals and practices generally exist in an iconic relationship with a model: they must resemble that which they seek to embody. This iconicity of imitation adds a social dimension to the work of ethical self-cultivation whereby assimilation with a model and distinction from its other becomes an ethical imperative. For the Deobandis, imitating the Prophet is both a necessary means of embodying prophetic virtue and preserving their communal identity by asserting difference from a Western other. Paying attention to imitation allows us to appreciate how rituals of subject-formation are animated not only by a desire to imitate exemplary religious figures, but also by anxieties to register visual and aesthetic distinctions of an Islamic identity.

Chapter Outline:

My argument in the chapter proceeds in 4 sections. In section 1, I examine current theorizations of ethics in the anthropology of Islam, especially in the works of Talal Asad and Saba Mahmood. I make the argument that the anthropology of Islam has enacted a bifurcation between subjectivation and signification which, in turn, has obscured imitation as a semiotic modality of ethics in postcolonial Muslim societies. Both Asad and Mahmood address imitation in their discussion of ritual, but they subordinate its semiotic function to its disciplinary significance as a regulatory practice. This bifurcation, I argue, re-inscribes an unwarranted distinction between signification and subjectivation and is more a reflection of disciplinary turns in anthropology than the outcome of a consistent engagement with local discourses and theorizations of ethics.[61] In

[61] While I do not entertain the possibility (or desirability) of transcending one's own disciplinary context and fully inhabiting the subject-position of an interlocutor in another discursive tradition, I do feel that anthropologists' theoretical abstinence from local discursive traditions enacts an age-old disciplinary divide between, on the one hand, historians and philologists as experts of literary traditions and, on the

section 2, I heed the call of Talal Asad, pioneering anthropologist of Islam, in attending to Deobandism as a discursive tradition. Here I situate the Deobandi discourse on *tashabbuh* within the larger tradition of Islamic legal thought and highlight the significance of British colonialism in shaping its trajectory in South Asia. The colonial context provides a crucial historical backdrop to Deobandi politics of authenticity and their efforts to resist Western cultural hegemony by determining it as a religiously prohibited form of imitation. It is under these colonial conditions of possibility that I introduce my primary interlocutor and Deobandi stalwart, Qārī Muḥammad Ṭayyib, author of a wide-ranging and multidisciplinary treatise on *tashabbuh* entitled *Al-Tashabbuh fī 'l-Islām* (2014). In subsequent chapters of the dissertation, I extend this genealogy of *tashabbuh* to Deobandi scholars in contemporary Pakistan who reverse the discourse of mimeticism from a religious and cultural anathema to a strategy of creative appropriation in Islamic finance.[62]

other hand, anthropologists as specialists of unlettered cultures (Messick 2018). This divide is further augmented by the asymmetric attention given to European/Anglo-American theoretical sources over local traditions of theory and knowledge. I say that such transposition is undesirable, in addition to being ontologically impossible, because as historians, anthropologists, philologists, scholars of religion etc. in the Anglo-American academy, our claim to knowledge—as evidenced from the desire to publish, deliver lectures and present papers at conferences—is based on some insight we have to offer on our "subjects" of study from our own disciplinary perspectives. These insights, in order to have any enunciative value, must otherwise be non-identical or at least not readily accessible through the traditions and forms of knowledge we study. If everything that we say and write transparently communicates what has already been said and written elsewhere, we might as well abdicate our disciplinary positions and the privileges they afford us in the academy and become local scholars or practitioners of local knowledge. To recognize one's positionality as an academic is to be aware of the politics of representation in one's scholarship and the asymmetrical power of one's language over those that one claims to translate. It is certainly desirable, rather imperative, that one strive for epistemological proximity in the face of such recognition, but by virtue of one's positionality one cannot be coeval with the object of one's study.

[62] I illuminate this discursive and strategic shift in *tashabbuh* through local discourses as well as engagement with theories of simulacra, hybridity, mimicry and translation. However, contrary to the subversive potential attributed to native agency in these theories, I contend that the transformative effect of such imitation, both in its negative form as cultural opposition and positive form as technological appropriation, is the subordination and subsumption of the imitator into the life-worlds of the imitated.

In section 3, I conduct a detailed philological and archeological analysis of Ṭayyib's text. Through a careful philological and archaeological analysis of Deobandi commentaries on scriptural proof-texts, i.e. the Qur'ān and the Ḥadīth, I examine the textual provenance of imitation (*tashabbuh*) and symbol (*shi'ār*) and their reiteration as polemical concepts in a discourse of cultural authenticity. I place special emphasis on Ṭayyib's reading of the popular *tashabbuh* Hadith. Through his Hadith commentary, Ṭayyib constructs a theological and political enemy as the other that Muslims must constantly distinguish themselves from. I argue that the framing of a friend/enemy distinction is crucial to the intensity of polarization assumed between Muslim and non-Muslim in the discourse of *tashabbuh*. In the context Ṭayyib's determination of the political-theological enemy, I elaborate the significance of *shi'ār* or symbolic markers of distinction to the practice of *tashabbuh*. Muslims are forbidden from acquiring the *shi'ār* of the enemy and in turn encouraged to adopt Islamic *shi'ār* as markers of Islamic distinction. However, contrary to structuralist understandings of symbolism and symbolic order, the *shi'ār* as objectified semiotic medium is determined by antagonistic relations of power. Ṭayyib therefore analogizes all markers of Muslim distinction to military uniforms and symbols of identification that are used to distinguish armies in a battlefield. Finally, in connection with Ṭayyib's theory of *shi'ār* as semiotic mediators of subjectivity and communal belonging, I conclude the section by outlining Ṭayyib's theory of the subject. Whereas Ṭayyib considers the principle of semiotic distinction amongst nations and religious communities as a law of nature, he is fully cognizant of the disruptive potential of semiotic non-conformity as a subversive performance. I substantiate this point with the example of how Ṭayyib and his Deobandi contemporaries viewed shaving off one's beard as a deviation from masculine nature and the cultivation of feminine sensibilities.

In section 4, I detail Ṭayyib's elaborate taxonomy on the limits and boundaries of *tashabbuh* as a form of cultural appropriation. Through this taxonomy, Ṭayyib creates a discursive regimentation of the kinds of practices that Muslims may adopt from non-Muslims and details their conditions. One notices in Tayyib's taxonomy the beginnings of a consequential bifurcation—what Latour has called purification—between culture and science/technology. In earlier articulations of this bifurcation, Deobandis categorize technology as a value neutral domain in which cultural imitation can only occur by way of an explicit *intention* to imitate. However, as I show in later chapters of the dissertation that deal with Deobandi practitioners of Islamic finance, technology soon acquires the status of a good to be harnessed for the benefit of global Islam. One may still be reprimanded for imitating an alien or un-Islamic culture, but there is no question of imitation in seeking the technological advancement of the West.

The conclusion addresses the final part of Ṭayyib's treatise, where he presents a mystical rationale for the theory of *tashabbuh* as one grounded in love for the Prophet. He subordinates the regulatory imperative of discipline and practices of the self to an affectively imbued mimeticism that seeks assimilation with the beloved. In fact, he theorizes the latter as the animating force of Islamic law. I conclude by combining Ṭayyib's jurisprudential and mystical insights in conversation with theories of imitation, performativity and pietistic ethics developed by Butler and Mahmood.[63] These comparisons help me demonstrate that the bifurcation between symbolism and

[63] I am in agreement with Dipesh Chakrabarty about the simultaneous indispensability and inadequacy of these and other European and Anglo-American interlocutors to an understanding of Deobandi conceptions of ritual and ethics. My usage of the term "inadequacy" should not be read as implying a counter-claim of producing an "adequate" understanding of Muslim rituals. In a sense, an exhaustive understanding of Muslim ritual as achieved through historical transcendence is impossible. However, we can and should supplement existing understandings of non-European life worlds by deploying neglected theoretical resources from these very life-worlds, especially when our primary theoretical frames of reference are dominated by European modes of thinking. I am convinced that the epistemological imperative of highlighting the historically contingent nature of knowledge and practices produced elsewhere applies first and foremost to our own knowledge enterprises. The discomfort felt with terms like "European

signification is both inoperative and unsustainable in Islamic conceptions of ethics. I claim that it is impossible to understand embodied practices of ethical cultivation without studying how the body's exterior is shaped in relation to other bodies. As an improvement on the prevailing model of ethics centered on the care of the self, I propose a renewed emphasis on imitation as a modality of ethical practice that is simultaneously embodied and signifying. By shaping the body's exterior as a semiotic form, imitation allows the mediation of inner dispositions, habits and temperaments with the intersubjective domain of the social. The fashioning of a pious habitus thus becomes coterminous with establishing social distinction through the semiotic forms of religious ritual.

1.1. Ethics as Piety: Subjectivation in the Anthropology of Islam

In 1986, Talal Asad pioneered a new anthropological approach to the study of Islam. Arguing for an understanding of Islam as a "discursive tradition," (Asad 2009) Asad noted that for a practice to be instituted and authorized as Islamic, it presupposed some form of interpretive authority over the foundational texts of Islam. Further, such interpretive authority had to be temporally connected to a normative past whose exemplarity guided Muslims' present and future aspirations. The constitution of a normative Islamic practice was therefore the outcome of scripturally grounded arguments and their contestations between Muslims. Asad's notion of a discursive tradition served both as a description of what Islam was and a methodological imperative for its study: "If one were to write an anthropology of Islam, one should begin, as Muslims do, from the concept of a discursive tradition that includes and relates itself to the founding texts of the Qur'an and the Hadith" (20). In emphasizing the temporally situated aspect of discursive traditions in Islam, Asad took inspiration from the exposition of tradition provided

thought" is perhaps evidence of a habit of thinking that regards certain historically situated authors and their knowledge traditions as universal in their explanatory power.

in the work of communitarian philosopher Alasdair MacIntyre. According to this view, traditions are not isolated and static vestiges of a bygone past but are historically contingent formations of values, ideas and practices. The practice of internal inquiry and retrospective reformulation is central to the continuity of a tradition, without which its accumulated wisdom and norms cease to be practicable for its adherents (MacIntyre 2007).

In later works, Asad complemented his attention to the discursive modalities of tradition with a keen appreciation of its disciplinary technologies and forms of embodiment (Hirschkind and Scott 2007). This theoretical shift was occasioned by Asad's interest in genealogies of religion and secularity and their distinct modes of subject-formation. Influenced by Michel Foucault's theories of disciplinary power and subjectivation, Asad in *Genealogies of Religion* (1993) studied processes of shaping human subjectivity through disciplinary techniques of the body and monastic institutions in medieval Christianity. The body henceforth emerged both as a site and mechanism of subject formation. To understand ritual, for instance, one had to attend *not* to the underlying *meanings* of words and actions but to their effects on the body as operations of power.[64]

Asad is known for his critique symbolic and functionalist explanations of ritual as a distraction from its disciplinary significance of inculcating virtues. A symbolic explanation of rituals casts them as symbols in need of interpretation. According to this view, propounded most forcefully by Clifford Geertz, outward religious markers and performances direct us towards the meanings, beliefs and ideologies that have taken hold of a culture. The task of the anthropologist is to decode these symbols and uncover the real meanings underlying religious performances. A

[64] In *Formations of the Secular*, Asad explored new kinds of subjectivation enacted by the modern state through the workings of secular power. This dissertation partly follows Asad's trajectory from *Genealogies* to *Formations* by studying a shift in the centering of Muslim ethical subjectivities from technologies of the body in the Madrasa to technologies of the market in the Islamic bank. By the same account, it reverses Foucault's sequence of the study of governmentality by beginning with his later work on practices of the care of the self and proceeding with his earlier emphasis on biopower.

key assumption of symbolic explanations of rituals is that their true meanings and purposes are external to the ritual itself and often unbeknownst to their practitioners. Rituals are thus either performed unthinkingly or are falsely attributed a power of causation that defies scientific logic. Observance of religious rituals, from a functionalist or hermeneutical perspective, may therefore be a sign of false consciousness. It is the job of the anthropologist and sociologist to demystify rituals by interpreting their true meaning and uncovering their social function.

In contrast to these approaches, Asad placed emphasis on how rituals act as techniques of the body that are used to cultivate ethical dispositions. Whereas functionalist and hermeneutical approaches point to an external purpose fulfilled by rituals, emphasis is given to their effects on and through the body in the paradigm of ethical self-cultivation. There are two benefits to studying religious rituals as a form of self-disciplining. Firstly, it avoids the structuralist pitfalls of positing ritual as a sign, symbol or surface appearance of a signified essence. In a structuralist framework of symbolic representation, rituals are empirical actions or events that exist in a dialectical relationship with a larger symbolic order or social reality. They are therefore interpreted as points of reference to a larger whole that is enclosed either as objective economic conditions (Bourdieu 2013) or a self-contained cultural system (Geertz 1973). Such structuralist formulations of ritual become entangled with intractable dichotomies of mind/body, surface/essence, ideology/reality etc. The second advantage of the ethical self-cultivation paradigm is the attention it gives to disciplinary and pedagogical practices enacted by a subject on her body. These practices are conscious techniques of subjectivation as opposed to the subconscious imbibing of a social order that embeds a subject.

An entire generation of anthropologists has taken inspiration from Asad's contributions to the anthropology of Islam, producing ethnographies of subject formation in Muslim societies and

showing how ethical self-cultivation can be achieved through disciplinary practices of audition, mosque attendance and seeking religious counsel from Sharī'a experts (Agrama 2012; Hirschkind 2006; Mahmood 2005). Perhaps no anthropologist has advanced Asad's project of understanding subject-formation as effectively as Saba Mahmood. In her landmark publication, *Politics of Piety*, Mahmood convincingly demonstrates how women participants in Cairo's mosque movement fashioned a pious habitus through rituals of worship and bodily techniques of disciplining the self. She stresses the fact that the main purpose of outward religious markers and ritualistic performances for the mosque participants was not the representation of a distinct political identity. Instead, their pious exterior functioned as a disciplinary technology towards the acquisition of inner virtue. In Mahmood's words, the body was "not a medium of signification but the substance and the necessary tool through which the embodied subject is formed" (Mahmood 2005, 29). Women from the piety movement would deploy an entire regimen of bodily practices and rituals to cultivate affective dispositions and capacities that were consonant with a pious habitus. Piety entailed not just an objective fear or conscious awareness of God; it meant attuning one's bodily disposition towards God in such a way that one would effortlessly perform religious duties and rituals as if they were part of one's nature.

Anthropologists of Islam like Mahmood have rightly emphasized the disciplinary significance of religious rituals in creating inner dispositions, capacities and skills essential to the formation of a pious self. However, this inward approach to understanding rituals has come at the cost of neglecting their semiotic significance and social dimension. It is noteworthy that Mahmood's theoretical model for human behavior comes from Aristotle's concept of an embodied habitus. She distances herself from the Bourdieuan habitus given its emphasis on objective economic conditions as a determinative force in shaping human behavior, cultural and aesthetic

preferences. For Mahmood, Bourdieu's model is too deterministic to allow the conscious self-fashioning that women in the piety movement engaged in through practices of worship and remembrance. She therefore finds Aristotle's emphasis on embodied capacity building through repetitive practice much more receptive to her ethnographic evidence from the women's piety movement. While no systematic treatment of a canonical Islamic theory of ethics is offered, the medieval jurist-theologian Abū Ḥāmid al-Ghazālī is mentioned to confirm Aristotle's views by reference to a broader history of the reception of Greek knowledge in Islam. Putting aside the Gadamerian question of Aristotle's reception in the historically effective consciousness of Mahmood's ethnographic subjects, we might recall that Aristotle also regarded mimesis or mimetic representation as an essential aspect of human nature.[65] Indeed, the literary critic Stathis Gourgouris uses Aristotle's notion of *poiesis*—the human ability to transform/recreate aspects of reality through the manipulation of signs—to challenge Mahmood's insistence on the lack of a symbolic dimension to Muslim practices of piety (Gourgouris 2013, 115-123).[66]

One need not conform to Gourgouris's anthropocentric view of what he calls the "*poiein* of secular critique"—a radical practice of self-alteration predicated on a concept of human

[65] To quote Aristotole: "The instinct of imitation is implanted in man from childhood, one difference between him and other animals being that he is the most imitative of living creatures, and through imitation learns his earliest lessons; and no less universal is the pleasure felt in things imitated" (Aristotle 2013, xv).

[66] A critical operating assumption in Gourgouris's dissatisfaction with Mahmood's non-semiotic understanding of ethical self-cultivation is the Hegelian dialectic of identity formation. According to the latter, the self can only be formed and recognized in relation to an oppositional other. Gourgouris expresses his 'befuddlement' with Mahmood's model of piety: "Is the veil not a sign for the devout Muslim? What is it? An empty signifier? And as a sign, how can it not be activated but in an identity formation? Incidentally, by virtue of the elementary dialectics of institution in any society, no identity formation can ever be conducted entirely within an internal signifying framework; no identity formation can ever be monolithic. One's identity—even under conditions of perfect self-determination (which, of course, never exist in history, but only for the sake of argument)—can never be formed without simultaneously forming the identity of the other against whom (or in difference from whom) one defines oneself." (Gourgouris 2013, 121-122)

autonomy that Gourgouris takes great pains to distinguish from Cartesian and Kantian varieties of rationalism—to entertain the question of poetic form in Muslim ethics. Whereas Gourgouris uses both symbolism and semiotics interchangeably as modes of signification, I find it helpful to introduce an anthropological distinction between the two. This distinction isn't formalized as a disciplinary demarcation in anthropology, but it reflects a general move away from abstract frameworks of signification modeled on language to an appreciation of the material and interactive constraints of "on the ground" practices of representation (Mertz 2007, 340-341). Asad's well known critique of Geertz's conception of religion adequately captures the limitations of symbolism as a dialectical system. He points to Geertz's double move of (a) carving an independent symbolic order for religion in the form of a cosmic vision and (b) identifying religious practice as an empirical manifestation of (a). In Geertz's model, religious practices signify a cognitive and belief-based connection to a larger transcendental reality. It is only with reference to that grand cosmic vision, Geertz reminds us, that a scholar may be able to differentiate religious experience analytically from the awe-inspiring sensation one feels when beholding the Grand Canyon.[67] By creating a separation between the raw materiality of religious practice and its meaning-giving symbolic dimension, Geertz conjures an essentialist definition of religion that is founded in an abstract realm of virtual reality. Not unlike Saussure's semiology, Geertz's symbolic order can only exist in an arbitrary relationship with concrete religious practices as there is no logical-causal relationship between the two. Asad's refutation of symbolism paves the way to understanding the role of discursive conditions in authorizing religious practices and that of discipline in shaping

[67] To quote Geertz: "If sacred symbols did not at one and the same time induce dispositions in human beings and formulate, however obliquely, inarticulately, or unsystematically, general ideas of order, then the empirical differentia of religious activity or religious experience would not exist." (Geertz 1973, 98)

embodied religious dispositions. But Geertz's structuralist approach to symbolism is only one variety of signification.

The anthropologist Webb Keane offers a profitable alternative to abstract symbolism in the form of a materially embedded semiotics. Taking inspiration from Charles Peirce's model of signification, Keane argues for attention to the diversity of material, visual and oral forms that circulate our spaces of perception. Their varying dynamics of interaction and the regulations imposed on their circulation create what Keane calls a "representational economy" (Keane 2007). Similar to the phenomenon of entextualization—how texts acquire generalizable qualities and circulate across multiple contexts—that interests linguistic anthropologists, Keane expands Marx's concept of objectification to include those processes of formatting and practices of reification that stabilize texts, things and persons into their recognizable forms. The specific semiotic form taken by an entity that undergoes objectification is crucial to the signifying function it performs in a representational economy. Unlike Geertz's symbols, however, these semiotic forms aren't sui generis and may in fact be subject to further alterations and transformations.[68] The beard is one such semiotic form which inhabits multiple representational economies of Islamic traditionalism, religious nationalism and Islamophobia.

There is no reason to suggest that the creation, movement and formatting of semiotic forms isn't mediated by relations of power. Whereas what Peirce called an "indexical" relation—

[68] In other words, and although Keane doesn't use this terminology, semiotic forms are "iterable." Keane dismisses both Saussure's semiology and Derrida's critique of it for their obliviousness to the material and interactive constraints on language. It is true that Derrida's affirmation of the "infinite semiosis" of language—taken from Peirce, whose theory of signification Keane champions—is constrained in practice, thus giving stability to meaning and linguistic conventions. But the fundamental claim of "iterability" is not an empirical one of disruption resulting from every repetition. It is a claim about the innate potential for alteration and slippage from context in linguistic citation. Without entertaining the notion of iterability, Keane will have to submit that all semiotic forms are final and stable once they undergo a process of objectification.

between, say, fire and smoke—may relay physical causality and proximity, the relationship between the beard and religious piety is more complicated. Firstly, it is sustained by an authorizing discourse that consists of Prophetic injunctions (Ḥadīth) on wearing a beard, its institutions of learning, authoritative interpreters and transmitters. It is not "symbolic" in the sense of resting on arbitrary conventions. The relationship is also "iconic" in that it marks an embodied resemblance between the person sporting a beard and the historically documented appearance of Prophet Muhammad. This resemblance, achieved through mimesis or imitation, may also indicate one's aesthetic sensibility, desire, and emotive attachment towards the Prophet. The semiotic and the sensory-somatic merge in this iconic relationship.[69] Finally, the work of discipline that undergoes in acquiring a pious internal habitus mobilizes semiotic forms both as signs of recognition and as developal means for self-cultivation. In so far as the beard carries perceptible visual and material properties, it is a semiotic mode of associating with the Prophet that addresses both the subject and observer. For Deobandi traditionalists, a Muslim cannot simply claim love for the Prophet in his heart without adopting the sartorial apparatus of the Sunnah or Prophetic conduct. When a Muslim performs the disciplinary labor to cultivate prophetic virtue, the mind/body distinction ceases to hold. Ethical self-cultivation, echoing Gourgouris, becomes a form of *poiesis* in which appearances become integral to inner dispositions. Mahmood rightly insists that the "morphology of moral action" is central to a pietistic conception of ethics. How else could these pious practices of the self be 'morphological' if not in semiotic form? In section 3, I detail how bodily semiotics have been theorized in the Deobandi tradition not just as a "developal means" for internal ethical

[69] In her exchanges with Talal Asad and Judith Butler in *Is Critique Secular?* (2009), Mahmood concedes to this mimetic relationship of love with the Prophet in her explanation of visceral reactions to the Danish cartoons. While she elaborates the embodied and affective dimensions of such a mimetic relationship, it is difficult to imagine how an ethical relationship of resemblance can be conceived outside an economy of signification.

cultivation but also, and critically so, as a publicly accessible sign of social distinction. But before entering that discussion, I first introduce *tashabbuh* as a discursive tradition in Deobandism.

1.2. *Tashabbuh*: from Minor to a Major Discursive Tradition in South Asian Islam

The Deoband school represents a major discursive tradition of Islam in South Asia. A distinguishing feature of Asad's theory of discursive traditions is its underlying genealogical, as opposed to teleological, conception of history. The internal arguments, power contestations and paradigm shifts affecting a tradition are occasioned by historical contingencies and not by a logic of historical inevitability. Discursive traditions are therefore historical in that they are internally fluid and responsive to external stimuli. For Asad, however, this historical dynamism does not warrant a nominalist understanding of tradition, where anything that goes under the name of "Islam" becomes historically effective as such. Asad reminds us that discursive authority and institutional orthodoxy are central to the historical constitution of Islam and its hierarchies. Any normative conception and practice of Islam presupposes an authorizing discourse that defines and regulates what counts as 'Islamic.' While Asad's theory shows a way out of the dialectical trap between nominalist and essentialist understandings of Islam, the question of differentiating the stable and consistent patterns of a discursive tradition from its micro-historical deviations is profitably addressed by Wael Hallaq. Invoking Carl Schmitt's theory of paradigms, Hallaq (2013) distinguishes the enduring moral foundations of the Islamic governance paradigm—characterized by the 'central domain'—from its subsidiary features—represented by the domain of the 'peripheral.' More recently, Brinkley Messick (2018) has articulated the internal dynamics of the Sharī'a's textual architecture by distinguishing the discursive domain of the 'library' from the 'archive.' Whereas the former consists of widely circulated, de-contextual and theoretical texts,

the latter is comprised of context-rich and region specific documents that are empirical extensions of library discourse.[70]

If we take a longue duree view of Islamic intellectual history, it wouldn't be inaccurate to state that the discourse on imitation (*tashabbuh*) was at best a minor Islamic discursive tradition. The textual architecture of writings on *tashabbuh* is made up of both library and archival texts. Library texts include elaborate treatises on scriptural foundations of *tashabbuh* and its significance as an organizing principle of intercommunal and interreligious relations between Muslims and non-Muslims. Archival texts on *tashabbuh*, far numerous than its systematic library renditions, include *fatwā*s, sermons, pamphlets and polemical tracts condemning a popular fashion, ritual or custom—shaving the beard, shrine pilgrimage, celebrating Christmas and Valentine's day etc.—as foreign to Islam and hence impermissible for Muslims. The 14th century Syrian jurist-theologian Ibn Taymiyyah (d. 1328) is arguably the first to pen a systematic treatment of the concept of *tashabbuh* in his *Kitāb Iqtiḍā' al-Ṣirāt al-Mustaqīm Mukhālafat Aṣḥāb al-Jaḥīm* ("The Necessity of the Straight Path in Distinction from the People of Hell"). The treatise argues for maintaining Muslim distinction from Christians, Jews and other religious communities in the observance of everyday customs as well as festivals and ceremonies marking special occasions. Ibn Taymiyyah wrote his treatise at a time when Muslim power in Mamluk Syria and Egypt was threatened by the

[70] In my reading, both Hallaq and Messick offer useful analytical pathways that build on and extend Asad's seminal contribution to the study of Islam as a discursive tradition. While Messick's Bakhtinian reading of the dialogical relationship between library and archival texts is elucidative of the dynamics of interdiscursivity across textual genres, Hallaq's differentiation of central and peripheral domains helps make explicit the internal hierarchy and asymmetrical reciprocity between different genres of Sharī'a discourse. For instance, the minor discourse on *ḥiyal* or legal stratagems may indeed reflexively index the more foundational texts of the Qur'ān and Ḥadīth. The reverse, however, only occurs in the form of *ḥiyal* being deployed as commentarial glosses on the Qur'ān and Ḥadīth. This difference in the citationality of high and low discourse within a discursive tradition may not be immediately evident from the dialectic of "model of/model for" that Messick appropriates from Geertz to describe the mutual constitution of library and archive.

onslaught of Mongol invasions. The struggle for self-preservation and survival becomes crucial in the face of an outside existential threat and Ibn Taymiyyah's text is unapologetic in its puritanical bent to sanitize Islam from the effects of religious syncretism. Despite Ibn Taymiyyah's seminal contribution, however, *tashabbuh* was never elevated to the level of a canonical regulatory principle of Islam. Unlike other pressing theological, jurisprudential and political matters that occupied jurists for centuries and shaped school identities, concerns over *tashabbuh* emerged in specific historical instances and remained within Hallaq's 'peripheral domain' of Islamic moral governance.

This situation was to change drastically in the late colonial context. Not only did *tashabbuh* acquire global significance for Muslims in the making of an anti-colonial pan-Islamic consciousness, its discourse was also inflected by an omnipresent Western other. In rethinking their status as a distinct nation (*qawm*) or community of faith (*umma*) both preceding and proceeding decolonization, Muslims inevitably defined themselves against a Western other. It must be noted that they did so with major consequences. The Deobandi discourse on imitation reflects anxieties of asserting Muslim distinction as a nation in late colonial India. It wouldn't be wrong to say that *tashabbuh* has become a discursive tradition in its own right in South Asian Islam. It is discursive in that it entails arguments and contestations between and amongst Muslims who identify as 'traditionalists' and 'modernists' over the boundaries of Muslim religious, cultural and nationalist distinction. Further, it constitutes a tradition in that it formulates an inquiry at a specific historical juncture with recourse to scriptural sources and an authoritative past as a guide to normative conduct. The central concern of this discursive tradition may be summarized as follows: how do Muslims preserve their distinct religious identity in the face of Western cultural hegemony that threatens to dissolve their traditional lifestyle?

As we will see in the chapters ahead, contemporary Deobandis working to advance Islamic finance offer a radically different perspective on the question of *tashabbuh*. For them, one could only realistically compete against the West and challenge its hegemony by appropriating capitalist institutions and technologies. Competition required strategic imitation. But for the Deobandis writing in late colonial India, the battle for the soul of Islam could only be won by actively resisting the West and keeping a distance to avoid its contaminating influence. Deobandi advocates of Islamic finance qualified this resistance to as pertaining to the 'cultural' sphere, all the while arguing for the need to harness technology in pursuit of power. To my understanding, we cannot fully appreciate the justificatory discourse of Islamic finance without attending to the question of *tashabbuh* and its adjudication of the opposing demands of imitation and distinction. Earlier iterations of *tashabbuh* by Deobandi scholars, therefore, offer a crucial comparative context to its later invocations in the polemics of cultural authenticity surrounding Islamic finance.

In the proceeding discussion, I focus on a seminal library text entitled *Al-Tashabbuh fī 'l-Islām* (2014), written by Qārī Muḥammad Ṭayyib (d. 1983) in 1929. Ṭayyib was a Deobandi stalwart who far outranked the likes of Ludhiyānwī, both in terms of seniority and scholarly accomplishment. He was the son of Muḥammad Qāsim Nānōthwī, founder of the 8th principle of Dār al-'Ulām Deoband seminary, as well as its 8th principal. Not only was Ṭayyib the first Deobandi scholar to pen a detailed treatise on the question of imitation, his is one of the most comprehensive treatments of the subject by any scholar of Islam in South Asia. Ṭayyib's *Al-Tashabbuh* is an extraordinary critique of cultural politics. It combines elements of both library and archival texts, elaborating a theory of *tashabbuh* from scriptural proof-texts, logic and legal theory and also revealing a historical anxiety of preserving Muslim cultural authenticity after nearly two centuries of British colonization and systematic policies of linguistic, ethnic and

religious differentiation in South Asia. Ṭayyib himself made a career as a champion of Muslim minority rights; he was one of the founders of the All India Muslim Personal Law Board and served as its president from 1973 until his death in 1983. For Ṭayyib, therefore, the question of *tashabbuh* was one of great political salience. *Al-Tashabbuh* was written earlier in Ṭayyib's illustrious career and at the cusp of decolonization in South Asia. This was a time of immense nationalist fervor and a mutating communal consciousness, partly propelled by colonial technologies of governance and the creation of distinct communal identities along lines of religious affiliation. The fact of colonial subordination weighed heavily on Ṭayyib and the early generation of Deobandi scholars. The loss of Muslim political sovereignty only gave greater urgency to the need to preserve Islam in Muslim consciousness and an embodied habitus through the entire expressive repertoire of Islamic rituals. When these Deobandi scholars chided their co-religionists for imitating the ways of the West, they saw them as threatening the very survival of the Muslim community.

Colonialism, Cultural Hegemony and Muslim Imitation:

Ṭayyib's text begins with a startling insight about the relationship between culture and power: the hierarchy of cultures and civilizational achievement, Ṭayyib proclaims, is a function not of freedom but of power. People are attracted to the customs and lifestyles of nations in power, however unsophisticated, vulgar and uncouth their culture may be. Conversely, a subordinated nation will fail to attract imitators, however pleasant, sophisticated and sublime its cultural traits may be. Ṭayyib reminds his readers that the popularity and allure of Western culture is not due to its universal appeal or intrinsic beauty; it is the outcome of European colonial hegemony. On the other hand, the subordinated status, indignity and aversion towards Islamic customs and practices is not owing to their intrinsic repugnance but to the loss of Muslim dominion and political authority in the world (Ṭayyib 2014, 13-14).

Ṭayyib is convinced that the Islamic modus vivendi is innately superior to the vision of human flourishing in Western modernity. Whereas the latter thrives on stimulating human desire by giving free reign to sensuousness, accumulation of wealth and an appetite for violence and destruction, Islam seeks to tame human desire through ascetic practices and orients it towards simplicity, humility and frugality. Ṭayyib recognizes that the demands of Islamic piety would seem repulsive to an untamed ego—the seat of human desire (*nafs*). In the absence of a pious disposition, Ṭayyib claims, one is more likely to find the simplicity of an Islamic lifestyle insipid and unexciting. To make matters worse, the hedonism and carnality of Western culture is now fortified by Europe's unprecedented industrial growth, military might and technological prowess. These forces grant Western culture an unparalleled hegemonic force. Those with the will to resist it cannot withstand its power whereas those overcome by the lust for power also allow it to corrupt their aesthetic sensibilities. Ṭayyib offers a grim prognosis for the lethal combination of Western culture and power: it acts as a force of corruption on earth and absorbs (*jadhb karnā*) traditional societies in its fold. Ṭayyib's analysis proceeds from the material realm to the cultural and spiritual as he outlines their dynamics of interaction in an elaborate theory of *tashabbuh*. At the outset of the text, however, he registers a preliminary observation that the hierarchy of cultural tastes and preferences is maintained by power differentials. In fact, they can enact forms of hegemony and subjectivation that are far more effective than any kind of physical and military dominance. Ṭayyib's sensitivity towards the imbrications between culture, aesthetics and power yields insights that could be a valuable resource for cultural studies, along with Gramsci's elaboration of cultural hegemony and Bourdieu's exploration of connections between class and cultural taste. Of course, Ṭayyib's insights precede the groundbreaking analysis of both these thinkers.[71]

[71] Ṭayyib's treatise was published in 1929, whereas Bourdieu's *Distinction* was published in 1979 in French and then in English translation in 1984. Gramsci's *Prison Notebooks* were written between 1929

Having established the fundamental link between European colonialism and Western culture, Ṭayyib claims that Muslims' uncritical embrace of Western cultural norms and practices sustains their political humiliation and subjugation. Such imitation is both a reflection and enforcement of Muslim subordination to their colonial masters. When Indian Muslims imitate the ways of the British, for instance, they inadvertently cultivate feelings of awe and reverence towards the imitated. The consequences of such imitation are far reaching: the loss of self-esteem and self-confidence propels Muslims to shed their own norms and values in favor of those that are antithetical to Islam. For Ṭayyib, the struggle of Indian Muslim political leadership to restore Muslim dignity and sovereignty by imitating their colonial masters is akin to fighting a lost battle; they have already conceded defeat by casting themselves into the mold of the British. Any emancipatory project based on a strategy of subsumption into an alien culture and civilization leads to self-effacement, not freedom.

Ṭayyib's solution is deceptively simple: instead of capitulating to the pervasive desire of mimicking those in power, Muslims should emulate, both in appearance and inner states, the exemplary model of humanity embodied in the life of Prophet Muhammad. Since the Sharī'a is a complete code of life that leaves no human need unaddressed and the Prophet himself exemplifies the best of human character, Ṭayyib asserts that nothing is more deserving of imitation than Islam itself. It is the only viable path towards the worldly ascent of Muslims and their eschatological salvation. He therefore calls on Muslims to substitute their blameworthy predilection for imitating disbelievers (*tashabbuh bi 'l-kuffār*) with imitating divinely guided prophets (*tashabbuh bi 'l-anbiyā'*), specifically Prophet Muhammad. When Ṭayyib and Deobandis use the term *tashabbuh*, they imply the former, reprehensible kind of imitation. Whereas semantically the term *tashabbuh*

and 1935 but weren't published until 1951. Their first English translation was published in 1971.

doesn't foreclose praiseworthy kinds of imitation, its usage in Islamic legal discourse connotes imitation that is forbidden. Ultimately, for Ṭayyib and his co-religionists, Western culture is inseparable from European global domination as a political project. Therefore, even wearing an outward marker of Islamic religiosity constitutes a form of resistance to Western hegemony. Islamic insignia act as disruptive expressions of alterity within a regime of signification that preserves Western cultural forms as hallmarks of civilization. Conversely, Muslims who acquire a distinctly European presentation of the self become portrayers of Western cultural supremacy and undermine Islam with their actions. Idrīs Kāndhalwī (d. 1974), a contemporary of Ṭayyib and prolific scholar of Ḥadīth, chides Muslim imitators of European culture for their self-deprecation and lack of self-esteem:

> I ask these disreputable visitors upon Islam: why have they adorned Western attire? Is it because the Islamic dress is physically injurious and harmful to the body—whereas Western attire isn't? Or is it because they find Islamic attire humiliating? If that is so, they don't have to be Muslims at all! The Islamic dress is a marker of one's Muslim identity. If one is ashamed to be identified as Muslim, why not abandon Islam altogether? Islam doesn't need Muslims whose heartfelt allegiance to European styles compels them to alter themselves.[72] They lack independence, autonomy and self-respect. Those whose faith lies in the motto "Do as the Romans do in Rome"[73] are incapable of self-determination. (Kāndhalwī, vol. 3, 379)

It is important to note that such condemnation isn't reserved for imitators *qua* imitators, but only for Muslims who imitate Europeans and Westerners. For Ṭayyib and Deobandi traditionalists, the antidote to such imitation is not innovation or reform of the Sharī'a. The only way for Muslims to assert their autonomy in colonial India is by preserving Islamic traditional norms and practices. Imitation for Ṭayyib is not reprehensible in and of itself; it is the *model* that one chooses to imitate that matters.

[72] The original expression in Urdu is *rang badalnā* which literally translates as "changing one's color."
[73] The proverbial Urdu expression is *jaisā dēs waisā bhēs*, which literally translates as "dress according to the place."

1.3. Proof-Texting a Hadith: The 'Other' as the Political-Theological Enemy

As was stated earlier, the Deobandi discourse on imitation is premised on the existence of a Prophetic model that is worthy of emulation. Also significant, however, is the framing of an external enemy as Muhammad's 'other' that must be actively opposed and resisted. If following Muhammad entails denouncing the enemy, imitating the enemy occasions a repudiation of the ways of Muhammad. It is the role of this 'other' in the formation of late/post-colonial Muslim piety that is often neglected in the anthropological paradigm of ethical self-cultivation. How did this 'other' come to be constituted as an enemy in the Deobandi imaginary that could either only be opposed or yielded to but not neutrally engaged? Moreover, what are the discursive domains to which this enemy belongs and how do they affect the configuration of *tashabbuh* as a regulatory practice?

While a thorough historical examination of Muslim conceptions of the enemy is beyond the scope of this chapter, our discussion in the preceding section has already shown how the colonial encounter had instigated Deobandi animosity towards the British. In a different context, Mahmood Mamdani has argued that one of the most enduring legacies of colonial rule as a "legal-institutional complex" is the creation of legally inscribed "political identities" (Mamdani 2002, 20). For Mamdani, the contours of a political identity may be based on shared cultural, linguistic, ethnic and economic circumstances of a people, but what distinguishes a political identity from these other designations is its fixity and naturalization through legal enforcement. Mamdani elaborates the consequential difference between the polarizing force of political and other kinds of identity markers:

> Whereas cultural identities tend to shade into one another, with plenty of middle ground to nurture hybridity and ambiguity, there is no middle ground, no

> continuum, between polarized identities. Polarized identities give rise to a kind of political difference where you must be either one or the other. You cannot partake of both. The difference becomes binary, not simply in law but in political life. It sustains no ambiguity. (23)

We know all too well how colonial legal institutions in British India canonized the Sharī'a as Anglo-Muhammadan law and how technologies of mapping and enumeration reconstituted religious communities into distinct political identities. These transformations helped galvanize anti-colonial nationalist sentiment and must have affected Deobandi self-identification as a Muslim political community that stood against the British colonizer.

The idea that a legally enforced political identity is the most potent instrument of intensifying antagonistic relations between self and the other carries great plausibility in the context of modern conflicts in the age of nation-states. However, the political, understood in terms of belonging to a secular sphere of law, does not exhaust the discursive constitution of the enemy in the work of Ṭayyib and other Deobandi stalwarts. In fact, as Gil Anidjar observes in his study of the historical (con)figurations of the enemy in Europe, even Carl Schmitt affirms a rupture and a discontinuity between the theological and the political when describing the latter as grounded in the peculiar distinction between friend and enemy (Anidjar 2003, 47-52; Schmitt 1996, 26). A different concept of the political is at work in the Deobandi tradition, where the political and the theological are continuous if not coterminous. Ṭayyib in his treatise frames the enemy in historical, geographical, ethnic, political and theological terms. The last of these designations is the most critical and overlaps with the rest. I will now demonstrate how Ṭayyib combines them to construct a political theology of the enemy that in turn informs his discourse on *tashabbuh*.

Following the protocols of argument in Islamic jurisprudence, Ṭayyib first grounds his position in two of the most authoritative textual sources of Sharī'a: the Qur'ān (revelation or the words of God) and the Ḥadīth (traditions or the words of Prophet Muhammad). The single most important proof-text for Ṭayyib is the foundational *tashabbuh* Hadith: *man tashabbaha bi-qawmin fa huwa minhum* ("whosoever imitates a people is/becomes one of them") (Abū Dāwūd).[74] This statement attributed to Prophet Muhammad, though concise, is quite vast in its interpretive possibilities. It can be read as a "neutral" descriptive statement about the communal effects of imitation: imitators become part of the community they imitate. In other words, the Hadith described a process by which social belonging in a community is achieved through imitation. But the same Hadith can also be read as an admonition against imitation itself: imitation leads to the loss of self and its becoming another. Through imitation, antecedently existing differences are collapsed and an equivalence is established between previously distinct entities. Imitators therefore cease to be part of the community they originally belonged to and enact a kind of self-excommunication. Ṭayyib entertains both descriptive and proscriptive readings of the Hadith, but subordinates the former to the latter. In order to substantiate his reading, Ṭayyib constrains its semantic range by mobilizing a cluster of other textual referents; the entire philological exercise is a good specimen of what Messick has called the dialogical interaction between Sharī'a texts from the library and archival genres. In the end, not only does Ṭayyib succeed in determining a political-theological enemy, he also constructs a systematic juridical framework for norms of Muslim engagement with that enemy.

[74] For an excellent genealogy of this Hadith, its history of circulation, canonization and contested interpretations in early Islam, see Youshaa Patel ""Whoever Imitates a People Becomes One of Them": A Hadith and its Interpreters," *Islamic Law and Society* 25 (2018): 1-68.

Ṭayyib's first challenge is to prove that the Hadith is of sound provenance. Proving the authoritativeness of a well-known Prophetic tradition would not have been a concern had Ṭayyib's treatise been written prior to the 18th century. However, writing in the early 20th century, Ṭayyib is quite familiar with Orientalist criticisms of Hadith. More importantly, since his polemic is mainly addressed to Muslim modernists, he offers a systematic refutation of attempts to discredit the Hadith, mainly by the most influential Muslim modernist of South Asia, Sayyid Ahmed Khan. The Hadith itself has a checkered history, with doctors of Hadith (*muḥaddithūn*) ranking its chain of transmission (*isnād*) between sound (*ṣaḥīḥ*) and weak (*ḍa'īf*); moreover, only one particular variation finds place in the six most authoritative compilations of Hadith (*al-ṣiḥāḥ al-sitta*) in Sunni Islam: the *Sunan Abī Dāwūd* (Patel 2018, 12-14). Interestingly enough, Ṭayyib upholds the Hadith as sound but he does so by relying on the authority of the Hanbalites—a Hadith-centered school with whom the Hanafites of South Asia tussled the most on the question of Hadith interpretation. Ṭayyib's philological reading of the Hadith also aligns closely with Ibn Taymiyyah, the Hanbalite jurist who propagated the meaning of the Hadith as a Prophetic condemnation of cultural appropriation. Grammatically, the Hadith can be read as a nominal sentence (*jumlah khabariyyah*) and as a quasi-conditional sentence (*jumlah sharṭiyya*) (ibid, 35). As a nominal sentence, the Hadith's subject (*mubtadā'*) is "whoever imitates a people" whereas its predicate (*khabar*) is "becomes one of them." This grammatical rendition is closer to the "neutral" valence of the Hadith as a mere descriptive statement. As a quasi-conditional statement, the Hadith is read as constituting two parts: the protasis or condition (*sharṭ*) and the apodosis or response (*jawāb*). Here the Hadith presents a condition ("whoever imitates a people") that necessitates an outcome ("becomes one of them").[75] The second reading more closely lends itself to the tone of warning

[75] When read as a quasi-conditional statement, the Hadith can also be translated as "If a person imitates a people he becomes one of them." Another example perhaps better demonstrates the conditionality of this

and admonition against imitation. But this proscriptive reading also critically depends on Ṭayyib's determination of three elements in the Hadith: its object-noun (*maf'ūl*) "people" (*qawm*); its predicate (*khabar*) "is/becomes one of them" (*fa huwa minhum*); and, finally, the valency of the verb "imitates" (*tashabbaha*).

Ṭayyib determines *qawm* as referring to the community of disbelievers. The noun *qawm* is an open-ended reference to a community or group of people.[76] He qualifies *qawm* in the context of this Hadith by invoking several other proof-texts, mainly historical reports (*āthār*) and Qur'anic verses (*āyāt*), that forbid Muslims from associating with disbelievers. The most significant of these is the Qur'anic verse "Oh you who have attained to faith! Take not the Jews and the Christians for your allies—they are but allies of one another. And whoever amongst you befriends them becomes one of them. Verily God does not guide evildoers."[77] (5:51) Further, Ṭayyib cites numerous reports from the Prophet's Companions (*ṣaḥāba*) and the earliest generation of pious Muslims (*al-salaf al-ṣāliḥūn*) in which they forbid Muslims from adopting styles of dress peculiar to non-Muslims. The structural similarity between these proscriptive proof-texts and the *tashabbuh* Hadith is read by Ṭayyib as evidence that the people (*qawm*) spoken of in the latter are indeed non-Muslims, disbelievers and infidels. Another Qur'anic proof-text confirms their status as the theological

structure: "Whoever commits a crime pays the penalty." Here paying a penalty is stated as a necessary outcome of the conditional act of committing a crime. This and other examples of quasi-conditional statements can be found in G. M. Wickens, *Arabic Grammar: A First Workbook*.

[76] The Qur'an uses the noun *qawm* on 383 occasions, variously referring to a people associated with a Prophet—people of Moses, people of Lot etc.—or to people exhibiting common moral characteristics—people of wrongdoing, people of piety etc. Interestingly, the term *qawm* in Urdu is more commonly used for a nation defined by race, tribe or ethnicity. *Qawmiyyat* is therefore one's national identity.

[77] I have slightly modified Muhammad Asad's translation but kept the address *yā ayyuha 'l-ladhīna āmanū* as "Oh you who have attained to faith!" Most translators use the shorter and more literal translation "Oh you who believe!" I prefer Asad's translation as it captures the hierarchical distinction between acceptance (*islām*) as willful surrender to and acceptance of the authority of God compared to belief (*īmān*) as the thorough embodiment of faith in the form of a pious disposition. Believers (*mu'minūn*) are those who have, in Asad's words, "attained to faith" beyond the stage of giving verbal assent to Islam.

enemy: “O you who have attained to faith! Do not take my enemies—who are your enemies as well—for your friends, showing them affection even though they are bent on denying whatever truth has come unto you.” The verse continues, “You secretly incline towards them with affection and I am aware of all that you may conceal and all that you do openly. Whoever amongst you does this has already strayed from the right path.” (60:1) It is important to note that the verse deploys the enemy/friend distinction, albeit in an explicitly theological context where the ‘enemies of God’ are extended as ‘enemies of Muslims.’

Once it is established that the Hadith warns against imitating enemies of God, how does one understand its predicate—if read as a nominal sentence—or apodosis—if read as a conditional sentence—“is/becomes one of them” (*fa huwa minhum*)? The phrase can be read as a factual description or as a figurative expression meant to act as a deterrent. It was not uncommon for Muslim legal theorists (*uṣūliyyūn*) and doctors of Hadith (*muḥaddithūn*) to interpret Prophetic statements of rebuke “is not one of us” (*laysa minnā*) and “is one of them” (*fa huwa minhum*) as a figurative deterrent (*zajr*) (Patel 2018, 9).[78] Another variant of the *tashabbuh* Hadith appears in the form “He who imitates others is not one of us” (*laysa minnā man tashabbaha bi-ghayrinā*). A towering compiler of one of the six authoritative *al-ṣiḥāḥ al-sitta*, Muhammad al-Tirmidhi (d. 892), interpreted “is not amongst us” (*laysa minnā*) as “is not from our tradition” (*laysa min sunnatinā*) or “is not from our etiquette” (*laysa min adabinā*). Another classical jurist and Hadith stalwart, Sufyan al-Thawri (d. 778) qualified the statement to mean “is not like us” (*laysa mithlunā*) (Sarwar 2009, 22-26). None of these interpretations receive mention in Ṭayyib’s otherwise painstakingly detailed treatise. Instead, he reads the deterrent as a credible threat and

[78] Several Hadith proscribe Muslims from impermissible acts using the “is not one of us” and “is one of them” phrase as an apodosis. For instance, “He is not from us who does not have compassion for our young ones nor respect for our elders” (*laysa minnā man lam yarḥam ṣaghīranā wa lam yuwaqqir kabīranā*) (Tirmidhī 1975, vol. 4, 322).

attributes to it the full semantic force of a declaration of expulsion. Imitation results in the effacement of one's previous identity and assimilation into the community of disbelievers. One who imitates the enemies of God is banished from Islam as he "becomes one of them," such that on the day of judgment he will be resurrected amongst infidels and will suffer their eschatological fate.

Ṭayyib's readers now know (a) who the Hadith warns against imitating and (b) the gravity of consequences of such imitation. But what kind of action meets the criteria of 'imitation' that is so strongly rebuked in the Hadith? The verb *tashabbaha* ("he imitates") is of the 5th verbal form, which denotes reflexive action. It is derived from the trilateral root *sh-b-h* which means similarity, likeness and resemblance. The verbal noun *tashabbuh* (imitation) is therefore the reflexive creation of a likeness, a resemblance of another in oneself; it is to make oneself similar to another. Due to their reflexive quality, verbs in the 5th verbal form are usually considered a deliberate and intentional form of action. Ṭayyib, however, argues that even unintentional modes of imitation are reprehensible.[79] Imitation does not have to stem from a pure will or cognitive impulse to have its corrosive effects on a Muslim's character. As I noted earlier and will describe in detail in the end of this section, Ṭayyib is a keen observer of how external stimuli and repetitive practice shape the embodied habitus in subconscious ways. Further, in the absence of a disciplined habitus and a pious moral disposition, a Muslim who is enamored by the grandeur of Western civilization will be moved by an internal compulsion to ape the West. Here Ṭayyib connects imitation and desire in a mutually reinforcing feedback loop: conscious imitation feeds into a desire for the imitated whereas a predisposition towards something propels one to imitate it subconsciously.

[79] I address the different categories of imitation in Ṭayyib's taxonomy in more detail under section 4 below.

As further proof of the relationship between desire and imitation, Ṭayyib highlights a subtle linguistic point in the Qur'anic verse structure "Oh you who attained to faith! Do not become like the disbelievers…" (3:156).[80] He states that the verse doesn't forbid "disbelief" in and of itself but prohibits Muslims from becoming "like" disbelievers. One may therefore wear Western attire which is not in and of itself an act of disbelief (*kufr*), but the act points to an internal state of one's taste and preferences that have been skewed towards the ways of non-Muslims. Imitation is both an indication of one's internal state of desire and a means of shaping it. For these reasons, Ṭayyib militantly rejects the position of modernist Muslims who consider imitation blameworthy only in matters of faith and worship but not in matters of dress, customs and other social activities. The proscription against imitation, therefore, applies not just to the esoteric (*bāṭin*) realm but also to its apparent (*ẓāhirī*) forms. In fact, for Ṭayyib, it is the latter kind of imitation that Muslims need to be the wariest against: "*Tashabbuh* is far more consequential in matters of civilization, culture and society than it is in matters of belief. The former is lived and practiced whereas the latter is hidden." He went on, "Islam is not simply about belief in God but also a complete way of life; the universality of Islam precludes the need for imitation and appropriation." (Ṭayyib 2014, 39-41)

In summary, Ṭayyib's reading of the Hadith acts as a call for polarization between Muslim and non-Muslim. It is the duty of every Muslim to actively resist the enemy through a form of negative mimesis. Even innocent imitation or an apparent resemblance by chance could carry severe consequences: a Muslim who cannot maintain distinction will lapse into a zone of indistinguishability with the enemy. The intensity of the distinction between friend and enemy, one where there is "no middle ground, no continuum" and where one "must be either one or the other" as Mamdani put it, is aggravated by Ṭayyib's skillful hermeneutical, theological and

[80] *Yā ayyuha 'l-ladhīna āmanū lā takūnū ka 'l-ladhīna kafarū*. The expression makes us of the preposition *ka* (like/as) followed by the genitive *al-ladhīna kafarū* (those who disbelieve).

psychoanalytical determination of the enemy. Recall the verse cited above: "You secretly incline towards them [mine and your enemies] with affection... Whoever amongst you does this has already strayed from the right path" (60:1). Here loving one's enemy is strictly forbidden in contradistinction with the paradoxical Biblical commandment to 'love one's neighbors and enemies' (Matthew 5: 43-44) that, in Anidjar's prescient reading, "*generalizes* enmity by subsuming as objects of the same love, neighbors and enemies" (Anidjar 2003, 18). Whereas in the Biblical commandment, at least in St. Augustine's reading of it (21-24), one is encouraged to move from a zone of distinguishability to one of indistinguishability where all differences are dissolved under the love of God, here the movement is reversed. Imitation is forbidden because it triggers and is triggered by love for the enemy, leading one to abolish the distinction between enemy and friend. Enmity must be maintained *and* contained by preserving a zone of distinguishability. What the *tashabbuh* Hadith deters, forbids and warns against with the apodosis "becomes one of them" is precisely subsumption into the enemy. Ṭayyib and his co-religionists would often warn Muslims against "becoming subsumed" (*jadhb hōjānā*) into the community of disbelievers through imitation (Ṭayyib 2014, 80). For Ṭayyib, the challenge presented by *tashabbuh* was not merely one of preventing moral corruption or preserving cultural authenticity, it was an ontological question of upholding the very existence of the Muslim community as a distinct people. Yet, Muslims were so awestruck by the British and European civilization that they couldn't see in them the theological enemy who refuted their Prophet and the political enemy who colonized them and stole their lands. These Deobandi sentiments are adequately captured in the extract below from a *fatwā* penned by Ḥusayn Aḥmad Madanī (d. 1957), a renowned master of Hadith and fierce anticolonial nationalist figure. Incidentally, the *fatwā* is a response to a question by a college-going Indian Muslim in Meerut over the significance of sporting a beard in Islam:

> A Muslim endowed with sound nature and rational faculty should imitate the Prophet in every way possible and find the ways of his enemies repulsive. Today there is *no greater enemy* to Prophet Muhammad on the face of the earth than the British. Look at what they've done to the Muslim world! If anything, we should be completely repulsed by their styles and fashions, whether it be Curzon's fashion or Gladstone's,[81] French or American, whether it be in dress, body, language, customs or civilization. It is in one's nature to have an affinity towards one's friend and admire things that are associated with him. One is repulsed by things associated with the enemy, especially those that are his distinctive marker. We should be slaves of Muhammad, not slaves of Lord Curzon or Harding. (Thānawī 1990, vol. 9, 339; italics added)

What are these "things associated with the enemy" and how are they determined? Madanī here is referring to "distinctive marker(s)" that carry the enemy's signature. These are markers that can be appropriated, but doing so does not alter their authorial designation. Consequently, the one who adopts them becomes indistinguishable from the enemy. A marker of distinction that can be circulated but not severed from its referent is called a *shi'ār*.

Symbols of Distinction - *Shi'ār*:

After having defined *tashabbuh* and the enemy against whom distinction must be maintained, the question of what belongs to the enemy and what is of the enemy remains. Ṭayyib constructs a comprehensive taxonomy of the domains of practice in which *tashabbuh* applies and the rules pertaining to that application. But before that, a more basic question needs to be answered: how does one identify the domain of the enemy? Is it restricted to a circumscribed body or is it also subject to analogical extension, figurative expansion and association by resemblance? In other words, how does one mark the enemy? Despite Ṭayyib's attempts at scriptural confinement of the enemy, he would often speak of it in terms of synecdoche. A specific geographical, temporal, religious, racial and ethnic designation could be used as a representative part for a larger whole.

[81] Curzon is a reference to the Lord George Nathaniel Curzon of Kedleston (d. 1925), who was the Viceroy and Governor-General of British India from 1899 to 1905. Gladstone is a reference to William Ewart Gladstone (d. 1898), Prime Minister of the United Kingdom from 1868 till 1894.

These designations ranged from European (*yōrpī*), Western (*maghribī*),[82] British (*angrēzī*), Frank (*farangī*), non-Muslim (*ghayr-muslim*), modern (*jadīd*), polytheist (*mushrik*) and infidel (*kāfir*). None of these identities, however, exhausted the range of practices and identifying markers of the enemy. Further, Ṭayyib didn't quite see religion, culture and science as ontologically distinct domains.[83] The closest term to culture in Ṭayyib's vocabulary is *tamaddun*, which roughly translates into a sedentary as opposed to nomadic lifestyle. *Tamaddun* is also a form V reflexive verbal-noun and refers to the act of settling down. In contemporary Urdu usage, *tamaddun* refers to civilization. However, Ṭayyib often contrasted *tamaddun* with *tadayyun*. The latter is a reflexive acquisition of religious traits and characteristics. Other terms deployed by Ṭayyib that maybe synonymous to "culture" include civility (*tahdhīb*), cultural refinement (*thaqāfat*), ethics (*akhlāq*), habits (*ʿādāt*), traditions (*riwāyāt*), manners (*aṭwār*), fashions (*rawāj*), tastes (*adhwāq*), sensibilities (*iḥsāsāt*), ceremonies (*rusūmāt*), festivals (*tehwār*) and symbols (*shiʿār*) etc. No standalone term could encompass all of these into one cultural whole. My own admittedly anachronistic usage of "culture" in the context of Ṭayyib's discussion is, therefore, a loose reference to all the aforementioned.

In the context of *tashabbuh*, the most crucial term for Ṭayyib is symbol or *shiʿār* (pl. *ashʿira*). A *shiʿār* is a distinct marker of association. As Ṭayyib explains, *shiʿār* refers to those practices, customs and material forms that are unique to a community; it is a symbolic referent that stands in for a larger whole. When a person imitates a people by taking up their *shiʿār*, they attempt

[82] In the parlance of modern South Asian Islam, the term *maghribī* almost always exclusively refers to Westerner and never to the West African part of the Muslim world.

[83] The existence of culture as a separate and distinguishable domain from science is a product of the social, institutional and disciplinary rearrangements of modernity. Even though Ṭayyib was writing in the early 20th century, by the time when the British governing apparatus has effectively reconfigured social relations and established boundaries between distinct spheres of life, one doesn't see him deploy the idea of a self-enclosed culture that acts as a background explanation for all human action.

to become part of another whole. The "symbolic" aspect of *shi'ār* should not be confused with the structuralist understanding of an abstract order of signification or organizational logic of meaning that is isolated from the world of empirical reality. A *shi'ār* is more than often materially embodied in physical, visual or even aural form. The material embodiment may itself be a form of objectification that congeals in it religious labor and sentiments. For instance, the *adhān* or call to prayer is a *shi'ār* of Islam (Mawsū'a 2004, vol. 26, 119). It is a melodic pronouncement of theological belief and an invitation to worship that aurally embodies religious sensibilities and aspirations. The *adhān* is unique to Muslims and distinguishes them from calls to worship made in other religions, such as the use of bells in churches, which in turn is a *shi'ār* of Christianity.

A *shi'ār* is therefore a semiotic medium that serves the dual purpose of identification and distinction. This dual purpose may be met by establishing relations of iconicity, indexicality and conventionality.[84] For instance, sporting a beard marks a resemblance with the appearance of Prophet Muhammad; it is therefore an iconic *shi'ār* of Islam and shows one's love for and association with the Prophet. A *shi'ār* may also be based on an indexical relation of physical proximity. Incidentally, one of the lexical meanings of *shi'ār* is inner garment, in contrast to *duthār* as the outer garment. The Prophet said, "The Anṣār are the inner garment (*shi'ār*) and the rest of the people are the outer garment (*duthār*)" (Bukhārī, vol. 5, 157). This Hadith is an expression of

[84] Here I invoke in Charles Peirce's tripartite model of signification as a better approximation of the different valences of *shi'ār*. At its most basic, Peirce's model defines three relations of signification between a sign, an object and an interpretant: (a) icon, (b) index, and (c) symbol or token (Peirce 1992, 225-228). An icon is a relation in which the sign resembles its object in a strictly qualitative manner. It's also called a likeness. Peirce uses photographs and paintings as examples. An index signifies a more direct, physical and even causal relation between a sign and its object. Peirce uses the example of smoke indexing a fire. which could be conventional, iconic or indexical. Lastly, a symbol or a token is a relation between a sign and its object that is strictly mediated by a convention, law or some habit of thinking. It has no real substantive connection to the object otherwise. Examples of symbols/tokens are linguistic conventions and proper names. It is this relation of signification with constitutes the bulk of Saussurean semiology.

the Prophet's intimacy and proximity to the Anṣar (lit. helpers), who had given Muslims abode and aided them in Medina as they flew from persecution in Mecca. The Qur'an speaks of Ṣafā and Marwa—two small hills in Mecca that Hagar, the wife of Abraham, is said to have run in between in search for provisions for her infant son—as *sh'ā'irAllāh* (rights of Allah). Further, "whoever honors the rites of Allah, then verily it is from piety of the hearts." (22:32) Not only is the *shi'ār* a marker of intimacy but also one that must accorded reverence and respect. Taking up the *shi'ār* of another people can therefore be seen as an intimation of love towards them—a significant danger of *tashabbuh* mentioned repeatedly by Ṭayyib.

The most significant of these relations by which a *shi'ār* connects to its referent, however, is symbolic. In fact, it is this relation that most closely aligns with the discourse of *tashabbuh* as one of distinguishing between friend and enemy. In the authoritative Arabic lexicon *Lisān al-'Arab*, the word *shi'ār* is described as an *'alāma* (indicator; marker). *'Alāma*, however, is a linguistic derivative of the term *'alam* which means flag (Ibn Manẓūr 1972, 3085). Flags are quintessential symbols of representing a collective, usually a group of people—a tribe, nation, team, army etc. We also know that flags don't really *resemble* the people they represent and neither is there physical proximity or a causal relationship—think of smoke and fire—between the contents of a flag and those who claim allegiance to it. Their relationship is usually entirely symbolic, i.e. one driven by convention. *Lisān al-'Arab* then informs us that one of the meanings of *shi'ār* is a symbol of distinction used by armies in a battlefield. This symbol could be a uniform, a flag or even a war cry that would distinguish competing armies from one another.[85] Capitalizing on this definition of *shi'ār* as a military symbol, Ṭayyib invokes the image of armies pitted against

[85] A Hadith states that the Prophet used the cry "Umma, Umma" (community) as a symbol (*shi'ār*) of identification in battle (Mawsū'a 1993, 120).

each other the battlefield as a metaphor for Muslim engagement with the British and European nations.[86] When fighting a war of survival in the battlefield, one's physical appearance is all that distinguishes between enemy and ally. A soldier who imitates the enemy by taking off his uniform and dressing up in the enemy's garb will, of course, 'become one of them.' As followers of Muhammad, Muslims are a distinct nation and must be identifiable as such through appropriate markers in the battlefield of civilization. Ṭayyib states, "Differences in belief must translate into differences in appearance. Muslims must be distinguishable from non-Muslims just like armies can be identified through their uniforms in the battlefield" (Ṭayyib, 75).

The corollary to conserving and upholding one's *shi'ār* as a symbol of distinction in battle is a complete renunciation of *tashabbuh* in its esoteric and exoteric forms. This connection is further substantiated by a longer variant of the *tashabbuh* Hadith: "I was sent before the last hour [to fight] with the sword, until Allah is worshipped without any partners. My sustenance has been placed under the shadow of my spear. Submissiveness and servility have been destined upon he who opposes my command. And whoever imitates a people becomes one of them" (Ibn Ḥanbal 1993, vol. 9, 478; Patel 2018, 10-11). As Youshaa Patel shows in his archaeological analysis of different variations of the *tashabbuh* Hadith, this longer version is more widely circulated and is possibly the source from which the shorter version is extracted. The longer variant is clearly a statement of war and appears to restrict the proscription against imitation to circumstances of battle. Despite Ṭayyib's emphasis on the battlefield metaphor, he does not cite the longer variant

[86] This is not an altogether fantastical figurative reduction. The battlefield metaphor and the work of symbols in it could be also be extended to the power contestations that drive the production of knowledge. As Michel Foucault famously stated in his *Power/Knowledge* interviews, arguing against a semiological understanding of human thought and action, "Here I believe one's point of reference should not be to the great model of language (*langue*) and signs, but to that of war and battle. The history which bears and determines us has the form of a war rather than that of a language: relations of power, not relations of meaning." (Foucault 1980, 114)

of the Hadith at all.[87] This is a surprising omission given the Hadith's utility in bolstering Ṭayyib's battlefield argument. It is, however, extremely unlikely that the omission of this longer variant stemmed from Ṭayyib's ignorance of its existence. Abū Dāwūd himself, narrator of the Hadith's shorter variant in one of the *ṣiḥāḥ sitta*, often redacted different portions from a longer and presented them in separate chapters for purposes of legal exposition (Patel 2018, 27-28). The classification of a Hadith under a particular chapter or topic of discussion was therefore as crucial to its interpretive reception as the content of the Hadith itself. For instance, Abū Dāwūd included the portion "whoever imitates … becomes one of them" in the chapter on dress (*bāb al-libās*). This classification evidently also suited Ṭayyib's purposes who considered the prohibition of *tashabbuh* as applicable to sartorial non-conformity in general did not *restrict* it to circumstances of war.

Regardless of which variant of the *tashabbuh* Hadith received greater reception amongst Deobandi scholars, they developed a consensus around advocating a maximalist position on the prohibition of *tashabbuh*. In seeking to preserve Muslim traditionalism by creating polarized identities, the Deobandis ended up expanding the domain of the enemy and restricting the domain of the Muslim. Part of this restriction came with the insistence on a distinct Muslim uniform as marker of social distinction. Returning to the *fatwā* written by Madanī in response to the Meerut college student who had endured much ridicule for sporting a beard, we notice a new nationalist justification for abiding by the sartorial repertoire of the Sunna. Madanī explains to the impressionable student that every nation insists on its distinctive markers and Muslims had no reason to not assert their own. Like every other distinct nation, Muslims had their own intrinsic uniform and also a duty to preserve it.

[87] An Arabic translation and commentary of Ṭayyib's original Urdu text was published from Deoband, India, in 2016. The longer variant is not to be found in all 369 pages of the updated commentary. See Muḥammad Ṭayyib Qāsmī, *Al-Tashabbuh fī 'l-Islām* (Deoband: Dār al-'Ulūm Waqf, 2016).

> The British came here 250 years ago. They come from a cold climate and, yet in India's warm climate, their uniform still consists of a coat, pants, hat, collar and neck-tie. Therefore, a country of 35 crore people could not absorb them… Hindu leaders insist on wearing the loincloth. It uses far more cloth than pajamas; it doesn't even cover the body; it doesn't help in either winter or summer and yet these leaders don't want to wear a pajama… Guru Nanak wanted to immortalize Sikhism and he preached against cutting one's hair, growing the beard, wearing a steel bangle (*karā*). Sikhs now tolerate all of this in the hot climate of India, but they do so because it is a matter of their identity. Similarly, bearing the ankles, parting of hair on the side, growing the beard, trimming the mustache etc., these are all markers of distinction that have been prescribed to distinguish Muslims from Jews and Christians. (Thānawī, vol. 9, 337)

The rationale behind the uniform, for Madanī, was not practical utility but its purpose in serving as a criterion for social distinction. Having understood the domain of the enemy, we are now in a position to explore Ṭayyib's theory of the Muslim subject that must be shielded from this enemy.

A Natural Theology of Difference: Ontology and Performativity:

While Ṭayyib's treatise is a product of colonial times, it is also grounded in traditions of logic (*manṭiq*) and legal theory (*uṣūl al-fiqh*) that give his arguments their analytical robustness. Ṭayyib's mastery in these classical sciences of Islamic learning had earned him the title of Ḥakīm al-Islām (the sage of Islam). But unlike conventional works of logic and legal theory, Ṭayyib's treatise is a polemical defense of Islam's superior cultural heritage and a rebuke against "Muslim modernists" for their cultural infidelity in adopting Western styles, tastes and manners. These Muslim modernists had uncritically endorsed the idea of an autonomous and free-willing Muslim subject who didn't require protection from *tashabbuh*. Ṭayyib presents his philosophical anthropology of the subject by establishing a dyad between the intrinsic and extrinsic qualities of every human and non-human entity. Each appearance conforms to an inner essence and a law governing its function. The human ear, for instance, is designed a certain way to transmit sound. Its form and shape are integral, not ancillary, to its auditory function. If one were to alter the shape

of the ear, this change in appearance will affect its essential characteristic of hearing. The variety of appearances and marks of distinction found in objects of nature are also a proof of divine creativity. All acquisition of knowledge, appreciation of beauty and transactions of exchange are rendered possible by distinctions of matter, taste, sound and appearance.

Ṭayyib then turns to human anatomy. In keeping with a long tradition of relying on Greek logic to construct definitions and categories in the Islamic sciences, Ṭayyib offers a bounded definition of human beings that both captures their essential characteristics (*faṣl*) and distinguishes them from unlike things (*farq*). The essential characteristic of humans is that they are living beings (*ḥayāt*); the distinguishing characteristic that separates the from other living beings like animals and plants is that they are sentient (*mudrik*) and endowed with the faculty of speech (*nāṭiq*).[88] In Ṭayyib's cosmology, ontological distinctions cut reality at its joints. Nature has gifted every genus (*jins*) and its species (*naw'*) its unique existence. It is for this reason that muddling the apparent distinctiveness of things by changing their appearances is tantamount to committing ontological violence. The human species is marked by distinct signs of existence (*'alā'im al-dhāt*) which include the face, hair, limbs etc. These markers are further subject to peculiarities ordained by nature (*khaṣā'il al-fiṭrat*). Ṭayyib divides these peculiarities into two bodily categories: bodily essence (*aṣl al-badan*) and bodily increments (*zawā'id al-badan*). The former consists of those parts of the body that acquire stability and permanence. These include the limbs, genitalia, skin and other body parts that aren't subject to further growth, development and alteration after a certain age. The Sharī'a ordains the preservation of these body parts and forbids disturbing their natural forms and arrangements through surgical intervention. Ṭayyib cites artificial teeth, skin whitening

[88] In Islamic metaphysics, the faculty of speech is synonymous with the faculty of reason. A person who is *nāṭiq* is not only someone who can speak but someone who can reason through speech.

creams and organ transplants as violations of the bodily essence. Engaging in these activities is altering God's creation (*taghyīr khalqAllāh*) and therefore a sin of the highest order.

Bodily increments on the other hand are those parts of the body that are impermanent and their growth remains unchecked. These include the nails, head hair, androgenic (body) hair etc. The Sharī'a has prescribed regimens of cleanliness, grooming and beautification for these bodily increments. Women are obligated to cover their head hair whereas men are commanded to grow their beards and trim their moustaches. Whoever grooms and beautifies their bodily increments according to the rules of the Sharī'a acts according to nature and therefore fulfils the "words of God" (*takmīl kalimātAllāh*). For Ṭayyib, gendered practices of grooming and beautification in the Sharī'a are undergirded by heteronormative essences and the laws governing their performativity. Modern Muslim men who shave off their beards do not simply commit the sin of imitating disbelievers but also subject their bodies to the imitation of women (*tashabbuh bi 'l-nisā'*). One's face is the most important indexical sign of recognition and facial hair is a mark of distinction between men and women. Cutting off the beard doesn't simply bring about a change in appearance, it impresses upon the person feminine characteristics of complaisance, shyness and emotional volatility. Altering one's appearance therefore also alters one's spiritual, emotive and temperamental cast.

1.4. A Jurisprudential Taxonomy of Imitation: Purification and Appropriation

After scriptural proof texts, Ṭayyib proceeds with juristic reasoning to further substantiate his argument in the tradition of Islamic jurisprudence. Ṭayyib understood the implications of extending the realm of forbidden *tashabbuh* too far. Since the play of signification and flow of resemblances is interminable, even the most well-intentioned and meticulously crafted activities could be interpreted as resembling un-Islamic practices. Muslim men were asked to sport beards

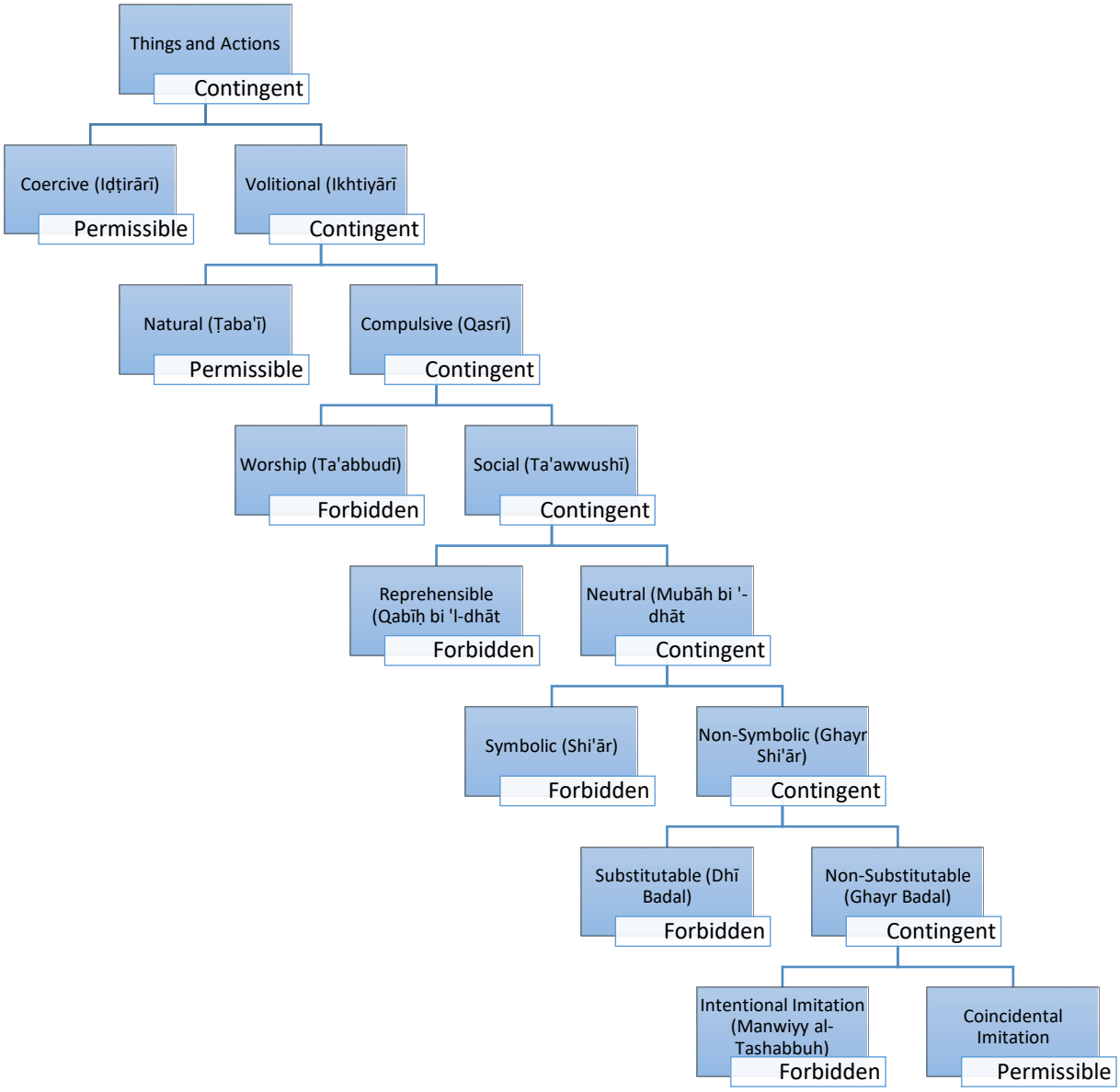
in emulation of the Prophet, but Sikhs, orthodox Jews and even the Pharoah had reportedly sported beards. How could one establish the Muslim beard as a symbol of piety in contradistinction with these other beards? If one were to distinguish imitation of the pious from imitation of disbelievers, it was crucial to control the "infinite of semiosis" of cultural signs through juridical regimentation. Ṭayyib therefore elaborated a taxonomy of 8 different categories of practices in relation to *tashabbuh*. The distinctions he draws upon are based on an ontology of the human subject whose anatomy and agency are heteronomous in relation to both culture and divine power.

Ṭayyib begins by dividing all human actions into two categories of agency: volitional (*ikhtiyārī*) and coerced (*iḍṭirārī*). Actions that are coerced are ordained by nature and willed by the divine, such as eating and sleeping. In so far as all humans need to do these tasks in order to live, Muslims will also perform them with their fellow human beings and cannot abandon them for the sake of establishing distinction. In the realm of volitional actions, the Sharī'a teaches Muslims how to fashion themselves into ethical subjects and, by entailment, how to distinguish themselves from non-Muslims. If a Muslim were to insist on distinguishing themselves (note on avoiding false gender neutrality in a discourse that is thoroughly patriarchal) from a non-Muslim by refusing to eat and sleep, they would be contradicting an act ordained by God. The rules of *tashabbuh* only apply to human actions. Ṭayyib further divides volitional acts into two kinds: natural (*ṭaba'ī*) and compulsive (*qasrī*). Natural acts are those volitional acts that are triggered from an immanent and bodily need, such as the act of drinking to quench one's thirst. These acts are also "natural" in the sense that they do not need to be taught or inculcated through external discipline. Such acts do not come under the purview of *tashabbuh*.

Compulsive acts are those volitional acts that are cultivated and learnt through external constraint and pedagogy. They are "compulsive" in the sense that they are not immanent and result

from external stimuli. Rules of *tashabbuh* begin to apply to these acts and their subcategories. Compulsive acts are divided into devotional (*ta'abbudī*) and habitual (*ta'awwudī*). Devotional acts include religious practices, symbols and forms of worship. For instance, wearing a cross is a devotional act and imitating such acts is explicitly forbidden (*ḥarām*). As for habitual acts, these refer to social customs and practices that are further divided into two types: repugnant (*qabīḥ bi 'l-dhāt*) and neutral (*mubāḥ bi 'l-dhāt*). The former refers to customs and practices that are repugnant due to being intrinsically sinful from a religious point of view, such as adultery and consumption of alcohol. These are also explicitly forbidden (*ḥarām*). As for social customs and practices that are *neutral* in their *essence*, Ṭayyib adjudicates their normative status not on the basis of their primary characteristics, i.e. the content of the practices themselves, but by determining their secondary characteristic of association, i.e. the provenance of those practices. These intrinsically neutral practices can further be of two types: communal (*shi'ār aqwām*) and non-communal (*ghayr shi'ār*). The former are practices that have become associated with a specific community, nation or tribe, such that imitating them would make one identifiable with that community. The national dress or a national flag are examples of such symbolic markers of identity. Adopting these symbolic markers, while not explicitly forbidden (*ḥarām*) since they aren't intrinsically sinful, is still considered repulsive-bordering-forbidden (*makrūh taḥrīmī*). As for those practices that are not associated with any particular community, they are further divided into two types: substitutable (*dhī badal*) and non-substitutable (*ghayr badal*). For neutral practices that have substitutes in Islam or amongst Muslims, it is always preferable that a Muslim adopt their Islamic iteration. Muslim honor demands avoiding any unnecessary dependence or reliance on the practices of non-Muslims, which, even if neutral, are still repugnant (*makrūh*) if chosen over their Muslim counterparts.

Finally, we are left with those intrinsically neutral practices for which Muslims have no substitute, such as new technological inventions, infrastructures, tools, appliances and paraphernalia etc. Ṭayyib understands that here Muslims have no alternative to riding cars, traveling by railroad and planes, using the telegram etc. These activities are permissible only in so far as Muslims indulge in them as a matter of routine and convenience to meet their needs. However, if a Muslim uses these facilities, which Ṭayyib deems to be morally neutral in and of themselves, with the intention of imitating non-Muslims (*manwiyy al-tashabbuh*) then their usage is not permissible. This is because intentional imitation reflects a covetousness towards the object that one imitates, which in this case is determined by the association of such technological advancements with an assumed civilizational superiority of the West. As Muslims become overawed by such ethnocentric significations of technology, they will become obsequious towards the un-Islamic West and indulge in self-degradation. A diagrammatic presentation of Ṭayyib's taxonomy summarizes the different categories of objects, actions and practices—in the blue boxes—and their relation to the permissibility/impermissibility of *tashabbuh*—in the white boxes.


Things and Actions
Contingent
Coercive (Iḍṭirārī)
Permissible
Volitional (Ikhtiyārī
Contingent
Natural (Ṭaba'ī)
Permissible
Compulsive (Qasrī)
Contingent
Worship (Ta'abbudī)
Forbidden
Social (Ta'awwushī)
Contingent
Reprehensible (Qabīḥ bi 'l-dhāt
Forbidden
Neutral (Mubāh bi '-dhāt
Contingent
Symbolic (Shi'ār)
Forbidden
Non-Symbolic (Ghayr Shi'ār)
Contingent
Substitutable (Dhī Badal)
Forbidden
Non-Substitutable (Ghayr Badal)
Contingent
Intentional Imitation (Manwiyy al-Tashabbuh)
Forbidden
Coincidental Imitation
Permissible

1.5. Conclusion: Imitation as an Act of Love

Ṭayyib concludes his treatise on *tashabbuh* by citing the Hadith, "None of you [truly] believes until his desires become pursuant to what I have brought forth." While this Ḥadīth points to an inner state of orienting one's desires towards Prophetic teachings, Ṭayyib explains that imitation is the best indicator of one's desires as it shows through practice what one wishes to become. If a Muslim imitates Western cultural practices while neglecting Islamic sartorial choices, he becomes too enamored by the West to value the beauty and norms of an Islamic lifestyle. For Ṭayyib, the antidote to low self-esteem and moral standards amongst Muslims is not relinquishing imitation as an insincere and ingenuous practice; it is the redirecting of that practice towards the Prophetic model. Being pious requires becoming like the pious. Opening a chapter from the etiquette (*adab*) of learning in Islamic mysticism (*taṣawwuf*), Ṭayyib reminds his readers that the knowledge and blessings of spiritual masters are acquired by imitating them whereas the taste (*dhawq*) of faith (*īmān*) is lost when one imitates the ways of the disbelievers.

In Ṭayyib's representational economy, the interior-exterior correspondence is not simply representational but also performative in that it fashions a subject's inner dispositions through external appearances and vice versa. But the key to this dynamic fashioning of the self through mutual reinforcement of external appearances and inner dispositions is that it takes place in an intersubjective dimension. External appearances mediate the relationship of one's inner dispositions with the outer world. Subjectivation is therefore always an intersubjective process. For this reason, mimesis and alterity acquire importance in shaping the subject in relation to others. Outward appearances and religious markers bear more than just a symbolic significance of giving meaning to their subjects' identities; they are an objectification of the subject's labor of pious practices and dispositions that partake in a "representational economy" of other such

objectifications. As both representations and products of pious performativity, these outward religious markers are simultaneously symbolic (meaningful) and indexical (indicative of causal relations).

Anthropologists of Islam have justifiably critiqued the mind/body and private/public distinction by showing how outward appearances and sartorial choices are directed towards the fashioning of a pious self. However, in rejecting the body's significance as a "medium of signification," they have overlooked the role of a subject's exteriority as an objectified interface between her interiority and competing objectifications of liberal subjectivity. After all, the political salience of Islamic sartorial choices stems from the fact that they perform an alternative objectification of virtue to those that are legitimated by a secular sensorium. In insisting that Islamic religious markers do not partake in "identity politics" but are simply practices of the care of the self that the subject enacts on herself, anthropologists of Islam have crafted their own private realm of Islamic piety. Ironically, the idea of an ethical subject engaged in a project of self-formation without any mediation or intervention from her environment resonates strongly with the subject of liberalism. One only needs to look at the recent spate of self-help literature in behavioral economics and psychology that projects a new autonomous self—one that has evolved from being an abstract rational-decision making actor into an introspective subject who can enhance productivity and shape attitudes, temperaments and embodied dispositions through modern technologies of the self. It is not entirely coincidental that Mahmood compares her model of virtue cultivation through disciplinary practices to modern dietary regimes in which outward performances are directed towards the formation of a trained body and capacitated self.

It is true that religious markers and rituals use the body as a "developal means" to acquire certain dispositions, skills and capacities, but it is important to remember that they do not do so in

a cultural vacuum. Ṭayyib therefore remarks that the prohibition over *tashabbuh* applies not simply to religious matters but also to cultural matters. Religious belief, claims Ṭayyib, is inert and abstract and one cannot so effectively imitate a state of mind. Society, culture and customs, however, are a lived dimension of reality and it is here that *tashabbuh* acquires salience. In a telling metaphor, Ṭayyib highlights the significance of the dress as a distinct marker of exteriority by comparing Muslims to an army in a battlefield. Their goals, motives and allegiances must be as easily distinguishable from their attire as it is possible to identify armies through their uniforms in battle. In the absence of indexical signs that make Muslim practices legible and differentiable from other objectifications of virtue, the project of pious self-fashioning is incomplete. It is always in relation to an empirical or perspectival other that the task of virtue cultivation is accomplished.

In Tayyib's moral economy, living life ethically is not defined by an abstract allegiance to categorical imperatives or the endless pursuit of utility; it is molding oneself and subjecting one's actions and desires to a pre-existing authoritative model. Ethical practice is therefore always a form of imitation (*tashabbuh*), wherein a subject tries to orient oneself according to a desired model. It is due to the performative significance of representations of exteriority in creating a pious self that *tashabbuh* acquires such importance. One cannot insulate religious beliefs from one's conduct and interactions in the social world. For Ṭayyib, a corollary to imitating the Prophetic model is to establish social distinction by distinguishing oneself from other models of virtue.

Chapter 2: Custom (*ʻāda*) and Tacit Recognition (*ʻurf*): Immanence and the Ordinary in Islamic Ethics

"Whatever Muslims regard as good, God regards it likewise."

~ Prophet Muhammad.

"For the study of tacit knowledge the basic data are intuitions, they are the judgments that the members of a cultural group systematically express without elaborating on the underlying argument."

~ Dan Sperber.

Introduction

The recent ethical turn in anthropology has stimulated copious theorization on the location of ethics as an object of ethnographic study. In formulating a concept of "ordinary ethics," anthropologists have argued for attention to the pervasiveness and spontaneous flow of ethics in everyday life. Instead of identifying ethics exclusively with forms of regulatory compliance, religious piety or adherence to categorical moral principles, ordinary ethicists consider how mundane practices and linguistic interactions are imbued with tacit ethical considerations. Arguing that ethics does not vanish in the absence of explicitly stated rules and principles, ordinary ethicists identify the working of ethics in everyday human interaction. Yet, despite claims of embedding ethics in the largely implicit and embodied dimensions of speech and practice, ordinary ethicists end up formulating a restricted conception of the ethical that is modelled on a representationalist ideology of language and cognition.

This chapter attempts to make an intervention in the debate on ordinary ethics by elucidating the juristic categories of custom (*ʻāda*) and tacit recognition (*ʻurf*) in the Sharīʻa.

Contrary to the claim that discursive traditions based on scripture objectify ethics through rationalization and cognitive explication, Islamic discourses on *ʿāda* and *ʿurf* grant prima facie normative status to recurring practices that become integrated into a social habitus. Further, these practices are recognized as ethical *prior* to their discursive authorization by scripture. The chapter concludes by proposing a reconsideration of the transcendent/immanent binary that persists in anthropological debates on ethics. I argue that the insistence on locating ordinary ethics in an immanent realm poses a metaphysical barrier towards ethnographic explorations of other worlds of ethical possibility. Moreover, it reifies a problematic secular bifurcation between, on the one hand, mundane ethical interactions and embodied practices constituting everyday life and, on the other hand, the inherently rigid and misanthropic tendencies of ethical piety.

What distinguishes anthropological explorations of ethics from studies in psychology and moral philosophy is, arguably, anthropology's emphasis on the *lived* dimensions of ethical life. The task of an anthropology of ethics, according to an influential formulation, is not a prescriptive one of evaluating people's actions as ethical or unethical. It is, instead, a descriptive one of showing how people themselves make ethical evaluations (Laidlaw 2014, 3). Description, however, can have performative effects. Our descriptions of ethics do not simply *locate* the ethical as external to our language and cognition; they actively construct and define ethics as an object of disciplinary discourse. In this chapter, I critically examine how the anthropological framing of ordinary ethics figures a particular relationship between religion and ethics. I argue that anthropological theorizations of ethics as everyday, quotidian, and ordinary in contrast to the scriptural, rule-bound, and transcendent character of religion effectively evacuates ethics from religion itself. This theorization also partakes in a longer secular history of defining religion

through a set of binary oppositions, the most critical of which is the binary of immanence and transcendence.

Advocates of ordinary ethics frequently contrast the place occupied by ethics in scriptural religions with ethics that breathes through everyday life. A key claim in this contrast is that ethics in religion rises above the volatility, contingency and reflexivity that marks everyday existence. Once ethics relinquishes the ordinary and transcends into a religious realm of the exemplary, it becomes universal and absolute. According to this perspective, monotheistic religions based on scripture expound rules, principles and categorical moral imperatives backed by the authoritative word of God. The resulting ethical practice is constrained within a strictly defined regulatory framework of religious doctrine. In contrast, ordinary ethics is not premised on external regulation from a singular source of authority that uniformly applies to all.

This chapter unpacks the discursive and metaphysical bases of this contrast between ordinary ethics and ethical piety. Further, it offers a corrective to this contrast by reading Islamic discourses on custom (*ʿāda*) and tacit recognition (*ʿurf*) contrapuntally with anthropological theories of ordinary ethics. Offering an emendation of the theory of ordinary ethics, it draw insights from an alternative discourse on tacit ethical considerations and embodied practices in the Islamic legal tradition. In contrast to the epistemic closure created by ordinary ethicists' insistence on grounding ethics in an immanent foundation and separating it from 'transcendental' sources of morality, an Islamic juristic conception of socially embedded ethics fosters an organic continuity between the relatively tacit and the denotationally explicit varieties of ethical norms and practices.

The chapter is divided into 4 sections. In section 1, I present a detailed assessment of the anthropological bifurcation of ordinary and religious ethics. My primary focus is on a recent anthropological study that extrapolates a theory of ethical piety, based on readings of the Qur'ān,

and distinguishes it from ordinary ethics. Using critical approaches to the study of religion from within anthropology, I argue that the bifurcation of ordinary and scripture-based religious ethics is limited by a textual semiotics that privileges a cognitive relationship between scripture and the believer. In section 2, I turn to the Islamic legal tradition and examine how Muslim jurists understood ordinary ethics in relation to law and theology. Contrary to ordinary ethicists' claims that scriptural religions inevitably reduce ethics to law-like imperatives by grounding it in a transcendental perspective and objectifying it through discursive explication, I show that Muslim jurists recognized social custom and habits as an independent reservoir of ethical norms and practices. Moreover, they constructed an elaborate juridical framework of legal maxims and hermeneutical principles to integrate textual guidance with prevalent social norms and customs. Focusing on the Ḥanafite legal tradition practiced in Muslim South Asia, I show that a discursive refinement of ordinary ethics into juristic categories does not lead to its colonization by scripture. Instead, it facilitates the development of a derivative discourse that recognizes the foundational primacy of the Qur'ān and Ḥadīth and, simultaneously, expands the reach of ethics beyond the confines of scripture. In section 3, I continue the analysis of ordinary ethics in the Islamic legal tradition by examining dynamics of interaction between text and custom. More crucially, I show how custom can become a basis of legal change by acting as an authorizing discourse.

Finally, in section 4, I directly address the metaphysical basis of the stated distinction between ordinary ethics and ethical piety. I show that despite claims of metaphysical abstinence, ordinary ethicists rely on an immanent/transcendent binary to sustain their separation of piety and ordinary ethics. However, in the absence of an analytical rubric that distinguishes the ethical from the unethical, I argue that the ubiquity of ordinary ethics risks slipping into an analytically intractable omnipresence. Furthermore, the insistence on grounding ethics in an immanent realm

devolves into a metaphysical foundationalism that secularizes ordinary ethics at the exclusion of alternative visions of ethical life. If the task of anthropology is to faithfully describe how others evaluate situations as ethical or unethical, I argue that such a task requires a disciplinary divestment from the metaphysics of immanence and transcendence.

2.1. Ordinary Ethics: An Alternative to Transcendental and Objectified Ethics

The ethical turn in anthropology has taken many strands, with theoretical influences ranging from Aristotelian virtue ethics, MacIntyre's concept of a tradition, Foucault's embodied practices of the care of the self, and Wittgenstein's ordinary language philosophy. In this section, I specifically examine the turn to ordinary ethics in anthropology and its peculiar framing of the relationship between religion and ethics. In a landmark volume entitled *Ordinary Ethics,* anthropologist Michael Lambek posited a view of ethics as "intrinsic to speech and action" (Lambek 2010, 1). As per Lambek, ethics cannot be separated from ordinary life as an ontological domain of religion or metaphysics but is embedded in everyday action, thought and speech. In somewhat circular fashion, he characterizes ordinariness as an intrinsic feature of ethics: "the ordinary is intrinsically ethical and ethics intrinsically ordinary" (3). Here Lambek acknowledges the influence of Wittgenstein's and Austin's theories of ordinary language usage and performativity on his conception of immanence (2). Attention to how we use language, make claims and arguments through an implicitly agreed upon language game is, as per Lambek, critical to understanding how ethics plays out in everyday interaction.

Lambek further outlines three distinguishing characteristics of ordinary ethics. Firstly, ethics is an inevitable part of the human condition (1). This means that human beings cannot avoid making and being subject to ethical evaluation. Secondly, unlike ethical precepts of religion and moral philosophy, ordinary ethics is "relatively tacit, grounded in agreement rather than rule, in

practice rather than knowledge or belief, and happening without calling undue attention to itself" (2). Lambek contrasts this immanent quality of ordinary ethics with ethics rendered explicit within highly regulated religious jurisdictions. "Through religion," he asserts, "the ordinary is transcended and ethics intellectualized, materialized, or transcendentalized" (ibid). Finally, since there is no universal essence to the ethical, ordinary ethics carries a tragic sensibility that comes with a recognition of human finitude (4). What drives the ethical, however, is not absolute certainty but hope in the face of human finitude.

Another contributor to the *Ordinary Ethics* volume and prominent anthropologist of religion, Webb Keane, further explores the relationship between ordinary ethics and religion. While Keane avoids grounding ethics on the model of ordinary language usage, the play of semiotic forms is integral to his theory of ethics and to the "dynamic of everyday social interaction" that makes up ethical life (Keane 2016, 33). For instance, in commenting on embodied forms of ethics present in the Aristotelian conception of virtue and Bourdieu's habitus, Keane notes that even unselfconscious modes of ethical embodiment are "materialized in sensible forms" (98). Embodied habits are themselves not immune to semiotic mediation because "the ethical values embodied in those habits are inseparable from their concreteness, their availability to the judgments of others" (109). Keane contrasts these relatively tacit and embodied forms of ethical subjectivity with a more cognitively explicit rendition of ethics. He refers to the latter as the outcome of objectification, a process that "draws on people's cognitive capacity to take a third-person perspective" (67). Keane takes religion as a primary example of such objectification. Scriptural monotheisms tend to take ethics out of the domain of the ordinary and render it cognitively explicit in the form of textually inscribed injunctions. In contrast to the openness and flexibility of ordinary ethics, Keane claims that scriptural monotheisms privilege "coherence and

explicitness" that is "accounted for by their divine origins—their authority by the existence of a transcendental judge" (19). In other words, it is the transcendental positioning of scriptural monotheisms that leads them to objectify ethics. Ordinary ethics, in comparison, is discursively implicit due to its immanent grounding.

For Keane, the transcendental monotheistic perspective and its resultant objectification of ethics gives rise to "ethics as piety." (206) Piety, however, is a unique ethical condition that puts the subject of piety at odds with the world of ordinary ethics that s/he inhabits. Keane explains this friction as the outcome of a piety-paradox. To begin with, monotheistic religious traditions based on scripture tend to objectify ethics by rendering it abstract, coherent and cognitively explicit through endless discursive refinement. This discursive refinement of ethics militates against the unpredictability and implicitness of ethical habits and interactions that are a part of everyday life. The resulting polarization between ethics as piety and ordinary ethics inspires efforts by religious believers to encompass all domains of life within a universal jurisdiction of scriptural religion. However, this move towards totalization is undermined by the very objectification and fixity of ethics made possible by religious scripture in the first place (208). In other words, ethical objectification in scriptural monotheism both inspires the need to extend the realm of religious ethics and practically thwarts such an extension. As a result, religious movements based on scriptural monotheism devolve into fundamentalist movements, seeking to overcome the contingency and openness of ethics of everyday life through coercive and authoritarian means.

My contention is that Keane's characterization of the piety paradox is misplaced on two levels: textual and genealogical. At the textual level, Keane's reading of scripture is limited by a textual semiotics that privileges a strictly cognitive relationship between a reader and the text, according to which reading for the former entails affirming the truth of propositions advanced in

the latter. At the genealogical level, Keane's claim that scriptural monotheisms objectify ethics by shifting the locus of ethical life from everyday social interaction to abstract and transcendental principles is an unwarranted generalization. This generalization, as I show below, stems from the assumed universality of a modern Christian conception of scriptural religion as centered on belief and cognition.

Keane draws examples from two ethnographic studies of religious piety to substantiate his piety-paradox: Joel Robbins's work on the struggle of Urapmin Christians to uphold religious restrictions on interest in everyday commerce and Charles Hirschkind's study of Cairene Muslims' attempts at fashioning a pious personhood by listening to religious cassette sermons. Keane notes that the inability of Urapmin Christians to satisfactorily abide by dictates of scripture is due to "contradictions between ethics tacitly embedded within daily activities and social relations, on the one hand, and the explicit precepts of religion, on the other" (Keane 2014, 222). The Muslims of Cairo, on the other hand, are not constrained by a religious imperative that impedes everyday life. Instead, they make a conscious effort to become ethical selves by attuning their sensorium to the sound of religious sermons. Nevertheless, it is the affective thrust of very explicit Qur'ānic invocations of divine punishment and the torment of hellfire that moves them towards piety. For Keane, however, what matters is that both projects of piety are ultimately based on doctrinal teachings sanctioned by scriptural authority. Once theological scripture serves as the foundation of moral life, it creates conditions of heteronomy in which the ethical is severed from its embeddedness in everyday life and relegated to a higher order. Ethics henceforth becomes a matter of submitting to an external moral order sanctioned by scripture. Keane substantiates this point by offering a reading of the Qur'ān through the pioneering work of a Japanese Islamicist, Toshihiko Izutsu.

Relying on Izutsu's structuralist reading of scripture in *Ethico-Religious Concepts in the Qur'ān*, Keane posits an argument for the exteriority of religious ethics to ethics embedded in everyday life. The arguments presented for this exteriority rely on the Qur'ān's theological content as well as its form as textual objectification. As per Keane, the Islamic perspective on morality can be defined by a uniquely "monotheistic perspective" or "the God's-eye point of view" that centers on "a single supreme being." (Keane 2016, 208-209) To support his position, Keane approvingly cites Izutsu's characterization of Islam as a code of life that allows its adherents to "judge and evaluate all human conduct with reference to a theoretically justifiable moral principle." (209) This monotheistic perspective, premised on the unitary existence of a transcendent, omnipotent and omniscient deity, becomes the organizing principle for what Keane calls a "totalizing ethics." (Ibid)

In contrast to the "centralizing ethical project" that emerges from a unitary moral perspective on organizing ethical life, Keane points to the multiplicity of situated and interactive ethical perspectives embedded in everyday life and exemplified by what Marcel Mauss called a "total social fact" (Ibid). For Keane, the Maussian 'total social fact' can be sharply contrasted with "totalizing" ethical impulse of a monotheistic perspective; the former is concerned with "the ways ordinary social existence is already thoroughly saturated with ethics prior to any regulating principles," whereas the latter seeks to constrain social existence under a singular and divinely sanctioned moral order (Ibid). Keane essentially uses the Maussian 'total social fact' as a figuration of ordinary ethics, which is then contrasted with the transcendentalized ethics of scriptural monotheism.

Keane's comparative analysis of ordinary ethics and scriptural monotheism ultimately results in the latter's figuration as a cognitive phenomenon. He draws two major conclusions from

the transcendental provenance attributed to pietistic ethics. First, the fact that the source of such ethics lies outside the social realm of human interaction makes it radically heteronomous. Citing another passage from Izutsu on the Qur'ānic conception of religion as "acceptance of guidance" from God (212), Keane notes that the separateness of the source of this guidance from humans renders ethics into an act of submission to the authority of an external law. Here it is crucial to note Keane's qualification: "… but that it is a *chosen* adherence, since one could have rejected the law (that is, although 'submission' is definitive of Islam, it must in principle result from an act of free well)" (213, Italics original). Heteronomy, therefore, becomes a precondition for what Keane effectively considers a conscious and *cognitive* process of accepting divine guidance. Keane's second conclusion doesn't come as a surprise: pietistic ethics entails affirming one's *knowledge* of universal truth. In support for this claim, Keane cites another towering Islamicist, Fazlur Rahman, who connects faith with understanding what the Qur'ān refers to as the signs (*āyāt*) of God.[89] (Ibid) In Qur'ānic terminology, signs (*āyāt*) may refer to verses of the Qur'ān, objects in nature that are taken as signs of creation, or to lessons in history. Keane, presumably, only thinks of *āyāt* as revelation when he connects faith with affirming the signs of God. He sums up this cognitive relationship between the believer and a divinely sanctioned ethical order of religion: "Islam connects ethical behavior to knowledge of the truth about reality. Ethics hinges here on accepting truth, which is revealed in signs (*ayat*) … Thus the factual assertions of the creed are foundational to the ethical demands of the moral system." (Ibid)

[89] The citation is from Fazlur Rahman's *Major Themes of the Qur'an*: "In order to determine the meaning of a sign, one must have, in addition to reason, a certain disposition, i.e., the capacity for faith." (213) It is curious that while Keane cites the sentence in full, he doesn't comment on Rahman's explicit mention of "a certain disposition" as a prerequisite to understanding the signs of God. This "disposition," according to Rahman, precedes one's cognitive ability to accept and understand the meaning of a sign from God. We will address the importance of dispositions in greater detail below.

Apart from the Qur'ān's content and theological assertions, Keane also comments on the role of its textual form in objectifying ethics. Since monotheistic scriptures must, according to Keane, rationalize ethics within a divine framework, they also end up making ethics cognitively explicit through discursive refinement. The process of encoding discourse into a coherent textual format so as to make it transportable across different contexts is also called "entextualization," a key semiotic concept in linguistic anthropology (211). According to Keane, abstraction is a necessary outcome of the entextualization of ethical discourse in religious scripture. It is only by condensing and stripping ethics into generalized and abstract principles that a monotheistic perspective of universal morality can be validated. Keane finds this to be the case especially with scriptural religions whose moral outlook is global and universal. In order to circulate globally, their texts must be transportable across different sociohistorical contexts (211). For Keane, this textual objectification of ethics in scriptural religion sets it apart from other, non-textual semiotic forms of ethics—"clan-specific taboos, ritual obligations, and the like"—that may be "immediately inhabitable." (Ibid) Keane recognizes that ethical discourses rendered into text can always be interpreted and re-contextualized. However, he maintains that the discursive accessibility of such texts makes them incompatible with the tacit and embodied ethical practices of everyday life:

> To be sure, many religious texts are obscure, even opaque, and all of them require interpretive strategies if the reader is to engage them. But they are discursive in their very nature: they represent ethics in words, a process that already involves a degree of distance from embodied practice and of generalizing beyond particular circumstances. The Qur'an is a good example. (212)

In other words, both the format—entextualization—and content—attachment to a transcendental perspective—of piety-based ethics runs counter to the amorphous flow and socially organic modes of embodiment that characterize ordinary ethics.

Keane's carefully crafted arguments, based on oppositions between transcendence and immanence, discursivity and embodiment, totalization and total synchrony etc., appear to make logical sense, but only at the cost of oversimplifying the complex dynamics of pious ethical formation. A major reason for this oversimplification is Keane's reading of ethical piety as based on a cognitive relationship between scripture and its reader. To be sure, Keane qualifies his argument as being applicable only to modern pietistic movements of religious revival that assert the primacy of scripture. Further, he clarifies that such movements work with a conception of religion that has already been purified as a separate and distinct "value sphere" in secular modernity (207-208). While these qualifications are helpful, Keane's argument about the discursive quality of religious scripture itself carries little truck with historical contingency. It is almost as if certain functions of objectification and abstraction are intrinsic to scripture and are an inescapable outcome of the trans-historical "monotheistic perspective" that lies at the core of monotheistic traditions. Keane's explanations give us little reason to imagine why the same scriptures, with their catechisms and abstract principles, would not have militated against ordinary ethics even prior to the dislocation of religious disciplines by secular modernity. However, even if we grant the historical specificity of Keane's arguments, the idea that modern Muslims' pious subjectivities are constituted through cognitive awareness and law-like conformity with categorical imperatives of scripture—and, conversely, outside of everyday experiences, affects, and sensibilities—does not withstand ethnographic scrutiny (Fadil and Fernando 2015).

I will now unpack some of the key conceptual and methodological assumptions that sustain Keane's separation of ordinary ethics from ethical piety. An otherwise astute observer of the complex historical connections between religious discourse and its various material objectifications,[90] Keane's exclusive emphasis on scripture in explaining ethical piety leads to an impoverished understanding of religion as centered on belief. When Keane states that faith in Islam is conditioned upon knowledge of truth and affirmation of the signs of God revealed in scripture, such affirmation or "*chosen* adherence" could only occur in the form of belief. Talal Asad has famously critiqued this cognitive framing of religion, where the latter is reduced to "a set of propositions" to which believers as thinking and observing subjects can give their "assent" (Asad 1993, 41). According to Asad, an exclusive emphasis on theological discourse is likely to obscure the disciplinary and embodied dimensions of religion, leading one to privilege cognition as the primary mode of religious association. Critiquing symbolic conceptions of religion, Asad warns against confusing articulations of a religious worldview—be it Clifford Geertz's "cosmic framework" or Webb Keane's "monotheistic perspective"—with religious dispositions that are pertinent to ethics and practice. To quote Asad,

> … Theological discourse is not identical with either moral attitudes or liturgical discourses—of which, among other things, theology speaks. Thoughtful Christians will concede that, although theology has an essential function, theological discourse does not necessarily induce religious dispositions, and that, conversely, having religious dispositions does not necessarily depend on a clear-cut conception of the cosmic framework on the part of a religious actor. Discourse involved in practice is not the same as that involved in speaking about practice. It is a modern idea that a practitioner cannot know how to live religiously without being able to articulate that knowledge (36).

[90] For an illuminating ethnography of the purification of religion in colonial Dutch East Indies, its valorization of belief based on cognitive sincerity, and its condemnation of animism and materialized objectifications of religious deities, see Keane 2007.

By focusing exclusively on the Qur'ānic text, Keane commits the same mistake of trying to extract moral attitudes and dispositions from theological discourse. I do not, of course, say this because of a secular academic sanction against drawing insights and analysis from theology. The problem with trying to understand ethical subjectivation solely on the basis of theological discourse is that there is no linear causality from the words of scripture to the ethical formation of its reader. In a different context, Talal Asad offers a remarkable insight on contradictory notions of interpretive agency vis-à-vis scripture that are attributed to pious Muslim and secular Christian subjects respectively. In the case of the former, the reader is assumed to be a passive recipient of textual indoctrination. Whereas in the latter case, it is the reader who exercises interpretive agency over the passive text.[91]

Keane is indeed far removed from philological approaches to the study of Islam that defined Orientalism. Yet, his Qur'ānic analysis of ethical piety rests on the crucial assumption that modern Muslim readers, at least those belonging to pious movements, unproblematically accept a common "monotheistic perspective" on ethics that is transparently expounded in the Qur'ān. In fact, Keane's claim that faith in Islam is premised on knowledge and acceptance of the signs of God (*āyāt*) revealed in scripture does not hold true even for the most puritanical proselytizing movements in contemporary Islam.[92] It is true that modernist Islamist movements have advocated

[91] Asad's insight pertains to explanations given for "Islamic terrorism" as stemming from textual indoctrination: "A magical quality is attributed to Islamic religious texts, for they are said to be both essentially univocal (their meaning cannot be subject to dispute, just as "fundamentalists" insist) and infectious (except in relation to the orientalist, who is, fortunately for him, immune to their dangerous power)." (Asad 2003, 11)

[92] The Tablīghī Jamā'at, for instance, a global grassroots proselytizing movement founded in India, has millions of adherents and preachers who cannot access scripture for theological content. Their knowledge and practices of Islam are informed by derivative discourses and an elaborate disciplinary regime of ethical cultivation based on travel and an etiquette of self-reflective teaching. For an insightful commentary on the Tabīlghī Jamā'at's missionary activity as constituting an interactive form of "pious sociality," see Khan 2016.

direct reliance on scripture for guidance in matters of religious belief and practice, but neither of these stems exclusively from knowledge of the content of scripture. In fact, adherence to doctrines enshrined in scripture or an affirmation of the truth of the signs (*āyāt*) of revelation may as well occur independently of any concrete knowledge of scriptural content.[93] Most believers will not be able to articulate the discursive sources or scriptural proof-texts in support of their religious beliefs and practices.

While I consider it important to heed Asad's warning on creating unwarranted linkages between theological discourse and religious disposition, I also think that the Qur'ān remains a significant technology for creating religious dispositions due to being both a theological text and liturgical discourse. It is a text that establishes doctrines and catechisms, but it also instructs in correct practice and fashions religious sensibilities through a combination of poetic and stylistic registers. I therefore do not think that Keane's attempt to find connections between religiously informed ethical dispositions and Qur'ānic discourse is entirely misplaced. However, it is Keane's cognitivist framing of the interaction between text and reader that limits his appreciation of how textual discourse can also enact ethical subjectivation. Even Muslim theologians differentiate between "belief" as mere cognitive recognition or affirmation of the message of the Qur'ān and belief as an embodied subjectivity that is fashioned through rigorous discipline and ethical

[93] This is true not only for the non-Arab Muslim world, which far exceeds the Arab world in terms of population, but also for Arabic speaking Muslim societies. The reason is not due to language or literacy alone. Firstly, formal Qur'ānic Arabic (*fuṣḥā*) is distinct from the many local dialects (*'āmmiyya*) spoken across the Arab world. In non-Arab Muslim societies in South Asia, Central Asia and Southeast Asia, Muslims recognize Arabic orthography and can recite the Qur'ān, but do not understand it. The ability to directly access the Qur'ānic text for purposes of understanding its content partly depends on one's facility in formal Arabic. Even so, only specialists access the text with the aim of abstracting rules, laws and principles. When literate Muslims access the Qur'ān to understand its content, they do so in translation or through commentaries produced by authoritative specialists. As I describe below, in common Muslim life the Qur'ān serves as a recitational technology for developing a pious personhood.

cultivation. In a theological key, the former is referred to as *islām,* in the literal sense of submission or acceptance. The latter is called *īmān*, which entails fashioning one's entire disposition according to Islamic teachings.[94] In fact, one of the key topics of discussion in Muslim theology is the gradations of *īmān*. One's *īmān* is thought to decrease or increase based on one's level of piety and practices of ethical self-cultivation. Asad eloquently captures this extra-cognitive notion of belief in Islam:

> *Īmān*—usually translated into English as "faith"—is not a singular epistemological means that guarantees God's existence for the believer. It is better translated as the virtue of faithfulness toward God, an unquestioning habit of obedience that God requires of those faithful to him (*mu'minīn*), a disposition that has to be cultivated like any other, and that links one to others who are faithful, through mutual trust and responsibility. (Ibid, 90)

From an anthropological perspective, the Qur'ān's relationship to religious practice, dispositions and subjectivities can perhaps best be elucidated by taking a cue from Asad's discussion of ritual. In presenting a genealogy of the concept of ritual in modernity, Asad demonstrates that the contemporary understanding of ritual as symbolic action was preceded by its literal definition as a "script" to be uttered and performed (Asad 1993, 58). Ritual as a script not only entails liturgical recitation but also behaving and acting in the world according to its instructions. The Qur'ān as a script serves both roles: it is read out in the performance of liturgical services and it also instructs in proper conduct as ethical discourse. In its former sense, the Qur'ān acts as a recitational technology that shapes affective and sensorial registers of religious

[94] The Qur'ānic proof-text for this distinction comes from an address to Bedouin converts at the time of Muhammad: "The Arabs of the desert say: 'We believe.' Say thou [Muhammad]: 'Ye believe not, but say rather 'we submit,'' for faith hath not yet entered your hearts." (49:14). I have approximated Martin Lings's translation.

subjectivity.[95] In the latter sense, the Qur'ān acts as a "mode of subjectivation," providing injunctions and authoritative guidance on how to constitute oneself as an ethical subject.[96] In modernity, however, Asad notes that the disciplinary functions of ritual as regulatory script are displaced by other technologies of discipline. This leads to the characterization of ritual as symbolic action in need of interpretation. In fact, modernity privileges belief as a form of cognition over what it characterizes as the mindless routinization of ritualistic practice. According to Asad, this shift in the understanding of ritual from instrumental to expressive behavior is coterminous with "the Reformation doctrine that correct belief must be more highly valued than correct practice" (Ibid). True religiosity, henceforth, can only be indexed by the sincerity and clarity of one's beliefs. Moreover, religious scripture loses its significance as a script-based recitational technology and becomes the purveyor of creedal doctrine. Keane's analysis of Islamic ethics in connection with the Qur'ān reifies the secular division between religious piety based on abstract moral principles and belief and those embodied practices and sensibilities that saturate everyday life.

The irony of Keane's belief-centric understanding of the Qur'ān and pietistic ethics is that it militates against his own analyses of the circulation of rituals and their susceptibility to multiple

[95] Charles Hirschkind's ethnography (2006), also mentioned by Keane as an example of ethics as piety, captures how the Qur'ān is used as a recitational technology by Muslim devotees to fashion a pious sensorium.

[96] In referring to the Qur'ān's function as a script that regulates conduct, I prefer Foucault's "mode of subjectivation" to "moral code" precisely to avoid the cognitivist framing that places the Qur'ān in relation to a thinking subject who affirms the truth of its propositions. Saba Mahmood elucidates this difference eloquently in the context of her study of pious subjectivation:

> For Foucault, the relationship between moral codes and modes of subjectivation is not overdetermined, however, in the sense that the subject simply complies with moral codes (or resists them). Rather, Foucault's framework assumes that there are many different ways of forming a relationship with a moral code, each of which establishes a particular relationship between capacities of the self (will, reason, desire, action, and so on) and a particular norm. (Mahmood 2005, 28-29)

modes of objectification. Keane is a particularly intelligent observer of how textual discourse takes on non-textual semiotic forms and is appropriated in a variety of ways in different contexts. Recognizing the precarity of processes of entextualizations, he notes: "… The very textual dimension of ritual speech—like the materiality of physical objects—leaves it open to appropriation in new contexts, its various properties shifting in their relative utility and significance, serving new purposes" (Keane 2007, 269). We have no reason to think why monotheistic scriptures, no matter what their self-described source of origin or perspectival vantage point, can't be open to such appropriation, iteration and citationality. Neither abstraction nor discursive objectification should necessarily lead to Keane's piety-paradox.

Thus far I have critiqued the discursive and textual bases of the contrast drawn between ordinary ethics and piety from an anthropological perspective. I now turn towards an alternative conception of ordinary ethics as presented in the Islamic legal tradition.

2.2. Custom (ʻāda) and Tacit Recognition (ʻurf) in Islamic Ethics

"He who does not know the prevalent customs of his time is ignorant."[97] This statement that is attributed to Muḥammad al-Shaybānī (d. 805), one of the founding figures of the Ḥanafite school, is well rehearsed by *madrasa* students training to become *muftī*s or jurisconsults in Pakistan's Deobandi seminaries. A person who trains himself in the craft of issuing authoritative legal opinions (*fatwā*s) must, according to tradition, develop an intimate familiarity with everyday practices and social customs of his time. During my fieldwork at the Jāmiʻa Ashrafiyya seminary in Lahore, I auditioned two morning classes that were devoted to instructing *muftī*s-in-training in the science and etiquette of *fatwā*-giving. One of these classes covered an advanced text in legal theory by the 16th century Egyptian jurist Ibn Nujaym (d. 1563), *Al-Ashbāh wa 'l-Naẓā'ir*. The

[97] Text (Arabic): *Man lam yaʻrif bi-ʻurfi zamānihī fa huwa jāhil*.

other one was devoted to a relatively thin text on the practical craft of *fatwā*-writing by the 18th century Syrian jurist Ibn ʻĀbidīn (d. 1836), *Nashr al-ʻUrf*. Both texts expounded the importance of social custom and everyday practices in understanding the theory and practice of Islamic law. From the afternoon until the mid-day *ʻaṣr* prayer, I would sit in the Dār al-Iftā', a public space where lay Muslims would come to seek counsel from *muftī*s on religious matters. The Dār al-Iftā' was the place where *muftī*s could put to practice rules and principles they learnt in class by interacting with real people and addressing their imminent ethical queries and concerns. *Muftī*s in training would write *fatwā*s that were proof-read by instructor *muftī*s and then handed over to the questioner—free of charge. An instructor *muftī* would address queries himself and also assign suitable cases to *muftī*s-in-training.

Muftī ʻUbaydAllāh Ukārwī served both as an instructor-*muftī* and administrator of the Dār al-Iftā'. I would often go to him when I wanted to retrieve a *fatwā* on some topic of interest, mostly pertaining to commercial matters, from the *fatwā*-archive. He encouraged me to not just go over written *fatwā*s but witness the manner in which *muftī*s dealt with their questioners. Nearly confiding in me, he stated, "People think that we are backward and not in touch with our times. Yet, I often say that there are only two kinds of specialists in society who are intimately familiar with the masses and their problems: the medical doctor and the *muftī*." I had a sense of why he invoked that particular comparison. Towering intellectual figures like Ghazālī and Shāh WalīAllāh often stated that the Muslim scholar (*ʻālim*) was a doctor of the soul just as the physician was a doctor of the body. Yet, Ukārwī had something else in mind, "We are not mere experts in reading books. When people come to us, they share their feelings, sentiments, worries, and anxieties. We can even tell from the tone and wording of a question what sort of answer the questioner is seeking." Since a majority of questions that were posed in a Dār al-Iftā' pertained to divorce,

Ukārwī noted, "When a man divorces his wife out of anger, we must determine the legality of that divorce by figuring the exact words he used. We must discern both circumstantial evidence (*qarā'in*) and linguistic custom (*'urf qawlī*) to determine the legality of an act."[98] He continued, "Similarly, a doctor doesn't prescribe medicine just by observing the patient. He must ask the patient questions about his medical history, his lifestyle and habits." It was in this sense of intimate familiarity with people's circumstances, habits, and customs that the *muftī* was compared to the medical doctor.

Ukārwī's comparison was instructive, but also somewhat of an understatement of the *muftī*'s cultural sensitivity and expertise. There is no parallel in professional medical ethics of the kind of systemic theorization of people's everyday habits and customs one finds in Islamic jurisprudence. Let us now turn to one of the texts studied by *muftis* that placed custom in the discursive architecture of the Sharī'a as a non-scriptural reservoir of ethics. Ibn Nujaym's *Al-Ashbāh wal-Naẓā'ir* (*Resemblances and Likenesses*) was a landmark moment in the intellectual history of the Ḥanafite school of jurisprudence. It was written at a stage of historical maturity when the school's massive repertoire of positions could be organized under a discrete set of interpretive maxims (*qawā'id*). The title of the text refers to a genre of Islamic legal theory wherein particular legal cases are grouped together based on their similitude and resemblances. (Rabb 2015, 198) The maxims in *Al-Ashbāh* were derived retrospectively from the accumulated positions taken by the

[98] We will address the legal typologies of custom in more detail below. Briefly put, here Ukārwī's reference is to the category of irrevocable divorce (*al-ṭalāq al-bā'in*). The irrevocability of a divorce depends on the force and intensity of an additional statement added to the performative "I divorce you" or "you are divorced." Such intensity is not lexically determined but is contingent on linguistic custom. For instance, in Urdu usage, supplementing a divorce performative with the statement "you are free from my end" (*tū mērī ṭaraf sē fārigh hai*) renders the divorce irrevocable. Although, literally speaking, the additive does not refer to repudiation, its customary usage implies comprehensive repudiation.

school's jurists over the past eight centuries. Subsequently, they served as interpretive guides for issuing *fatwā*s on specific empirical cases.

As highly generalized descriptive and prescriptive claims, one might say that these maxims (*qawā'id*) were "maximally implicit citations" (Nakassis 2012, 627) of specific cases and ethnographic materials that constituted jurisprudence (*fiqh*). One of the five central maxims listed in *Al-Ashbāh* addresses the importance of social norms and customs in guiding Sharī'a jurisprudence. The maxim is pithily called *al-'ādatu muḥakkimatun*, which translates as "custom is judicially decisive" (henceforth referred to as the *'āda* maxim). The maxim does not describe the content or meaning of custom, but simply states a procedural principle of taking as normative (in the prescriptive sense) that which becomes a norm (in the recurring sense) amongst Muslims. If a certain practice becomes pervasive and occurs regularly in society, the practice in question is considered normative according to the Sharī'a.[99]

Ibn Nujaym cites the following Ḥadīth as a proof-text for the *'āda* maxim: "Whatever Muslims regard as a good, God regards it likewise" (Ibn Nujaym 1986, 1:295). Unlike other maxims, several of which find support in more than one textual source, Ibn Nujaym is only able to come up with a single proof-text for the *'āda* maxim. Further, the Ḥadīth Ibn Nujaym cites itself lacks a strong chain of transmission and is considered weak (*ḍa'īf*) by Ḥadīth specialists (*muḥaddithūn*). Ibn Nujaym acknowledges this textual weakness but then offers an extra-textual rationale for the authority of customs to be included amongst the major legal maxims: "And know that *'āda* is given consideration due to a great deal of cases in *fiqh* reverting to it. In this way, it

[99] Of course, certain practices forbidden by explicit textual evidence, such as adultery, are barred prima facie regardless of their frequency of occurrence. The province of *'āda* are practices whose legality isn't explicitly determined by juridical doctrine.

reached a point where it was made into an *aṣl* (original source)." (Ibid) The authoritativeness of custom, therefore, is a function of its recurrence in society.[100]

Ibn Nujaym uses two terms interchangeably to refer to custom: *'āda* and *'urf*. In common parlance, *'āda* refers to a habit whereas *'urf* means common knowledge. *'Āda* comes from the trilateral root *'a-w-d* which means "to return." (Wizārat al-Awqāf 1993, 29:215) In technical usage, it refers to a recurrent practice that is repeated without the intervening impulse of a command or logical necessity (*luzūm 'aqlī*). (Ibid) Ibn Nujaym offers the following definition: "*'Āda* is an expression for those repetitive and agreeable matters that become embedded in persons of sound nature." (Ibn 'Ābidīn n.d., 112). In so far as *'āda* is repetitive and becomes an organic part of human conduct, it can be a considered a habitus. The term *'urf* stems from the root *'a-r-f* which means knowing, recognition and awareness.[101] But *'urf* is not knowledge rendered cognitively explicit; it is something known by tradition, convention or a habit of thinking. *'Urf,* therefore, designates implicit knowledge that carries a normative force even when not verbalized (*majhūl*). (Ibn Nujaym 1986, 1:300) Terminologically, *'urf* refers to that which becomes acceptable to the temperaments and rational capacities of people from a specific region or a time period.[102] The key point to note here is that *'Urf* is known to human temperament not by virtue of a universal abstract principle, a transcendental truth or categorical imperative grounded in scripture, but as an embodied perspective that is intersubjective and taken for granted. It can therefore be more accurately described as a form of tacit recognition. Ibn 'Ābidīn further

[100] For a rigorous philological and historical analysis of the *'āda*-maxim, see Hallaq 1994.

[101] As a form of recognition, *'urf* signifies both acceptance and the extension of beneficence and kindness toward another.

[102] Ibn Nujaym further distinguishes between customs that are pervasive across Muslim lands (*'urf 'ām*) and those that are prevalent only in specific regions (*'urf khāṣ*). We shall not deal with this distinction in this chapter. For a discussion of the distinction and its significance, see Hallaq (2001, 218-219).

distinguishes between *ʻāda* and *ʻurf* by stating that they are identical in their legal significance but differ in terms of meaning. He designates *ʻāda* as "custom in action" and *ʻurf* as "custom in speech." A custom can therefore be both practical and verbal.

How did *ʻurf* and *ʻāda* inform formal jurisprudence? Firstly, custom was used as a criterion to determine the legality of practices that exceeded, either partially or in their entirety, the domain of written law. In the hierarchical taxonomy of legal rulings developed in Islamic jurisprudence, rules that are made explicit through textual injunction in the Qur'ān or Ḥadīth are considered incontrovertible—barring exceptional circumstances in which they may be provisionally suspended. These rules, often referred to as *manṣūṣ* (lit. written) or "textually revealed," are considered *given* rather than *derived*. Textually revealed rules are also invested with a higher degree of certitude compared to rules inscribed in weaker textual sources, non-textual sources or those derived from textual inference. Ibn Nujaym affirms this hierarchy by stating that considerations of custom cannot override a textually inscribed rule (*manṣūṣ ʻalayh*) (297). Here it may seem that Ibn Nujaym has circumscribed the domain of custom by restricting it to matters lying outside textually inscribed rules. But this discursive regimentation of text and custom should not be read as constituting a boundary between that which is internal and external to the Sharīʻa.

Both text and custom are constitutive of the Sharīʻa but are differentiated through an internal hierarchy between written sources and tacit norms. The former was necessarily limited due to its denotatively explicit character whereas the domain of the latter was far more expansive and contingently connected to the law. This regimentation undercuts Keane's argument about the drive towards universal objectification in scriptural or discursive religions. It is important not to confuse the higher authoritativeness of "textually revealed" rules with an absolutist conception of their universal applicability—the kind that Keane identifies with modern forms of religious

fundamentalism. While a custom cannot gain priority over a textually revealed rule, it may (and often does) serve an ancillary function of filling in the missing blocks needed to interpret such a rule or put it into practice. In so far as even textually inscribed rules have contingency built into them, custom becomes relevant in determining their applicability. Custom, therefore, ranks lower than the more methodologically formal and explicitly written sources of law, but its function is both integral and internal to the Sharī'a system as a "total discourse" (Messick 1993, 3).

I now discuss a few examples from *Al-Ashbāh* to demonstrate how custom can act as a criterion to determine the validity of a practice that is either textually inscribed or without textual basis. One of Ibn Nujaym's examples of how custom acts as an arbitrator between the permissible and impermissible concerns wage-labor: a person gives a portion of a cloth to be weaved or colored by a tailor or a dyer without either of them agreeing on a wage. Once the job is completed, a disagreement occurs between the laborer and the client. On the one hand, the laborer demands a wage for his service. On the other hand, the client claims he had reasonable grounds to assume the service was gratuitous: the task was minor and no wage was explicitly stipulated. Whose claim would be validated? Ibn Nujaym cites three positions: (a) Abū Ḥanīfa, the eponymous founder of the Ḥanafite school, states that a wage cannot be demanded after a service provision if there was no prior agreement between parties to an exchange; (b) Abū Yūsuf, Abū Ḥanīfa's student and a primary authority of the Ḥanafite school, is of the opinion that a wage will apply if the laborer is a professional of the craft for which his services were sought; and finally, (c) Muḥammad, also a student of Abū Ḥanīfa, maintains that a wage will have to be paid if the weaver or dyer is known to have dedicated himself to the craft and is recognized for rendering paid services. Ibn Nujaym states that Muḥammad's position is the Ḥanafite school's preferred one since it is based on custom. Availing the services of any known professional of a craft would always imply the promise of a

wage, even if not explicitly stipulated. Ibn Nujaym further extends this principle to staying at a hospes or entering a public bath (*ḥammām*). Both are tacitly recognized as paid services and utilizing them would always entail a fee, even if not explicitly stipulated (Ibn Nujaym 1986, 1:307).

Custom in speech also informed legal reasoning in a more subtle yet consequential way. It served as a legal tool to access the performative effects of language. Ibn Nujaym establishes this function of custom early on by citing the interpretive maxim: "Veridicality will be abandoned for meaning that is established by usage and custom" (295).[103] Veridicality in this maxim refers to *ḥaqīqa*: a key theological and interpretive principle which points to the reality, essence and truth of something. In theological discourse (*'ilm al-kalām*) and foundations of legal theory (*uṣūl al-fiqh*), *ḥaqīqa* is contrasted with *majāz* or the figurative dimension of reality. The interpretive maxim cited by Ibn Nujaym, however, escapes the literal vs. figurative dialectic by contrasting the veridical basis of things with how they are used. To put the contrast in more explicit terms, the veridical basis of understanding something would entail pointing to an essence. Conversely, connecting meaning and reference to usage and custom entails a pragmatic and non-essentialist view of language. According to the latter, words do not function as vehicles of signification that connect our mental representations of objects with their autonomous empirical existence or celestial archetypes. The meaning of words is located within their usage rather than in an epistemological foundation.[104]

[103] Text (Arabic): *tutrak al-ḥaqīqatu bi-dalālati 'l-isti'māl wa 'l-'āda*.

[104] It must be stated that the aforementioned interpretive maxim is not universal in its application. Jurists would abandon veridicality as a basis for deriving rules only in circumstances where custom could perform the following hermeneutical operations: ascertain the meaning of a text (*ta'yīn*); bind an absolute principle (*taqyīd*); and specify a general statement (*takhṣīṣ*). Custom could also subvert or replace an analogical inference from a text (*qiyās*) as the basis of a legal ruling. In this latter instance, a textual rationale would be abandoned in favor of a non-textual rationale grounded in social practice. Recognition of custom, therefore, was not premised on a categorical denial of realism or veridical propositions. As I argue in chapter three, the positing of such oppositions as contradictory pairs is an outcome of the

Since custom in speech pertained to understanding the meaning of words based on their usage, it was commonly referred to in the matter of oaths.[105] Of particular significance here are words whose connotations in popular usage differ from their scriptural denotation. Ibn Nujaym cites the example of a person who promises to not sit on a floor-spread (*firāsh*). The Qur'ān also uses the word *firāsh* to describe the spread of the earth. Now if this person were to sit on flat earth, he will not have violated his oath because in common parlance *firāsh* does not mean "earth" but a spread made of cloth. The meaning of *firāsh* in common usage therefore takes precedence over its textual meaning in the Qur'ān. In another example, Ibn Nujaym states that if a person promises not to consume meat (*laḥm*), he will not have defected from his promise by eating fish. While the Qur'ān uses *laḥm* for fish, in common parlance *laḥm* only connotes red meat (301-303). The validity of an oath will also vary based on differences in meaning and reference across different regions. Ibn Nujaym offers the example of a person who promises not to consume bread. Such a promise will be kept or violated depending on the kind of edible that is classified as 'bread' in a certain region. In Cairo, the oath will only apply to wheat bread whereas in Tabaristan it will apply to bread made from rice (305).

A common thread running through Ibn Nujaym's examples is that the performativity of a promise does not depend on the sincerity of a speaker's intent or its lexical reference. Intentionality does not constitute, using Austin's term for the necessary criteria of speech acts to have effect, a

purifications peculiar to modernity. In Islamic legal theory, veridicality, figuration and custom can all co-exist as legitimate hermeneutical categories.

[105] In a culture that stressed moral obligation and honesty in one's everyday dealings, many human interactions were oath-based and did not always require written enforcement. It is commonly accepted in all Sunni schools of jurisprudence—with the exception of a minority position within the Mālikites—that a unilateral promise (*nadhar*) made by a person is morally binding but not legally enforceable. This lack of enforceability has created numerous predicaments of governance in modern Islamic finance, which I explore in detail in the chapter of gift-giving under contractual agreement.

felicity condition for a promise to be made or broken. The illocutionary force of a "commissive" rests not with the speaker's intent but with how his words are coded in custom. Since jurists were concerned with the immersion of the Sharī'a in social practice and everyday human interaction, their view of language differed from grammarians. The famous Transoxanian polymath and grammarian Sa'd al-Dīn Taftāzānī (d. 1390) anticipated an Austinian view of felicity conditions that had to be in place for a speech act to have effect: "When a word is not uttered for the right purpose but is subject to distortion and alteration, it can neither be taken as veridical nor figurative." Taftāzānī continues, "It cannot be figurative because there is no longer a connection between the word's actual meaning and the meaning intended by its utterance. In fact, such a word will be incorrect and cannot be relied upon" (Ibn 'Ābidīn n.d., 116; Usmani 2014, 299). The Syrian Ḥanafite jurist, Muḥammad al-Ḥaṣkafī (d. 1677), retorted with a jurisprudential perspective on language that is sensitive to custom: "If a people collectively use a word in a certain manner [that distorts and alters its actual meaning] and its deliberate utterance also conforms to such usage then this will serve as a new placement for the word and it will be recognized as correct." (Usmani 2014, 299) In other words, the jurist's concern is with custom and coinage, not with lexical or antecedently existing meanings. The former is contingent and emergent based on changing customs whereas the latter is fixed and determinate.[106]

2.3. Custom as an Authorizing Discourse in Islamic Law

As we observed with cases of both custom in action and custom in speech, rules that take customs into consideration are bound by the spatiotemporal coordinates of social practice. But are

[106] One can notice the evident contrast between the actual Islamic juristic conception of *'āda* and *'urf* and Keane's sweeping generalization of ethics sanctioned by discursive religion: "…The scriptural, monotheistic religions develop a point of view located *not* in the immediate surroundings like a given social unit or the ancestors or the first person position of the rational maximizer, but rather one predicated on the idea of a unitary and unique supreme being" (Keane 2016, 228).

there customs that escape the Sharī‘a altogether? What about norms and practices that carry no textual or historical precedent? How does the Sharī‘a recognize these as part of ordinary ethics? Moreover, what are the actual mechanisms through which unprecedented customary norms and practices are accommodated in the Sharī‘a? In his critique of Talal Asad's understanding of Islam as a "discursive tradition," linguistic anthropologist Steven Caton points to certain practices that become part of a tradition by reflexively authorizing the tradition itself rather than being authorized *by* it. Caton recognizes the utility of Asad's shift from a cognitivist emphasis on religious meaning to institutionally sanctioned modes of argumentation and disciplinary techniques used to authorize religious norms. Caton contends, however, that not all religious practices were recognized and constituted as such by means of the Sharī‘a's authorizing discourses in the Qur'ān, Ḥadīth, or *fiqh*.

To establish his point, Caton cites the example of the prayer for rain (*ṣalāt al-istisqā'*) and the liturgy and rituals surrounding its practice in Yemen. This prayer, at least apparently for the Yemeni practitioners, had no basis in authoritative scripture or the jurisprudential canon of their Zaydī school. In order to explain the religious acceptance of this practice in the absence of an authorizing discourse, Caton deploys what he calls a "metapragmatic" framework that allows us to see how new discourses are created through a dialogical interaction between authoritative and non-official discourses (Caton 2006, 42). Key to Caton's metapragmatic argument is that everyday practices and discourses not only sustain official doctrine through dialogic interaction but can also undermine or influence it from the outside. Pointing to a similar metapragmatic dynamic at work between "official" and "behavioral" ideology in Voloshinov's Marxist linguistics, Caton notes that the latter may "arrogate to itself the power to authorize itself without depending upon or waiting for an official ideology" (52). For Caton, the prayer for rain also acts like a "reported speech" which implicitly cues multiple voices and references from the Qur'ān to authorize itself (55). He

therefore differentiates it from the kind of discursive authorization that explicitly sanctions a particular practice as religious. For Caton, the source of authorization for the rain prayer becomes the citationality inherent to its function as reported speech, not the discursive authority of the Qur'ān alone.

In responding to Caton, Asad reaffirms his position that neither "lingualism" nor "textualism"—by which I understand him to refer to the position that reality is verbally constituted—are sufficient to understanding the embodied dimensions of authoritative discourse (Asad 2006, 212). Whereas Caton's emphasis is on communication and citationality as vehicles of self-authorization, Asad articulates a more expansive view of authoritative discourse in which authority acts as an "inner binding" that is constitutive of not just linguistic but also somatic and physical processes (213). Once we conceive of power in terms of capabilities and potentialities, an authoritative discourse ceases to be "an exchange of signs between autonomous senders and receivers" but brings into play multiple materialities—Asad lists "images, practices, institutions, programs, objects" as well as "other living bodies"—that activate feeling, sensation, perception, and cognition to shape bodily capacities and build new attachments (214). In Caton's model, the workings of authoritative discourse may simply be understood by comparing two texts: the self-authorizing rain prayer and its (implicitly) authorizing referent, the Qur'ān. It is, of course, helpful to examine the dialogical relationships between different texts and genres, but textual or linguistic analysis alone does not offer an adequate explanation as to why a practice becomes authoritative.[107] Caton's metapragmatic understanding of dialogical self-authorization fails to explain why customs that *don't* cue the Qur'ān or any authoritative religious discourse are given authoritative status.

[107] Asad's question is worth pondering: "If Caton thinks that the authority of the Yemeni rain prayers lies in their internal semantic structure, he should ask himself why they were not authoritative for him" (213).

Asad's response to Caton offers a helpful methodological critique of conceptions of religious discourse based on language and cognition, but neither Asad nor Caton attend to the theory and mechanisms developed by Muslim jurists to engage custom as an authoritative source of the Sharī'a. As I hope to have shown through examples of *'urf* and *'āda* discussed in Section 2, these are precisely the kind of *extra-scriptural* practices whose normativity precedes their authorization through a juridical discourse. Unlike textually prescribed acts such as prayer (*ṣalāt*) or alms-giving (*zakāt*), the normativity of customary practices doesn't stem from explicit sanction or regulation through scripture. Jurists conceived an organic link between the Sharī'a and custom. Neither the jurists nor scriptural sources *authored* customs into existence. However, once a practice was found to be rooted in custom and social norms, it was considered synonymous with an authoritative practice sanctioned by scriptural sources.

For Muslim jurists, the ordinariness, embeddedness, somatic quality, and spontaneity of custom were both its definition and proof of authority. Jurists didn't detail the processes through which custom in speech and practice came to be embodied—a task admirably taken up in recent anthropology of Islam. Instead, their task was to identify speech acts and practices that were *de facto* part of custom. This identification did not entail semantic, logical, psychological, structural or even moral evaluation. Perhaps Asad comes closest to describing how the jurists "interpreted" custom in speech and practice as a way of life:

> How we use words in various circumstances is the most familiar thing about our knowledge of language—in that sense, signs-in-use are inseparable from the way we live. We tend to use them competently in ordinary life even if we don't know why the forms in which they appear are important to what we are doing. In order to grasp what is being done here, one relies not on *interpretation* but on observing the skill with which things are competently done. The meanings of words-in-use lies, as it were, on the surface of recognizable practices—they are not mysteriously hidden in those practices, waiting to be dug out by an interpretive science. (214-215)

In concluding this section, I want to preempt a possible objection to my critique of Keane and Lambek's characterization of religious ethics as anchored in a transcendental, and therefore absolutist and universal, location as opposed to ordinary life. Since my focus in this chapter has been on custom as a lower authoritative source of the Sharī'a, it may be said that considerations of custom can always be overruled by the fixed and determinate ethical principles expounded in the higher authoritative sources of the Sharī'a, i.e. the Qur'ān and Ḥadīth. Given the hierarchy of authoritative sources of the Sharī'a, this is not an entirely unreasonable objection. In fact, jurists themselves are careful not to prioritize custom over an explicit text of revelation (*naṣ ṣarīḥ*) when explicating the hierarchical taxonomy of sources of the Sharī'a. It would therefore seem that the jurists' own discursive hierarchy affirms rather than contradicts Keane's understanding of the supremacy of transcendental ethical principles in the Sharī'a.

As I have attempted to show through a textual analysis of Islamic legal discourses on custom, the hierarchical relationship between custom and scriptural sources of the Sharī'a is not simply one of subordination of the former by the latter. Instead, written sources in the latter existed in a dialogical relationship with both written and unwritten forms of custom. In his pioneering ethnography of the written artefacts of the Sharī'a, Brinkley Messick identifies two broad levels of Sharī'a discourse: the library and the archive (Messick 2018). The library represents the cosmopolitan textual formation of the Sharī'a: those doctrinal and legal-theoretical texts, such as Ibn Nujaym's *Al-Ashbāh*, that expounded interpretive maxims and hermeneutical principles. The discursive style of these texts is a-temporal and non-contextual, which made them mobile and transportable on a cosmopolitan scale. The archive, on the other hand, represents the contingent textual formation of the Sharī'a. These were context-rich texts, such as *fatwā* collections, that

subjected the rule-based discourse of the library to empirical particularities and temporally situated configurations of fact. These two textual formations, however, were not isolated from one another.

Messick models the intertextuality of library and archival discourse in terms of dialectical and "reciprocal movements" between the two genres. Avoiding the artificial dichotomy of theory and practice, he deploys the metaphor of a script and its performance, showing how either can be both a model of and a model for the other (45). Just like a performance can always be improvised without deviating from a given script, the script itself can never capture or totalize the performance in its entirety. While I am suspicious of invoking rubrics of dialectic and reciprocity to explain a discursive movement/circulation that is both uneven and asymmetrical, I find Messick's script/performance metaphor to be a close approximation of how different genres and discursive formations interact with one another in practice. Its merit lies in facilitating a departure from the conceptual binarism that plagues distinctions of immanence and transcendence in anthropological discussions of ordinary ethics. Messick substantiates his theory by demonstrating the linkages between library and archive through ample ethnographic evidence from jurisprudence manuals, *fatāwā* collections, court documents, minutes of litigation, contracts, and notarial writings etc.

Messick's archival treatment of custom is particularly illuminating for our purposes. "Contingency in sharī'a texts" writes Messick, "was intimately tied to custom (*'urf, 'āda*), an essential ingredient in particular histories of the sharī'a." (29) Noting the longstanding Orientalist position on custom as remaining 'outside the Sharī'a system.' Messick contends that the separation of custom from Islamic law rests on a conceptual disjuncture between theory (found in texts) and practice (found in society). According to the Orientalist view, the custom could be contemporaneous but never coterminous with the written laws of the Sharī'a. It is quite possible to misconceive custom as being external to the Sharī'a if the latter is seen exclusively through the

lens of library discourse. However, a more comprehensive consideration of the Sharī‘a as consisting both library and archival discourse cannot ignore the "active dependence of a sharī‘a system thus conceived on receptions of local usages and conventions." (29) For Messick, custom in the Sharī‘a largely operated at the level of archival discourse. In fact, our previous discussion of custom in speech (*‘urf*) and practice (*‘āda*) and its reported cases in a major library text (*Al-Ashbāh*) demonstrate how custom was "absorbed and digested" into the doctrinal sources of the Sharī‘a.[108]

The internal diversity of the Sharī‘a and its discursive interaction with local customs, traditions, and institutions befits its characterization by Messick as a "total discourse" (Messick 1993, 3). Messick's coinage is indebted to both Marcel Mauss and Michel Foucault. The Sharī‘a is "total" in so far as it operates in harmony with the totality of religious, moral, cultural, tribal, economic and political norms and institutions of society. It is a "discourse" in so far as it entails forms of argumentation that are mediated by relations of power.[109] The Sharī‘a not only tolerated but elevated the value of custom as a form of social habitus and tacit recognition of the good in society. Custom, therefore, imbued ordinary life with ethical considerations. These insights on the Sharī‘a as a "total discourse" can be contrasted with Keane's peculiar characterization of the

[108] One of Messick's earlier iterations of the role of custom within the Sharī‘a could also be read in terms of an interaction between library and archival discourse: "Inasmuch as the shari‘a is general or summary in its provisions, there are two basic ways it could be extended or given necessary detail. One is through the activities of interpretation, which 'fill in gaps' in the shari‘a's conceptual structure as needed. The other is by reliance on the existing detailed structures of local usage, or 'urf, a patchwork backdrop of practices that showed through the gaps in the shari‘a fabric" (Messick 1993, 182).

[109] "Total" in Maussian terms is a principle of synchronic operation that gives expression to all the aforementioned dimensions of life. Regrettably, Shahab Ahmed in his ambitious *What is Islam?* misreads Messick's coinage of total discourse as advocating a "legal supremacist" view of Islamic law (Ahmed 2015, 119-120). This reading may have stemmed from Ahmed's confusion of "total" with "totalizing." For an illuminating discussion on the Maussian "total social fact," see Marcel Hénaff, *The Price of Truth: Gift, Money, and Philosophy* (Stanford: Stanford University Press, 2010).

totalizing impulse of Islam's "monotheistic perspective" and its radical separation from the Maussian total social fact:

> Ironically, the explicit goal of *totalizing* ethics under a theoretically justifiably moral principle in religion stands in contrast to the *totality* implicit in the Maussian total social fact. For it is an implication of the Maussian total social fact that ordinary social existence is *already* thoroughly saturated with ethics *prior* to any regulating principles. The ubiquity and sheer ordinariness of this ethics is crucial. (Keane 2014, 229)

2.4. Searching for Grounds to be Ethical: Immanence versus Transcendence

In this final section, I direct my attention to the metaphysical basis of the alleged divide between ordinary ethics and ethical piety. Underlying this normative, conceptual, and spatial division between the everyday and the exceptional is one of the most significant metaphysical binaries of secular thought and practice: immanence and transcendence. This binary sanctions a set of oppositions that are crucial for a secular ordering of things: sacred versus profane, private versus public, and, in the context of our discussion, scriptural morality versus ordinary ethics (Asad 2003, 23-25). Indeed, the immanence/transcendence binary is a key metaphysical concept that allows ordinary ethicists to imagine an overdetermined relationship between discursive religion and a severely constrained form of pietistic ethics.

When the anthropology of ordinary ethics claims to wrest conceptions of the ethical from transcendental foundations and secure its "descent into the ordinary," this move begs the question that the ethical in religious traditions is necessarily transcendental and not already a "dimension of everyday life" (Das 2012, 134). In other words, ordinary ethicists' descriptive claim of finding the ethical at work in quotidian and everyday practices—the immanent realm—entails the

performative effect of creating a closure around religious ethics as categorical, rule-bound, and transcendental. Far from unraveling metaphysical binaries that distribute ethics between normative realms of the religious and the secular, ordinary ethics *reinforces* the immanence/transcendence binary by privileging immanence as the true location of ethics. This privileging of immanence, of course, presupposes a transcendental realm from which ethics must be wrested. The immanence/transcendence binary is, therefore, the metaphysical pre-condition for an anthropological theory of ordinary ethics.

The anthropological claim of securing ethics in an immanent realm has not gone uncontested from within the discipline. Michael Lempert, a linguistic anthropologist, has been a vociferous critic of this newfound immanent foundationalism in the anthropology of ethics. It is possible to distill two major criticisms of ordinary ethics that have appeared in a series of articles and book reviews by Lempert. Firstly, the descriptive claim of locating ethics in everyday practices is analytically unhelpful as it diffuses ethics too widely and somewhat indiscriminately over society (Lempert 2013, 377).[110] Secondly, Lempert fears that the comfort of discovering the location of ethics may relieve anthropologists of their responsibility to explain *how* ethics is performed and enacted. Ordinary ethics isn't just "unproblematically there" but is the result of complex interdiscursive and communicative labors. Anthropologists, according to Lempert, should direct their efforts at understanding the discursive processes that make the ethical recognizable as such. This includes, but is not limited to, tacit forms of reflexivity that aren't always self-consciously driven as well as "denotationally implicit varieties" of ethical demands

[110] This criticism has also been leveled by the anthropologist of religion Joel Robbins (2016), who finds fault with ordinary ethicists and their attempts to confine ethics to an immanent realm. Robbins primary interest is not in unravelling the immanent/transcendent binary but in salvaging transcendence as a location of ethics.

and claims made on to others (376). For Lempert, it makes better analytical sense to speak of "ethical entanglement" than claim immanence as a foundational source for ethics (379).

Lempert's emphasis on performativity over location has the advantage of revealing continuities between reflexively embodied and discursively explicit mediums of ethical action and evaluation. Whereas the former are exemplified by Aristotelian virtue ethics and Foucauldian practices of the self, the latter give expression to moral reasons and Kantian categorical imperatives that are usually afforded by a cognitive distancing from habits. Lempert questions the "utility" of these disciplinary "dichotomies" between ethics and morality by noting how neither approach can avoid the "heterogeneity of reflexivity" that characterizes ethics in all its manifestations (376-377). For Lempert, seeking refuge in immanence creates analytical closure. In fact, it marks an anthropologist's resignation from the critical reflexivity needed to discern those interconnected discursive labors that give ethics its coherence and stability. One can notice here a methodological resonance between Lempert's interdiscursivity and Caton's metapragmatic reading of discursive authorization. To my understanding, the main virtue of Lempert's intervention lies in its ability to draw connections between seemingly isolated discursive genres of speech and practice. We have already explored a brilliant application of such interdiscursivity between Sharī'a texts and custom in the form of Messick's library and archive. The limitation of this approach, however, is that it still relies on semiotic analysis to explain the authoritativeness of a scriptural dictum or its embodiment in practice. As Asad reminded us in his response to Caton, the "inner binding" of authoritative discourse or ethical conduct cannot be entirely reduced to metapragmatic operations of language.

Defendants of ordinary ethics qualify Lempert's criticism by noting that it only applies to what they call a secondary or derivative aspect of ethics: notions of good and bad. For Michael

Lambek, ethical immanence is not coterminous with the discursive practice of ethical claim-making; it is the ground from which such claims are made (Lambek 2015, 129). The sort of discursive interaction and its underlying communicative labors that Lempert considers essential to ethics may, according to Lambek, only arise in "moral commentary" and "conversational practice" (Ibid). But ethics at its core, Lambek asserts, is the possibility and necessity of rendering judgment. When Lambek claims that ethics is "intrinsic to action," he is referring to the judgments and evaluations that are inherent to such action (Ibid). In this sense, ethics is immanent even to ordinary actions that may not be "semiotically characterisable" in "moral terms" (Sidnell 2019, 3). Lambek goes a step further in splitting the difference between what his critic understands as the irreducibly discursive character of ethics and what he himself means by ethical immanence: "Nowhere do I say that good behavior or wise judgments are themselves immanent. What I do say is that the existence and necessity of rendering judgment and the possibilities for acting well and judging wisely are immanent" (Lambek 2015, 129). One insight to be drawn from Lambek's clarification is that anthropological theorizing, not unlike theological disputation, can also be prone to the tendency of creating infinitesimal distinctions to salvage a theory or concept.

Far from sharpening the difference between ethical immanence and ethics as discursive interaction, Lambek's clarifications confound them even further. His exegesis of ethical immanence gives rise to a number of questions: if ethical pronouncements of good/bad are secondary to the possibility of judgment itself, does that make ethical immanence a *pre-discursive* condition? Is judgment *causally* prior to the communicative act of an ethical pronouncement? If so, is judgment a *cognitive* operation from the first person's standpoint? How does one avoid the mind/body dichotomy when maintaining that "virtuous behavior" is only a "second step" of the more immanent (essential?) ethical operation of judgment? (Ibid) It is hard to conceive of ethical

immanence as simultaneously reflexive and non-discursive given Lambek's reliance on 'judgment' as the primary condition of possibility for ethics. The more Lambek tries to secure an immanent position for ethics as prior to its semiotic mediation, discursive interaction, and intersubjective recognition, the more he veers close to a foundationalist conception of ethics.

In the end, Lambek settles with the term "infra-ethical" to designate the immanent ground from which communicative ethics emerges, defining the former as "the structure that underlies the possibility for specific ethical pronouncements or judgments… it is a part of the human condition and is thereby neither specifically 'natural' nor specifically 'cultural.'" (Ibid) The second part of the statement probably serves to temper the structural-foundationalist overtones of the first part.[111] We are told that ethics being part of the 'human condition' does not make it either 'natural' or 'cultural,' but does it make it anthropocentric? Regardless of what this statement says about the content of the 'infra-ethical,' it is clear that it exists in a structural relationship with specific ethical judgments. In a more recent statement on ethical immanence, ordinary ethicists explain that the "ethical is to speech (*parole*) or action what grammar is to language (*langue*)." (Sidnell et al 2019, 9) It is not difficult to see how this framing of ethical immanence leads us into same problems of

[111] It is not an uncommon academic practice to denounce some variety of essentialism and structuralism and then proceed to make claims that fall within their theoretical ambit. Such repudiations often serve to establish one's theoretical credentials and affiliations, but more so to preempt criticisms based on partisan lines that divide disciplinary factions. There's an uncanny resemblance between pronouncements of one's methodological orientation and disciplinary commitments—Foucaultian, ANT, post-structuralist, and 'why I am not a post-secularist' etc.—and creed-based confessions. Both are cognitive modes of granting one's assent to a set of beliefs or theoretical principles and propositions. One's disciplinary practices or habits of the imagination are of secondary importance to creedal affiliation in such pronouncements. When these pronouncements are made transitively to associate another with a creedal affiliation, they could either take the form of exoneration or accusation. Accusations of Orientalism or essentialism, for example, are leveled at others with sectarian fervor and often lead to acrimonious debate. For a provocative discussion of the polemical tenor of such accusations and their epistemological pitfalls, see Hallaq 2018, particularly the Introduction, Chapters 1 and 3.

determinism and epistemic closure that have plagued other varieties of structuralism in linguistics and anthropology.

If the infra-ethical is the ground or, put in another key, the symbolic order that both organizes and gives meaning to ethical actions and expressions, it becomes increasingly difficult to imagine unpredictable changes induced by an ethical agent or event.[112] The irony of this framing is that ordinary ethicists themselves deny any straightforward dialectical correspondence between ethical actions and moral rules and principles (3). And yet, that is precisely what a structuralist relationship between the infra-ethical and ethical action entails. Put simply, the theoretical basis used by ordinary ethicists to secure immanence undermines their aspiration of studying ethics in its "pervasiveness, ambiguity, lack of closure" (Ibid). One cannot both harness the certainty of structuralism and be open to the iterations and performativity of ethical action as "moving beyond the circumstances and conditions of its production to its effects and consequences (predictable and unpredictable)" (8).

These insights give credence to Lempert's critique that the effort to locate ethics exclusively in an immanent realm is not simply driven by demands of ethnography. It reflects a disciplinary will to power by which the world must be re-imagined and re-ordered. To quote Lempert, "The very search for ethics' source betrays disciplinary commitments to objects of

[112] My critique of the structuralist framing of 'infra-ethical' should not be misapplied to the relational and non-representationalist conceptions of power as put forth by Foucault. There is a key methodological difference between (a) identifying a dialectical relationship between structures of domination and their agents of resistance and (b) analyzing asymmetrical relations of power between regimes of governmentality and the governed. To quote Foucault, the movement from (a) to (b) entails "a refusal of analyses couched in terms of the symbolic field or the domain of signifying structures, and a recourse to analyses in terms of the genealogy of relations of force, strategic developments, and tactics." In fact, Foucault can almost be read as responding to Sidnell's claim of modelling ethical action on the dialectic of *langue* and *parole*: "Here I believe one's point of reference should not be the great model of language (*langue*) and signs, but to that of war and battle. The history which bears and determines us has the form of a war rather than that of a language: relations of power, not relations of meaning." (Foucault 1980, 114)

knowledge to which deference is still owed, and duly paid, thereby reassuring those in these fields that they still have something solid and perhaps even epistemologically irreducible under their feet" (Lempert 2013, 372). Richard Rorty would take the matter even further and charge any attempt at distributing objects of knowledge into discrete epistemic spheres—immanent, transcendent, nature, culture etc.—as indulging in metaphysics of representationalism. Privileging immanence over transcendence as the rightful location to examine ethics does not substitute a metaphysical approach with an ethnographic one; it trades one variety of metaphysics with another. To quote Rorty, "From a pragmatist angle, this whole notion of privileging a level and putting it forward as a foundation of inquiry is one more unhappy attempt to save the notion of truth as correspondence" (Rorty 1991, 89). When anthropologists insist on situating ethics in an immanent realm, they treat it as an object of inquiry that can be adequated through ethnography as a mode of representation. One can detect here the workings of a representationalist framework of epistemology in which truth (ethnography) is achieved through correspondence with fact (ethics).

I would go a step further and state that the immanentization of ethics does more than offer a representation of the ethical cosmology of ordinary life. It enacts a reconfiguration of religion as 'transcendental' and out of the ordinary by instituting a secular metaphysics of immanence. The search for sources or foundations of ethics cannot but be carried out by particular persons inhabiting particular institutions and epistemic vantage points. When this search, moving from the particular (ethnographic) to the general (immanent), ends in the discovery of a metaphysics of ethics, it necessarily occurs at the exclusion and effacement of other—including Islamic—views of the ethical. Ethical immanence may as well be "white mythology" sold as transcultural truth.[113]

[113] The reference here is to Derrida's radical equation of Western metaphysics with white mythology: "Metaphysics – the white mythology which reassembles and reflects the culture of the West: the white man takes his own mythology, Indo-European mythology, his own *logos*, that is the *mythos* of his idiom, for the universal form of that he must still wish to call Reason" (Derrida 1974, 11).

2.5. Conclusion

I have argued in this chapter that the newfound enthusiasm for ordinary ethics in anthropology, while correctly pointing to tacit ethical considerations that inform everyday life, reifies a false bifurcation between religious morality and everyday habits. In this new anthropology of ethics, attention to the ordinary is premised on the construction of an alternative zone of ethics associated with religion. By a logic of contrast, religious ethics is then excluded from the ordinary and posited as its other. In other words, the theory of ordinary ethics itself produces a figuration of religious ethics as rule-driven, cognitively explicit, categorical, and morally imperative. I have critiqued an example of such a figuration as found in Webb Keane's discussion of Islamic 'scripture-based' piety and ethics. As a corrective to the bifurcation between ordinary and religious ethics, I then examined the interflow of scripturally sanctioned norms and everyday ethical habits through discourses of custom (*'āda*) and tacit recognition (*'urf*) in Islamic law.

As my analysis of *'urf* and *'āda* in the preceding sections has shown, it is quite possible to develop an elaborate account of tacitly recognized and habitually performed ethics without resorting to the *immanentization* of the ethical. Any variety of dogmatic insistence on either transcendence or immanence as the true source of the ethical obfuscates the complex and heterogeneous operations of ethics in religious traditions. The Ḥanafite jurists, for instance, did not need to demarcate an immanent realm to be able to recognize the normativity of customs and habits. As extra-scriptural sources of normativity in the Sharī'a, customs and habits were endowed with a quality of givenness. If a repetitive norm or practice was internalized by a community to the extent of becoming integrated into its ecological formation, the Sharī'a recognized its ethical status as prima facie. The exaggerated distribution of ordinary and exceptional ethics between mutually exclusive realms of immanence and transcendence becomes all the more implausible

when one considers how custom, both linguistic and practical, could qualify, alter, and even suspend, dictates of scripture. As I have shown through examples in Section 2, custom spoke to the cognitively explicit and rule-based practices of the Sharīʿa and vice versa. Their relationship exhibited what Messick has called the dialogical interaction between the Sharīʿa library and archive.

Muslim jurists, to be sure, were clear about the higher authoritative status of textual sources over custom, but the latter was always considered an integral part of the Sharīʿa. Ordinary ethics in the Sharīʿa system existed in a hierarchical relationship with textual sources. But the crucial point that needs to be made here is that *hierarchy* between custom and text, mediated by asymmetrical relations of power, did not give way to a *binary* between immanent and transcendent sources of ethics. An exclusive emphasis on immanence not only produces a static picture of the ordinary but also blinds us to its dynamics of embodiment, entextualization, and iteration that are put in motion through the citationality of religious texts and ethical practices. Encapsulating ethics in an immanent realm may provide the comfort of sanitizing the ethical from religious—read "transcendental"—influence, but this secular operation obfuscates the interdiscursive labors and complex operations of power that make ethics possible and give it its peculiar shape and format. If an anthropology of ethics wants to be open to multiple expressions of the ethical, their varied sources of nourishment, and their movement across implicit and explicit mediums of affect and discursivity, it needs to break free from the immanence/transcendence binary.

Chapter 3: Secularizing the Sharī‘a: Corporate Personhood and Limited Liability

> "To search for a meaning is to bring to light a resemblance. To search for the law governing signs is to discover the things that are alike."
>
> ~ Michel Foucault, *The Order of Things*.

Introduction

The limited liability corporation is the defining institutional form of contemporary financial capitalism. Capitalism would not be conceivable without the existence of corporations. The aspirational project of developing an Islamic alternative to capitalism has, therefore, had to reckon with the corporation as its primary institutional form. The pre-modern Sharī‘a developed its own indigenous models of business partnerships and commercial enterprise. These models, however, differ in their legal structure from the limited liability corporation in two significant respects: (a) they do not have an independent existence separately from their owners and (b) they are not invested with exceptional legal immunity. Deobandī proponents of Islamic banking, under the leadership of Mufti Taqi Usmani, have argued that the concepts of corporate personhood and limited liability can be accommodated within the discursive framework of the Sharī‘a. Their attempts to reformulate the Sharī‘a's conception of personhood and financial liability, however, have met with intense criticism from their co-religionists. With the modern Islamic banking project not being more than four decades old, these debates bring to the fore major ethical and hermeneutical fault lines within a discursive tradition undergoing transformation. Moreover, these debates are of foundational importance for the Islamic banking project.

In this chapter, I situate the Deobandī discursive battle over corporate personhood and limited liability within a new paradigm of capitalist governance called "corporate sovereignty." (Barkan 2013) Under corporate sovereignty, corporations act as both extensions of and supplements to state power. They extend it in the form of biopolitical mechanisms of governance that operate through markets. At the same time, their operations also transcend the state's territorially confined juridical authority; they enjoy legal privileges and exceptions unavailable to private citizens. Corporate sovereignty is the condition of possibility for the Islamic finance project. The debates between Usmani and his critics are thus animated by similar concerns of the abuse of financial power and legal immunity. The discursive format of the debate, however, remains within the bounds of traditionalist jurisprudence (*fiqh*), its meta-principles and hermeneutics. I read textually grounded arguments and counter-arguments in this debate by considering the rules of discourse governing Islamic legal interpretation. A central hermeneutical category or literary device that figures in these debates is that of similitude and its various forms. I pay close attention to the semiotic configurations and pragmatic functions of these literary devices to understand how they perform the work of discursive authorization. Previous anthropological accounts have documented the performative resonance between Islamic banking and capitalist finance. (Maurer 2005; Rudnyckyj 2011) However, it is only by attending to knowledge practices drawn from the hermeneutical toolkit of the Sharī'a that we can appreciate the actual discursive labor of Muslim jurists that contributes to the authorization of Islamic banking.

Apart from assessing the Deobandī debate on corporate personhood and limited liability from a hermeneutical standpoint, I read it as a discursive event that allows us to approach the larger problematic of secularization. I therefore isolate the hermeneutical strategies of Usmani and his

critics and read them contrapuntally with other theorists of secularization. To be more specific, in so far as the secularization thesis—in its articulation by Carl Schmitt—makes an argument for the continuity of theology in the form of the modern secular state, Deobandī proponents of Islamic banking make a similar argument for secularization with respect to the corporation. Usmani, in particular, justifies corporate personhood and limited liability by referring them back to their "juristic parallels" in the Sharī'a. My interest, therefore, is in seeing how a connection between religious and economic/financial concepts is established so as to impute an implicitly religious quality to the latter. This requires attending to both semiotic and pragmatic dimensions of the discourse on secularization. The former establishes a similarity between religious and secular concepts whereas the latter indexes their mutual influence. In order to understand how both dimensions are at work within the discursive contestations between Usmani and his critics, I compare two analytical categories used to establish an affinity between religious and secular concepts: Usmani's juristic parallels (*naẓā'ir*, sing. *naẓīr*) and what Giorgio Agamben calls the signature of secularization.

The ensuing argument of this chapter is that the Deobandī justificatory discourse on corporate personhood and limited liability affects a secularization of the Sharī'a at two interconnected levels: the conceptual and the juridical. At the conceptual level, Deobandī proponents of Islamic banking build bridges between the formal legal structures of Islamic institutions of social welfare and the legality of modern corporations. Through this work of translation, the major structural and ethical differences between these two institutional forms are suppressed in favor of formal resemblances. At the juridical level, the citational effects of engrafting Islamic institutional forms into the domain of corporate sovereignty end up authorizing corporate personhood and limited liability. This discursive authorization grants Islamic banks

moral and institutional credibility, which in itself is a crucial form of social capital. In the end, the Sharī'a itself is reconstituted as a discursive object through the process of secularization, the consequences of which I outline using a metaphor of the 'thinning' of religion. In the conclusion, I return to methodological considerations that apply to scholarship on secularization. Responding to Talal Asad's critique of the reliance on formal resemblances between religious and secular phenomena, I argue that formal resemblances, along with the differential effects of discursive contestations between historical actors, are crucial to any work that presents a genealogy of secularization.

Chapter Outline:

The chapter is divided into 5 sections. Section 1 provides the broader context of our discussion by presenting a genealogy of corporate sovereignty. Contrary to the methodological individualism and objectivity that marks economic discussions of corporations, I show that a political theology underlies the history and formation of corporate personhood. In Section 2, I introduce the circumstances in which the Deobandī debate over corporate personhood and limited liability took place. I analyze Usmani's philological arguments in favor of corporate personhood and limited liability and rebuttals presented by his critics. Here I also introduce the juristic and hermeneutical categories of similitude deployed in this debate, particularly focusing on what I call the "juristic parallel" (*naẓīr*). Section 3 is largely theoretical and epistemological. I read Usmani's juristic parallels (*naẓā'ir*, sing. *naẓīr*) contrapuntally with Agamben's signature. I compare and analyze their hermeneutical functions and pragmatic operations. I also situate both categories within an epistemic history of the mimetic faculty, the Classical Age of resemblance, and the economic regime of representation. In Section 4, I return to the discursive battle between Deobandīs. Whereas Section 2 focused on the formal arguments presented in this debate, here I

address moral-ethical concerns regarding corporate personhood and the question of continuity within the tradition. This question becomes salient as Deobandīs try to resolve the "puzzle" as to why a model of corporate personhood was never developed in Islamic law. Finally, Section 5 provides a detailed articulation of the chapter thesis presented above and concludes with a discussion on the methodology of secularization.

3.1. A Genealogy of Corporate Sovereignty

Current economic analyses of corporations presume a methodological separation of questions of ethics and politics from economic efficiency. Corporations are conceived and analyzed in terms of a nexus of private contracts that resolve the principal-agent problem: the management of the wealth of multiple individuals (the principal/shareholders) by a body of business specialists (the agent/corporation). Corporations are thus conceptualized as economic agents that efficiently channel diversely sourced investments towards wealth generating and profit maximizing ends. Questions about the distributive outcomes of such activity and its ecological consequences are not considered internal to the functionality and working dynamics of corporations (Bell et al. 1971).[114] As the critical legal theorist Bernard Harcourt remarks in *The Illusion of Free Markets*, the idea of a natural orderliness and its subsequent technical-scientific iterations attached to markets absolves them from moral critique and evaluation (Harcourt 2011).

Even mainstream liberal criticisms of corporations are premised on the fundamental separation between the internal logic and law like functionality of corporations and their external

[114] Nobel laureate and the preeminent Economist of firms and organizational behavior, Ronald Coase, makes the case for a socially and morally agnostic pursuit of profit for corporations in unequivocal terms:

> … Should the management of a corporation undertake (or refrain from) any activities to benefit others if the profits of the corporation would suffer as a result? This is what I understand corporations are being asked to do when they are called upon to exercise "social responsibility." My answer is *no*. We would be better off if management thought of nothing except maximizing profits, at least in those cases which form the subject of the debate on social responsibility. (Bell et al. 1971, 10)

outcomes. Take, for example, progressive-liberal criticisms of the role of corporations in labor exploitation, tax evasion, and environmental degradation etc. Conventional liberal wisdom states that more regulations are needed to curb abuses of corporate power.[115] The underlying assumption here is that corporations and states are independent entities and that corporate power is not only separate but also inimical to state sovereignty. Furthermore, corporations are seen as forces of globalization that function outside the constraints of territorial borders and, therefore, simultaneously transcend and compromise state sovereignty.[116]

Market fundamentalists and contemporary liberal critics may disagree as to the utility and appropriate range of regulations needed to govern corporate activity, but they agree on the fundamental premise that such regulations can only be externally imposed on corporations, as the latter are ontologically distinct entities from the state. Seen from this perspective, one might falsely conceive Islamic finance as a uni-directional movement towards markets and away from the state. Indeed, holding similar assumptions about the freedom of markets from the state, the Middle East scholar and foreign policy advisor Vali Nasr celebrates the rise of Islamic finance as fomenting a new "Muslim bourgeoisie" that can successfully counter the influence of Islamic extremism (Nasr 2010). The Islamic turn towards capitalism, Nasr hopes, will finally supplant the ugly tradition of authoritarian rule in the Muslim world by ushering a new democratic revolution.[117]

[115] My usage of the term "liberal" here is not intended in the sense of classical liberalism. In terms of its designation as an economic orientation in contemporary American political discourse, a "conservative" values free markets and minimalist government. A "liberal," on the other hand, favors governmental regulations over unfettered markets. Conservatives frequently accuse progressive-liberals for advocating socialism, whereas liberals attack conservative hypocrisy in using state legislation to curb reproductive rights. Notwithstanding the paradoxes of their respective positions, both orientations are in alignment with the disciplinary and biopolitical mechanisms of neoliberal governmentality.

[116] A representative liberal critique of the abuses of multinational corporations can be found in Stiglitz (2003).

[117] Nasr's providential view of capitalism as rooting out religious fundamentalism and securing democracy does more than reinforce an ontological distinction between markets and the state. The idea of

The Economist Timur Kuran has wondered why the corporation was never developed in Islamic law. Kuran repeats conventional economic wisdom on the corporate firm, articulated in its most influential form by the Chicago School economist Ronald Coase, as the most efficient and cost-reducing institutional mechanism for conducting trade (Coase 1937). For Kuran, the corporation is a product of the institutional maturity and legal complexity of societies and marks their transition from personal to impersonal modes of exchange. The absence of the corporation in Islamic law is thus an historical anomaly that requires explanation.[118] One of the major reasons

market-based governance as a corollary to liberal democracy has a respectable pedigree in Economics as a discipline. Its most vocal and prophetic advocate was Milton Friedman, Nobel laureate and one of the founders of the Chicago school of Economics. In his *Capitalism and Freedom* (1962), Friedman argued that only competitive capitalism could merge governance with political freedom. In other words, capitalism as a governing mechanism provides the only solution to what Foucault described as the liberal problematic of government without governing too much. The fact that Nasr finds in Dubai a prime example of this liberative turn towards Islamic capitalism actually confirms rather than contradicts the thesis of capitalism and freedom. "Freedom" here signifies an ever-expanding domain of consumer choice fueled by innovation and planned obsolescence. It is hardly surprising then that veteran New York Times journalist Thomas Friedman should praise Saudi prince Muhammad Bin Salman from "driving religious and economic reform" that would put an end to the "virus of antipluralistic, misogynistic Islam." (Friedman 2017) Finally, Nasr's historical analysis also rests on a normative-teleological foundation, wherein the Muslim world would need to follow the historical script of the rise of capitalism in Europe in order to overcome the disease of extremism. It is not uncommon for economists to attribute socioeconomic and political turmoil in the modern Middle East to a failure in following the historical script of Western capitalism. For a representative economic history of such an argument, see Kuran 2013.

[118] To quote Kuran,

> The business corporation is critical to the modern global economy. Hence, it is natural to wonder whether the Middle East might have overcome the handicaps identified thus far, and made the transition from personal to impersonal exchange, through some alternative organization rooted in corporate law. (Kuran 2013, 96)

Kuran's economic history can be read a classic example of what Dipesh Chakrabarty has described as a historicism informed by the "imaginary waiting room of history" (Chakrabarty 2000, 8). According to this theory, which Chakrabarty extracts from the writings of John Stuart Mill, the history of Europe leads global civilization towards the promise of freedom and enlightenment. Other societies that are not yet capable of treading the path of progress must first undergo preparation in the waiting room of history. This preparation takes the paradigmatic form of European colonization, where lesser societies are gradually bestowed with the right to self-determination. Beneficial institutions and forms of governance are also transplanted to lesser societies by their colonial masters. When Kuran finds it "natural" to wonder about the non-existence of the corporation in Islamic law, he takes the corporate form as a self-evident telos of historical progress. This telos is dictated by the economic trajectory of the West. Societies where the corporate form is not developed are thus considered "economic laggards" and, by implication,

Kuran offers for the absence of the corporation in Islamic law is the history of strong and centralized governments that ruled Muslim societies. Had there been less authoritative governance and more economic freedom, perhaps the corporation could have emerged in the Islamic Middle East. Kuran thus repeats the folk narrative of corporations as self-governing mechanisms of trade and finance that were given rise in Europe due to weakening state authority (Kuran 2010, 103).

Whether the imagined separation of states and corporations is grounded in disciplinary methodology or ideological aspiration, it fundamentally misconstrues the nature of state sovereignty and corporate power. In his superb study of the genealogy of modern corporations, Joshua Barkan argues that modern corporations are neither categorically inimical to the state nor mere reflections of state authority. Relying on Agamben's concept of the ban as a zone of indistinguishability between sovereign power and bare life, Barkan states that corporations function in an interstitial space between state jurisdiction and the domain where the law is suspended. Corporations, in this sense, simultaneously embody state sovereignty and are exempted from it. They are a 'supplement' in the Derridean sense of both adding to and substituting state sovereignty. Asking how much state regulation is needed to curb the abuse of corporate power is, according to Barkan, asking the wrong question. Barkan sees the relationship between states and corporations as defined by a kind of "doubling," wherein they simultaneously complement and undermine each other. In Barkan's own words,

> Corporations and states model each other's defining figures. Modern state sovereignty is founded in and anchored to a figure of the corporate political body. Likewise, modern corporate power emerges from and mobilizes apparatuses of

historically backward. Their only path to salvation is to catch up to the West by replicating its institutions and enacting its principles of success.

> sovereignty, discipline, and government. In this manner, corporate power and state sovereignty depend on one another, each establishing the other's condition of possibility. Nonetheless, the relation is full of tension, as these institutional ensembles mix and often threaten one another's existence. (Barkan 2013, 6)

Today's multinational corporations perform functions that have historically been the reserve of states—including, but not limited to, market governance, corporate social responsibility, education, incarceration, and healthcare etc. At the same time, corporations militate against state sovereignty by claiming exemption from state law and extending their operations beyond territorial confines of the nation-state. The virtue of Barkan's approach is that it allows us to appreciate how both sovereignty and governmentality are a crucial part of corporate governance.

The first great corporations were created through sovereign state charters that allowed them to finance and govern the European colonial enterprise. These charters established a state of exception for corporations to occupy and govern new territories on behalf of the colonial state. Modern financial corporations continue to enjoy legal immunities in ontological and functional terms. Whereas limited liability protects corporations from their creditors, their global operations transcend state boundaries, thus allowing them to evade taxes, circumvent state laws, and violate environmental regulations. While this extension of sovereign power invests corporations with legal immunity, their mechanisms of corporate governance rely on techniques of disciplinary and biopower.

As disciplinary institutions, corporations train their own employees into disciplined subjects with a pragmatic disposition towards problem-solving and an aptitude for risk-taking (Ho 2009). They conduct regular audits to create a culture of self-vigilance and ensure goal-oriented performance within departments (Strathern 2000). On the other hand, as centers of biopolitical

governance, corporations deploy statistical systems of knowledge to gauge market demand and product performance. These modes of knowledge inform processes of manufacturing, marketing, and product placement that in turn stimulate demand and shape patterns of consumption. Barkan coins the term "corporate sovereignty" to refer to this dual embodiment of sovereign power and governmentality within corporations. As supplements that both embody the law and transcend it through the legal immunity invested in them, corporations cannot be simply understood as superseding the state and its juridical authority. Sovereignty does not vanish but is reconfigured with the emergence of biopolitical governmentality.

Barkan further notes that the concept of corporate personhood emerged in an American context as a solution to the problem of liberal governmentality (Barkan 2013). This problem, as Michel Foucault articulated it in his lectures on biopolitics, was that of governing a politically autonomous subject in a state that was bound by an imperative of 'not governing too much' (Foucault 2010, 13). In the post war era, the state's political sovereignty was reduced to guaranteeing a market infrastructure that would organize social relations and guide human activities to achieve optimal levels of productivity (173). With the unlimited generalization of the market as a model of governance, a new subject defined by economic interests—the *homoeconomicus*—replaced the juridical subject of the state (273, 282). It is within this context of the state's new role of guaranteeing the rules of the market as an economic game that the corporation emerged as a legal entity. The corporation existed independently of both the state and individual shareholders; it was an institutional form that harnessed the power of the former while representing the aggregated interests of the latter (Barkan 2010, 65). The corporation thus became a person in its own right—not liable to anything larger than itself.

In American legal discourse, given its pragmatist and realist influences in the 20th century, the ontological character of corporate personhood got sidelined in favor of the practical implications of corporate governance. In the words of prominent American pragmatist John Dewey, the corporation is but "a verbal and fiscal convenience," an abstracted "mercantile device rendered necessary by a credit economy" (63). Dewey warned that corporations could erode democratic forces by accumulating massive capital and acquiring monopolistic forms of control over material resources, but he was also absolutely clear that such dangers were not causally connected to the ontological basis of the corporate entity. Instead, they were specific to the structural features of American capitalism and were to be politically guarded against through legal and democratic institutions (64).

Barkan's theory of corporate sovereignty critically relies on the first two books of Agamben's *Homo Sacer* series: *Homo Sacer* and *State of Exception*. In these books, Agamben was largely interested in the relationship between sovereignty and biopower but did not focus on governmentality per se (Toscano 2011, 130). By merging the sovereign exception and biopolitical management in the body of the modern corporation, Barkan in many ways anticipated Agamben's genealogical study of governmentality and its connections with sovereignty in *The Kingdom and the Glory*.[119] *The Kingdom and the Glory* is in many ways an extension of Carl Schmitt's secularization thesis on to the domain of the economy (Agamben 2011, 3). In this extension, one may even paraphrase Schmitt as saying that 'all significant concepts of the modern theory of *economics* are secularized theological concepts.' Agamben shows how the administrative function of biopolitics, on the one hand, and the ceremonial aspects of popular sovereignty, on the other,

[119] I should note that Barkan's *Corporate Sovereignty* was published in 2013 whereas the English translation of *Il Regno e la Gloria* as *The Kingdom and the Glory* appeared in 2011. Barkan, however, does not base his analysis of corporate sovereignty on the latter.

are in fact secularized renditions of the theological paradigm of *oikononomia* and the liturgical glorification of divine sovereignty.[120] In other words, Agamben finds modern governmentality and popular sovereignty as corresponding to the two immanent and transcendental polarities of what he calls the "governmental machine" of theological Government and Kingdom.[121]

In Agamben's theological genealogy, modern economics as a science of efficient resource allocation finds its correlate in a theology of providence that gives order to the universe and sustains its ecosystems according to divinely ordained laws of nature (280-283). Herein lies the derivation of modern governmentality and market-based distributive justice from the theological paradigm of providential government (278). As for constitutional democracy and its reliance on the will of the people as a legitimating expression of popular sovereignty (secured through democratic voting), Agamben argues that today's mediatized simulations of public opinion in liberal democracies perform the liturgical function of theological acclamations that glorifying divine sovereignty (253-259). Further, Agamben claims that the domination of the latter by the former, i.e. the takeover of popular sovereignty by economic rationalities of administrative governance, fulfills a long drawn process in which God's direct intervention in worldly affairs is gradually eclipsed in favor of divinely instituted, though functionally autonomous and self-propelling, mechanisms of governance.[122] (276, 287)

[120] I define *oikonomia* in Section 3.

[121] I have presented a detailed criticism of the immanence/transcendence binary as an analytical principle of distinguishing between secular and religious phenomena in Chapter 2. Whereas Agamben questions the allegedly secular provenance of modern governmentality and points to Foucault's failure in tracing its theological underpinnings, he nevertheless relies on the immanent/transcendent binary to distinguish between (a) "economic theology" as an "immanent" art of government and (b) "political theology" as the "transcendent" founding of sovereign power in a single God. (Agamben 2011, 1)

[122] In explaining the correlation of sovereign power with its various insignia and ceremonial expressions of grandeur, Agamben claims to have demystified a working relationship between power and its symbolism that eluded many philosophers and social scientists before him: "Why does power need glory? If it is essentially force and capacity for action and government, why does it assume the rigid, cumbersome, and 'glorious' forms of ceremonies, acclamations, and protocols?" (Ibid, xii) To my

While Agamben does not deal with the question of corporations in *The Kingdom and the Glory,* the work of medieval historian Ernst Kantorowicz shows that a political theology underlies the foundation of the corporation as sovereign entity—one that both governs and carries legal immunity.[123] Kantorowicz notes that Roman catholic theologians in the twelfth century reconceptualized the body of the Roman Catholic Church in terms of *corpus mysticum* or the mystical body of Christ (Barkan 2013, 23; Kantorowicz 1957, 198). This model of incorporation allowed the Catholic Church to become the representative of the collective will of the people. At

understanding, Agamben's response reproduces the functionalism of legitimation that has dominated classical anthropological and sociological explanations of power:

> … The function of acclamations and Glory, in the modern form of public opinion and consensus, is still at the center of the political apparatuses of contemporary democracies. If the media are so important in modern democracies, this is the case not only because they enable the control and government of public opinion, but also and above all because they manage and dispense Glory, the acclamative and doxological aspect of power that seemed to have disappeared in modernity. (xii)

For Agamben, just as the liturgical glorification of an inactive God served to "cover with its splendor the unaccountable figure of divine inoperativity," so does the "new and unheard of concentration, multiplication, and dissemination of the function of glory as the center of the political system" dissimulate a popular sovereignty that is "emptied of all meaning." (163, 276). I provide an alternative explanation of symbolism as a bipolar—both reflexive and transitive—form of power in my discussion of *shi'ār* (symbol) in Chapter 1.

[123] There are, of course, alternative Christian and non-Christian genealogies of providential government—notwithstanding the difference in their historical efficacy—that might bring to light the theological underpinnings of governmentality. Agamben's reading of the Physiocrats and their elaboration of political economy as a divinely instituted "science of order," particularly in reference to the writings of Francois Quesnay (d. 1744) and Guillaume Francois Le Trosne (d. 1728), demonstrates a startling parallelism with the Indian philosopher-theologian Shāh WalīAllāh al-Dihlawī's (d. 1762) theory of *irtifāqāt* (lit. utilities, fig. supports of). (281-282; al-Dihlawī 2005) Agamben's meticulous archaeological inquiry, however, is based almost entirely on Christian theological sources. He chides Foucault for the latter's theological abstinence which prevented him from "articulating his genealogy of governmentality all the way to the end and in a convincing way" (Agamben 2011, 112-113). In contrast to Foucault, Agamben states that in his study "the shadow of the theoretical investigation of the present projected on the past here reaches, in fact well beyond the chronological limits Foucault had assigned to his genealogy, the first centuries of Christian theology, which see the first, uncertain elaboration of the trinitarian doctrine in the form of an *oikonomia*." (xi) Of course, no genealogical account of *oikonomia* can be complete without recourse to classical Greek philosophy. Agamben also refers to Rabbinic literature and makes a few references to Averroes, but his overall effort is intended to show "how the Trinitarian *oikonomia* may constitute a privileged laboratory for the observation of the working and articulation—both internal and external—of the governmental machine." Agamben proceeds, "For within this apparatus the elements—or the polarities—that articulate the machine appear, as it were, in their paradigmatic form." (Ibid)

the same time, the Church was the purveyor of the will of God and thus endowed with a sacred quality. The incorporation of the Church as a divinely ordained institutional representative of the body of believers protected it from the juridical power of the Emperor. The Catholic Church thus became the model for subsequent secular forms of incorporation that received charters of approval from the sovereign that granted them quasi-legal immunity. The connection between incorporation on religious grounds and legal immunity is connected to the idea of the inviolability of the sacred. In his *Profanations,* Agamben describes the theological connection between sacrality and freedom from commercial exchange.

> Sacred or religious were the things that in some way belonged to the gods. As such, they were removed from the free use and commerce of men; they could be neither sold nor held in lien, neither given for usufruct nor burdened by servitude. Any act that violated or transgressed this special unavailability, which reserved these things exclusively for the celestial gods (in which case they were properly called "sacred") or for the gods of the underworld (in which case they were simply called "religious"), was sacrilegious. And if "to consecrate" (sacrare) was the term that indicated the removal of things from the sphere of human law, "to profane" meant, conversely, to return them to the free use of men. (Agamben 2007, 73)

It is not entirely coincidental that contemporary arguments for corporate personhood and limited liability in the Sharī'a were primarily drawn from the model of the charitable endowment (*waqf*). The *waqf* was an institution of social welfare that carried a number of legal privileges and protections. A *waqf* once founded existed in perpetuity and, unlike private property, it was not subject to market exchange or inheritance claims. Islamic banking selectively appropriates certain features of the *waqf* and other social welfare institutions of the Sharī'a and directs them towards commercial enterprises. Let us now transition to our discussion of the Deobandī justificatory discourse on corporate personhood and limited liability.

3.2. Contesting Corporate Personhood and Limited Liability in the Sharī‘a

Unlike the development of the corporation in the West, the Muslim world did not have an indigenous model of the limited liability corporation. The economist Timur Kuran is correct in so far as he notes that the corporation and other capitalist institutional forms were effectively transplanted to the Muslim world—through colonialism—during the eighteenth century. We are not concerned here with the social and economic history of that process of institutional transplantation. Instead, I focus on the discursive formation of an Islamic alternative to these institutions, which barely began four decades ago. The debates surrounding the status of the corporation in Islamic law stand in stark contrast with discourses surrounding the formation of the Catholic Church in the twelfth century to the nineteenth century debates on corporate personhood in the American legal establishment. These latter discourses that I surveyed in the previous section shape the discursive contours of the paradigm of corporate sovereignty. Islamic legal discourse on corporate personhood marks a transposition of the Sharī‘a into this paradigm. In the context of South Asia, this transposition is severely contested by Deobandī critics of Islamic banking.

Deobandī proponents of Islamic banking argue that any institutional alternative to financial capitalism must deal with the reality of corporate institutions. They have therefore attempted a justification of its ontological status from within the framework of the Sharī‘a. Mufti Taqi Usmani has been a leading international figure in this movement. As arguably one of the most influential Sunni scholars in the contemporary Islamic world, Usmani has been carrying out this task of justification over the past two decades. Usmani and his Deobandī supporters, mostly hailing from prominent *madrasa*s in Pakistan, such as the Dār al-‘Ulūm Karachi and Jāmi‘at al-Rashīd, now serve in influential advisory positions in Islamic banks. A major segment of Deobandī scholars, however, have critiqued and dismissed the jurisprudential foundations laid for Islamic banking and

finance by Usmani. These scholars hail from reputable Deobandī *madrasa*s, including Jāmi'a Fārūqiya Karachi and Jāmi'a 'Ulūm al-Islāmiyya Binori Town. In 2008, a collective legal edict (*fatwā*) was issued by a group of around 500 Deobandī scholars and published in the Daily Jung newspaper, the most widely circulated Urdu news outlet in Pakistan. Signatories mostly included Deobandī *'ulamā'* from Pakistan, including Usmani's teacher and the head of *Wifāq al-Madāris*, SalīmAllāh Khān.[124] Signatories also included representatives of Deobandī *madrasa*s from India and Bangladesh. The *fatwā* was soon developed into a 400 page book entitled *Murawwaja Islāmī Baynkārī* (*Prevalent Islamic Banking*) and was published under the collective authorship of "Rufaqā' Dār al-Iftā'" (friends of the Dār al-Iftā' at Jāmi'a 'Ulūm al-Islāmiyya). Since the publication of the *fatwā* and its accompaniment in book form, a discursive battle has ensued between Usmani and his supporters and critics of Islamic finance. The *fiqh* literature on Islamic finance has expanded vastly due to these internal debates, ranging from extremely technical treatments of juristic topic to highly polemical rebuttals and counter-rebuttals. Parties to this Deobandī schism are referred to in the local literature as "permitters" (*mujawwizīn*) and "critics" (*nāqidīn*).

In this section, I focus on the discursive contestation over Usmani's justifications of corporate personhood and limited liability. I first narrate Usmani's seminal arguments and then discuss their rebuttals. Treading the path of jurisprudence (*fiqh*) as a skilled jurist himself, Usmani admits that an elaborate notion of the corporation is absent from the Islamic legal canon. However, he argues that the Muslim jurist could still find juristic parallels (*naẓā'ir*, sing. *naẓīr*) in the Shari'a that resemble the corporation's legal structure (Usmani 2009, 168).[125] Usmani uses these *naẓā'ir*

[124] I discuss the *Wifāq al-Madāris* and its significance as an institutional representative of a network of approximately Deobandī 20,000 *madrasa*s in Chapter 4: Standardization.

[125] I discuss *naẓā'ir* and my rationale for translating them as juristic parallels shortly.

to establish modes of kinship between the corporate form and other institutional entities recognized in Islamic law. Usmani and his critics both agree that the Sharī‘a recognizes a contracting agent (*‘āqid*) as an individual who is independent, i.e. not a slave, who possesses a sound intellect, and carries both the will and ability to form a contractual agreement with another party. (Rufaqā’ Dār al-Iftā’ 2008, 171) These conditions evidently presuppose that the contracting agent (*‘āqid*) is an empirical reality in the form of a biological person (*al-shakhṣ al-ḥaqīqī*). They also recognize that contractual partnerships (*shirka*)—distinct from *sharika*, the Arabic term for the modern company—sanctioned in the Sharī‘a share two characteristics: (a) the partnership does not have an independent existence on its own and cannot outlive its constituent partners, and (b) the partners in a commercial enterprise do not enjoy limited liability.[126] (118-119)

Usmani considers these two as the most basic form of personhood (*shakhṣiyya*) and partnership (*shirka*) that meets the conditions of validity (*shurūṭ*) for commercial exchange and business enterprises in the Sharī‘a. He then states that many administrative and organizational features of modern corporations do not conflict with the Sharī‘a. However, he points to corporate personhood and limited liability as two aspects of corporations that are a “cause for hesitation” (*bā‘ith-i taraddud*) when seen from the perspective of the Sharī‘a (Usmani 1993, 79-80). He then argues that although one does not find an articulation of corporate personhood or limited liability in the textual sources of the Sharī‘a, Muslim jurists in the past did indeed confer upon non-human entities the ability to form contracts and carry out commercial transactions (*mu‘āmalāt*). Usmani cites the charitable endowment (*waqf*) and public treasury (*bayt al-māl*) as two non-human legal

[126] The Arabic term *shirka* refers to the model of partnership in Islamic law whereas *sharika* refers to the modern company (Usmani 1993, 62).

entities that were able to enter into commercial agreements as contracting agents in their own right. The *waqf* and the *bayt al-māl* were thus, according to Usmani, endowed with legal personhood.

Firstly, the *waqf* is a legal entity that exists independently of the many individuals constituting its bureaucratic and administrative apparatus. Apart from having its own independent and perpetual existence, the *waqf* is also an owner of properties that are endowed under its name. It can act as a creditor or lend the usufruct of such property for rental income. *Waqf* institutions such as the mosque (*masjid*) or school (*madrasa*) can also act as plaintiffs or defendants in a court of law. This means that natural persons working for the *waqf* may indeed represent it, but cases will be lodged and adjudicated in the name of the *waqf* and not its representative employees (Thāqib al-Dīn 2009, 153-155). In a similar manner, the public treasury (*bayt al-māl*) acts as an owner of the wealth and property secured under its name. Although individuals may become employees or beneficiaries of the *bayt al-māl*, they cannot claim ownership of all or part of its wealth. Historically, the *bayt al-māl* had separate divisions of charity and government revenues. In the event that the division of charity (*ṣadaqa*) runs out of funds, it may borrow from the division of tax revenues (*kharāj*) to meet its needs. The *bayt al-māl* can thus also act as a debtor and creditor within its divisions (155-157).

Usmani cites examples of other activities conducted by the *waqf* and *bayt al-māl* to buttress his claim that such institutions performed contractual tasks and exhibited the rights and responsibilities of natural persons. Such institutions, according to Usmani, thus acted as a legal person (*al-shakhṣ al-qānūnī*), irrespective of the fact that Muslim jurists in the pre-modern era devised no such conceptual category. Usmani is careful with his words and does not use these juristic parallels (*naẓā'ir*) as evidence for sanctioning the corporation. He simply contends that their presence and functional character opens an avenue of recognizing a concept of legal

personhood in Islamic jurisprudence, even if the term is absent from the vocabulary of Muslim jurists. After having shown that the notion of a legal person is not entirely alien to Islamic legal practice, Usmani moves to its more controversial corollary that grants it legal immunity: limited liability.

Usmani comes up with a diverse array of instances of legal protection in the Sharī‘a that seem to put limited liability into practice. I limit my focus to two instances. The first is the case of an “inheritance consumed by debt” (*tarika mustaghraqa bi ’l-dayn*). This refers to a deceased debtor whose debt liabilities have exceeded the value of his/her inheritance (171). Under such dire circumstances, Ḥanafite jurists (*fuqahā’*) decreed that the deceased’s creditors will only be able lay claim on existing assets of his/her inheritance to recover the debts owed to them. Portions of the debt that exceed the deceased’s inheritance must be dissolved, since a debtor’s liability cannot be transferred to his/her heirs. Usmani compares the functional similarity of this legal protection with the bankruptcy of a limited liability corporation. Once a corporation goes bankrupt, its assets are also liquidated and any debts exceeding the value of those assets are dissolved. Creditors cannot pursue the corporations investors or management to pay the remaining debts (105). The *tarika mustaghraqa bi ’l-dayn*, therefore, operates on a similar principle.

Another stronger parallel to the principle of limited liability appears in the partnership in commenda (*muḍāraba*). The *muḍāraba* is a contractual partnership between a principal and an agent. The former, the investor or financier (*rabb al-māl*), is a sleeping partner, whereas the latter is a business manager (*muḍārib*). In this arrangement, if the manager incurs debts for the operation of the business enterprise without the investor’s approval, the latter will not be liable for these debts despite being the owner of that enterprise. If the business goes bankrupt owing to the manager’s careless borrowing, the investor will only bear losses to the extent of his/her invested.

The manager will be responsible for any remaining debts. (134) For Usmani, both these parallels demonstrate that a concept of limited liability was operational under certain conditions in pre-modern Islamic jurisprudence. It was now up to Muslim jurists of the present age to make the imaginative leap beyond natural personhood and employ available hermeneutical principles in the Sharī'a to construct a viable theory of legal personhood.

Usmani's critics first counter his reading of the *waqf* and *bayt al-māl* by stating that a model for commercial partnerships already exists in the Shari'a. A *shirka* is indeed constituted by the sum of its contracting parties but, unlike the corporation, it isn't ontologically separate from them. A *shirka* cannot condense the liabilities of its respective participants into the quasi-immunity of a sovereign body. Given the presence of the *shirka*, Usmani's detractors find no compelling reason to construct an alternative notion of legal personhood from within the Shari'a (Rufaqā' Dār al-Iftā' 2008, 321). They further argue that disparities between the corporation and pre-modern Islamic institutions are not only ontological but also functional. To begin with, the assets owned by the *waqf* or *bayt al-māl* are public property that can't be claimed by the very individuals who have invested in them. Unlike the corporation, when a *waqf* or *bayt al-māl* is dissolved, there are no creditors and shareholders to lay claim on their assets. Moreover, the *waqf* and *bayt al-māl* enter into contracts and conduct transactions for the specific purposes of social welfare. They are exempted from conditions of natural personhood because they are meant to undertake charitable measures for the public. The corporation, on the other hand, serves private interests and runs on the principle of profit maximization. (329) Thus, a major communitarian-ethical difference marks these two entities. I consider the moral and ethical critique of corporate personhood and limited liability in more detail in Section 4 below. Here I limit myself to the hermeneutical flaws in Usmanis reasoning as pointed out by his critics.

On the parallels of limited liability brought forth by Usmani, critics again find his comparisons unjustifiable. On a hermeneutical level, the disparity (*tafāwut*) between the compared cases far outweighs their resemblance (*tashābuh*). Commenting on the case of the "inheritance consumed by debt" (*tarika mustaghraqa bi 'l-dayn*), critics state that the agreed upon principle of Islamic jurisprudence is that debts are only foreclosed through repayment (*adā'*) or remission (*ibrā'*). One's death in dire circumstances does not absolve him/her from his/her debts, unless creditors voluntarily forfeit their right to retrieval. (200) The inability to pay back one's debts therefore does not translate into a legal right of limited liability. A case similar to the deceased debtor is that of the insolvent debtor. If it is established by evidence that a debtor in distress has no means or prospects to pay off his/her debts, a Sharī'a court of law may refuse to apprehend him/her, as doing so would yield nothing. But this does not negate the creditors' right to repayment; it simply means that the juridical and administrative means for retrieval have been exhausted. Critics thus claim that an administrative limit has no bearing on an individual's liabilities towards his/her creditors. In fact, it is an accepted principle amongst the Ḥanafites that the rights of a plaintiff are not negated with the passage of time; there is no statute of limitations in the Sharī'a.[127] These principles point to the socially mediated nature of rights and responsibilities imagined in the Shari'a. For Usmani's critics, ignoring the circumstances of an indebted person under distress to make him/her an example of limited liability for the corporation sanctions a form of legal immunity that is both alien and inimical to the Shari'a (212).

Countering Usmani's second parallel to limited liability that he finds in the partnership in commenda (*muḍāraba*) arrangement, critics state that it actually refutes the notion of a corporation's limited liability rather than supporting it. Firstly, the investor's (*rabb al-māl*)

[127] Text (Arabic): *Li'anna 'l-ḥaqqa lā yasquṭ bi-taqādum al-zamān*.

immunity to debts incurred by the manager (*muḍārib*) is conditioned on the absence of the former's consent. If it can be shown with evidence that the *rabb al-māl* approved or acquiesced to debts taken by the *muḍārib* then the former will still be responsible for those debts. Secondly, Ḥanafite jurists distinguished between a loan (*qarḍ*) and a debt (*dayn*). The *muḍārib* may take loans in a personal capacity, for which the *rabb al-māl* can't be held responsible. But debts are often incurred to facilitate essential business operations. In fact, such debts may actually be crucial to protect the principal (*ra's al-māl*) invested in the business by the *rabb al-māl*. Therefore, the *rabb al-māl* cannot claim immunity from debts that constitute a necessary aspect of the regular business cycle. His/her "limited liability" is strictly conditional (Udovitch 2011).

Besides these conditions demarcating the investor's (*rabb al-māl*) sphere of financial liability, Usmani's critics also argue that, in a *muḍāraba*, the manager's (*muḍārib*) functions and responsibilities are closer to those of the corporation than to its shareholders. Although the corporation's executives also own assets and shares in the company, they are the ones primarily responsible for managing and governing its business operations. It therefore makes no sense to align the liability of an investor (*rabb al-māl*) in a *muḍāraba* with the corporation's unjustifiable limited liability. Moreover, by the logic of Usmani's juristic parallel (*naẓīr*), any losses a corporation incurs due to careless borrowing by the corporate management will have to be borne by the latter. Such a situation would contravene rather than establish the principle of limited liability (Rufaqā' Dār al-Iftā' 2008, 304).

Finally, critics respond to an oft-cited argument that since a corporation regularly publishes financial reports and prospectuses, providing detailed information of its debts and assets on a balance sheet, potential investors and creditors are familiar with risks involved in buying shares or financing that company. They thus willfully accede to the principle of limited liability (Usmani

1993, 82-83). This claim, critics argue, is self-defeating on two grounds from a Sharī‘a perspective. Firstly, the rules and conditions stipulated on a corporation's information prospectus clearly establish its unjust advantage over the potential shareholder, both in terms of amassing a larger share of profits and shielding itself from debt repayments in the event of a bankruptcy. Since these rules unconditionally favor the corporation over its shareholder as party to the same contract, the conditions (*sharā'iṭ*) of such a contract are unacceptable in Islamic law and it is rendered invalid. Secondly, the shareholder's entry into an asymmetrical contract with the corporation, one that exonerates the latter from debt obligations, is not the result of a mutual agreement between two parties with equal negotiating power. The condition of limited liability is forced on the shareholder against his/her interest and, therefore, does not constitute a legitimate act of debt remission (*ibrā'*) by the shareholder. Such an agreement, however elaborate its published details may be, is in violation of the most basic contractual conditions and principles expounded in the Sharī‘a.[128] (Rufaqā' Dār al-Iftā' 2008, 312) In light of these observations, critics argue that the juristic parallels Usmani has drawn between corporate personhood and Islamic institutional forms are not only incongruous in form but also lead to undesirable ethical consequences. None of them justify reconfiguring the natural person (*al-shakhṣ al-ḥaqīqī*) and the Shari‘a's model of contractual partnership (*shirka*).

One of Usmani's most talented students, Muftī Thāqib al-Dīn, penned a 650-page rebuttal to the juristic arguments presented in *Murawwaja Islāmī Baynkārī*. Unlike Usmani's other disciples who have practical experience in the Islamic banking industry, Thāqib al-Dīn runs his own local *madrasa* in Karachi and devotes much time to authoring books on Qur'ānic exegesis.

[128] These two principles being "entitlement to gain or profit is subject to bearing responsibility for loss" (*al-kharāju bi 'l-ḍamāni*) and "returns are justified with losses" (*al-ghurmu bi 'l-ghunmi*). I elaborate both principles in connection with what Wael Hallaq calls the Sharī‘a's "persistent moral benchmarks" in the final section of the chapter (Hallaq 2018, 79).

When I met him in his Dār al-Iftā' in the spring of 2017, he was busy completing a translation and commentary of a Persian-Arabic text *Mutashābihāt al-Qur'ān* (*Ambiguous Verses of the Qur'ān*), authored by the erudite Deobandī philosopher-theologian Anwar Shāh Kashmīrī (d. 1933).[129] Thaqib al-Din first laments that critics of Islamic banking are largely unfamiliar with the science of juristic disagreements (*'ilm al-furūq*) and its hermeneutical categories.[130] He argues that a quick dismissal of Usmani's juristic parallels (*naẓā'ir*) stems from confusing them as examples (*amthila,* sing. *mithāl*). (Thāqib al-Dīn 2009, 142) Both the *naẓīr* and *mithāl* denote relations of similitude, but there is also a difference of degree and nature between them. Thāqib al-Dīn provides a definition, citing the authoritative work *Al-Ashbāh wa 'l-Naẓā'ir* of the Shāfi'ite jurist Jalāl al-Dīn al-Suyūṭī (d. 1505):

> Verily the *mumāthala* [*mithāl*] necessitates equivalence in all aspects; the *mushābaha* [*shabīh*] necessitates sharing in most respects but not all; and the *munāẓara* [*naẓīr*] suffices [sharing] in some aspects even if it is a single aspect. [For example] It is said: "this is a *naẓīr* of this in such and such respect," even though it differs in all other aspects.[131] (Al-Ṣuyūṭī 2000, vol. 2, 259; Thāqib al-Dīn 2009, 69)

[129] The genre of *mutashābihāt al-Qur'ān* was usually only braved by scholars who had mastered the literary science of rhetoric (*'ilm al-balāgha*) and had a keen perception of various forms of literary similitudes and ambiguities (*mutashābihāt*). As we will see shortly, Thāqib al-Dīn uses his skill in this genre to launch a sophisticated hermeneutical defense of his teacher Usmani.

[130] I discuss this genre along with *al-ashbāh wa 'l-naẓā'ir* in more detail in Section 3.

[131] It have noted in square brackets that *mumāthala*, *mushābaha*, and *munāẓara* are the infinitives of the third verbal forms of the roots of *mithāl* (*m-th-l*), *shabīh* (*sh-b-h*), and *naẓīr* (*n-ẓ-r*) respectively.
Text (Arabic): *Inna 'l-mumāthalata taqtaḍī 'l-musāwāta min kulli wajhin wa 'l-mushābahata taqtaḍī 'l-ishtirāka fī akthari 'l-wujūhi lā kullihā wa 'l-munāẓarata takfī fī ba'ḍi 'l-wujūhi wa law wajhan wāḥidan, yuqālu: hādhā naẓīru hādhā fī kadhā wa in khālafahū fī sā'iri jihātihī.*

Suyūṭī differentiates between three relations of similitude: *mithāl*, *shabīh*, and *naẓīr*. A *mithāl*, according to this definition, denotes a strong correspondence between two entities that are similar in all respects. A *naẓīr*, in contrast, denotes a weak correspondence between two entities. The weakness of this correspondence results from their likeness in a few or only a single aspect. A *shabīh* occupies an intermediate position between these two and does not concern us here. Suyūṭī's definition, however, is lexical and only establishes the degree of difference between *mithāl* and *naẓīr*.

Thāqib al-Dīn also cites an excerpt from the terminological lexicon by the towering Deobandī figure Ashraf 'Alī Thānawī, *Kasshāf Iṣṭilāḥāt al-Funūn wa al-'Ulūm*: "The *mithāl* of a thing is an essential part of its composition. The *naẓīr* of a thing [only] shares in it a designated matter."[132] (Thānawī 1996, 2/1447; Thāqib al-Dīn 2009, 70-71) Here Thānawī establishes a qualitative and hierarchical difference between *mithāl* and *naẓīr*. A *mithāl* of something shares with it a common essence in the form of a genus or an ideal-type. A *mithāl* is thus a constitutive member of that which it is an example of (*mumaththal lahu*). For example, the leopard and the tiger are examples (*amthila*, sing. *mithāl*) of two species belonging to the Panthera genus. The *naẓīr*, on the other hand, does not share a common essence with its corresponding entity (*manẓūr ilayhi*). In fact, as Thānawī says, the *naẓīr* relates to another thing in a designated matter but is not an essential part of it or does not belong to the same family. To take another example, an airplane is a *naẓīr* of an eagle. They are two ontologically distinct entities and share neither a common genus nor an archetype. The one common aspect they share, which is their common attribute (*manẓūr fīhi*), is flying. Perhaps a partial resemblance or a simile come close to denoting a relationship based on *naẓīr*. I choose to translate the *naẓīr* as a "parallel" because it maintains a

[132] Text (Arabic): *Anna mithāl al-shay'i lā budda an yakūna juz'iyyan min juz'iyyāti dhālika 'l-shay'i wa naẓīr al-shay'i mā yakūnu mushārikan lahū ay li-dhālika al-shay'i fī 'l-amri 'l-maqṣūdi minhu.*

sense of ontological distinction between two entities that are placed side by side for comparison.[133] The mere fact of being placed side by side does not establish a necessary connection between two things. It merely facilitates a consideration of their differences and similarities. In the case of *naẓā'ir* (sing. *naẓīr*), the differences between two things far outweigh their similarities.

Thāqib al-Dīn proceeds to argue that a *naẓīr* by definition deviates from its *manẓūr ilayhi* in most respects. One needs a tutored eye to detect their similarity in a forest of differences. One similarity over a hundred differences is enough to establish a relationship of *naẓīr* between two dissimilar entities. In contrast, the observable facets of a *mithāl* are closely aligned with its *mumaththal lahu* almost to the point of exactitude (Thāqib al-Dīn 2009, 79). Thāqib al-Dīn notes that the reason critics have dismissed Usmani's comparisons between corporate personhood and its Islamic forms is because they judged those comparisons by the criterion of *mithāl*. But Usmani was too astute a jurist to look for *amthila* (sing. *mithāl*) for the legal person or limited liability in Islamic legal history. He was strictly concerned with finding parallels (*naẓā'ir*, sing. *naẓīr*) to these concepts. If the *bayt al-māl* could own property despite not being a natural person (*al-shakhṣ al-ḥaqīqī*), this common attribute of owning property was sufficient to establish it as a *naẓīr* for corporate personhood. The question as to the sufficiency of a *naẓīr* in transferring a ruling from a case to its weakly corresponding parallel was subject to much hermeneutical contestation, the details of which I will consider in the third section of the paper.

In defense of Usmani's parallelisms between the corporation and pre-modern Islamic institutions, Thaqib al-Din further argues that categories of existence (*wujūd*) in Islamic legal theory were far richer than the binary of empirical-natural personhood versus abstract-legal

[133] In fact, the English word "nadir" as the lowest point is derived from the Arabic *naẓīr*. It is the opposite of zenith which means the highest point. (Hoad 2006) Despite their difference, the two terms correspond to each other as marking the parallel limits of a vertical space.

personhood. He thus thinks that critics were mistaken in dismissing Usmani's comparisons of ontologically incommensurable entities, such as the insolvent human debtor and the bankrupt corporation. Thaqib al-Din reminds his co-religionists that resemblances between things could be subtle enough to traverse ontological boundaries. For instance, depending on the context of usage, Thāqib al-Dīn notes that Muslim jurists have the Qur'an as signifying an empirical body (*wujūd fī 'l-khārij*), a conceptual entity (*wujūd fi 'l-dhihn*), a body of syntax (*wujūd fi 'l-'ibāra*) and a textual entity (*wujūd fi 'l-naṣṣ*). Based on these different ontological categorizations of the Qur'ān, Thāqib al-Dīn argues that even things that are physically or conceptually dissimilar may share a quiddity (*māhiya*). (153-154)

Thaqib al-Din further states that critics are wrong in dismissing the corporation on grounds that it is a 'fictitious' entity. The corporation acquires different personas depending on its context-specific performances, each of which have their own juristic parallels (*naẓā'ir*). For instance, when the corporation enters a financial contract, it performs an action and thus becomes synonymous with a natural person (*al-shakhṣ al-ḥaqīqī*). But since the corporation has to be distinguished from a living, breathing, and thinking human being, there is no harm in attributing to it a legal persona. Personhood (*shakhṣiyya*) itself, Thāqib al-Dīn alleges, does not signify a human or biological essence as is wrongly construed by Usmani's critics. The etymological root *sh-kh-ṣ* refers to a distinguishing characteristic (*hay'a mumtāza*), not to an anthropocentric essence. An entity can thus acquire a personification (*tashakkhuṣ*) based on biological, spiritual, aesthetic, and many other forms of distinction. Thāqib al-Dīn argues that Usmani's *naẓā'ir* cut through differences between biological essence and legal construction to locate corporate personhood as a distinguishing characteristic shared by the corporation and Islamic institutional forms (154).

3.3. Similitude, Resemblance, and the Signature of Secularization

Usmani's ability to cut through historical and empirical differences and identify parallels between Islamic and secular institutions is also common to theorists of secularization. In this section, I compare Usmani's hermeneutics with Agamben's peculiar strategy of reading history and locating the theological referents to secular categories and concepts. Agamben's genealogical method is different from Usmani's hermeneutical approach to finding parallels between capitalist and Islamic institutions and concepts. However, in so far as both authors 'cast a shadow on to the past' to highlight affinities or continuities between the theological and the secular, their writings can be instructively contrasted as offering two complementary approaches to secularization.

To begin with, Agamben extricates his genealogy from the potential charge of essentialism. He clarifies that he doesn't seek to explain connections between theology and government "by means of a hierarchy of causes, as if a more primordial genetic rank would necessarily pertain to theology." (Agamben 2011, xi) Agamben also contrasts the secularization theses of Max Weber and Carl Schmitt by noting that whereas the former interpreted modernity as driven by the progressive decline of religion and the disenchantment of the world, Schmitt argued the reverse by claiming that theology continued to influence and shape modernity in significant ways. Agamben then proceeds to clarify that even Schmitt's concept of secularization, which he extends and elaborates, does not entail "an identity of substance between theology and modernity, or a perfect identity of meaning between theological and political concepts."[134] On what principle or

[134] The fact that Agamben doesn't feel the need to similarly redeem Weber from the charge of equating modernity with the "disenchantment and detheologization of the modern world" is perhaps reflective of the hegemony and intuitive appeal of the Weberian thesis. (Agamben 2011, 3-4) As Wael Hallaq has perceptively noted, theories of progress often enjoy uncritical assent as the positive other of the widely despised notion of historical nostalgia (Hallaq 2013, 14). It is not uncommon for authors to try and unburden themselves from charges of indulging in the latter. Claims about historical progress, however, are seen as less problematic. To be sure, Weber's sophisticated narrative about the rise of capitalism and its religious catalysts in Europe avoids any simple teleology of historical progress. Rather than celebrate

by what method, then, does Agamben formulate a theological genealogy of economy and government? Here Agamben introduces his theory of the "signature," which he defines as,

> … Something that in a sign or concept marks and exceeds such a sign or concept referring it back to a determinate interpretation or field, without for this reason leaving the semiotic to constitute a new meaning or a new concept. Signatures move and displace concepts and signs from one field to another (in this case, from sacred to profane, and vice versa) without redefining them semantically….
>
> In this sense, secularization operates in the conceptual system of modernity as a signature that refers it back to theology. (4)

Agamben thus distinguishes the signature from a sign or a concept. The signature is not coterminous with what Agamben calls the "sense" of a term or its "semantic nucleus." (20) It is a "strategic relation" between, on the one hand, a specific discursive field in with a term or concept acquires its paradigmatic form and, on the other hand, the denotational extensions of that term or concept into different discursive fields. This movement of a term or a concept across discursive fields does not transmute its semantic nucleus to constitute a new meaning but rather entails a "gradual analogical extension of its denotation." (Ibid) In other words, a signature does not detect the formation of new concepts—or transformation of existing ones—but allows us to observe different iterations of the same concept. For Agamben, secularization is similarly a signature that marks political, economic, and aesthetic etc. signs and concepts and "refers them back to their theological origin." (4)

As per Agamben's further elaborations in *The Signature of All Things: On Method* (2009), the key confusion to be avoided regarding the signature is that it is neither reducible to a semantic function of explicating the meaning of a term nor to a semiotic function of identifying the mode

either historical progress or disenchantment, he mourns the "iron cage" of bureaucratization and its cold calculative rationality that has entrapped humanity in modernity. (Weber 2001, 123) Nevertheless, Weber's historicism should be deserving of as much epistemological scrutiny and clarification as is Schmitt's alleged essentialization of theology.

of signification—iconic, indexical, symbolic—by which a term is recognized (Agamben 2009, 60-61). A signature, in other words, does not establish the meaning of a term within a semantic field or decipher the formal properties of its legibility within a set of semiotic relations. What I have been able to gather from Agamben's numerous—though not unmistakably consistent—usages of "signature" is that it is a pragmatic potential that is situated at the "threshold" between a term's semiotic and semantic configurations. (64) It facilitates the passage of a concept from abstract signification to meaningful discourse. (60-61) A signature thus both marks a term and exceeds it by making possible its movement from one discursive field to another. Furthermore, as I understand it, this movement is both transitive and reflexive. A signature not only enables the "displacements and movements" of a term across different discursive fields but also acts as the "clue" that allows us to trace that term back to its "original paradigm." (Agamben 2011, 4, xii; Agamben 2009, 70)

Agamben notes that a conventional history of ideas approach fails to register the signature of secularization due to its insistence on locating the history of a concept within a singular discursive field. In contrast, if one pays attention to the movements of *oikonomia* across discursive fields—an alternative approach to the history of ideas that Agamben calls the "archaeology of signatures"—it becomes possible to observe "structural analogies that accompanied and made possible the shift from the theological context to the political one" (Agamben 2011, 272).

If we compare Agamben's archaeological method with Usmani's juristic hermeneutics, we can notice a few important similarities in their analytic operation.[135] Notwithstanding evident

[135] I do not, by any means, wish to suggest that these analytic similarities point to a common epistemological framework that is unconsciously shared by both Agamben and Usmani. I also do not presume that Agamben and Usmani inhabit a common zeitgeist or spirit of the times that flattens historical difference and motivates them to historicize capitalism in theological terms. Even though they are contemporaries, both Agamben and Usmani operate from different positions of epistemic authority and institutional power. Their respective projects are also embedded in two discursive traditions that are

differences in terms of methodological framework, critical orientation, and the scale and historical location of their respective projects, both projects share three significant features. Firstly, both Agamben and Usmani point to "structural analogies" between capitalist concepts/institutional models and pre-capitalist ones. Both authors work backwards in time to locate a pre-capitalist model for an existing capitalist concept and/or institution. Finally, both authors defy disciplinary orthodoxy premised on periodization and traverse epistemological boundaries to establish affinities between the "religious" and "secular."[136]

Differences between Agamben and Usmani are also instructive. Whereas Agamben carefully marks the denotational extensions of theological *oikonomia* through different epochs in the religious history of Europe, Usmani skips the historical narrative and only concerns himself with "structural analogies" at a formal level of analysis.[137] For Agamben, the signature of secularization proves the lasting influence of theology on modernity—contrary to claims of a radical disjuncture between the religious and the secular. For Usmani, structural similarities between the capitalist corporation and Islamic welfare institutions enable an extension of the rules of the latter on to the former. In the end, both authors articulate the religious underpinnings of capitalist concepts and institutions for purposes of their respective projects. Agamben

differentiated by history, geography, and asymmetrical relations of power. Agamben is an Italian continental philosopher working in the Christian theological tradition, whereas Usmani is a Sunnī-Deobandī jurist in Pakistan working in the tradition of Ḥanafite jurisprudence.

[136] The allusion here is to Kathleen Davis's (2008) excellent study of periodization as a self-legitimating principle of secularism. According to Davis, the epochal rupture between modernity and pre-modernity functions according to the logic of the sovereign exception. Periodization, therefore, establishes modernity as an exception in the form of a radical departure from pre-modernity. A representative work that performs this task with much scholarly elegance is, of course, Hans Blumenberg's *The Legitimacy of the Modern Age* (1985). Within the scholarly context of European debates on secularization, Agamben's genealogy can rightly be placed in the series of works by Carl Schmitt (2006) and Karl Löwith (1949) that challenge the exceptional and a-theological character of modernity.

[137] I further elaborate the implications of this methodological difference in my discussion of Talal Asad's critique of secularization below.

accomplishes with the signature what Usmani tries to accomplish with the help of juristic parallels (*al-naẓā'ir al-fiqhiyya*).

Having identified these similarities and differences, I now want to home in on a more rudimentary category of analysis that informs Agemben and Usmani's projects: similitude. It is now clear to us that the signature of a term or a concept directs us to another, usually prior, discursive field to which the term belongs. But how does the signature sustain a concept's connection to a particular discursive field even after its displacement into another? How do we recognize the signature of a concept—that "strategic relation" that takes the concept back to a "determinate field"—if the signature itself is neither a semiotic relation nor the semantic nucleus of a concept? Moreover, is the signature performed or is it something intrinsic to a concept that awaits archeological excavation? Agamben doesn't directly address any of these questions, but his cogitations on the location and functional character of signatures may offer—despite their ambivalence—some clues.

On the one hand, Agamben affirms the pragmatic function of signatures in making a sign or a concept "efficacious and capable of action" (Agamben 2009, 50). Here the signature bears a performative function—which is not the same as saying that it is performed by the reader's interpretive agency. On the other hand, Agamben also insists that signatures reside in language. Language is not only "the archetype of the signature" but also "the reliquary of signatures" (36). Signatures are, therefore, both "inseparable from the sign" and, due to their pragmatic character, "irreducible to it" (50). Agamben explains the signature's "irreducible excess of efficacy over signification" through the paradigmatic example of the sacrament. A sacrament not only signifies a sacred thing by means of similitude but also 'actualizes the efficacy' of the sacred.[138] (47) A

[138] Agamben quotes from Hugh of St. Victor: "…the sign may signify the thing, but not confer it [*conferre*]. In the sacrament, instead, there is not only signification but also efficacy, such that it signifies

sacrament, then, is a form of similitude that confers the effect of what it resembles. In light of this example, let us reconsider Agamben's statement that the signature both marks and exceeds a sign or a concept. The 'marking' here refers to the signature's similitude with the signified; the 'exceeding,' on the other hand, refers to the signature's ability to confer the effect of the signified onto another domain.

Going back to our question, how can we look at a concept—say, economy—and be able to discern a signature that 'marks' it as a denotational extension of a prior concept from another field—say, theological *oikonomia*? Here Agamben draws on Walter Benjamin's reflections on the "mimetic faculty." Benjamin referred to the mimetic faculty as that remarkable human capacity to discern and create similarities by behaving mimetically (Benjamin 1979, 65, 69). Whereas physical and sensuous resemblances between things informed ways of perceiving and living in the ancient world—Benjamin cites the constellation of stars and the horoscope as examples—today that law of similitude has found its way into language and writing in the form of a "non-sensuous similarity."[139] (66-67) To put it in other words, Benjamin speaks of a re-orientation of the mimetic faculty from its sensitivity to resemblance in sensuous qualities and physical appearances to its concentration in the non-sensuous similitude of language.[140] Language and writing establish

by means of institutions, represents by means of similarity, and confers by means of sanctification." (Agamben 2009, 45)

[139] Benjamin's shift from "sensuous" to "non-sensuous similarity" finds a close parallel in the semiotic distinction between the iconic sign—one that signifies by means of a resemblance in appearance—and the symbolic sign—one that signifies by means of a legal or linguistic convention. But since Benjamin situates this shift in a larger historical process, to my understanding it corresponds with what Foucault identified as an epistemic transformation from the "age of resemblance" to the "age of representation" in Renaissance Europe (Foucault 1994). I discuss the relevance of this transformation from resemblance to representation to the epistemology of Economics and Usmani's subversion of it below.

[140] To be sure, Benjamin does not characterize the divergence between sensuous and non-sensuous similitude as one of categorical difference. Regarding the non-sensuous similarity, he states: "The concept is obviously a relative one: it indicates that in our perception we no longer possess what once made it possible to speak of a similarity which might exists between a constellation of stars and a human being."

similitude by means of formal, symbolic and conventional relations between words and their designated things. Benjamin thus sees language and writing as constituting "an archive of non-sensuous similarities or non-sensuous correspondences." (68) Agamben confirms that signatures too belong to this sphere of "immaterial similarity" that is now the province of a re-oriented mimetic faculty. "The specifically human faculty of perceiving similarities" notes Agamben, "…precisely coincides with the ability to recognize signatures that we have examined so far." (Agamben 2001, 71) Agamben's analytic operation of drawing "structural analogies" between capitalist and theological concepts can thus be seen as a mimetic endeavor of discovering the "immaterial" and "non-sensuous similarities" between economics and religion.

Once we take into consideration the role of the mimetic faculty in recognizing the signature of a concept, the affinity between Agamben's signature and Usmani's juristic parallel (*naẓīr*) becomes all the more evident. A *naẓīr*, by definition, exists in a relation of similitude with a *dissimilar* entity. As we discussed above, unlike the *mithāl*, a *naẓīr* does not share a common type, genus or even the semantic nucleus of its corresponding term. What connects the *naẓīr* with its parallel counterpart (*manẓūr ilayhi*) is a similitude of formal, symbolic, and conventional relations. When Usmani finds parallels between the corporation and Islamic welfare institutions, he identifies an "immaterial" and "non-sensuous similarity"—in the form of corporate personhood—between ontologically distinct entities. These entities are even separated in time and their juristic formulation belongs to two different discursive traditions—hence the historical 'anachronism' of pairing the capitalist corporation together with the Islamic *waqf* and *bayt al-māl*. Yet, the *naẓīr*

(Benjamin 1979, 66) Benjamin further notes that the re-orientation of the mimetic faculty from sensuous to non-sensuous similarity was not the outcome of a sudden transformation: "... The mimetic faculty, which was earlier the basis for clairvoyance, quite gradually found its way into language and writing in the course of a development over thousands of years, thus creating for itself in language and writing the most perfect archive of non-sensuous similarity." (68)

cuts across historical difference and epistemological boundaries and finds that "immaterial similarity" between two entities, however partial and weak that similarity may be.

Usmani's discourse of juristic parallels is different from Agamben's signature in that it draws from the jurisprudential genres of *al-ashbāh wa 'l-naẓā'ir* (similitudes and resemblances) and *'ilm al-furūq* (the science of legal distinctions).[141] These genres, developed around the 14th century, dissected representative legal cases (*masā'il*) by examining the disagreements of scholars and the justificatory bases for the differences (*furūq*) in their rulings (Young 2016; Musa 2014; Saba 2017; Rabb 2015). In his commentary on Ibn Nujaym's magnum opus *Al-Ashbāh wa 'l-Naẓā'ir*, Shihāb al-Dīn al-Ḥamawī (d. 1687) defines the genre as dealing with "those cases that resemble one another, yet have different rulings due to inapparent reasons that the jurists could discern with their sharpness of perception." Ḥamawī continues "They have written books to catalogue them, such as the *furūq* of Maḥbūbī…" (Ibn Nujaym 1985, Vol 1, 38)

It is within these genres that the *naẓīr* and *mithāl* are often defined and differentiated as synonyms.[142] The *naẓīr* is indeed understood as a weak and ineffective resemblance. However, it belongs to a juristic genre that lays out the subtlety of distinctions between apparently similar cases. Without knowledge of these distinctions, one could not discriminate between the modes of reasoning that resulted in scholars issuing a different ruling (*ḥukm*) on the same case (*mas'ala*). The genre of *al-ashbāh wa 'l-naẓā'ir* essentially sifted similar cases between (a) those that shared the same category of a ruling (*ḥukm*) and (b) those whose rulings differed despite their apparent similarity. Cases that were similar to each other in most aspects—*amthilah* (sing. *mithāl*) and *ashbāh* (sing. *shabīh*)—were gathered under a common juristic maxim (*qā'ida fiqhiyya*). On the

[141] I translate *naẓā'ir* here as resemblances in the more generic sense of a weak form of similitude. "Resemblances" serves as a more appropriate synonym for *ashbāh* (similitudes) than "parallels."

[142] I have discussed these definitions in Section 2 of this chapter.

other hand, cases that were alike in only one or a few aspects with representative cases of a particular maxim—the *naẓā'ir* (sing. *naẓīr*)—were shown to be exempt from that maxim (Musa 2014, 338-339).

Apart from the genres of *al-ashbāh wa 'l-naẓā'ir* and *'ilm al-furūq*, the *naẓīr* as a signifier is also pertinent to discussions of analogical inference (*qiyās*).[143] In Islamic legal reasoning, *qiyās* is the primary method of analogically extending a "linguistic proposition in the original texts" of the Sharī'a to a "new case or problem confronting the believer" (Hallaq 1997, 101). Foucault describes analogy in the Renaissance episteme of Europe as an immaterial similitude "of adjacencies, of bonds and joints" (Foucault 1994, 24). The similitudes captured by the analogy, according to Foucault, "are not the visible, substantial ones between things themselves; they need only be the more subtle resemblances of relations." But as with other kinds of similitudes in the Renaissance episteme, the analogy described by Foucault would "extend, form a single point, to an endless number of relationships." It was open-ended and commanded "a universal field of application." (Ibid) In contrast, *qiyās* was constrained by a set of rules and did not exhaust the limits of Islamic legal interpretation. Further, the pursuit of analogical relations through *qiyās* entailed the work of analytical discrimination. Different kinds of *qiyās* were ranked based on the precision with which they could isolate a common attribute between two empirically dissimilar cases.

Quite early in the development of *qiyās* as a paradigm for legal reasoning, jurists had already established a hierarchy between logically rigorous and imprecise forms of *qiyās* by the late 9th/early 10th century CE (El Shamsy 2017). The "causative inference" (*qiyās al-'illa*) occupied the highest position in this hierarchy as it established a causal relationship between (a) the *ratio legis*

[143] For a comprehensive discussion of *qiyās* and its logical operations, its authoritativeness and traditionalist typology, see Hallaq (1997, 83-107).

or effective legal cause behind a rule and (b) its ethico-legal justification (*ḥikmah*).[144] (Ibid) But since the *naẓīr* did not constitute a textually sourced *ratio legis*, it could at best function as a similitude that indicated a "common factor" (*jāmi'*) between an original case and a new one. (104) The *naẓīr* could thus be a basis of an "indicative inference" established by "similitude" (*qiyās shabah*). This latter form of *qiyās* was relegated to the lowest level in the hierarchy of analogical inferences—even outrightly rejected by notable jurists. (Ibid) In his *Sharḥ 'Uqūd Rasm al-Muftī*, Ibn 'Ābidīn (d. 1836) advises against issuing a *fatwā* or deriving a ruling (*ḥukm*) on the basis of a *naẓīr*:

> Any *naẓīr* that resembles a case under consideration shall not be relied upon, for the reason that there might be a distinction between the two that his [the *muftī*'s] understanding could not have arrived at. How numerous are the cases and their *naẓā'ir* that the *'ulamā'* have differentiated, so much so that they have written books of *furūq* for this purpose! Had the matter been left to our own mental faculties, we would not have been able to discern the differences between them. (Ibn 'Ābidīn 1883, 34)

Ibn 'Ābidīn's statement is not a dismissal of the paradigm of analogical inference but a qualification of its weakest element, i.e. *naẓīr*. A *naẓīr* is not a fiction in the sense of a "chimera of similitude" that is denounced by representationalism for concealing difference under the garb of sameness (Foucault 1994, 57). The economy of *mithāl* and *naẓīr* deals in the discrimination of *degrees* of difference; it does not operate on the binary logic of perfect identity and contradiction. A *naẓīr*, therefore, is simply a correspondence of one or two aspects between entities whose mutual

[144] It is difficult to capture the semantic range of *ḥikma* in a single term in English. For an illuminating discussion of the metaphysical bearings of the term *ḥikma* and its somewhat reductionist rendition as "wisdom" by modernist translators of the Qur'ān, see Hallaq (2012, 15-16).

difference far outweighs what they share in common. It is no surprise that Deobandī critics use Ibn ʻĀbidīn's principle to dismiss Usmani's *naẓā'ir* (sing. *naẓīr*) for corporate personhood and limited liability as constituting a form of incongruous inference, i.e. an inference that sustains an effective distinction between two cases (*qiyās ma' al-fāriq*).[145] (Rufaqā' Dār al-Iftā' 2008)

What justification, then, does Usmani have in relying on *naẓīr* as a basis of sanctioning key capitalist concepts of corporate personhood and limited liability? As an astute jurist, Usmani understands that neither corporate personhood nor limited liability have an established legal archetype in the Islamic jurisprudential tradition. Furthermore, he seems well aware of the numerous operational, organizational and formal-structural differences between modern business corporations and Islamic institutions of social welfare. Usmani, therefore, has his hermeneutical bases covered when he resorts to the *waqf* and *bayt al-māl* as juristic parallels (*naẓā'ir*, sing. *naẓīr*) and *not* as juristic examples (*amthila*, sing. *mithāl*) for limited liability and corporate personhood. Since first introducing these *naẓā'ir* as provisional ideas for the consideration of Pakistan's *'ulamā'* in 1993, he has never expressed certainty over their conclusive juristic status or insisted that they be taken as incontrovertible (Usmani 1993, 80). Epistemic humility, however, does not explain why an unprecedented institutional form should be authorized and invested with legal immunity.

3.4. Continuities of Custom (*'urf*) and the Explaining the Absence of the Corporation

In Usmani's formal legal discourse, the *naẓīr* is used as a hermeneutic device to enable a juristic figuration for corporate personhood and limited liability. Yet, the justificatory impetus for

[145] The *qiyās ma' al-fāriq* is the opposite of *qiyās nafī al-fāriq*. The latter is an analogical inference in which the difference between two cases are considered irrelevant (Hallaq 2001, 12).

resorting to *naẓā'ir* (sing. *naẓīr*) as a means of sanctioning capitalist institutional forms derives from a particular reading of custom (*'urf*). Usmani and his comrades essentially plead the necessity (*ḍarūra*) of corporate personhood to provide Muslims religiously permissible alternatives to interest based banking on a mass scale. Since corporate personhood is now a ubiquitous legal model for establishing business corporations and is also globally accepted as a legal norm, there is no way to circumvent it. Its legitimacy is undergirded by force of custom (*'urf*). Usmani and his comrades therefore bolster their legal hermeneutics by engaging in a pragmatics of necessity (*ḍarūra*) and custom (*'urf*). According to them, it becomes permissible to take hermeneutic license and resort to *naẓā'ir*—an admittedly weak basis of legal reasoning—when demanded by necessity (*ḍarūra*) or custom (*'urf*).

Usmani's student, Thāqib al-Dīn, responds to critics who accuse his teacher of making faulty inferences (*qiyās ma' al-fāriq*) by reminding them that Ibn 'Ābidīn's proscription against using *naẓīr* as a basis of rulings (*aḥkām*) is not categorical (*muṭlaq*). In fact, Ibn 'Ābidīn himself creates an exception for using *naẓā'ir* when a *muftī* is confronted with an unprecedented case and has to take custom (*'urf*) into consideration. In the same passage in which Ibn 'Ābidīn proscribes using *naẓīr*, he concludes the passage by making an exception: "Yes, incidents based on custom that also do not violate textual sources of the Sharī'a do occur. A *muftī* may thus issue a *fatwā* by relying on them [as *naẓā'ir*]." (Ibn 'Ābidīn 1883, 34) Besides, Usmani never framed his comparisons between corporations and Islamic welfare institutions as resulting from *qiyās* and so the debate over *qiyās ma' al-fāriq* becomes moot.

The argument from necessity (*ḍarūra*) and custom (*'urf*) can best be appreciated as a response to a central historical objection leveled by Deobandī critics of corporate personhood: what explains the absence of the corporation in the Sharī'a in the first place? I will first detail the

criticism itself and then elaborate the juristic parameters in which Usmani and his advocates respond to it. I have situated this particular exchange between Usmani and his critics in this section as it most clearly reveals how the problematic of secularization plays out in the debate over corporate personhood. After thoroughly critiquing and exposing the juristic weaknesses in all of Usmani's *naẓā'ir* for corporate personhood and limited liability, Usmani's critics rhetorically ask why the model of corporate personhood was never devised by classical jurists themselves.[146] The question is anything but conjectural since all of Usmani's *naẓā'ir* appear to give the impression that the jurists had the intellectual tools and resources to sanction corporate personhood, but they didn't. In the *Murawwajah Islāmī Baynkārī* volume, the friends of Dār al-Iftā' at Binnorī Town write,

> First thing's first: on a collective and social level, a diversity of models and practices of commercial life have existed from the beginning [of Islam]. The collective conditions of people associated with different professions were by no means hidden from the noble *fuqahā'*. We also know that the *fuqahā'*'s gainful intellectual abilities mined the subtleties and minutiae of new cases and occurrences. Despite all of this, we do not find the concept of "corporate personhood" in the fruits of their scholarly labor. It would be utterly unreasonable to imagine that they were unable to perceive such a concept. Rather, it is far more plausible to suggest that they were fully aware of such a concept but found it indefensible. For this reason, they neither made a place for it in the reservoirs of *fiqh* nor made it the basis for adjudicating any cases. (Rufaqā' Dār al-Iftā' 2008, 120)

[146] As we saw earlier in section 1, this question is also raised by Timur Kuran. However, we must appreciate the difference in moral and epistemic vantage point from which the same question is raised by Kuran and Usmani's Deobandī critics. When Kuran inquires into the reasons for the absence of the corporation in Islamic law, he reads that absence as a flaw and a sign of legal incapacity. Usmani's critics, on the other hand, see the absence of the corporation as evidence of the moral superiority of the Sharī'a over the chrematistic character of capitalism. For Kuran, the absence of the corporation is a weakness. For Usmani's critics, it is a strength. Wael Hallaq has intelligently remarked that asking why the corporation wasn't conceived in Islamic law presupposes its necessity and desirability as historical progress. It is this presupposition that needs to be questioned because the model of a corporation is fundamentally at odds with Islamic principles of justice and the Sharī'a's moral economy (Hallaq 2013).

The argument presented herein doesn't imply that the absence of a concept in the vocabulary of the jurists (*fuqahā'*) means that it can never be accommodated at some point in the future. The critics' question of the absence of corporate personhood is animated by the presence of fairly developed models and contractual forms of business partnerships (*shirka*) in the Sharī'a. Certainly the concept of risk (*gharar*) and mechanisms of its distribution and diversification—through, for instance, profit-loss sharing in the *mushārakah* model—were built into the design of Islamic contracts. If Usmani's *naẓā'ir* for corporate personhood and limited liability are presented as proof that these concepts are not entirely alien to the Sharī'a, how come they were never indigenously developed in the Muslim world? Why did they have to be imposed through European colonialism—an imposition that was also contingent on the very destruction of the *waqf* and *bayt al-māl*? Why did Ḥanafite jurists, who devised complex legal stratagems to evade interest, not take that additional step and generalize the investor's "limited liability" in the *muḍāraba* model to the legal immunity of an entire partnership (*shirka*)? The answer, according to Usmani's critics, has little to do with historical progress or the increasing specialization of knowledge.

Usmani's critics assert that Muslim jurists had sound moral and epistemological reasons to *not* entertain the notion of corporate personhood and its legal immunity. Aside from the hermeneutical concern with the relative strength or flimsiness of the *naẓā'ir* presented in support of corporate personhood, the authors of *Murawwajah Islāmī Baynkārī* highlight a few significant moral and ethical differences between the corporation and the *waqf* and *bayt al-māl*. Firstly, the latter remain in the service of individuals whereas the former protects the right of an artificial and hypothetical person over real humans. "The concept of legal personhood is premised on the disrespect and indignity of humanity… It makes rational, mature, dexterous and legally empowered humans the servant and the slave of an invisible and fictitious ghost." (126) At times

the rhetorical flourish can obscure the substance of the critique. However, the ability of American corporations to claim exemptions from federal law on grounds of their "religious beliefs" in contrast with the state's apprehension of individuals exercising conscientious objection is only the most recent example of the differential between corporate power and human dignity in the US.[147] (Lofton 2017, 198-201)

As for limited liability, critics aver that it legalizes injustice by guaranteeing the unfair advantage of one party to a contract or a business partnership. Limited liability is certainly beneficial for the "organs and limbs" of the corporate person, but it can be "pernicious and irreparably damaging" for a corporation's creditors (*dā'inīn*, sing. *dā'in*). (Rufaqā' Dār al-Iftā' 2008, 150) It is therefore against the core principles of socioeconomic justice in Islam. "Any business model that guarantees such an advantage to a party that is contingent on the disadvantage and exploitation of others" is, according to critics, "deplorable from the perspective of ethical values and contradictory to the Sharī'a." (Ibid) Critics then point to three examples of such exploitative practices that Ḥanafite jurists proscribed according to the aforementioned principle: (a) monopolizing (*iḥtikār*); (b) the purchasing of merchandise prior to its arrival in the market so as to sell it at a competitive price (*talaqqī al-jalab*); and, (c) exploitative forms of price control (*tas'īr*). All of these practices are designed to concentrate the benefits of commerce in a few hands while systematically disadvantaging the rest.

[147] Lofton compares the case of The Hobby Lobby corporation with the government servant Kim Davis, both of whom suffered a different fate for refusing to obey federal law on religious grounds of conscientious objection. A court of law ruled in favor of the Hobby Lobby corporation's right to not cover contraceptive costs for its employees on religious grounds, even though this refusal violated a condition of the Obamacare act. Kim Davis, on the other hand, famously served a sentence for refusing to issue a marriage certificate to a same-sex couple. Lofton compares these cases to show that whereas religious freedom in the US is being increasingly claimed by corporations, its scope is decreasing for individuals and real persons.

More importantly, since the contractual form of limited liability conditions an unlimited (*ghayr maḥdūd*) pursuit of profit on a limited (*maḥdūd*) responsibility for losses, it violates two well-known principles of fairness of contract in the Sharī'a. The first principle, which quotes the words of a Ḥadīth, states that entitlement to gain or profit is subject to bearing the responsibility for loss (*al-kharāj bi 'l-ḍamān*). The second principle, synonymous with the first, states that a return is justified by the possibility of a loss (*al-ghurm bi 'l-ghunm*).[148] The balancing of gains and losses in these principles does not refer to the *actual* gains or losses that are materialized in the course of a transaction. They refer to contractual conditions that *preempt* the losses of a single party to a contract, thus giving them an unfair advantage over others. Rules of profit-sharing and the distribution of losses in Islamic partnerships were designed in accordance with the aforementioned principles of fairness. From the perspective of Usmani's critics, the contracts and institutional forms devised by the *fuqahā'* negate rather than support corporate personhood and limited liability. Even if they had been presented with an empirical specimen of a modern corporation, they would have found it morally repugnant and epistemically indefensible.

Usmani's student, Thāqib al-Dīn, chides critics for their biting sarcasm and the hastiness with which they dismiss Usmani's juristic labor in translating finance along Islamic lines. Reminding them of the importance of respectfulness as an etiquette (*adab*) of critiquing elders, he

[148] I have avoided the slightly anachronistic translation of *ghurm*, which literally means a damage or a loss, as "risk." *Ḍamān* can be said to encompass risk as it entails the *responsibility* for bearing a loss. Regardless, there is at least a difference in terms of the degree of calculability in contemporary financial risk and what the *fuqahā'* referred to as *gharar*. In today's credit economy, risk is a calculable phenomenon that is differentiated from uncertainty. While risk belongs to a grid of intelligibility that is shaped by probabilistic modes of thinking and calculation, uncertainty is not easily amenable to measurement. Arjun Appadurai, taking inspiration from the work of the Economist Frank Knight, differentiates between the modern "machinery of risk" and the "spirit of chance." (Appadurai 2013, 49) A textbook distinction is drawn between systematic and systemic risk. The former can be measured and controlled to certain degrees through calculative and statistical interventions. Systemic risk, however, is endemic to the movement of markets and the world and, in a sense, both precedes and defies calculation. An excellent comparative study of the juristic conception of *gharar* and contemporary financial risk has been done by the Pakistani Deobandī scholar, Muftī Waṣī Butt (2016).

notes that the passion with which they refute Usmani's arguments far exceeds their juristic acumen. In addressing the puzzle as to why the classical jurists never devised a concept of corporate personhood, Thāqib al-Dīn stresses that continuity within a tradition is not marked by the identity of specific terminologies or positions taken by subsequent jurists but by the principles of reasoning they share. He then states that the correct methodological basis for assessing the validity of corporate personhood is by subjecting it to analytical criteria of new cases (*nawāzil*), changing circumstances of custom (*ḥawādith 'urfiyya*), necessity (*ḍarūra*), need (*ḥāja*), and juristic preference (*istiḥsān*) etc. (Thāqib al-Dīn 2009, 134) If determining the validity of a concept were as simple as checking for its availability in the juristic canon, the *fuqahā'* would have had no reason to devise tools of interpretation for us to apply Islamic law to new and unprecedented situations.

Thāqib al-Dīn reminds critics that even in the seven-stage hierarchy of jurists (*ṭabaqāt al-fuqahā'*) in the Ḥanafite school, continuity within the tradition is sanctioned through the extension and application of interpretive principles established by the master-jurists (*mujtahidīn*, sing. *mujtahid*). Jurists at the third stage of this hierarchy (*ṭabaqatu 'l-mujtahidīn fī 'l-masā'il*) dealt with cases that were not addressed by those above them. The fact that these jurists addressed unprecedented cases did not mean that they were contradicting the wisdom of those before them. (135) As the Damascene jurist Ibn 'Ābidīn (d. 1836) noted, "For they cannot disagree [with jurists higher in the hierarchy] either in meta-principles or points of substantive law. Rather, they deduce rulings on cases that were not addressed [by jurists higher in the hierarchy] and do so on the basis of meta-principles and interpretive maxims [established by jurists higher in the hierarchy]."[149] Ibn 'Ābidīn further noted that jurists at the fourth stage (*aṣḥāb al-takhrīj*), who were not considered master-jurists (*mujtahidīn*, sing. *mujtahid*) but were rather conformists (*muqallidīn*, sing.

[149] Text (Arabic): *fa-innahum lā yaqdirūna 'alā shay'in min al-mukhālafati lā fī 'l-uṣūli wa lā fī 'l-furū'i.*

muqallid), had a deep comprehension of the meta-principles devised by master-jurists and also understood the inferential bases of the latter's reasoning. They could therefore extend and elaborate rulings (*aḥkām*) and points of substantive law (*furūʿ*) authorized by the master-jurists by way of drawing "examples (*amthāl*) and parallels (*naẓāʾir*)" from their work. (Ibn ʿĀbidīn 1883, 91; Hallaq 2001, 15-16)

After detailing the gradations of epistemic authority that mark the first four stages of juristic hierarchy in the Ḥanafite school, Thāqib al-Dīn claims that Usmani has adequately performed his juristic duties in the role of a school conformist (*muqallid*). He has not circumvented the school's established hermeneutical principles in creating juristic parallels for corporate personhood and limited liability. Rather than concoct novel interpretive principles or innovate new juristic categories, Usmani mined the Ḥanafite juristic canon for parallels (*naẓāʾir*) to corporate personhood and limited liability. He then extended and elaborated these *naẓāʾir* by transmitting their rulings (*aḥkām*) on to modern corporations. Thāqib al-Dīn's placement of Usmani in the hierarchy of Ḥanafite jurists subjects him to one expected criticism from Deobandī critics: the authority to draw examples (*amthila*) and parallels (*naẓāʾir*) from established rulings (*aḥkām*) is vested in jurists at the fourth stage (*aṣḥāb al-takhrīj*).[150] Deobandīs, however, have always humbled themselves as belonging to the seventh and last stage in the hierarchy of Ḥanafite jurists, i.e. the category of mere transmitters (*nāqilīn*, sing. *nāqil*) of the tradition, whom Ibn ʿĀbidīn likened to wood-collectors in the dark (*ka-ḥāṭibi laylin*). How can Usmani thus assume the authority to draw parallels (*naẓāʾir*) from the work of the master-jurists?

[150] Ibn ʿĀbidīn cites as examples of *aṣḥāb al-takhrīj* the famed authors of *Uṣul al-Karkhī* and *Hidāya*, Abū al-Ḥasan al-Karkhī (d. 952) and Burhān al-Dīn al-Marghinānī (d. 1197) respectively. See also Hallaq 2001.

In his response, Thāqib al-Dīn harnesses a juristic category that is central to Usmani's entire justificatory discourse: custom (*'urf*). Changes in custom, Thāqib al-Dīn argues, require a qualified jurist at any stage in the Ḥanafite hierarchy to adjust and extend the law according to new circumstances by drawing parallels (*naẓā'ir*) from the repertoire of existing rulings (*aḥkām*). To support this position, he cites the Ḥanafite legal theorist, Aḥmad b. 'Alī al-Jaṣṣāṣ (d. 918): "There is no disagreement between scholars of the first period, their followers, and the followers of their followers over the permissibility of exercising independent reasoning and making inferences from juristic parallels in the matter of rulings pertaining to new occurrences."[151] (Jaṣṣāṣ 1994, vol. 2, 206; Thāqib al-Dīn 2009, 78-79) Thāqib al-Dīn uses this proof-text to make the argument that an expert jurist (*māhir faqīh*) may indeed rely on juristic parallels (*naẓā'ir*, sing. *naẓīr*) to extract rulings (*aḥkām*) on particular matters of custom (*juz'iyyāt 'urfiyya*). In this day and age, Thāqib al-Dīn asks, who amongst the Deobandīs knows the customs of Muslims and financial markets better than Usmani? "No one can disagree that the God-gifted juristic acumen of his eminence, the preceptor of Islam—may Allah protect him—is recognized all over the world."[152] (Thāqib al-Dīn 2009, 79)

After having established Usmani's fidelity to the hermeneutical protocols of the Ḥanafite tradition, Thāqib al-Dīn argues that the primary justification for sanctioning corporate personhood and limited liability *today* comes from custom (*'urf*). He again relies on the authority of Ibn 'Ābidīn, whose works greatly expanded the domain and agency of *'urf* in affecting change in the Ḥanafite tradition. In the final sections of his *Sharḥ 'Uqūd Rasm al-Muftī*, Ibn 'Ābidīn devotes

[151] Text (Arabic): *Lā khilāfa bayna 'l-ṣadri 'l-awwali wa 'l-tābi'īna wa 'l-tibā'ihim fī ijāzati 'l-ijtihādi wa 'l-qiyāsi 'alā 'l-naẓā'iri fī aḥkāmi 'l-ḥawādithi*.
[152] Text (Urdu): *Is mein kisī kā ikhtilāf nahīn keh ḥaḍrat shaykh al-Islām ḥafaẓahuAllāhu kī faqāhat-i khudādād kō sārī dunyā taslīm kartī hai.*

several pages to discussing the importance of *'urf*.[153] A central interpretive maxim that guides his discussion states that "changes in custom bring about corresponding changes in rulings" (*tataghayyaru 'l-aḥkāmi bi-taghayyuri 'l-'urf*). After listing 22 examples of cases wherein later jurists (*muta'akkhirīn*) either reversed or contradicted the rulings established by their master-jurist predecessors (*mutaqaddimīn*), Ibn 'Ābidīn argues that such reversals should not be seen as a dismissal of earlier jurists or their meta-principles (*uṣūl*). Rather than marking a deviation from tradition, these reversals establish continuity with it as they abide by the traditionalist imperative of adjusting rulings according to changing customs.[154] Adjustments made to rulings are, of course, not unconditional. They are only warranted for those specific rulings that already have a component of custom built into them. When the custom changes, these rulings have to be adjusted

[153] For a comprehensive assessment of Ibn 'Ābidin's cautiously innovative approach to *'urf* as seen through his *Sharḥ 'Uqūd Rasm al-Muftī* as well as the epistle *Nashr al-'Urf*, see Hallaq (2001, 221-233).

[154] Here I should register my disagreement with Islamic legal historian Zouhair Ghazzal's characterization of the continuity of the legal school (*madhhab*) through *'urf* as "fictional." (Ghazzal 2007, 62-63) The temporality of an Islamic discursive tradition does not always function according to the logic of homogeneous secular time. In other words, continuity with a tradition's normative past does not depend on logical consistency or teleological continuity. It is, as Talal Asad has correctly remarked, a function of "discursive coherence." (Asad 1993, 185-188, 210) It is perfectly imaginable, for instance, for a scholar in the 15th century to institute an unprecedented legal ruling or contradict an established position without rupturing the temporality of tradition. In the same way, while it is indeed true that Ibn 'Ābidin's argument for *'urf* as an agent of change is *not* continuous with its marginalization in the first few centuries of the Ḥanafite *madhhab*, his reasoning nevertheless achieves discursive coherence within the parameters of the Ḥanafite tradition. (Hallaq 2001, 215-217) Ibn 'Ābidīn, and Ibn Kamāl Pāshāzādeh (d. 1533) before him, similarly achieve discursive coherence when constructing the 7-stage hierarchy/typology of the Ḥanafite school discussed earlier. Hallaq elegantly captures the internal coherence of this authoritative hierarchy in terms of its synchronic and diachronic relations:

> Synchronically, therefore, the function of these typologies is not only to describe, justify, and rationalize juristic activities of the past but also, and more importantly, to construct the history of the school as a structure of authority which is tightly interconnected in all its constituents. The structure that emerges is both hierarchical and pyramidical. In synchronic terms, then, the achievement is represented in the creation of a pedigree of authority that binds the school together as a guild.
>
> Diachronically, the typologies justify the tradition in which the *muftī*s were viewed as founders of law schools as well as the sustainers of a continuous activity that connected the past with the present. (19-20)

accordingly.[155] Ibn ʻĀbidīn thus effectively normalizes change driven by custom as being internal to tradition:

> All these cases are those that have been altered due to temporal changes, circumstances of necessity, custom or due to contextual conditions. None of these altered rulings are excluded from the [Ḥanafite] school as had the founder of the school [Abū Ḥanīfa] been present during this era, he would have approved these [altered rulings]. And had the same changes occurred in his era, he would not have decreed against these [alterations]. And this is the reason that drove the master-jurists of the school [jurists that were second to the founder/absolute-*mujtahid*] and perspicacious jurists from later generations to rule contrary to the explicit rulings of the founder of the school in the books of *ẓāhir al-riwāya*.[156] The reason for this is that the founder of the school based his rulings on the circumstances of his time. (Ibn ʻĀbidīn 1883, 138-139; Thāqib al-Dīn 2009, 137-138)

In his citation of the original quote, Thāqib al-Dīn underlines the Arabic portion that says "perspicacious jurists from later generations" (*wa ahlu 'l-naẓari 'l-ṣaḥīḥi min al-muta'akkhirīna*). The emphasis is, of course, directed towards Usmani as a jurist who is both righteous and sagacious; he has cultivated a unique discernment (*naẓar*) that allows him to draw appropriate parallels (*naẓā'ir*) from the Ḥanafite canon to address changes in custom. Thāqib al-Dīn's foray into Ibn ʻĀbidīn's writings on custom is intended to establish corporate personhood and limited liability as the outcomes of changing global norms and customs that are internal to the tradition. Just as a "change in custom corresponds to a change in rulings," corporate personhood and limited liability are also authorized as new entities that parallel existing institutional forms in the Sharīʻa.

[155] I discuss the maxim of 'changes in customs warrant changes in rulings' and its specific examples in more detail in Chapter 2: *ʻĀda*. It is sufficient for our purposes here to understand that Usmani and his comrades rely on Ibn ʻĀbidīn's view that certain practices are authorized in the Sharīʻa largely due to changes in custom.

[156] The *ẓāhir al-riwāya* refers to compilations of the most authoritative doctrines of the Ḥanafite school from the school's eponymous founder Abū Ḥanīfa (d. 767) and his two students—the master-jurists of the school (*mujtahidūn fī 'l-madhhab*)—Abū Yūsuf (d. 798) and Muḥammad al-Shaybānī (d. 804). For a detailed discussion of the hermeneutical significance and authoritative status of the *ẓāhir al-riwāya* in the Ḥanafite school, see Hallaq (2001, 26-31).

This framing in terms of *'urf* establishes continuity with the tradition while allowing Usmani and his supporters to accommodate capitalist concepts and institutions in an Islamic legal framework.

The *'urf* based framing also addresses the objection as to why corporate personhood and limited liability were not authorized by previous generations of jurists. Thāqib al-Dīn's confident response to that objection is that such authorization was not warranted according to the custom and circumstantial necessities of the time of the classical jurists. He thus remarks, "The banking system and its like were not promulgated during the time of the classical jurists. How could they have imagined a concrete concept of a non-existent entity and established their juristic position on it?"[157] (Thāqib al-Dīn 2009, 139) He even goes to the extent of making the following prediction: "Had our noble jurists—Allah's blessings be upon them—been living in our times, they would certainly have presented exceedingly better concepts for new occurrences based on custom (the company, the bank etc.) and devised appropriate solutions for them from principles of the faith."[158] (140)

Thāqib al-Dīn adheres to formalistic modes of reasoning to show the procedural soundness of Usmani's arguments from the perspective of legal theory (*uṣūl al-fiqh*). He largely evades critics' substantial criticisms of limited liability, focusing instead on strengthening the legal-theoretical groundwork for corporate personhood. His argumentative strategy betrays the conviction that once the formal-legal structure of corporate personhood is properly aligned with *fiqh*-based hermeneutics, the ills of capitalism and limited liability will automatically be taken care

[157] Text (Urdu): *Qadīm fuqahā' kē dōr mein baynking niẓām wa-ghayrah rā'ij nahīn thā lihādhā ḥaqīqī taṣawwur "ma'dūm-i maḥaḍ" kā kaisē kartē aur apnī rā'ē kaisē qā'im kartē?*

[158] Text (Urdu): *Agar hamārē fuqahā'-i karrām—raḥimahumAllah—is zamānē mein ḥayāt hōtē tō bi 'l-ḍarūr in ḥawādith-i 'urfiyya (company, bank) wa-ghayrah kē muta'alliq behtar sē behtar taṣawwur paysh farmā kar uṣūl-i dīn kī madad sē un kā ṣaḥīḥ ḥal nikāltē.*

of.[159] For Thāqib al-Dīn, the kind of moral criticism leveled by Usmani's critics shows that their ability to think pragmatically has been clouded by polemics. In response to their claim that the concept of corporate personhood unjustly subordinates real persons to the dictates of fictional entity, Thāqib al-Dīn reminds critics that the *madrasa*s from which they draw their spiritual and material sustenance are all juristic persons. "Do you not see how a single legal person, Dār al-'Ulūm Deoband, keeps attracting multitudes of people and how a single *Wifāq al-Madāris* exercises its authority over us?" asks Thāqib al-Dīn. He follows up with another polemical question, albeit intended as a rebuttal: "When we say 'we stand by the position of our *jāmi'a* [grand *madrasa*],' is such a conception of loyalty premised on the disrespect and indignity of humanity?" In fact, he notes that the authorship of their book as "Rufaqā' Dār al-Iftā'" (Friends of the Dār al-Iftā) itself represents the collective will of a group of *muftī*s by a fictitious person. (91-92)

For Thāqib al-Dīn, just as Islamic forms of legal personhood—including, but not limited to, the charitable endowment (*waqf*), public treasury (*bayt al-māl*), mosque (*masjid*), and religious seminary (*madrasa*) etc.—were sanctioned on the basis of need (*ḥāja*), necessity (*ḍarūra*), and custom (*'urf*), the fact remains that modern corporate personhood and limited liability dominate global financial norms. The everyday lives of Muslims and their material activities are shaped by modern corporations. Since it is no longer possible to circumvent or wish away corporate personhood and limited liability, the Sharī'a allows these concepts to be accommodated on grounds of necessity (*ḍarūra*) and custom (*'urf*). "If the legitimate existence of legal personhood

[159] Indeed, nearly all the *muftī*s I spoke to who were associated with Islamic banks in 4 major commercial cities—Karachi, Lahore, Islamabad, and Faisalabad—stated unequivocally that their task was to ensure the correction of banking practices at the level of contractual forms (*'uqūd*). They were neither responsible for nor had the authority to correct the ills of the capitalist system. One of the seasoned trainers at Insaf Bank, Hisham Anwar, had a favorite line he repeated at every employee-training session: "Islam's temperament is 'process oriented'; it is not 'result oriented.'" The emphasis is on adherence to the rule and doing things right. I investigate the reasons and consequences of this formalistic approach in more detail in the introduction.

is categorically denied," warns Thāqib al-Dīn "everything from our clothes to our vast transactions will have to be declared impermissible." (175) Finally, Thāqib al-Dīn gives expression to a sentiment widely shared amongst Deobandī proponents of Islamic finance: when critics denounce Islamic finance, they concede the all-important economic and commercial spheres of life to the West. An implication of this concession, for Thāqib al-Dīn, is a negation of the idea that Islam can have a solution to all problems:

> A class of people imagines that it is not possible to operate a banking system in the Muslim community without surrendering to the ideas of Western culture and civilization. Perhaps this class has already presumed that only people like Cassel, Mill, Smith, Ricardo, and John can order an economic system. It is obvious that their presumption could only have been true if our religion, Islam, was—Allah's refuge we seek!—deficient or mute on the principles of an economic system. To the contrary, Islam is a complete way of life that has the capacity to meet the necessities and combat the changes and transformations of each day and age. (45)

The irony in this statement is that it premises the idea of Islam's self-sufficiency on the possibility of providing an alternative to capitalism. Consequently, when Deobandī critics insist that an Islamic alternative to capitalism is neither possible nor desirable due to the incommensurability between their respective values, they stand accused of diminishing the universality of Islam.

In one sense, however, critics and advocates talk past each other when discussing an Islamic alternative to capitalism. When Thāqib al-Dīn claims that Islam is indeed well equipped to take on the reigns of economic governance, he intends by the latter a value neutral and pragmatic activity of commercial exchange and resource allocation. For Thāqib al-Dīn, the entire corpus of the jurisprudence of commercial law (*fiqh al-mu'āmalāt*) is evidence of the Sharī'a's competence in regulating markets and its resourcefulness in developing financial instruments, contracts, and business partnerships etc. For critics, however, the field of operations that Usmani and his devotees are entering is not a pre-existing and neutral domain of commercial activity on which the laws of the Sharī'a can be applied. The reality that they are trying to reform by means of the Sharī'a is

itself dictated by the terms and conditions of capitalism. It is a reality for which no permissible alternative exists. Critics cite the examples of pork and alcohol consumption. Since these are categorically forbidden by the Sharī'a, Muslims should abstain from them rather than come up with their Islamic alternatives. Just like there can be no Islamic pork or alcohol, for critics the very idea of an Islamic bank is a contradiction in terms.

> In our opinion it is neither a religious nor rational necessity for there to be an alternative to every impermissible thing. Otherwise, given the plague of everyday temptations and the deluge of sinfulness and crimes in our era, the Sharī'a will gradually be emptied of all its "prohibitions" and not a single "impermissible" thing shall remain. For today usury is a common affliction and we need an alternative that embodies its utility and benefits. Tomorrow, in order to get rid of adultery as another affliction, we will seek a permissible alternative that embodies the benefits and characteristics of adultery… It would be even more regrettable and suspicious, from a faith and practice-based perspective, if we became fearless in shaping and fashioning the Sharī'a so as to acquire a desired alternative for each and every thing that is "impermissible." (Rufaqā' Dār al-Iftā' 2008, 320)

For Usmani's Deobandī critics, therefore, enthusiasm for an Islamic alternative to capitalism is not driven by a desire to obey the Sharī'a. It is driven by a sense of urgency to conform to the needs and demands of modernity. This sense of urgency itself reflects a misplaced "desire to be at par with the Western world" (*maghribī dunyā kī hamsarī kā jadhba*). (92) Despite the rhetoric they hear from Usmani and his disciples about purifying and reforming the interest-based banking system, critics see the discourses and practices of Islamic banking as molding the Sharī'a into an image of financial capitalism. In miming financial capitalism, Islamic banking becomes more and more like it. As we saw in our discussion of imitation (*tashabbuh*) in Chapter 1, even mere physical and symbolic resemblances can bring about an alteration in one's character.[160] For them, finding juristic parallels (*naẓā'ir*) for corporate personhood and limited liability does not

[160] Critics will mostly like agree with Michael Taussig's wisdom on mimesis: "The wonder of mimesis lies in the copy drawing on the character and power of the original, to the point whereby the representation may even assume that character and that power" (Taussig 1993, xiii).

magically transform corporations along Islamic lines. It does, however, mislead ordinary Muslims into thinking that the core institutional model of financial capitalism is compatible with Islam.

Muftī ʻIjāz Ṣamdānī, an Islamic banking stalwart of the new generation of Deobandīs, dismisses the logic of this critique as too extreme and contrary to the spirit of Islam. Whereas some things that are forbidden can have no alternative in the form of a substitute, such as swine and alcohol, Ṣamdāni contends that Islam has always offered permissible alternatives to impermissible things. The alternative to fornication (*zinā*) is intercourse in legal wedlock. Both acts carry similar characteristics and are a means of deriving sexual pleasure, yet God ordained one as permissible and outlawed the other. Similarly, the Qur'ān explicitly posits profit-making through trade and sales as a permissible alternative to usury. Here again, the monetary outcome of commercial activity through both means may be exactly the same. One could derive the same benefits with income generated from interest as with income generated through sales. Yet, Islam renders one permissible and outlaws the other. Ṣamdānī further reminds critics that Muslim jurists for centuries have devised ways of evading and abstaining from interest. Just because the alternative they seek resembles the prohibition they want to avoid, the alternative does not become impermissible in and of itself (Ṣamdānī 2006, 16-17).

3.5. Conclusion: Secularizing the Sharīʻa

I have been arguing that the justificatory discourse of Islamic banking and its internal contestations can be read as a discourse of secularization. I refer to secularization not in the conventional sense of the gradual vanishing of religion from the domain of politics and economy. To the contrary, what we witness here is a discursive reconstitution of the Sharīʻa in the domain of corporate sovereignty. Part of this reconstitution, which we considered in this chapter, entails a modification of the Sharīʻa's legal protections for institutions of social welfare such as the *Waqf*

and their extension to for-profit corporations. Working with a hermeneutics of juristic parallels (*naẓā'ir*), Usmani is able to reflexively authorize corporate personhood and limited liability as concepts standing in congruity with the Sharī'a. As we discussed in Section 1, these concepts are foundational in the juridical domain of corporate sovereignty. They establish the juridical authority of corporations as governing bodies with "legally sanctioned immunity from law." (Barkan 2013, 4) Usmani's authorizing discourse for legal personhood (*shakhṣ-i qānūnī*) thus serves as a backbone for subsequent concessions and accommodations of capitalist concepts and practices.

It is possible to see secularization taking place at two interconnected levels through Usmani's discourse: the conceptual and the juridical. At the conceptual level, Usmani argues that modern concepts of corporate personhood and limited liability do in fact have Islamic precedents in the form of juristic parallels (*naẓā'ir*). In a sense, Usmani denies an absolute epistemic rupture between the Sharī'a and capitalism by insisting that the former already had proto-concepts that were later developed in an institutionalized form by the latter. There is continuity between the Sharī'a and capitalism in so far as the latter carries traces of legal and institutional elements recognized in the former. The *naẓīr* is deployed as a signature of secularization that marks corporate personhood and limited liability and refers them back to religious antecedents in an Islamic discursive domain. Usmani is, of course, not entirely wrong when he identifies certain parallels and resemblances between Islamic commercial law and financial capitalism. Both systems have models of contracts, definitions of property, and rules of exchange. What is consequential, however, is the meaning given to their resemblances, the suppression of their differences, and the actions justified through them. It is here that Usmani's discourse of 'secularization'—in the sense of establishing kinship and continuity between religion and secularity—effects a secularization of the Sharī'a in juridical terms.

What Usmani accomplishes with his juristic parallels (*naẓā'ir*) of corporate personhood and limited liability is a citational effect in which categories of the Sharī'a are themselves transformed as they are engrafted into the domain of corporate sovereignty. Performative theories of citation tell us that each citation of a term or a concept is "both imitative and novel." (Gal 2015, 227) Citations thus create difference through replication.[161] This difference and its directionality depend on, amongst other factors, the power differential between the source of the citation and its recipient context. When Usmani claims that the charitable endowment (*waqf*) and the inheritance consumed with debt (*tarika mustaghraqa bi 'l-dayn*) are juristic parallels (*nazā'ir*) for corporate personhood and limited liability respectively, this citation enacts a reframing of the former into the framework of the latter. As a consequence, a form of legal personhood that was previously reserved for an institutional model of social welfare is now authorized for the multi-national corporation. Legal protection that was granted to the needy is now afforded to largescale commercial enterprises. Of course, Usmani is not personally responsible for instituting corporate personhood and its legal immunities in the paradigm of corporate sovereignty. However, his authoritative reframing of Islamic concepts in terms of corporate personhood and limited liability have strengthened the credibility of Islamic banks as corporations. Credibility in the corporate world is more than a matter of interpersonal trust and reputation. It is an invaluable commodity and a guarantor of social capital. The Shariah [sic] Governance Framework (SGF) issued by the State Bank of Pakistan identifies "non-compliance" with the Sharī'a as a "reputational risk" for the industry (Islamic Banking Department 2015, 10). In the private sector, Insaf Bank executives would regularly emphasize Sharī'a Compliance as their bank's "Unique Selling Point" (USP).

[161] This brief mention of citationality suffices for our purposes here. I discuss citationality and the iterability of language in more detail in the chapter on Standardization, which pertains to the translation and transduction of Islamic legal discourse into standardized codes of finance.

Islamic banking would thus fall on its feet if the very foundation of its institutional model was seen as contradictory to the Sharī‘a.

Wael Hallaq's recent interventions in *Restating Orientalism* offer a systematic theoretical framework to understand the moral and ethical reservations of Usmani's critics. Hallaq argues that a crucial feature of the Sharī‘a's pre-modern system of governance was its authorization of a set of "persistent moral benchmarks" (Hallaq 2018, 79). These benchmarks provided a moral compass for a range of practices in different domains of the Sharī‘a—ranging from one's management of the household to interpersonal conduct in trade and commercial partnerships. Hallaq further explains that these benchmarks were not regulatory mechanisms that were implemented by means of interdiction. Their function could be conceived in terms of an ethical telos that orients one strives to emulate without necessarily perfecting it. In this sense, the Sharī‘a's benchmarks can fruitfully be contrasted with industrial benchmarks of standardization. Standardization established uniformity of form and action by enforcing comprehensive mechanisms of compliance.[162] The Sharī‘a's moral benchmarks were integral to the organic constitution of Muslim societies for centuries.

If I have understood Hallaq correctly, the persistency or the "pressure" of these moral benchmarks is akin to a persuasive force. (Ibid) This persuasive force shapes what Talal Asad has called "structures of possible actions" that are "logically independent of the consciousness of actors" (Asad 1993, 15-16). My reason for providing this Asadian gloss on Hallaq's moral benchmarks is to parse the question of the corporation's absence in Muslim societies from speculations about the frontiers of knowledge at which pre-modern jurists (*fuqahā'*) operated. As we witnessed in the exchanges above, these speculations divide Usmani's supporters—Thāqib al-

[162] I discuss the transduction of Islamic jurisprudential discourse into the discursive and ethical dimensions of standardization in Chapter 4.

Dīn in particular—and his Deobandī critics. But whether Muslim jurists were aware or unaware of the model of corporate personhood should be of secondary consequence to how their 'structure of possible actions' was shaped by certain persistent moral benchmarks. The mistake made by supporters and critics alike is that they try to argue for the presence or irrelevance of such a benchmark from the consciousness of classical jurists. Hallaq is absolutely correct in noting that it was the persistent moral benchmark of the individual's moral accountability and sense of social responsibility that forestalled the possibility of corporate personhood and limited liability from being recognized in Muslim societies.[163] All the arguments presented by Usmani and his disciples about the viability of corporate personhood and limited liability on the basis of custom (*'urf*) clearly indicate the collapse of such a moral benchmark. Usmani's semiotic—*naẓīr* based—and pragmatic—*'urf* based—hermeneutics could not have been conceived if this moral benchmark were still in effect.

Finally, the 'thinning' of the Sharī'a in Usmani's discourse can also be read as a *rhetorical* effect of the emphasis given to contingency over a foundationalist metaphysics.[164] In a pragmatist vein, Usmani would often remind his critics that commercial domains of Muslim life could not be sanitized from financial interest without penetrating capitalist institutions and creating Islamic juridical enclaves within them (Usmani 2009, 23). As we saw from examples of rebuttals given by

[163] One can clearly see how the principles of 'balancing the right to gain with responsibility for losses' cited by Usmani's critics are reflections of this moral benchmark. Hallaq's own description of the benchmark is as follows,

> One of the central benchmarks of the Shariʿa was the notion of *sharʿi* subject, one constituted by moral technologies of the self, technologies in which ethical and moral liability of the individual believer, the subject, stood supreme. This benchmark was not only operative but performative, which is to say not only that it was applied without reticence, but that in the process of its operation it produced subjects. The premium value in this configuration was moral accountability, not profit. (Hallaq 2018, 79-80)

[164] I emphasize 'rhetorical effects' because it is incorrect to assume that Usmani's critics are impractical or non-pragmatic or that Usmani's approach lacks its own metaphysical grounding.

Thāqib al-Dīn and Ṣamdānī, Usmani's disciples accuse his critics of restricting the Sharī'a owing to their hardline conservatism and refusal to budge from antecedently existing principles. In contrast, Usmani's approach is pragmatic and sensitive to the contingencies of custom (*'urf*) and necessity (*ḍarūra*). Usmani's method of applying rulings (*aḥkām*) does not depend on finding a 'common essence' between new cases (*nawāzil*) and their textual referents (*nuṣūṣ*, sing. *naṣṣ*)—either in the form of a shared genus or through inductive logic.[165]

In conclusion, the work of secularization accomplished in Usmani's discourse does not depend on finding what Agamben, contrasting his signature-based approach, called an "identity of substance between theology and modernity, or a perfect identity of meaning between theological and political concepts" (Agamben 2011, 4). Usmani's *naẓā'ir*, as elaborated earlier, are non-essential and non-causative connections based on immaterial similarities between dissimilar entities that are separated by time and space. In this chapter, our focus was on the juridical aspect of corporate sovereignty, especially as it pertains to the establishment of the corporation as a legal person and its investment with legal immunity. In the next chapter, we will observe "standardization" as a legal technology of corporate governance.

[165] Wael Hallaq has noted that the identification of an effective legal cause or *ratio legis* (*'illa*) in analogical inference (*qiyās*) could also be based on locating a *partially* shared genus between two cases: "Whether explicitly stated or inferred, the ratio may either bear upon a class of cases belonging to the same genus, or it may be restricted in its application to individual cases. In other words, the ratio may not be concomitant with the entire genus, but only some cases subsumed under that genus." (Hallaq 2005, 142)

Chapter 4: From *Fatwā*s to "Shari'ah Standards": Standardization and the Discursive Transformation of Islamic Law

Introduction

The emergence of modern Islamic banking and finance in Pakistan marks a paradigm shift in the discursive and disciplinary configurations of the postcolonial Sharī'a. One of the defining features of the pre-modern Sharī'a was the formation of legal schools (*madhāhib*, sing. *madhhab*) as authoritative guides to the interpretation and practice of Islamic law. These schools granted discursive coherence to the momentous work of Islamic legal interpretation and also authorized normative practices relating to personal conduct and social intercourse. In effect, they were discursive traditions that integrated and enmeshed the Sharī'a in society. With the advent of colonialism in the Muslim world and the subsequent formation of nation-states, the authority of the Sharī'a was displaced and subordinated to the centralized authority of the state. As the disciplinary power of the Sharī'a gave way to the juridical power of the sovereign state, the Sharī'a's school-based symbiosis with society was largely dismantled and Islamic law was codified into a juridical instrument of state control. In postcolonial South Asia, *madrasa*s are arguably one of the last remaining bastions of school-based learning and instruction in the Sharī'a, particularly its defrocked jurisprudential tradition. Deobandī *madrasa*s have not only continued the tradition of issuing authoritative legal opinions (*fatāwā*, sing. *fatwā*) in conformity with the Ḥanafite school but also function as disciplinary enclaves where pious subjectivities are fashioned away from the state's legal apparatuses. *Madrasa*s are vital vestiges of the largely diminished school-based observance of the Sharī'a.

In this chapter, I examine the disintegration of the authority of the legal school (*madhhab*) through the decentering of Islamic legal discourse from its school-based juristic canon and its integration into the discursive field of corporate standardization. I locate this disintegration in the institutional context of an alliance of expertise forged between Pakistan's Deobandī *madrasa*s and Islamic financial institutions. In Chapter 3, I discussed the major schism between Deobandīs over the religious legitimacy of the Islamic finance project. I also introduced the concept of "corporate sovereignty" as a doubling of the sovereign exception and biopolitical governmentality in the body of the modern corporation. Whereas Chapter 3 focused on the juridical aspect of corporate sovereignty by examining Deobandī contestations over legal personhood and limited liability, this chapter addresses "standardization" as a legal technology of corporate governance. Towards this end, I examine the discursive transformations entailed in the translation of Islamic legal discourse into what are called "Shari'ah [sic] Standards."[166]

The chapter contributes to literature on the codification of Islamic law by arguing that financial standardization has enacted a new reification of the Sharī'a as a biopolitical mechanism of corporate governance. As opposed to legal codification centered on the state's juridical power of interdiction, this particular biopolitical reification of the Sharī'a enables its integration as a privatized legal technology in the global financial network. The consequences of this transformation are also more penetrating and far reaching for the authoritative school-based interpretation and practice of the Sharī'a. Whereas *madrasa*s were able to limit the effects of codification on their own traditionalist pedagogy, the alliance of expertise between *madrasa*-trained jurisconsults (*muftī*s) and financial corporations has dismantled the hegemony of school-

[166] "Shari'ah" is used as an official spelling for Sharī'a in most of Islamic banking literature. I use "Shari'ah" whenever referring to professional literature. Further, in official Pakistani government sources, Sharī'a is often written as "Shariat." The latter spelling is also phonetical because "t" (*tā*) in the end is vocalized in colloquial Urdu.

based conformity (*taqlīd*) amongst Deobandīs and inspired curricular amendments in prominent *madrasa*s. In the *madrasa*, the *fatwā* still retains its epistemic and pedagogical function of expounding the rules of the Sharī'a—within school-based parameters—and offering counsel on practices of ethical self-cultivation. In Islamic banks, however, the *fatwā* is repurposed as a corporate governance mechanism to ensure *compliance* with standardized codes of financial conduct.

I trace all the aforementioned transformations through a close textual analysis of discourses from the traditionalist genre of rules and etiquettes of *muftī*-ship (*adab al-muftī*) and the recently published manual of standardization called *Shari'ah Standards*. By reading these texts contrapuntally, I show that standardization entails the decentering of Islamic legal discourse from its semiotic, social, and ethical relations within the school-based tradition and its transplantation in the discursive regime of corporate governance. This process of decentering and re-centering of discourse, also referred to as transduction in linguistic anthropology, is mediated by unequal relations of power between the discursive tradition of the source texts and the institutions of standardization. Whereas school-based interpretation of Islamic law is highly intertextual and sustains an epistemic pluralism in connection with local customs, habits, and the individual's ethical capacities, the discourse of standardization suppresses intertextuality in pursuit of objective clarity and transparency. The former aims towards discursive coherence within school-based practices, whereas the latter has as its aim increasing capital mobility and coordination between global financial transactions. These radically different discursive modalities are also complemented by internal protocols of interpretation. Whereas the school-based discursive tradition prohibits crossing school boundaries and engaging in legal concoction (*talfīq*) to escape normative prescriptions of the Sharī'a, standardization necessitates crossing school boundaries to

creatively exploit legal differences and construct composite rules that facilitate financial innovation. I conclude by noting that the power asymmetries between traditionalist Sharī‘a jurisprudence and financial standardization cause discursive exchanges between the two systems to be dominated by the terms and conditions of the latter.

Chapter outline:

The chapter is divided into x sections. The first 2 Sections are historical. In Section 1, I begin with the history of codification of the Sharī‘a and situate it in the context of postcolonial Pakistan. In particular, I analyze the limits of state codification through a historical examination of the vexed relationship between Deobandī *madrasas* and the Pakistani state. In Section 2, I describe the emergence of the aforementioned alliance of expertise between Deobandī *madrasa*s and Islamic financial corporations. I present historical reasons for this alliance and also provide an ethnographic overview of its effects on the discursive temperament and priorities of Deobandī *madrasa*s. Section 3 provides a detailed discussion of standardization as a new form of codification. I first set the theoretical stage for discussion by critiquing the theoretical fixation on law as necessarily emanating from the juridical power of the state. I then describe standardization as a biopolitical technology of corporate governance. Finally, in Section 4 I examine the aforementioned disintegration of the authority of school-based Sharī‘a as an effect of financial standardization. The bulk of my textual analysis is presented in this section; it is therefore divided into thwo parts. In Part (a) I discuss the orthodox Deobandī conception of school-based conformity (*taqlīd*) in light of their justificatory discourses. I also discuss the Deobandī critique and juristic treatment of legal concoction (*talfīq*) as a practice that violates school-conformity. Finally, in Part (b) I show how the standardization project enacts a discursive, authoritative, and practical reversal of the traditionalist school-based positions on *taqlīd* and *talfīq*.

4.1. Codification and *Madrasa*-State Relations in Pakistan

In his encyclopedic work *Sharī'a: Theory, Practice, Transformations*, Wael Hallaq (2009) presents a comprehensive analysis of the colonial project of codification and its effects in North Africa, the Middle East, colonial India, and the Malay Archipelago. While noting the regional variations and specific historical circumstances that guided the codification project in each of these places, Hallaq also derives its systemic effects on the Sharī'a and its practice in the Muslim world. Hallaq's analysis is instructive for us as he attends to (a) the specific discursive features of codification and (b) the forms of power that authorize the codification project.

In terms of discursivity, Hallaq contrasts the internal uniformity and organization of the code with the intertextual character of Sharī'a texts. Whereas plurality of opinion is a defining feature of jurisprudential discourses in the Sharī'a, the legal code is intended to be univocal for uniformity of application. Conduct guided by the code, therefore, converges towards a common set of norms and facilitates homogeneity of practice. In contrast to the rigidity of the code, Sharī'a jurisprudence accommodated a diversity of norms and practices. Hallaq fruitfully contrasts the fluidity of the Sharī'a with the fixity of the code by highlighting the former's connection with custom (*'āda*) as an authoritative source of the law.[167] Since *'āda* is custom that resides in a social habitus, it obviates fixation in the form of writing and therefore cannot be codified. But when *'āda* was written down as law, as Hallaq shows in the case of the Dutch in Indonesia, it ceased to act as custom. Codification, therefore, radically altered the discursive character of the Sharī'a and the forms of conduct and societal pluralism it engendered.

Hallaq also examines codification as a legal technology of the modern state. Codification allowed the colonial state to dispense with the traditional authority of Muslim jurists and govern

[167] For a detailed discussion of *'āda* in connection with ordinary ethics, see Chapter 2.

Muslim subjects through its own legal institutions. The postcolonial state followed suit and used codification not only as a mechanism of governance but also as a tool of legitimation. In his more recent commentary in *Restating Orientalism*, Hallaq (2018) expands his earlier critique of codification as a governing mechanism by attaching it to sovereign power: "Codification is the nation-state's modus vivendi, a method that entails a conscious harnessing of a particular tool of sovereign power" (Hallaq 2018, 234). Codification, in other words, uses law as a mechanism of exercising and enforcing the centralized authority of the state. In Foucaultian terms, legal codification is but an exercise in the juridical power of the sovereign state.[168] Hallaq further identifies 'coercion' and 'arbitrariness' as two key features of juridicality. The coercive aspect stems from the force of juridical sanction, which Foucault identified with the sovereign's ability to take life (Foucault 1980). The aspect of arbitrariness stems from the Schmittian definition of the sovereign's ability to decide the state of exception (Schmitt 2006).[169] Hallaq's theoretical and empirical analysis of prevalent forms of structural genocide, particularly the catastrophe of environmental degradation, only affirms the continuing relevance of sovereignty to the project of modernity.

One of the macrocosmic effects of the largescale transformations enacted through codification, which vary in their scope and intensity across regional contexts, is a demarcation between the public authority of the state and the private morality of the Sharī'a. This institutionalized demarcation maps onto the distinctively modern division between politics and culture. Even when the former manifests itself in the idiom of the Sharī'a through state-sponsored

[168] To quote Hallaq, "juridicality is any law, legal system, regulation, or decree used for coercing into obedience, governing, or regulating a human collectivity" (Hallaq 2018, 357).

[169] Hallaq, along with Agamben, refines the Schmittian position by arguing that the state of exception can no longer be couched in the vocabulary of suspension of the Rule of Law. It is, in fact, a constitutive feature of modernity that normalizes arbitrary rule of the state. See Hallaq 2018, 358-359.

projects of Islamization, the institutional bases, legal rationality, and apparatuses of control of such projects operate through modern forms of secular power (Agrama 2012). Cultural manifestations of the Sharī'a in the form of dress codes, norms of social intercourse, and rituals of worship also develop in response to militant secularism or coercive Islamization. However, they maintain a modicum of independence from disciplinary apparatuses of the state as different technologies of the self and practices of ethical cultivation continue to operate, albeit at a subterranean level, beneath the threshold of state surveillance.

The situation I have described above concerns the relationship between sovereignty of the state and its specific disciplinary and biopolitical configurations. Prior to understanding the impact of standardization as a new form of codification, it is important to consider the relations of power and sovereignty in which such codification took place. On the one hand, an exclusive theoretical focus on the ontological foundations of power—exemplified in Giorgio Agamben's ruminations on sovereignty—carries the risk of obfuscating the de facto configurations of power and its pragmatic workings in specific contexts (Richland 2013). Conversely, fixing one's analytical gaze on Foucaultian microphysics of disciplinary power or the calculative techniques of biopower might not always yield an adequate conception of sovereignty. In the postcolonial context of weak and fragile states like Pakistan, neither sovereignty nor governmentality alone can suffice as a singular theoretical lens to understand the complex relations between the state, the market, religious institutions, and the subject-agents straddling between their domains. Instead, one needs to appreciate the workings of power on multiple analytical scales by giving attention to both sovereignty and governmentality, and to modes of subjection and subjectivation (Hansen and Stepputat 2006). The workings of sovereignty and governmentality in postcolonial contexts may not always conform to a model of politics based on historical experiences in Europe and North

America. I therefore attempt to combine insights from European genealogies of sovereignty with attention to its de facto configurations in non-European environments. In the case of Pakistan, this means supplementing the application of existing theories with an analysis of what falls under the cracks of fractured state sovereignty and the gaps in biopolitical governance.

The case of Deobandīs in Pakistan defies any straightforward characterization of a traditional religious community subject to state domination. Given the fractured nature of sovereignty in the state of Pakistan—first effected by the loss of territory in 1971 and, more recently, exacerbated by military operations and drone warfare in the semi-autonomous Federally Administered Tribal Areas (FATA)—a strong military establishment and a proactive network of intelligence agencies have come at the cost of a weakened judiciary and democratic institutions. Since gaining independence from colonial rule in 1947, Pakistan has been governed under an exception to democratic rule in the form of unconstitutional military dictatorships for 33 years. The juridical authority of the state, not unlike its colonial predecessor, is far from omnipresent and administrative control even in the largest metropolitan cities remains ineffective. In 2018, Pakistan had one of the lowest tax to GDP ratios in the region (Rana 2019). This is only a continuation of a deteriorating trend in the state's inability to satisfactorily implement its fiscal policy (Zaidi 2015). A state governing with insufficient resources and an erratic administrative machinery is a far cry from that calculative regime, articulated in Foucault's lectures on security and biopolitics, that manages crime, health, and the productivity of entire populations on the principle of optimization (Foucault 2010). This doesn't mean that mechanisms of security and surveillance are laxed in the Pakistani state. Surveillance and extra-judicial rendition are arguably the most potent expressions of state power, but they are largely unconstrained by logics of "regularization" (Foucault 2003, 247) or the liberal problematic of governing without "governing too much" (Foucault 2010, 319).

Perhaps the defining feature of sovereignty in postcolonial states like Pakistan is that while the state is found lacking on liberal criteria of rule of law and good governance, the writ of the state manifests itself most profoundly through the normalization of "suspicion" in institutions of state surveillance (Agrama 2012; Asad 2018).

Pakistan's Deobandīs inherited a politically uprooted Sharī'a that was further reduced and codified in the form of "Anglo-Muhammadan Law." The *madrasa* system, however, largely continues a traditionalist pedagogy of the Sharī'a in the Ḥanafite school of jurisprudence.[170] Unlike the fate of Al-Azhar in Egypt, Al-Qarawiyyīn in Morocco, and the Dār al-'Ulūm Deoband in India, Deobandī *madrasa*s in Pakistan have successfully resisted nationalization.[171] They do not receive state funding or follow a state-approved curriculum and are governed by an autonomous body made up of traditionalist Deobandī scholars (*'ulamā*) called *Wifāq al-Madāris al-'Arabiyya*. Presently, the *Wifāq* oversees a network of approximately 20,000 Deobandī *madrasa*s ('Abd al-Majīd 2018). The *Wifāq* is one amongst 5 such autonomous boards that represent *madrasa* networks from other religious denominations in Pakistan. Since its foundation in 1959, the *Wifāq* has had a tense but vacillating relationship with successive Pakistani governments and their attempts to push for *madrasa* reform. Relations with the state were most favorable under the military dictatorship of General Zia-ul-Haq and his Islamization movement (1979-1988). Elective

[170] Other *madrasa* networks, most prominently the Ahl al-Ḥadīth, don't restrict themselves to the Ḥanafite-centered *dars-i niẓāmī* curriculum.

[171] The trajectory of Deobandī *madrasa*s in India has been vastly different from their Pakistani counterparts. This is largely owing to the former's distinct relationship with the state and their explicit support for Indian secularism as a bulwark against Hindu nationalism. Pakistani Deobandīs, whether from the *madrasa* establishment or those engaged in Islamist politics, vehemently oppose all forms of secularism. Further, whereas *madrasa*s in India are required by law to register with their respective state governments under the Societies Registration Act 1860 and their sources of foreign funding are monitored under the Foreign Currency Regulation Act, few Deobandī *madrasa*s in Pakistan are registered with the government (Malik 2008).

affinities between the Zia regime and the *madrasa* establishment facilitated the promotion of a few prominent *'ulamā* in the state's newly established Islamic courts and in advisory positions of the state's Islamic Ideological Council. During this time, the *Wifāq* welcomed some measures to integrate *madrasa* students into the mainstream educational system, including granting graduates of the traditional 8 year *dars-i niẓāmī* curriculum equivalence with an M.A. Arabic Studies (Zaman 2018, 122).

Most attempts at government supervision and intervention in curriculum design, however, have met with resistance. Relations between the state and the Deobandī establishment became particularly acrimonious during General Pervez Musharraf's regime (1999-2008). Following 9/11, international pressure to clamp down on religious militancy and terrorism increased on General Musharraf's government and led to the establishment of the Pakistan Madrasah Education Board (PMEB). The PMEB miserably failed to win over *madrasa*s already associated with the *Wifāq* and was only able to establish 3 state-sponsored *madrasa*s (Ahmadani 2017). A more rigorous attempt to regulate *madrasa*s has been a major part of the recently established National Action Plan and its policy of registering *madrasa*s has met with some success (NACTA 2017). Yet, despite these measures to coopt *madrasa*s under a security regime, the monopoly of the *Wifāq* largely remains intact.

Indeed, this relative freedom to instruct in traditional texts and instill Islamic norms is not continuous with the paradigmatic Sharī'a that was interrupted and uprooted with the onslaught of colonialism. Dār al-Iftā's or *fatwā* departments at prominent *madrasa*s afford a unique space for the cultivation of ethical norms and sensibilities in accordance with the Sharī'a's surviving textual tradition. But Sharī'a practice and interpretation in the *madrasa* does not occur in a cultural and political vacuum. *Madrasa*s must contend with state hegemony in unexpected ways, even when

they are not being regulated or supervised by state institutions. Many Dār al-Iftā's therefore carry a robust tradition of objecting against the state's attempts to dictate its own interpretation of the Sharī'a to the masses. A classic and frequently occurring example of one such confrontation is in the domain of Muslim Personal Law, where the position of the state often runs counter to the authoritative position of the Ḥanafite school of jurisprudence. An example is recent amendments made to the colonial era Dissolution of Muslim Marriages Act of 1939. These amendments empower a wife to unilaterally initiate judicial divorce. To this day, Deobandī Dār al-Iftā's issue *fatwā*s stating that judicial divorce (*'adālatī khul'*) as currently practiced in courts violates the Sharī'a (Abbasi 2016).[172]

While the Dār al-Iftā' can object to certain attempts by the state to codify the Sharī'a, there are also internal limits to the Dār al-Iftā' as a juristic and ethical enclave of the Sharī'a. As Talal Asad perceptively remarked in the broader context of modernity, it is not religion but industrial capitalism that sanctions disciplinary techniques and practices shaping people's lives, habits, imagination, moral and aesthetic sensibilities. In sharp contrast with the premodern Sharī'a, where the *muftī* was pressed to find rulings on matters ranging from commercial enterprise to judicial procedure, the postcolonial Dār al-Iftā' is largely limited to providing counsel on matters pertaining to worship (*'ibādāt*).[173] In the domain of human undertakings (*mu'āmalāt*), the Dār al-

[172] To be sure, Deobandīs recognize the court's authority to initiate a separation (*tafrīq*) if the wife can establish the husband's impotence, physical abuse, or inability to provide financial sustenance. Under no circumstances, however, can a court annul a marriage without the husband's consent. Taqi Usmani (1996) penned an entire treatise laying out the differences between the traditional Ḥanafite position and court practices of judicial divorce.

[173] Asad speculates on reasons of power owing to which religion in post-Enlightenment Europe was relegated to the level of personal belief and worship. If secularism can travel to the postcolonial world through new economic and political relations of domination, one may at least notice the differential effects of such privatization of religion in non-Europen contexts.:

> …The suggestion that religion has a universal function in belief is one indication of how marginal religion has become in modern industrial society as the site for producing disciplined knowledge and personal discipline. As such it comes to resemble the conception Marx had of

Iftā' mostly deals with cases of divorce (*ṭalāq*) and inheritance (*wirātha*). The specific emphasis given to cases of divorce and inheritance in the Dār al-Iftā' is, of course, due to the establishment of Muslim Personal Law under colonial rule. While the *madrasa* tradition sought to preserve the juristic canon through religious instruction, it could not change the fact that the Sharī'a had lost much of its disciplinary salience in the realm of *mu'āmalāt* and 'worldly' affairs. State redaction of the Sharī'a to Muslim Personal Law was a crucial step in the secular constitution of society: whereas matters of trade, public law and order were the exclusive preserve of the state, Muslim Personal Law extended state authority to the domestic realm. Arguably, rituals of worship (*'ibādāt*) and their moral technologies of the self are those domains of the Sharī'a that have not been totally taken over by the state.

One of the most frequent criticisms leveled by modernists against traditional *'ulamā'* is a direct consequence of this secular division of the world. *Muftī*s and the *'ulamā'* are recognized for their scholastic expertise in matters of worship and theology, but their knowledge is of little practical import in directing the affairs of the world.[174] (Iqbal 2013, 139-141) They are backward, bereft of the knowledge of science, and lacking in expertise in technology. The *'ulamā* counter such criticisms as both misplaced and unfair. They claim that their task is to preserve knowledge of the tradition. In that respect, they are doing a fine job producing religious scholars (*'ulamā'*), prayer leaders (*a'imma*, sing. *imām*), memorizers of the Qur'ān (*ḥuffāẓ*), and jurisconsults (*muftī*s). Unlike secular educational institutions, *madrasa*s largely provide education free of cost and do not receive government funding. They are able to sustain themselves and also impart religious

> religion as ideology-that is, as a mode of consciousness which is other than consciousness of reality, external to the relations of production, producing no knowledge, but expressing at once the anguish of the oppressed and a spurious consolation. (Asad 1993, 46)

[174] Many of these critiques echo present-day sentiments about the futility and redundancy of the Humanities.

knowledge with financial contributions (*chandā*) from the masses. According to the *'ulamā*, it is modernist intellectuals and the secular educational system that have failed Muslims despite commanding institutional and financial resources incomparable to the *madrasa*. They charge high fee and receive government support and yet still fail to produce quality doctors, engineers, and scientists. If *madrasa*s are going to be judged for their scientific aptitude, one might as well evaluate secular institutions for their expertise in Islamic sciences.

Despite such reasonably argued defense, the psyche of the *'ulamā* is not immune to constant criticism from modernists. A *madrasa* graduate who ends up instructing religious texts typically makes Pakistani Rupees (PKR) 15-20k a month. Compared to a university graduate, employment avenues for *madrasa* students are usually restricted to teaching at other *madrasa*s or private religious instruction. Despite their criticisms of the ills of secular education, there is a growing desire amongst *madrasa* students to appropriate benefits of modernity but without foregoing adherence to tradition. Whereas the first generation of Deobandī scholars were clear about the *madrasa*'s religious mission and its radical separation from secular Muslim institutions such as the Aligarh University, contemporary Pakistani Deobandīs are divided on the question of introducing modern knowledge in their curriculum and preparing students for careers in more financially lucrative professions. The dilemma is not just an ideological and ethical one, but also about the material livelihood of *madrasa* students.

4.2. The Emergence of the *Madrasa*-Islamic Finance Alliance

The emergence of Islamic finance has changed the fortunes of an influential segment of Deobandī *madrasa*s. It has made possible what the Pakistani state failed to accomplish in terms of *madrasa* curriculum reform, integrating *madrasa* students into the societal mainstream, and opening suitable employment avenues in secular professions. The current Deobandī *madrasa*

landscape in Pakistan is sharply divided between critics and advocates of Islamic finance. For the latter, Islamic finance has opened an attractive employment channel into corporate Sharī'a advisory positions. A *muftī* who made PKR 15K a month, counseling lay-Muslims in the Dār al-Iftā' from morning till early evening, could now earn a salary of PKR 30-50k per month with health benefits as a "Shari'ah [sic] Compliance Officer" at an Islamic bank. A more qualified *muftī* who became a "Shari'ah [sic] Advisor" could earn a salary of PKR 1 lakh per month or more, depending on experience and seniority, along with benefits and a car for private usage. In terms of salary raises and professional growth, an ideal trajectory for any "Shari'ah [sic] scholar" is to gain experience in Pakistan's banking environment and then transition to an Islamic financial institution in the Arabian Gulf. *Madrasa*s supplying *muftī*s as human capital to Islamic banks have now introduced specialized classes on Islamic commercial law. In addition to the traditional 8 year *dars-i niẓāmī* curriculum, students are also studying modern subjects including finance, management, and, most importantly, the newly codified "Shari'ah [sic] Standards."

Muftī Muḥammad Arshad Khalīl, an instructor in legal theory (*uṣūl al-fiqh*) at Lahore's Jāmi'a Ashrafiyya seminary and an accomplished scholar himself, noted this growing trend towards Islamic commercial law with caution. I developed a close relationship with Khalīl as I studied a seminal 16th century text on legal maxims, *Al-Ashbāh wa 'l-Naẓā'ir* (Ibn Nujaym 1986), directly under him. I also auditioned his class on a major 18th century text in legal theory, *Nūr al-Anwār* (Mullah Jīwan 2008). Khalīl's vast intellectual appetite could be gauged from his multi-faceted scholarly and professional profile. Apart from being a *muftī*, he had a post-graduate degree in Mechanical Engineering and was also completing a part-time MBA. Due to his expertise in these 'secular' subjects and fluency in English, he was made responsible for the seminary's online *fatwā* program. Unlike the Dār al-Iftā', where lay Muslims came to consult *muftī*s in person, the

online *fatwā* program responded to queries received via email. Khalīl was responsible for translating those queries into Urdu and distributing them to junior *muftī*s in training.

Outside Jāmi‘a Ashrafiyya, Khalīl offered auditing services as a Sharī‘a Expert in the *ḥalāl* food and cosmetics industry. As someone who had himself witnessed the industrial and corporate inroads made by *madrasa* trained *muftī*s, Khalīl did not withhold his skepticism over how these new opportunities affected priorities of *madrasa*s and their students. “*Madāris* (sing. *madrasa*) offer specialization in important subjects, such as *tafsīr* (Qur’ānic exegesis) and Ḥadīth (Prophetic traditions). But with the growth of Islamic finance, these traditional disciplines are being neglected due to an over-emphasis on Islamic commercial law.” He further lamented, “Now every student just wants to focus on *fiqh al-buyū‘* (jurisprudence of sales).[175] If everyone becomes an Islamic finance expert, who will study *tafsīr* and Ḥadīth?”

Khalīl also did not look favorably on the growth of certification programs in Islamic finance. These programs were intended to make knowledge of the Sharī‘a accessible to finance professionals, industry practitioners, and university graduates. As Khalīl noted with concern, certified professionals with no background or training in the traditional sciences of the Sharī‘a were now working at par with *muftī*s in Islamic financial corporations.[176] For Khalīl, a certification could not magically invest its holder with traditional authority and neither was it a substantive measure of a person’s epistemic competence. It was a commodity that gave one access to new

[175] The term also refers to a recent book of the same title by Mufti Taqi Usmani (2013), which is now taught at major *madrasa*s. The book analyzes contemporary market practices from a *fiqh*-based perspective.

[176] The most popular of these certification courses is offered by the Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI), called the Certified Islamic Professional Accountant (CIPA). The certification does not require philological competence in Arabic or familiarity with juristic texts. It is not uncommon for chartered accountants and MBAs to attain this certification as an inroad to Islamic banks.

markets and increased the likelihood of employment. "It is distressing to see even *madrasa* students running after this or that certification in Islamic finance!" Khalīl said agonizingly. He strongly felt that the industry was employing *muftī*s not because it genuinely cared about conforming to authoritative norms of the Sharī'a. *Muftī*s were being used to deploy and translate traditional expertise in ways that could be harnessed by these corporations to further their own goals of profit-maximization. Khalīl's major fear was that once Islamic banks, Halal food and cosmetic companies had built enough of a knowledge capacity to be able to regulate and innovate "Shariah Compliant" products themselves, they would dispense with *muftī*s altogether.

Khalīl's premonitions about the *madrasa*-Islamic finance alliance did not stem from unwarranted cynicism. He understood both the necessity of forging such an alliance and the risks associated with it. It would be far too cynical to draw from Khalīl's words the simplistic conclusion that *madrasa*s were simply looking out for their economic self-interest in aiding the Islamic finance industry. Politics of the Deobandī *madrasa* establishment are not only influenced by socioeconomic considerations and structural constraints imposed by the state. They are also informed by a desire to propagate and implement norms of the Sharī'a in society. In contrast to India's relatively pacifist Deobandīs, whose political energies are largely devoted to reminding the state of its secular mandate to protect religious minorities, Pakistan's Deobandīs have strongly advocated elimination of interest from the country's economy and its transformation according to principles of Sharī'a. The turn to Islamic banks has only come after much frustration with the state's ability to reform the economy along Islamic lines.

Muftī Taqi Usmani[177] is a prominent Deobandī figure who worked with state institutions to Islamize Pakistan's economy. As one of the judges at the "Federal Shariat [sic] Court,"

[177] I do not use diacritical marks for names that already have official spellings in English. Similarly, I do not italicize Arabic terms that are widely used in English literature, for example Qur'ān and Ḥadīth.

established during General Zia ul Haq's Islamization drive, Usmani used his position to declare the country's interest based economic system unconstitutional. The state-sponsored drive towards Islamization had begun in 1977, but it took until 1991 for the Federal Shariat Court to pass a comprehensive verdict on the jurisprudential and constitutional illegality of interest (Bhatti and Khan 2008). The Supreme Court of Pakistan, however, did not ratify the Federal Shariat Court's decision in consideration of 67 petitions submitted against it by banks, industrialists, and corporate lobbyists. Finally, as then judge of the Shariat Appellate Bench of the Supreme Court of Pakistan in 2000, Usmani authored a point by point rebuttal of all arguments made in those petitions for sustaining an interest based economy (Usmani 2008, vol. 6).[178] However, given Pakistan's complex entanglements with tied aid and indebtedness to IMF and the World Bank, financial interest could not be outlawed with the stroke of a pen. No action was taken on the verdict and subsequent judges of the Supreme Court of Pakistan sent it back to the new Federal Shariat Court for review. For the Deobandīs, these delaying tactics reflected the state's lack of political will to introduce reforms. Efforts to introduce structural change were readily undermined by the pervasiveness of red tape and a rigid bureaucratic machinery.

In contrast with state institutions, the private sector proved more responsive to the demands of an 'Islamic economy' as a niche market in global finance. It is not merely incidental that *madrasa*s supporting Islamic finance in Pakistan have opened a ready supply chain of expertise to business corporations. As financial corporations, banks were quicker in making adjustments to operationalize Islamic knowledge by accommodating *muftī*s in positions of audit, product development, and compliance. *Madrasa*s, on the other hand, introduced curriculum reforms suited

[178] Usmani's court judgment has been published under several languages. The text's analytical breadth is impressive as it presents a meticulous treatment of arguments for tolerating interest grounded in scripture, custom, and even the doctrine of necessity.

to demands of the Islamic finance industry. With these new linkages between *madrasa*s and financial corporations, the relevance and applicability of *madrasa* expertise was no longer limited to questions of Muslim Personal Law. Financial transactions and commercial law (*mu'āmalāt*) had once again made their way into the Dār al-Iftā'. It is almost as if the market had filled in for the state's failed promise of Islamization. *Madrasa*s capitalized on a historic opportunity to play a constructive role in this enterprise.

4.3. Standardization: Law and Biopolitics under Corporate Sovereignty

My analysis of *madrasa* relations with the state and business corporations should not be confused with a logic of privatization or an evolutionary perspective of the supersession of the state by financial markets. Despite its dramatic rise as a niche financial product offered by private business corporations, it would be a mistake to assume that Islamic finance functions exclusive of the state. The *madrasa*-Islamic finance alliance is the contingent outcome of a complex history and a heterogeneous assemblage of religious and financial institutions and agents.[179] One of the advantages of conceiving Islamic finance as an assemblage is that it shows connections between religious seminaries, business corporations, and state institutions. The radical separation of economics from politics, corporations from the state, and religious doctrine from secular science is not enshrined in social reality but a performative outcome of knowledge systems of modernity. These separations and distinctions organize objects of knowledge and our analyses of them.

In the previous chapter on corporate personhood, I introduced Joshua Barkan's theory of "corporate sovereignty" as a doubling of the sovereign exception and biopolitical governmentality

[179] I find it useful here to invoke political theorist William Connolly's conception of the "evangelical-capitalist resonance machine" as a religious/economic/political assemblage in the American context (Connolly 2008). The scope, content, intensity, and directionality of Islamic finance is starkly different from what Connolly discerns in terms of the American religious right's increasing affinity with market fundamentalism. However, "resonance" captures a sense of dynamism, internal friction, and contingency that defines Deleuzian assemblages and avoids epistemological difficulties with deterministic causality.

in the body of the corporation. Modern corporations, according to Barkan, simultaneously perform state functions through biopolitical governance and undermine state sovereignty by transcending its territorially bound juridical authority. Once we move from colonial and post-colonial state sovereignty to corporate sovereignty, we must therefore attend to the reconfigurations of law and government with this shift. Foucault's work shows us that the juridical conception of power as the sovereign's right to take life underwent two significant transformations in modernity: (a) the production of docile subjects through individually targeted techniques of discipline (Foucault 1977) and, later, (b) the management of populations through impersonal and statistically informed strategies of optimization (Foucault 2010). Foucault referred to the former as disciplinary power and the latter as biopower.

Whereas juridical power acted in negative terms of domination and coercion, disciplinary and biopower were productive forces of subject formation and population management respectively. Further, while biopower remains paradigmatic in neoliberalism, it does not entirely supplant disciplinary and juridical power. Foucault's oft-cited call to "cut off the king's head" (Foucault 1980, 121) in political analysis and his frequent objections to the "inflationary critical value" (Foucault 2010, 187) afforded to the state should not be misread as implying a total absence of state sovereignty. The mass incarceration system may work on the bodies of inmates through rehabilitative interventions of disciplinary power, but it does not put an end to police brutality and the militarization of law enforcement. Similarly, statistical data and calculations are used to inform policies on healthcare and crime through biopower, but they do not dispense with the legislative process in Congress or judicial procedure in courts. New modalities of power, their systems of knowledge and technologies of governance don't eliminate older modalities but interpenetrate and reconfigure them.

Modern corporations also operate on the knowledge systems and working mechanisms of both juridical and biopower. The law remains central not only to the ontological foundation of modern corporations but also to the workings of corporate governmentality. To arrive at an adequate appreciation of the significance of law for modern corporations, we must first dispense with a misleading equation of all forms of law with juridical power. As an exclusive reserve of the state, juridical power is only one form of the exercise of law. The law could also be reconfigured in the form of privatized regulatory regimes. These legal systems may create sanctions that might have effects other than establishing sovereignty of the state. In other words, not all forms of legality emanate from the centralized authority of the state (Tadros 2018). In the paradigm of corporate sovereignty, the law simultaneously sanctions a corporate person invested with legal immunity and functions as a biopolitical technology. Whereas the former is concerned with rights, the latter is concerned with a market based management of patterns of consumption and optimal productivity. We have already examined the former in the previous chapter on corporate personhood and limited liability. We will now investigate why the rise of Islamic finance has necessitated a new project of codification in the form of "standardization."

In terms of biopolitical management, the primary legal technology used by corporations to govern their internal operations, modes of exchange, transactional relationships and consumption patterns in the market is standardization. Usage of the term standardization, as distinct from standards, can be traced with the rise of industrial production led by multinational corporations in the 19th century (Williams 1985). Standards are socially ubiquitous in the general sense of benchmarks used for good practices and conduct, whether rendered denotationally explicit or known informally through custom, moral and aesthetic sensibilities. But *standardization* as a process of systematically devising and mandating common criteria for measurement and

production is typically associated with science and manufacturing. Moreover, it involves authoritative bodies that both establish these standards and oversee their implementation. Standardization entails the creation of uniformities across means of measurement, production, and exchange. In the domain science, standardization facilitates experimentation by establishing common criteria of measurement and allowing the transmission of results. In manufacturing, standardization helps coordinate production by creating linkages across a heterogeneous range of products and devices, thus ensuring their mobility and operational compatibility. These insights may be extended to a range of disciplines and organizational systems, including law and finance. By establishing common criteria for measurement, production, and exchange, standardization makes possible largescale repetition and replication.

Standardization was crucial for the growth of largescale manufacturing corporations in the 19th century. As competition amongst private corporations grew, firms not only sought to differentiate their products from the competition but also diversified their processes of manufacturing, which led to divergences in essential parts and operating procedures. The growing incompatibilities between products threatened the growth of industry (Epstein and Timmermans 2010, 76). Standardization allowed industries to coordinate their manufacturing processes and compete with one another without differentiating themselves into obscurity. It is not altogether wrong to suggest that standardization is the law of the industry. Indeed, standardization has been likened to a form of "soft regulation" by economists owing to its non-punitive and non-coercive character (Brunsson & Jacobsson 2000).

Who gets to author standards and who gets to regulate them? Standards are usually designed by experts operating in specialized fields of knowledge, predominantly science and engineering. However, since standards also operate as a relay between different systems of

measurement and exchange, they are developed by experts in trade, accounting, and economics. Bodies that institute and implement standards range from state institutions to supranational organizations. During Herbert Hoover's tenure as Secretary of Commerce in the US (1921-1929), government-mandated standardization led to the consolidation of America's militarized industrial complex. Various industries, however, have their own standard-setting agencies that integrate research design with production. These industry standards are technically voluntary as they are not enforced by the juridical power of the state. However, due to the necessity of adhering to standards for industrial coordination and the syndicated nature of infrastructural projects involving government organizations and private industries, standards can become "de jure mandatory." Sociologists Epstein and Timmermans therefore describe standardization as enabling a "neoliberal government-industry hybrid of governance" (Epstein and Timmermans 2010, 80).

This hybrid characteristic of standardization conforms to the kind of "doubling" Barkan identifies with corporate sovereignty. Corporate standardization shares many discursive features with state codification, but also departs from it in significant ways. Most importantly, unlike state codification, corporate standardization does not seek to eliminate transgression through the threat of violence. Instead, it directs the coordination of a heterogeneous set of activities to attain optimum levels of production and performance. Furthermore, unlike codification that is largely articulated in the juridical language of legal discourse, standardization operates in fields of knowledge as diverse as science, engineering, and finance. Yet, despite these differences in terms of objects of control and fields of knowledge, standardization gives formal expression to regulatory norms in a codified form. Since I have categorized standardization as a legal technology of corporate sovereignty, it would be more accurate to state that standardization is a biopolitical iteration of codification. As a crucial technology of market governance, standardization follows a

similar logic of corporate sovereignty. It neither functions as an autonomous and private alternative to state regulation and nor does it guarantee the absolute centralized control of state institutions. Standardization creates both homogeneity and stratification.

4.4. "Shari'ah Standards" and the Disintegration of the Authority of School-Based Jurisprudence

The main standards setting organization for Islamic banks and financial institutions is a non-governmental institution called the Auditing and Accounting Organization of Islamic Financial Institutions (AAOIFI), headquartered in Bahrain. The AAOIFI is a body made up of traditionally trained scholars of Islamic law (*muftī*s), scholars of economics and finance, corporate legal experts, and industry practitioners. This body of experts devises standards of operation for Islamic banks, which concentrate on the rules of conducting financial transactions according to the teachings of the Sharī'a. These are called "Shari'ah Standards" (*al-ma'āyīr al-shar'iyya*).[180] Established in 1991, thus far the AAOIFI has published 57 standards that cover a range of topics, including rules of issuing credit, currency exchange, proper formatting of contracts, and commercial insurance etc. In 2015, 54 of these standards were collated and published in a 1264-page tome, titled *Shari'ah* [sic] *Standards* (AAOIFI 2015).[181] The *Shari'ah Standards* is the bible for Islamic finance practitioners. As one of the first and most comprehensive standard-setting initiatives since the rise of Islamic finance in the 1970s, the *Shari'ah Standards* has been adopted

[180] The choice of the Arabic term *ma'āyīr* (sing. *mi'yār*) is a curious one as it corroborates with the positive sense of "standard" as a benchmark for excellence. Raymond Williams traced this usage of the term "standard" to the fifteenth century, which is distinct from "standardization" as an industrial phenomenon developed in the nineteenth century. Standardization, as opposed to standard, is not conceived as a moral benchmark and generally carries the connotation of coercive homogenization, monotony, and blandness. (Williams 1985)

[181] The first publications were in Arabic and English, which have more recently been translated into French, Russian, and Urdu. The English translation is widely used in Islamic banks but is of poor quality. In my analysis below, I compare both the Arabic and English versions of *Shari'ah Standards*.

by Islamic financial institutions globally. Its authority is only bolstered by the scholarly prestige of its 20-member "Shari'ah Board." Chaired by Pakistan's Justice [retd.] Mufti Taqi Usmani, the board includes prominent scholars from other parts of the Muslim world, including Dr. Sheikh Abdul Sattar Abu Ghuddah from Syria and Shaykh Nizam Yaquby from Bahrain. Almost all members on the AAOIFI's Shari'ah Board also head Shari'ah Boards of major Islamic financial institutions across the Muslim world. The AAOIFI's *Shari'ah Standards* has therefore effectively penetrated the entire Islamic finance industry as its single most authoritative reference.

The AAIOFI's modus operandi and the discursive architecture of its standards stands in sharp contrast with the way the Sharī'a's corpus developed through the instrument of the *fatwā*.[182] Firstly, the AAIOFI consciously situates itself in a globalized financial world, where its primary task is to translate and codify Islamic commercial law into the language of finance. Reminiscent of the rationales for codification given by the authors of the 19th century Ottoman civil code, the *Mecelle*, AAOIFI's *Shariah Standards* cite the urgent need to render the genre of Islamic commercial law (*fiqh al-mu'āmalāt*) into language that is concise, accessible, and 'disambiguated.' This additional work of simplification needs to be performed on the Sharī'a's textual corpus so that its teachings may be readily applied and coordinated with a fast paced financial industry.

The *Shari'ah Standards*, however, is much more than a simplified rendition of Islamic commercial law. The entire project of standardization is undertaken with a view towards homogenizing the discursive architecture of *fiqh al-mu'āmalāt*. As we noted with the rise of standardization in financial corporations, this is a necessary condition for coordinating the financial products and transactions of Islamic banks. The textual corpus of *fiqh al-mu'āmalāt*, however, is highly intertextual due to the interpretive pluralism of the Sharī'a and its organic

[182] For an in-depth analysis of the development of the Islamic jurisprudential canon through the *fatwa*, see Hallaq (1994; 2001) and Messick (2018).

linkages with custom. On a particular topic of sale (*bay'*) or lease (*ijāra*), a Ḥanafite legal text would report multiple positions (*aqwāl*, sing. *qawl*). These positions may not always be commensurable with one another. Through a process of discursive preference (*tarjīḥ*), certain positions gained precedence over others and became the basis of a *fatwā* (*muftā bihī*). The process of selecting and ranking positions in a discursive hierarchy was not simply one of grading interpretations as per their hermeneutical strength or logical consistency. It was also a social-temporal function of how positions were contested and adopted within a discursive tradition.

More significantly, discursive preference (*tarjīḥ*) was not premised on the epistemic erasure of competing positions, as their preservation is an integral part of the discursive architecture of Sharī'a texts. Many seminal texts of the Ḥanafite tradition, such as al-Marghinānī's (d. 1197) *al-Hidāya* and al-Sarakhsī's (d. 1096) *al-Mabṣūṭ*, follow a format of mentioning the preferred position (*qawl rājiḥ*) on a specific case right before or after listing its competing positions and their arguments (Usmani 211-212). This intertextual organization served two functions. First, it delineated the dialogical relationship between competing positions. Juristic authorities not only responded to but also built upon the positions taken by predecessors and contemporaries both from within and outside their schools. In a sense, the preferred position (*qawl rājiḥ*) always existed in conversation with competing positions. It would be impossible for a *muftī* reading those texts to appreciate the relative merit of a school's preferred position (*qawl rājiḥ*) without understanding its semiotic relations within a cluster of competing positions. Second, knowing competing positions gave the *muftī* interpretive latitude to diverge from the school's preferred position (*qawl rājiḥ*) in situations of necessity or distress (*ḍarūra*). The *fatwā* could thus be oriented towards the circumstantial needs of the questioner (*mustaftī*) by selecting from a range of juristic positions given in a text. In summary, authoritative juristic discourse was relayed in an intertextual format

that preserved its semiotic relations and sociohistorical contingency. As we will see, the *Shari'ah Standards* obviated this format in favor of a positivistic emphasis on objectivity and transparency.

The intertextual format of juristic texts runs counter to the method of standardization. In the latter, hermeneutical complexity and interpretive pluralism must be suppressed in favor of singular and objective prescriptions for conduct. From the perspective of the *Shari'ah Standards*, the intertextuality of Islamic juristic discourses counteracts the clarity and transparency needed to isolate distinct meanings and standards of practice. Towards this end, the AAIOFI's Secretary General Dr. Hamed Hassan Merah announces in his foreword to the *Shari'ah Standards* volume: "They [Standards] also grant special consideration to the use of unified terminology and disambiguation of its different components and aspects: technical, legal, accounting, financial, etc." (AAOIFI 2015, 7). The *Shari'ah Standards* places recurrent emphasis on the need to establish consistency in rules and regulations so as to facilitate coordination between Islamic financial organizations. Standardization is justified as a necessary measure to ensure the operational integration of Islamic banks across different regions and make Islamic transactions compatible with global financial standards.

Given the relatively smaller market share of Islamic banks in the financial world,[183] they often have to resort to syndicate financing with conventional banks. If Islamic banks are to work with conventional banks and jointly conduct deals with them, they must follow the same accounting standards and protocols. The AAOIFI doesn't see such joint operations as compromising the Islamic character of Islamic banks, as long as such partnerships do not violate formal rules and restrictions of the Sharī'a. As long as an Islamic bank does not earn interest-based income, seeking convergence in accounting standards, contractual forms, and business protocols

[183] In the year 2018, Islamic banks held approximately 12% of the overall banking business in Pakistan. The share of Islamic banks in the global banking industry is approximately 1% (IFSB 2019).

used by conventional banks does not in and of itself affect the religious permissibility of a transaction. The AAOIFI clearly mentions compatibility with modern finance as one the major objectives of *Shari'ah Standards*: "Furthermore, the standards account for modern applications of Islamic financial contracts and products and relevant emerging matters." (Ibid)

Having established the urgent need for standardization, how does the AAOIFI go about translating legal rulings and positions from *mu'āmalāt* into financial industry standards? The work of standardization itself is a multi-discursive process involving the collaborative labors of several kinds of experts. I want to outline two broad stages of this complex process: (a) decontextualization of juristic models, principles, and contracts from Islamic legal discourse and (b) their recontextualization in the discursive field of financial standardization. Linguistic anthropologists Bauman and Briggs (1990; 1992) broadly define decontextualization and recontextualization as a movement of discourse from one set of social, semiotic, and power relations to another. The discourse itself is transformed through this process of detachment and attachment.[184] In discursive terms, this process is also referred to as transduction.

This process of transduction critically depends on two interpretive protocols that are internal to the Sharī'a: school-conformity (*taqlīd*) and legal concoction (*talfīq*). I will therefore first describe the orthodox Deobandī positions on these two phenomenon in parts (a). I will then proceed with my textual analysis of transduction as it takes place from juristic discourse to standardization in part (b).

[184] To quote Bauman and Briggs,

> To decontextualize and recontextualize a text is thus an act of control, and in regard to the differential exercise of such control the issue of social power arises. More specifically, we may recognize differential access to texts, differential legitimacy in claims to and use of texts, differential competence in the use of texts, and differential values attaching to various types of texts. (Bauman and Briggs 1990, 77)

(a) Deobandīs, the Critique of Legal Concoction (*talfīq*), and the Justificatory Discourse on School-Conformity (*taqlīd*):

The AAOIFI's *muftī*s select relevant rulings and positions on a topic from the juristic canon of all four schools of Sunnī jurisprudence. Their selection process is not confined to the intra-school practice of discursive preference (*tarjīḥ*) described above. Instead, they circumvent school boundaries and often combine positions from different school towards the construction of a standard. In Islamic juristic terminology, this practice is pejoratively referred to as legal concoction (*talfīq*). *Talfīq* involves the creation of unprecedented rulings by piecing together opinions and positions from different schools of Islamic law. Whereas the practice of *talfīq* was advocated by reformist scholars in the early 20th century as a means of leveraging disagreements between Muslim jurists, traditionalists were vehemently opposed to it as it violated the methodological integrity of the schools of jurisprudence (Anderson 1976).[185]

Talfīq effectively decenters juristic positions from their discursive field of social and semiotic relations and transposes them onto a justificatory domain of utilitarian expedience. As per the juristic definition of *talfīq*, it entails composing a ruling (*ḥukm*) by selecting two or more positions from different schools, such that the final ruling may not be justifiable by the methodological criterion of any individual school. An oft-cited example is of a person who commits adultery (*zinā*) under the cover of entering a marital contract (*nikāḥ*) by combining (a) the Ḥanafite position that doesn't necessitate seeking permission from a woman's guardian (*walī*'s) for marriage and (b) the Mālikite position that relaxes the requirement of having witnesses to the marital contract. While both positions are acceptable under certain conditions within their respective schools, combining them produces an outcome that neither school would recognize as

[185] I outline major disagreements on the question of *talfīq* and school-conformity (*taqlīd*) between Pakistani Deobandīs, Ahl-i Ḥadīth, and modernists below.

a form of legal wedlock. *Talfīq* was therefore practiced as a legal expedient in order to justify an act for which there was no legal precedent in any of the four authoritative schools of jurisprudence.

Talfīq is widely rejected by all four Sunnī schools of Islamic jurisprudence (Hallaq 2009, 448). As Ḥanafites, the Deobandīs are staunch defenders of the principle of school conformity (*taqlīd*). As opposed to *talfīq*, *taqlīd* entails confining one's observance of the Sharī'a to the interpretive and instructional framework of any one authoritative school (*madhhab*) of Islamic law. The traditionalist rationale behind this conformity is to ensure consistency in one's practice of the Sharī'a by following a qualified interpreter relegated to the level of a master-jurist (*mujtahid*). In the traditionalist language of *fiqh*, a *mujtahid* is a person of vast knowledge and pious character who has the authority to conduct a meta-discursive interpretation of the Sharī'a. In the hierarchy of juristic authority within Sunnī schools of jurisprudence, only the "absolute *mujtahid*" (*mujtahid-muṭlaq*) has the authority to derive first-order principles (*uṣūl*) directly from the two primary sources of the Sharī'a, i.e. the Qur'ān and the Ḥadīth. Absolute *mujtahid*s include, but are not limited to, the eponymous founders of the four Sunnī schools of jurisprudence: Abū Ḥanīfa; Mālik; Shāfi'i; and Ibn Ḥanbal. Jurists lower in the hierarchy work from the interpretive methodologies derived by the absolute *mujtahid*s. As generations of jurists coalesced around the interpretive frameworks developed by absolute *mujtahid*s, these frameworks were given discursive coherence and gradually crystallized into full-fledged schools of law. *Taqlīd* secures the discursive authority of each school and ensures its integrity of practice amongst lay Muslims (Hallaq 2001, 24-56, 86-120).

In his comprehensive work on the traditionalist methodology, principles, and etiquette of issuing *fatāwā* (sing. *fatwā*), *Uṣūl al-Iftā' wa Ādābuhu*, Usmani justifies *taqlīd* as an organizing principle of school (*madhhab*) based practice of the Sharī'a and a bulwark against *talfīq*. Contrary

to Orientalist and classical anthropological projections of traditionalism as founded on a (false) belief in the timelessness of tradition, Usmani historicizes the institution of *taqlīd* and traces its emergence to two major conditions of possibility: (a) the maturation of schools of law into discursive traditions and (b) the growing threat of *talfīq* as the mixing and matching of positions from different schools to contravene the disciplinary objectives of the Sharī'a. For Usmani, *taqlīd* was not necessary prior to the formalization of schools of law as lay Muslims were embedded in a social habitus that was still shaped by the normative conduct of the Prophet and his successors. Custom (*'āda*) was a sufficient source of instilling Islamic norms of conduct. The custom of the Kūfans in Iraq varied from the custom of Medinans in the Hijaz, yet each of these were authoritative in that they were deeply imbued with the normative influence of pious *mujtahid*s, Islamic institutions of learning and socioeconomic justice. As for norms that weren't instilled by the tacit force of habit, lay Muslims could always inquire about them from a *mujtahid* in their vicinity.

This situation changed as new cultural encounters, socioeconomic developments, and greater social stratification led to greater discursive refinement of jurisprudence (*fiqh*). As the *fiqh* continued to develop in connection with *'āda*, lay Muslims practiced the Sharī'a as per their regional schools. The *fiqh*, however, had become more specialized in relation to methodological commitments and regional differences. Muslim jurists were not state officials but were embedded in society; their juristic discourse was intimately tied to social relations within their political and cultural environment. In such circumstances, crossing the boundaries of one's school disrupted the ecological connection between the Sharī'a's discursive formation and its local habitat. *Taqlīd* formalized school-based conformity primarily to safeguard against such disruption.

Usmani states unequivocally that *taqlīd* is not a theologically mandated principle of the Sharī‘a; it is pragmatic mechanism to ensure order (*naẓm*) and consistency in the practice of the Sharī‘a. Being a conformist (*muqallid*) of a particular school doesn’t entail an epistemological rejection of the positions taken by other schools. In other words, a Ḥanafite or a Ḥanbalite follows the Sharī‘a as per the teachings of his school but only with a conditional rectitude. He recognizes that the remaining orthodox schools aren’t misguided, but he conforms to Ḥanafism or Ḥanbalism with the hope of attaining fullness and consistency in his subjectification to the norms of Sharī‘a. In fact, one of the hallmarks of epistemic pluralism in the Sharī‘a is the dictum that each qualified interpreter (*mujtahid*) is correct (*kullu mujtahidin muṣībun*). In other words, if two *mujtahid*s take differing or even contradictory positions on an issue, the Sharī‘a recognizes the correctness of both.[186] The four Sunnī schools of jurisprudence are based on the interpretive efforts of such *mujtahid*s. While *mujtahid*s in early Islam were by no means limited to these four schools, it is only the latter four whose interpretive principles and juristic discourses have survived history and been transmitted from generation to generation. The ambit of authoritative discourse in

[186] Early Muslim theologians came up with two explanations for this dictum. According to the Mu‘tazilites, the principle entailed the plurality of truth itself. All *mujtahid*s did not strive to approximate a singular truth but rather arrived at multiple truths. The more Aristotelian position, however, affirmed that the truth of a matter could only be singular since the notion of multiple truths violated the law of non-contradiction (*al-jam‘ bayn al-naqīḍayn*). The truth known to God was only one. In other words, the Sharī‘a conveyed singular truths and each *mujtahid* tried to approximate it to the best of his ability. In situations where *mujtahid*s took multiple positions on a matter, only one position could be epistemologically correct. Those whose reasoning did not converge on the one true position, however, were also correct because they sincerely performed their duty of trying to approximate the truth. A *mujtahid* was, therefore, always correct in his effort (*fī ḥaqq al-‘amal*) even if that effort did not lead to the realization of truth itself (*al-ḥaqq*). As per the statement attributed to Abū Ḥanīfa: “Each *mujtahid* is correct but the truth near God is one; either the *mujtahid* has reached it or he has not.” (*Kullu mujtahidin muṣībun wa ’l-ḥaqqu ‘inda Allāhi wāḥidun wa qad yuṣībuhū wa qad*) This second position represents the view of orthodox Sunnī Islam on the relationship between the truth (*al-ḥaqq*) and authoritative reasoning (*ijtihād*). For a recent discussion of this dictum, see Ibrahim 2015.

jurisprudence (*fiqh*) is therefore confined to the four schools and their organizational integrity is ensured through the practice of school conformity (*taqlīd*).[187]

Discussions of *taqlīd* and criticisms of *talfīq* would often acquire sectarian overtones at the Jāmi‘a Ashrafiyya seminary. *Taqlīd* in South Asian Islam was much more than an administrative mechanism or a chapter in the intellectual history of jurisprudence (*fiqh*). It was also a major sectarian fault line that divided traditionalist conformists (*muqallidūn*) from traditionalist non-conformists (*ghayr muqallidīn*) and modernists (*mutajaddidūn*; *tajaddud pasand* in Urdu). While both Deobandīs and Barēlvī's were conformists of the Ḥanafite school, the Ahl-i Ḥadīth were traditionalists who did not conform to any single school and were vociferous critics of *taqlīd*. The Ahl-i Ḥadīth, often disparagingly referred to as 'Wahhābīs' in connection with the fundamentalist-revivalist movement in 18th century Najd, denounced the overly scholastic school-based hermeneutics in favor of unmediated reliance on textual sources of the Sharī‘a. Modernists, on the other hand, rejected school-based conformity as religious obscurantism that prevented Muslims from reconstituting their faith by embracing scientific rationality and progress. There is much diversity and internal variation within these camps, but the collective skepticism over *taqlīd* and its defense by school-conformists has triggered discursive contestation and acrimonious debate for over two centuries. These polemical exchanges have significantly shaped the discursive and psychic contours of Sunnī orthodoxy and its identity politics in South Asia.

Muftī Sājid 'Umayr, the head *muftī* of the Dār al-Iftā' at Jāmi‘a Ashrafiyya, would frequently veer into criticisms of all varieties of non-conformists (*ghayr muqallidīn*) during his

[187] Usmani's narrative of the emergence of *taqlīd* is by no means comprehensive. Notably, he makes no mention of the fact that beyond the four dominant Sunnī schools, other systems of jurisprudence developed by *mujtahid*s have also been transmitted through history and operate as discursive traditions. These include, but are not limited to, the Ja‘farī and Zaydī schools in Shi‘ite Islam and the Ibāḍī school. Whereas Zaydīs and Ibāḍīs are minority schools, the Ja‘farī school observed by twelver Shi‘ite Muslims rivals the Sunnī Ḥanbalite school in size.

lectures on *adab al-muftī*—a genre of Islamic legal discourse which concerns the rules and etiquette of *muftī*-ship. This was a much smaller class with only 8-9 students, all of whom had completed the 8-year *dars-i niẓāmī* curriculum and were in their first year of specialization in jurisprudence (*takhaṣṣuṣ fī 'l-fiqh*). 'Umayr would teach this 45-minute class once a week prior to beginning his morning session at the Dār al-Iftā'. The seniority of students was partly the reason 'Umayr took the liberty of sounding polemical attacks on the Ahl-i Ḥadīth and modernists. As per an etiquette of critique observed by the more seasoned *muftī*s, 'Umayr would wisely refrain from sectarian talk in congregational gatherings at the mosque. It was best to focus the public's attention on how to cultivate a pious disposition by enacting and embodying the norms of Prophetic conduct (Sunnah). The more contentious points of disagreement on doctrine and ritual were to be reserved for the classroom.

I read two major texts as part of my auditioning of 'Umayr's class: Usmani's *Uṣūl al-Iftā' wa Ādābuhū* and a much more concise but pivotal text on the principles of issuing *fatāwā* by the Damascene Ibn 'Ābidīn (d. 1836), *Sharḥ 'Uqūd Rasm al-Muftī*. Each week a student would read the text line by line and 'Umayr would instruct him to stop at any point where he wanted to offer his own commentary. During our reading of Usmani's text, 'Umayr expounded on the pragmatic necessity for *taqlīd* by saying that Deobandīs did not insist on Ḥanafism because the other three schools were misguided. People were free to be Ḥanbalites in Pakistan and India if they wanted to. However, 'Umayr noted, it would be impossible for a Ḥanbalite to practice the Sharī'a in Pakistan. No one is a *mujtahid* any longer and each follower of a *madhhab* (legal school) needs guidance. For the latter, there are no Ḥanbalite *madrasa*s, Dār al-Iftā's, *muftī*s, or even readily available books of the Ḥanbalite school in Pakistan. He further noted that Ḥanafite jurisprudence had evolved in relation to the social reality of this region and the experiences and concerns of

Muslims living here. Its *fatāwā* and *masā'il* (cases, issues, or questions) did not speak to the *'urf* (custom) of Muslims in the Arabian Peninsula or Southeast Asia. Anyone who insisted on being a Ḥanbalite or a Shāfi'ite in Pakistan, 'Umayr warned, would therefore deprive himself of all practical guidance in the Sharī'a.

'Umayr's harshest indignation was directed at the Ahl-i Ḥadīth and the modernists. While explaining the Ḥadīth about the *mujtahid*'s correctness in his effort to approximate the truth, 'Umayr stated that it was God's mercy on Muslims that the path to truth coalesced into four recognized schools of law. These four schools were the only fully developed discursive traditions based on the efforts of the pious *mujtahid*s and, therefore, the closest approximations of the Sharī'a. But if these *mujtahid*s couldn't attain the truth (*ḥaqq*) with absolute certainty, what chances did we have of finding the truth on our own? 'Umayr said that in circumventing the four schools the Ahl-i Ḥadīth wanted to arrogate the truth to themselves. Their inability to conform to a recognized path (*madhhab*) paved by *mujtahid*s for centuries only proved that they lacked the humility (*tawāḍu'*), the etiquette and cultivated sensibility (*adab*) needed to acquire the truth. As the proverbial expression went, "good fortune befalls the respectful one; misfortune befalls the impudent one."[188] By a creative play on words, 'Umayr would often say "we are not Ahl-i Ḥadīth (pl. *aḥādīth*); we are Ahl-i Aḥādīth. We respect *all* traditions, including those from the *mujtahid*s." He said that the name Ahl-i Ḥadīth was a misnomer because the Deobandīs also accepted the Ḥadīth. The real disagreement was over who had the authority to interpret and expound the Ḥadīth. "They say that they will expound the Ḥadīth for themselves," 'Umayr noted, "whereas we say that

[188] Text (Urdu): *Bā-adab bā naṣīb bē-adab bē-naṣīb*. This is arguably the most oft-quoted pedagogical wisdom imparted to *madrasa* students.

our elders will expound the Ḥadīth for us."[189] 'Umayr's statement does not signal an end to interpretation and discursive contestation, it simply contains them within the disciplinary and methodological parameters of the four established schools of jurisprudence.

Of course, neither the Ahl-i Ḥadīth nor the Deobandīs undergo self-effacement when engaged in acts of interpretation or the reception of authoritative interpretations. It is not that one approach allows texts to speak for themselves—thus guaranteeing continuity with tradition—whereas the other reconstructs them in the present—thus promoting change. The dispute between Deobandīs and Ahl-i Ḥadīth is neither over the delimitation of sources of Islamic knowledge nor on the *possibility* of their interpretation. Their ultimate concern is with the kind of discursive practice that both formulates and mobilizes Islamic knowledge as a way of "learning how to live in a given tradition." (Asad 2018, 5) When Deobandīs delimit authoritative interpretations of the Sharī'a to the domain of the four schools and mandate exclusive conformity to any one school (*taqlīd*) as the appropriate means of putting Islamic knowledge into practice, they are defining the "rules and processes of appropriation of discourse" within a discursive practice. (Foucault 1972, 75) In Foucaultian terms, these rules of appropriation confine "the right to speak, ability to understand, licit and immediate access to the corpus of already formulated statements, and the capacity to invest this discourse in decisions, institutions, or practices" to a "particular group of individuals." (Ibid, 76-77) For the Deobandīs, the authority to perform the aforementioned functions with respect to the discourse of the Sharī'a is confined to individuals who are trained in and adherents of the four recognized schools of jurisprudence.

Whereas tensions between Deobandīs and Ahl-i Ḥadīth were directed towards a common aspiration to perfect the Sharī'a as a "shared inheritance," (Asad 2018) the modernists were always

[189] Text (Urdu): *Woh kehtē hain keh woh khud ḥadīth kī tashrīḥ karēngē jab-keh ham kehtē hain keh hamārē bare tashrīḥ karēngē*.

conceived as having dual loyalty towards Islam and the West. Deobandīs greeted the modernists' reformist bent towards the Sharī'a with suspicion and often dismissed it as a covert operation to subordinate Islam to the values of the West. If the Ahl-i Ḥadīth were viewed somewhat condescendingly as being overzealous in their puritanical bent towards Islam, the modernists were seen with complete disdain as uncritical imitators of the West.[190] If the Ahl-i Ḥadīth were considered too rigid and extreme (*mutashaddid*) in their textual fundamentalism, the modernists were accused of twisting textual injunctions so as to reconstruct the Sharī'a in the image of the secular West. For the traditionalists, the modernists had internalized secular sensibilities to such an extent that they couldn't even tolerate the visual symbols (*shi'ār*) of Islam, let alone seek to preserve the laws and institutions of the Sharī'a. In the 1960s, Fazlur Rahman's highly controversial reinterpretation of the prohibition of usury (*ribā*) in Islam earned him the ire of Deobandīs.[191] In contemporary times, Javed Ahmed Ghamidi is a target of relentless attacks for trying to modernize Islam. Not surprisingly, Deobandīs note with concern that each of these modernist-reformers, from Syed Ahmad Khan (d. 1898) under the British to Ghamidi under General Pervez Musharraf, received state patronage to propagate their reformist views on Islam. Deobandīs thus defend *taqlīd* with even greater zeal as the only bulwark against modernist attempts to dissolve the authority of legal schools (*madhāhib*) and secularize Islam.

[190] For a lengthier discussion of the aesthetic and ethical dimensions of imitation (*tashabbuh*) as a self-deprecating practice, see Chapter 1.

[191] The young Taqi Usmani penned an entire book, *Islām aur Jiddat-Pasandī* (2002), dedicated to refuting Fazlur Rahman's methodology and substantive views on Islam. Another prominent Deobandī who attacked Fazlur Rahman was Yūsuf Ludhiyānwī.

‘Umayr did not mince words when talking about the air of intellectual superiority assumed by modernists housed in universities.[192] Modernists downplayed the importance of Islamic rites and emphasized the need to work towards achieving the larger objectives (*maqāṣid*) of the Sharī‘a. ‘Umayr found their *maqāṣid* talk audacious at best and hypocritical at worse. First, he thought that modernists were too unfamiliar with the Islamic tradition to comprehend its *maqāṣid*. Second, he thought they used *maqāṣid* to dilute the Sharī‘a’s commandments. He would derisively say “They are unable to read inside the very books they like to cite! They can’t call themselves *mujtahid*s because they don’t know the Islamic tradition and so they’ve appropriated the title of *muḥaqqiq* (researcher).” ‘Umayr told students that these Anglo-educated modernists could captivate audiences by using sophisticated language and talking in English with a highbrow accent, but they didn’t have the linguistic skills needed to read Islamic texts.

Deobandīs in general were extremely skeptical of the *maqāṣid* discourse as it had effectively been co-opted by modernists. A characteristic feature of the modernist-*maqāṣid*

[192] Recalling a recent incident in which he had to explain the rules of marriage (*nikāḥ*) expounded in al-Marghinānī’s (d. 1197) *Al-Hidāya* to a university professor, ‘Umayr laughed at the philological training that modernists received at universities. In 2014, the Punjab Assembly sought to make an amendment to the colonial era Child Marriage Restraint Act of 1929. Following a similar step taken by the Government of Sindh in 2013, the Government of Punjab wanted to increase the minimum age for marriage of girls from 16 to 18 years. The government invited a delegation of *‘ulamā’* for legal counsel and to seek their support. ‘Umayr represented Jāmi‘a Ashrafiyya at the consultation session. As per the Ḥanafite school, a girl’s father or grandfather had the right as her guardian (*walī*) to arrange her marriage at a young age. The marriage, however, could only be consummated after puberty. When ‘Umayr explained this principle to his audience, he was challenged by a professor of Islamic studies who argued that it violated the condition of mutual consent (*tarāḍī*) in Islamic contracts. ‘Umayr countered by saying that the notion of consent in the Sharī‘a was more expansive than its individualistic conception in the West. As al-Marghinānī explained in *Al-Hidāya*, the right to offer consent could be delegated to a compassionate elder. Al-Marghinānī attributes this *mufā bihī* position to Abū Ḥanīfah and notes that both his students, Muḥammad and Abū Yūsuf, disagree with their master. The latter two are of the opinion that a minor girl’s marriage cannot be arranged by anyone. She can only marry after puberty once her consent can be recognized. The professor, however, was adamant that such a conception violated the aims and objectives (*maqāṣid*) of the Sharī‘a and mentioned the work of Mālikite jurist Abū Isḥāq al-Shāṭibī (d. 1388), *Al-Muwāfaqāt*, in his support. As per ‘Umayr’s vivid recollection, when he challenged the professor to explicate his textual argument further, he was shocked to learn that the professor could not even read complete phrases in the *Muwāfaqāt* with the proper grammatical modulations and declensions.

discourse was its functionalist approach to ritual: each Islamic rite had an intended objective that was external to the rite itself. By this functionalist logic, an argument could always be made for sacrificing or altering an Islamic rite at the altar of some abstract/higher value posited as its long-term objective.[193] 'Umayr saw universities as the main culprits in propagating this modernist-*maqāṣid* ideology. While he never argued for the revival of a traditionalist approach to *maqāṣid* in the *madrasa* curriculum, he was nevertheless convinced that all varieties of Islamic instruction should be left to *madrasa*s: "universities ought to focus on engineering and medicine; Islamic studies departments are an affliction (*fitna*) and must be immediately shut down."

The modernist "affliction" (*fitna*)—a qualifier reserved for the sectarian other, including Barēlvīs and Ahl-i Ḥadīth—made an even more potent case, beyond concerns of discursive order and consistency in practice, for the need to institute *taqlīd*. 'Umayr's polemical deviations served to animate a teleological dimension in Usmani's historicist narrative of *taqlīd*. This teleological bent was based on the conviction that the pious character of the Muslim community in general underwent generational decline.[194] *Taqlīd* thus becomes important for subsequent generations of Muslims not only because of their temporal and physical remoteness from authoritative sources of guidance, qualified interpreters (*mujtahid*s), and normative customs of earlier generations, but also because of their weakened aptitude for consistent religious observance. Subsequent generations of Muslims are more likely to search for legal loopholes and exploit differences between legal schools

[193] We will shortly see how efficiency and global integration act as such values in Islamic finance. The task of jurisprudence is subordinated to achieving these goals.

[194] The oft-cited prooftext for this position is a Prophetic tradition that states "The best of the Muslim community are from my generation, then their successors, then their successors" (*khayru ummatī qarnī thumma 'l-ladhīna yalūnahum thumma 'l-ladhīna yalūnahum*). This Prophetic tradition is also used as a basis for the tripartite hierarchy of the model Muslim community, beginning with companions and contemporaries of the Prophet (*ṣaḥāba*), followers of the Prophet's companions (*tābi'ūn*), and the generation of followers after them (*taba' tābi'īn*).

to minimize normative constraints of the Sharī'a. In other words, the usage of *talfīq* to distort the Sharī'a and legitimize a life of relaxation becomes a moral hazard with a decline in Muslim piety.

Usmani still differentiates the purposeful circumvention of the Sharī'a from a genuine need to search for a ruling (*ḥukm*) outside the boundaries of one's school. An individual instance of extracting a position (*qawl*) or ruling (*ḥukm*) from outside of one's school is referred to as *iftā' bi madhhab al-ghayr* ("*fatwā*-giving from another school"). *Talfīq* is actually a composite of several instances of *iftā' bi madhhab al-ghayr* combined in a single act. While Usmani deems *talfīq* as generally impermissible, he concludes that *iftā' bi madhhab al-ghayr* may be permitted under 5 conditions: (a) it should be based on a situation of essential need (*ḥāja*) and dire necessity (*ḍarūra*) that is at once common and imminent; (b) the *muftī* should ascertain that the situation is recognized as one of dire necessity (*ḍarūra*) by other *muftī*s as well; (c) the *muftī* should consult experts of the school (*madhhab*) from where he intends to extract a ruling; (d) the *muftī* should ensure that the ruling taken from another school is not a minority opinion (*qawl shādh*) in that school itself; and, finally (e) the *muftī* should ensure that his new ruling meets all the conditions of validity stipulated in the source *madhhab*. Usmani cites several examples of such legitimate instances of *iftā' bi-madhhab al-ghayr* and confirms that meeting these five conditions will prevent a *muftī* from committing *talfīq*.

Usmani does not dismiss *talfīq* categorically either. After conducting a thorough philological investigation of juristic views on *talfīq*, he notices that some disagreement persisted over its impermissibility amongst the early scholars (*mutaqaddimūn*) of all four schools. A majority of the later scholars (*muta'akkhirūn*), however, rejected *talfīq*. He therefore concludes that *talfīq* cannot be declared impermissible by consensus (*ijmā'*). It is more accurate to state that its impermissibility is the preponderant (*rājiḥ*) position of all four schools. He expresses his

premonition against the popularization of *talfīq* in no uncertain terms: "If the door to *talfīq* were to be left wide open, its outcome could only appear in the form of people's subordination to their carnal desires and absolute freedom from the normative constraints of the Sharī'a." (Usmani 2014, 248) In the very next sentence, however, he qualifies his premonition by identifying a specifically forbidden form of *talfīq* (*talfīq mamnū'*). As we discussed above, Usmani defines such *talfīq* as combining an eclectic set of opinions to authorize a practice that could not be considered permissible by the criterion of any individual school of legal thought. Such an outcome would thus be "beyond consensus" (*khāriq al-ijmā'*). The corollary to this qualification is that *talfīq* becomes permissible when applied to two or more separate acts. After citing a few examples of permissible *talfīq* practiced by the Ḥanafites, Usmani relies on the authority of his Deobandī predecessor, Ashraf 'Alī Thānawī (d. 1943), who explains the difference between permissible and impermissible *talfīq* with an example from prayer (*ṣalāt*) and ablution (*wuḍū*):

> If a person performs the ablution (*wuḍū*) without the proper sequence of steps [washing the face, hands, and then feet etc.], his ablution will not be correct according to the Shāfi'ite school. And if he also wipes less than 1/4th of his head, his ablution will not be acceptable according to the Ḥanafites… Such an ablution will not be considered valid by any school and hence it is a kind of *talfīq* that breaches consensus (*khāriq-i ijmā'*). But if a person wipes less than 1/4th of his head during ablution and does not recite the *fātiḥa* [a chapter from the Qur'ān] behind the *imām* [prayer leader] during prayer—the ablution being performed per the Shāfi'ite school and the prayer being performed per the Ḥanafites—then due to the reason that ablution and prayer are two separate acts, such *talfīq* is not impermissible. (Ibid)

In conclusion, two or more rulings from alternative schools combined in a single action result in impermissible *talfīq*. On the other hand, an eclectic set of rulings applied to discrete but contiguous acts—the obligatory prayer and its pre-requisite rite of ablution—leads to a permissible kind of *talfīq*.[195]

[195] The difference between the two seems to rest on a thin distinction between bodily actions that constitute one religious rite versus actions distributed across multiple rites. It is unclear why lack of

(b) Transduction and the Reversal of *taqlīd* from Juristic Discourse to "Shari'ah Standards":

Usmani's emphatic defense of *taqlīd* and hypercautious allowance for *talfīq* undergoes significant redaction under the AAOIFI's *Shari'ah Standards* project, where he is chairperson of both the "Shari'ah Board" and the "Shari'ah Standards Translation Committee." In all 57 standards published in more than 1200 pages of the *Shari'ah Standards* volume, the term *talfīq* appears only once in the English edition and twice in the Arabic edition. *Taqlīd* appears only once in the Arabic edition but receives no mention in the English edition.[196] In the English version, *taqlīd* is glossed as "juristic position of an authoritative school." The term appears in clause 8/1/3 of Standard #6 that pertains to rules of converting a conventional bank into an Islamic one. The particular clause states that any receivable revenue earned by a conventional bank during its conversion phase may not be subject to "compulsory disposal" if it is deemed "permissible on the basis of (I) an interpretation of a person who is qualified to perform Ijtihad on issues that are subject to personal juristic interpretation, (II) juristic position of an authoritative school of Shari'ah or (III) the opinion of some eminent and knowledgeable scholars." (AAOIFI 2015, 157) In the Arabic edition, point (II) is translated as "*aw 'l-taqlīd li-madhhabin mu'tabarin*." (AAOIFI 2017, 161) Note that even here *taqlīd* is not mandated; it is mentioned as one amongst three optional bases of making a decision to not dispose a conventional bank's income.

school conformity in separate acts should be considered a kind of *talfīq* and not just several instances of discrete acts based on the directives of another school (*iftā' bi-madhhab al-ghayr*). As we will see in the chapter on Islamic insurance (*takāful*), these combinatorial logics of entangling and disentangling bodily actions, linguistic performatives, and contractual agreements from one another could make all the difference between the permissibility and impermissibility of an action.

196 *Taqlīd* does appear multiple times in the Arabic edition in its adjectival form *taqlīdī*. The latter refers to a conventional as opposed to Islamic entity or practice. For example, "conventional bank" (*al-bink al-taqlīdī*) and "conventional finance" (*al-tamwīl al-taqlīdī*). *Taqlīdī* here is different from the semi-juridical concept of *taqlīd* in the Sharī'a. Further, in each of the aforementioned instances, the adjective *taqlīdī* describes a conventional practice that is *not* in accordance with the Sharī'a.

While the AAOIFI is silent on the question of *taqlīd* as an organizational basis for Islamic jurisprudence, it also does not explicitly refer to its process of deriving standards as based on *talfīq*. Instead, it justifies its interschool sources of juristic reasoning as guided by a global vision and concern for general applicability. Highlighting the diversity of its "Shari'ah Board" as a major strength, the AAOIFI proudly proclaims the "globality and wide geographical outreach" of its *Shari'ah Standards*. (AAOIFI 2015, 7) It then states that such diversity of experts ensures that "all major schools of Islamic Law are duly represented, and various specializations are taken into consideration in its formation (from judiciary to Fatwa issuing, consultancy, research, authorship, law, and economic and financial advisory, etc.)." Standardization, in other words, is based on an eclectic approach of extracting rules and positions from different schools of law in a way that meets the demands and expectations of a range of financial experts. The entire corpus of the Sharī'a is therefore mined for its utility and compatibility with contemporary operations of finance. The AAOIFI effectively declares its *talfīq*-based methodology for deriving standards in the following words: "These standards also pay special attention to noting down classical Fiqh compendiums across ages, in the area of financial transactions, selecting the most practical and convenient out of these references, and giving preponderance [*tarjīḥ*] to specific rulings in the form of a classified and typified standard." (Ibid)

What happens to these "most practical and convenient" references from the Sharī'a once they are transduced from juristic texts into "classified and typified" standards? The first step, as I mentioned above, is a decentering of juristic discourse from its meta-discursive—referring to the field of semiotic, social, and pragmatic relations in which a discursive artefact is embedded—context. The second step is a re-positioning of that discourse in the discursive field of standardization. This second process of transduction—the relocation of a text from one meta-

discursive domain to another—is not a purely linguistic act but involves a shift in the social relations and asymmetries of power that figure a discourse. I will now address the first step and then move to the second.

The AAOIFI offers detailed instructions to Islamic financial organizations on how to seek and act on *fatāwā* from their Sharī'a Boards. "Shari'ah Standard No. (29): Stipulations and Ethics of Fatwa in the Institutional Framework" is particularly revealing of the discursive and disciplinary shifts undergone by the *fatwā* through corporate standardization. This 20-page standard—divided in 13 main clauses and 50 sub-clauses—authorizes a number of practices that deviate, at times directly contradicting, the rules and etiquettes of *fatwā*-giving as sanctioned in the pre-modern *adab al-muftī* genre. Clause 6/1 establishes the authority of the *fatwā* as an interdiction: "The Institution is obliged to follow the Fatwa once it is issued regardless of whether it meets the satisfaction of the management or not. This obligation holds true when the Fatwa entails enforcement or prohibition of a certain act." (Ibid, 739) As we noted earlier in the case of the Dār al-Iftā', the *fatwā* acts as a non-binding legal edict, whether it entails a prohibition or permission. [197] Usmani himself contrasts the pedagogical function of the *fatwā* with the enforceability of a legal judgment (*qaḍā'*):

> In issuing a *fatwā*, the *fatwā*-seeker (*mustaftī*) is not obligated in any way to consciously enact the requisite (*muqtaḍā*) course of action. In matters of *qaḍā*, the subject of legal judgment is effectively obligated to enact the judge's (*qāḍī*) decision. Enforcement is the *qādī*'s responsibility. The *muftī*'s purview is exposition (*bayān*) of a rule according to the Sharī'a. (Usmani 2014, 34)

[197] In historical practice, *fatwā*s could effectively be binding even in a Sharī'a court, especially if it was issued from a master-jurist whose epistemic authority was higher than that of the court judge (*qāḍī*) (Wael Hallaq, pers. comm.).

Ironically, in reformulating the *fatwā* as an exercise in juridical authority, Clause 6/1 contradicts the definition of *fatwā* provided in Appendix (C) of the same Standard: "Judgment [*qaḍā'*] entails the issuance of a verdict which is binding to the two litigants. In this sense, Fatwa differs from judgment as the latter entails offering a Shari'ah ruling without enforcing commitment towards it." (AAOIFI 2015, 752) The term "litigants" may be critical here as the AAOIFI could argue that its decision to give binding force to the *fatwā* is a matter of corporate governance that lies outside the jurisdiction of state courts. Yet, despite acknowledging the lack of enforceability of the *fatwā*, the AAOIFI is still pressed to ensure *compliance* with the directives of a financial institution's Shariah Board. It therefore has to convert the *fatwā* into a privatized regulatory technology. The power of interdiction of the corporate *fatwā* does not emanate from the state. However, in keeping with the doubling logic of corporate sovereignty, the *fatwā* issued from a bank's Sharī'a Board both supplements and extends the juridical power of the sovereign state through the corporation. The *fatwā,* henceforth, becomes a regulatory instrument of the private corporation. Once the *fatwā* is transplanted from the Dār al-Iftā' into the corporation, the authority of the *madhhab* is superseded by the authority of the corporation.

As is made clear by the justificatory discourse of the *Shari'ah Standards* volume, school-conformity (*taqlīd*) is not a priority that can be factored into standardization. The purpose of standardization, after all, is not to reorient financial markets according to *madhhab*-based lines of legal difference—a task many *muftī*s working in Islamic finance would readily dismiss as too utopic and impractical. Standardization seeks to integrate Islamic financial contracts (*'uqūd*) and transactions (*mu'āmalāt*) into the global financial network and ensure operational coordination between Islamic and conventional banks. In order to meet this objective, *fatwā*s issued by Sharī'a Boards will have to be responsive to the constraints, conventions (*'urf*) and customs (*'āda*) of

global financial markets. *Taqlīd* thus becomes an obstacle in the way of financial innovation and customization.

Clause 6/4 of Standard 29 effectively prohibits *taqlīd* by imposing an unprecedented condition on the *fatwā*-seeking process (*istiftā'*): "The institution should not demand Fatwa according to a specific Madhab [sic] (School of Fiqh) even if it is the official school in its host country, or the school that official Fatwa bodies adhere to." (740) The fact that the clause explicitly mentions "even if it is the official school in its host country" highlights a crucial contrast between *madhhab*-based jurisprudence and corporate standardization. Whereas the former is necessarily constrained by the cultural norms and customs of a particular region, as was articulated by Usmani and 'Umayr in their defense of *taqlīd*, the latter follows the de-territorial logic of corporate sovereignty by claiming immunity from local laws and traditions.

The AAOIFI's prohibition against seeking *fatwā*s from a Shariah Board according to a specific *madhhab* ensures that the work of standardization begins at the level of oral discourse, i.e. prior to its entextualization. Nevertheless, freedom from *taqlīd* does not equate with disorder and chaos. The AAOIFI carefully distinguishes its discursive tolerance for circumventing *taqlīd* from the exploitation of *madhhab*-based differences to seek Sharī'a exemptions (*rukhaṣ*, sing. *rukhṣah*). Clause 8/4 of Standard 29 is the only instance in which *talfīq* is mentioned in the main text of the *Shari'ah Standards* volume. The *talfīq* that is condemned here, however, is not the generalized selection of rules and positions from different schools. It specifically refers to the kind of *talfīq* that is unanimously condemned for its *intentional* circumvention of the norms of the Sharī'a. Whereas Usmani was meticulous in his classification of *talfīq* in *Uṣūl al-Iftā' wa Ādābuhū* and clearly stated that the majoritarian position of all four schools favored its prohibition, the AAOIFI carefully specifies and excludes only one form of *talfīq* by calling it "forbidden *talfīq*" (*al-talfīq*

al-mamnū').[198] (AAOIFI 2017, 752) The clause states the prohibition of "forbidden *talfīq*" in the following terms:

> Fatwa issuers shall not *always* pursue Shari'ah exemptions to make matters easier for Institutions. A Shari'ah exemption should be sought only when it results from thorough examination of the issue and appropriate reasoning. Moreover, it has to be ensured that making use of the Shari'ah exemption does not embody a related act that the Fuqaha *unanimously* consider as prohibited, or lead to issuing different Fatwas for two identical incidences. Misuse of Shari'ah exemptions in this manner is known in Fiqh as "Talfiq" (fabrication). (AAOIFI 2015, 742; italics added)

The clause essentially repeats the definition of the most extreme variety of *talfīq* discussed by Usmani above. It is also important to note that nowhere does the clause specify dire need or distress (*ḍarūra*) as a condition under which *talfīq* may be exercised. None of the five conditions that Usmani outlined above as a requisite of ruling outside of one's *madhhab* (*iftā' bi-madhhabi 'l-ghayr*) are mentioned here. It is probably assumed that the expression "thorough examination of the issue and appropriate reasoning" will encapsulate all the necessary conditions for valid *talfīq*. The Arabic edition does a better job of laying out the nature of those conditions in the following words: "and a *fatwā* shall not be issued [for an exemption] except when proper discernment and correct reasoning requires giving preference to a juristic exemption."[199] (AAOIFI 2017, 752) But even the Arabic does not specify what factors of consideration entail a "correct reasoning" that may justify legal exemption. The novice in *fiqh* has no way of figuring out the conditions under which *talfīq* may be allowed just by reading the text of *Shari'ah Standards*.

One way in which the *Shari'ah Standards* maintains intertextual links with its source texts is by providing an appendix with references and the justificatory basis for each standard. For

[198] The term "forbidden *talfīq*" only appears in the Arabic edition. In the English edition it is simply called as "Talfiq."

[199] Text (Arabic): *Walā yuftā bihā illā idhā iqtaḍā 'l-naẓaru wa 'l-istidlālu 'l-ṣaḥīḥu tarjīḥa 'l-rukhṣati 'l-fiqhiyyati*.

Standard #29, however, no justification is given for Clause 6/4 that prohibits seeking a *fatwā* according to the rules of a *madhhab*. Not surprisingly, the justification for Clause 8/4 that prohibits "forbidden *talfīq*" states that "pursuing Shari'ah exemptions" is forbidden as it "leads to relaxation of the rules of the Islamic Shari'ah and induce loss of keenness to observe them." (AAOIFI 2015, 715) The expression "pursuing Shari'ah exemptions" is a translation of the widely condemned practice of *tatabbu' al-rukhaṣ* or the relentless pursuit of exemptions from the norms of the Sharī'a. The premodern jurists condemned *tatabbu' al-rukhaṣ* as a personal moral failing. It was permissible in circumstances of need, but jurists also recognized that *tatabbu' al-rukhaṣ* could worsen into a habit of dodging prescriptions of the Sharī'a. Such a habit signaled one's predisposition of making excuses and finding reasons to exempt himself from the rules and prescriptions of the Sharī'a (Ibrahim 2015). As is characteristic of the methodological individualism of modern financial economics, the AAOIFI hardly recognizes the systemic effects of eradicating *taqlīd*. "Forbidden *talfīq*" can, therefore, be conveniently dismissed as a practice that simply reflects an individual's personal character flaw. As long as Islamic financial institutions are not *always* trying to create exemptions for themselves, they can be extricated from the charge of committing "forbidden *talfīq*."

It is also not surprising that the appendix for Clause 8/4 references the work of the towering Ḥanbalite scholar Ibn Qayyim al-Jawziyya (d. 1350), *I'lām al-Muwaqqi'īn* (1987). Like his master Ibn Taymiyyah (d. 1328), Ibn Qayyim was a critic of *taqlīd*. More significantly, he was of the opinion that many legal tricks and stratagems (*ḥiyal*) devised to seek exemptions (*rukhaṣ*) from the Sharī'a were a consequence of the kind of rigidity created by school-conformity (*taqlīd*). If lay Muslims were given the flexibility to follow the Sharī'a by benefiting from its manifold sources of guidance—provided they did so sincerely as obedient servants of God—they would not have to

devise tricks to escape the legal traps they set for themselves (Al-Qazwīnī 2012, 70-71). For Ibn Qayyim, *taqlīd* not only deprived Muslims from the blessings of legal pluralism in the Sharī'a, it also weakened their enthusiasm to abide by the norms of the Sharī'a through the imposition of unnecessary inconveniences. Ibn Taymiyyah and Ibn Qayyim's harsh criticisms of *taqlīd* are an integral part of the Islamic discursive tradition.[200] However, in the pre-modern discourse on *taqlīd*, the debate is over the effectiveness of a discursive practice in facilitating pious subject-formation. In the context of AAOIFI, the effects of abandoning *taqlīd* are systemic and *talfīq* becomes a legal instrument of biopolitical governance that is harnessed by the corporation.

It should now be clear that the textual referents picked up from "classical Fiqh compendiums across ages" for the *Shari'ah Standards* volume cannot have the organizational cohesiveness that defines *madhhab*-based juristic reasoning. In the *Shari'ah Standards*, these textual references are detached and decontextualized from their dialogical relations with competing positions inscribed in the source texts. Reading a classical compendium, the reader could discern how each juristic position was framed as a response (*radd*) to a range of alternative positions. In the *Shari'ah Standards* volume, however, the dialogical modality of a source position is transmuted into a monological discourse as its range of competing positions are deliberately omitted in the act of transcription. The *Shari'ah Standards* does provide references for all juristic positions informing its standards. However, these source texts are not replicated verbatim in the text of the Standard itself. The denotational contestation that was built into the juristic text gives way to the denotational transparency of the standard, attained through the expulsion of difference.

In his foreword to the *Shari'ah Standards* volume, Usmani himself mentions how discursive contestations that arise during the formulation of a Standard never make it to the text of

[200] The Ahl-i Ḥadīth of South Asia use the same order of anti-*taqlīd* arguments in responding to the sort of criticisms previously related by Mufti Sajid 'Umayr.

the Standard itself. Suppression of intertextual relations and the flattening of discourse is built into the very methodology of standardization. To quote Usmani,

> The Board follows a professional methodology as do most similar international bodies. Its decisions are taken by the majority of members, while those members with opposing views or reservations will be referred to along with their views or reservations in the minutes of meetings. The decisions will be issued under the name of the Board and points of incongruity will not be mentioned… It is not unusual, however, that different points of view often emerge as to rulings developed on the basis of reasoning (Ijtihad), especially in relation to new occurrences and issues (Nawazil). If incongruity on some issues lingers on after open deliberations, the Board would take its decisions based on the majority of views, and the points of incongruity would be noted down in the minutes as is the usual procedure without referring thereto in the body of the standard. (AAOIFI 2015, 13)

Thus far I have discussed systematic *talfīq* as enabling the decontextualization of Islamic legal discourse from the school-based tradition of Sharī'a jurisprudence. I now discuss the discursive strategies through which Islamic legal discourse is recontextualized in the discursive field of standardization.

A key discursive feature of the *Shari'ah Standards* is its regimentation and segmentation of juristic discourse. As we saw in the examples above, each standard is organized in a statute-like format, divided into several subsections and bullet points. The intended purpose of this organizational structure is to maintain the standard's clarity and replicability. If a standard is to be made applicable across a range of contexts, its semantic moorings must be disentangled from intertextual relations.[201] This disentanglement within the text is accomplished through segmentation, where each section, sub-section, and bullet point tries to convey discursive content that is distinct from the other. Once standards are derived and transduced from their source texts

[201] Of course, there can be no such thing as a thoroughly self-contained and decontextualized text that is also bereft of all inter-semiotic relations. Yet, all discursive genres bracket discourse, however contingently, and the *Shari'ah Standards* is a specialized text-artifact that organizes juristic discourse in consequential ways.

in this manner, they have the ability to "address all pertaining matters and to provide guidance to the process of differentiation between impermissible and permissible transactions and practices all in one neat, summarized compilation" (AAOIFI 2015, 7).

The linguistic anthropologist Greg Urban has argued that even instances of text-replication, i.e. those that involve an exact transcription of discourse from one medium to another, lead to systematic divergences between the 'original' and 'copied' discourse (Urban 1996).[202] These divergences are a function of both the discursive format taken by the discourse and the relations of power between parties to a discursive exchange. Urban notes that in cases of transcription of spoken speech, meanings verbally conveyed through metapragmatic and indexical cues of language—intonation, accent, emphasis etc.—are either omitted or captured in the transcription through qualifiers. Particularly instructive for our purposes is the following insight: transcription alters the spontaneous interspersion and interdiscursive quality of linguistic cues into "clause-level meanings" by jotting them down in "segmentable semantic forms." (Urban 1996, 30) In other words, transcription tends to over-determine difference in what was previously a fluid and metapragmatically inflected form of discourse.

I have already explained the disruption of Islamic legal discourse from its dialogical relations within the juristic text and its re-centering as monological discourse in *Shari'ah*

[202] I do not relate this observation as a deviation from the supposedly normal function of language to relay discourse as per the intentions of its speaker. The idea of recovering the true meaning of a discourse by reference to the original intent of an author or a speaker relies on a metaphysics of authorial presence. Since language is always bound within a shifting set of inter-semiotic and intertextual relations, no singular intention or context can exhaust the meaning(s) of a discourse. Each utterance or citation of an instance of discourse entails a decentering from its context and its re-centering in an alternative context. The degree and intensity to which a discourse may be altered or re-signified in the course of such discursive relocation is contingent on a number of conditions. However, the fact that an instance of discourse—whether written or spoken—undergoes difference through repetition is constitutive of language. Derrida referred to this as the "iterability" of language (Derrida 1988). My interest here is not in the fact of alteration of discourse in the course of response, replication, or standardization. I take such decentering to be self-evident. Instead, I am interested in the particular form and shape of the resulting alteration when Islamic legal discourse is transduced from juristic texts to *Shari'ah Standards*.

Standards. This discursive alteration ensures the clarity and uniformity of standards. But how does such uniformity enable what AAIOFI calls the "process of differentiation between impermissible and permissible transactions"? Herein lies the ambivalence of standardization in simultaneously affecting homogenization and stratification. The latter effect is achieved in the *Shari'ah Standards* by a clause-level segmentation of each standard into numerous sub-clauses. This discursive organization is particularly suited to the pragmatic financial decision maker, who doesn't have the aptitude or patience for much hermeneutical effort and needs to gather instructions that are customizable for distinct scenarios.

Urban also theorizes about the role of power differentials between discursive agents in determining the direction and effects of transduction. He observes the difference in transcription practices between a disciple, Nãnmla, and an expert, Wãñpõ, who are asked to replicate the oral discourse of a Shokleng elder from their tradition. Urban notes that both replicas deviate from the original as they try to "dutifully repair the text" in their own way by adjusting to the meta-discursive cues and instructions found in the oral speech. This ethnographic experiment also reveals a correlation between discursive and social relations: whereas Nãnmla takes special care in faithfully replicating the form and content of the original speech, Wãñpõ takes creative license in making alterations where he finds necessary. According to Urban, this divergence is explained by the fact that Nãnmla showed deference to the tradition as a disciple who had much to learn from it. Wãñpõ, on the other hand, deemed himself enough of an expert in that field of knowledge to both amend and emend the original speech. In the case of the former, there was an asymmetry of power between the source of the original and the agent of replication, which minimized their divergence. In the case of Wãñpõ, however, the agent of replication considered his authority to be at par with the source of the original. This symmetry of power gave Wãñpõ the ability to speak to

the original discourse and transcribe it on his own terms. Urban thus comes up with the following proposition: symmetry of power relations leads to "less faithful reproductions of the originals" whereas asymmetrical relations between the originator and copier lead to more faithful replications. (37)

Urban's conclusions leave much to be desired. Firstly, both Nãnmla and Wãñpõ are assigned the task of transcribing oral discourse *within* their own knowledge tradition. It is perfectly in accordance with the etiquette of respect and deference (*adab*) for a *madrasa* student to not engage in the hermeneutics of suspicion when transmitting knowledge from elders. As per the authoritative hierarchy of jurists in the Ḥanafite tradition, *muftī*s—placed at the 7th and last stage in this hierarchy—are expected to simply report and transmit the opinions of master jurists on top of the hierarchy. They can, and often do, disagree with themselves or jurists placed at the 5th and 6th stages of this hierarchy.[203] Here indeed symmetrical relations between originator and copier may give the latter creative license to extrapolate, amend, improve upon, critique, and even reject the discourse of the former.[204] In the case of *Shari'ah Standards*, however, transduction does not

[203] The 7-stage juristic hierarchy, whose formalization is attributed to the Damascene Ibn 'Ābidīn al-Shāmī (d. 1836), is a subject of much dispute amongst contemporary Deobandīs. No one challenges the hierarchy itself, but critics of Islamic banking hurl accusations against their co-religionists for not respecting it. The major criticism is that as *muftī*s standing at the 7th stage of the hierarchy, Islamic banking advocates do not have the authority to improvise new financial instruments from the sources of the Sharī'a. Most importantly, they do not have the authority to perform *talfīq* or even select from the range of positions within the Ḥanafite school. Another source of frustration for Islamic banking critics is the near infallible status granted to Mufti Taqi Usmani by his followers. Ironically, the most conservative representative of the Deobandī school are now preaching against uncritical conformity with the opinions of a reputable *muftī*. Muftī Aḥmad Mumtāz has widely published an 11-point booklet on the etiquette of disagreement amongst the jurists. In it he emphasizes the permissibility and praiseworthiness of contradicting the opinion of a contemporary jurist when evidence is presented against his opinions. No Deobandī would challenge jurists higher up in the hierarchy, but they find disagreement with contemporary jurists as well as with those in the 5th and 6th stages of the juristic hierarchy to be normative and at times necessary.

[204] The Deobandī stalwart, Khalīl Aḥmad Sahāranpūrī (d. 1927), is known to have often said in relation to the Damascene Ibn 'Ābidīn (d. 1836), the seal of the inquirers (*khātam al-muḥaqqiqīn*) in the Ḥanafite tradition, and his contemporaries: "they are men and we are men" (*hum rijālun wa naḥnu rijālun*). This

simply involve a shift in discursive medium or genre—from intertextual text to standardization manual. It is also the transcription of discourse from one discursive tradition and intellectual culture to another, i.e. from Islamic jurisprudence (*fiqh*) to standardization under modern corporate governance. In other words, it is a kind of transduction that is implicated in a larger paradigm shift from *mu'āmalāt* under the Sharī'a to corporate sovereignty under modern capitalism. The asymmetry of power relations in such large-scale projects of transformation do not produce the same discursive patterns as the way power relations figure discourse *within* a tradition.

4.5. Conclusion: Translation and Asymmetries of Power

Talal Asad reminded us that cultural translation between discursive traditions is an "institutionalized practice" that does not follow an "abstract logic" of transduction in the form of semantic alignment between two interacting linguistic registers. (Asad 1993, 179) Urban is also cognizant of how social relations and asymmetries of power influence transduction, but his propositions stem from an observation of *intra*-cultural translation. The kind of translation we are concerned with involves what Asad calls the "inequality of languages" between societies that are massively unequal in their politico-economic relations. (189) In such a case of transduction under asymmetrical relations of power, Asad notes that the weaker language is "more likely to submit to forcible transformation in the translation process than the other way around." (190)

The authors of *Shari'ah Standards* themselves are all Muslims and recognize the authority of the Sharī'a in their lives. In that sense, the translating agents show deference to the originating discourse, as Nãnmla did towards his Shokleng elder. However, unlike Urban's ethnographic experiment, the discursive modality and consequences of cultural translation between "unequal

statement forges an epistemological symmetry between current jurists and those from Ibn 'Ābidīn's generation in that both are deemed equally fallible. Sahāranpūrī, however, would always submit to the opinions of Abū Ḥanīfa and his immediate students with deference and respect.

languages" remain largely beyond the individual control of the translators. Urban is careful enough to show that, contrary to intuitive thinking, it is not only the copier who has agency over the translation. The originator, even when not directly involved in the translation process, can always constrain it by adding meta-discursive cues and instructions in the original discourse. I would further add to Urban's qualification by noting that the discursive architecture and content of the text itself may constrain or afford certain interpretations more readily than others, depending on the semiotic and political 'horizon' of the translator.[205]

Yet, these text and translator-specific discursive constraints can only go so far as to affect the trajectory of transduction between unequal discursive traditions. Wael Hallaq's emendation of Carl Schmitt's theory of paradigms offers a helpful way of framing the problem: the central domain of a paradigm acts as the epistemically organizing principle that shapes and governs the priorities of all peripheral domains (Hallaq 2013, 8). Since corporate sovereignty is one of the central domains of modernity, the transduction of juristic discourse from the Sharī'a's textual canon into *Shari'ah Standards* affects a transformation of the former into the epistemic and disciplinary norms of standardization. The systemic forces affecting such transformation are not co-equal with the agents involved in the standardization project, which the AAOIFI advances as a new model for Sharī'a jurisprudence. Asad's discussion of how asymmetries of power influence and motivate projects of translation adequately captures the thrust of the *Shari'ah Standards* project:

> Such transformations signal inequalities in the power (i.e., in the capacities) of the respective languages in relation to the dominant forms of discourse that have

[205] The allusion here is to Hans-Georg Gadamer's famous idea of the fusion of horizons of the text and the reader (Gadamer 2004). To my understanding, profitable emendations can be made to Gadamer's theory by expanding the notion of horizon from a restricted conception of language and historical context to include relations of power and the iterability/citationality of discourse. Gadamer's theory is too historicist to be able to appreciate non-diachronic shifts in interpretation that are a function of the citationality of language. Sheldon Pollock partly remedies Gadamer's dialectical synthesis between the horizon of the reader and that of the circumstances of the text's production by introducing a third plane of interpretation, i.e. of tradition (Pollock 2014).

> been and are still being translated. There are varieties of knowledge to be learnt, but also a host of models to be imitated and reproduced. In some cases, knowledge of these models is a precondition for the production of more knowledge; in others, it is an end in itself, a mimetic gesture of power, an expression of desire for transformation. A recognition of this well-known fact reminds us that industrial capitalism transforms not only modes of production but also kinds of knowledge and styles of life in the third world (and with them, forms of language). (191)

It would not be an exaggeration, then, to state that the decentering of juristic discourse from the Islamic legal tradition and its recontextualization in the form of *Shari'ah Standards* effectively reconstitutes the Sharī'a within the paradigm of corporate sovereignty.

Chapter 5: *Takāful*: Disentangling Reciprocity and Intentions in Islamic Insurance

Introduction: The Selflessness of Gifts and Selfishness of Commodities

The idea of generosity as sanctioned by law seems paradoxical. We associate law with coercion and constraint, whereas generosity, by definition, entails amplitude and the freedom of giving. A gift embodies the generosity of its giver and, for this very reason, is distinguished from objects given and exchanged as part of a contractual obligation. However, in so far as both disinterested and compensatory modes of giving occasion an encounter between donor and recipient, they are bound by certain norms of interaction. In the anthropological canon, the protocols and conventions of gift exchange have typically been identified with custom. In contrast, the utilitarian exchange of commodities is seen as a distinct feature of market-based commerce and economic order operationalized through contracts. Rather than social reciprocity, this economic order is guaranteed by a juridical institutional framework (Foucault 2010, 173).

Anthropologists have long come to understand that these two modes of exchange may not be as different as their abstractions make them seem. They can coexist, and gift exchange is not necessarily the primitive precursor to utilitarian exchange of the market. Even the neat conceptual division between morally sublime gifts and remunerative commodities does not withstand ethnographic scrutiny. Gifts given selflessly and voluntarily often trigger relations of agonistic reciprocity, making the compensation of gifts with counter-gifts compulsive. On the other hand, commodities exchanged for money in the market do not always cut ties with their buyers and sellers. They too bound parties to a transaction in unequal relations of credit and debt. To sum it up, neither are gifts completely transcendental and nor are commodities perfectly alienable. If so,

what explains their differential moral value and regimented social functions within capitalist and alternative regimes of exchange?

Divesting ourselves of essentialist notions of gifts and commodities doesn't take us forward in understanding how (a) an object is transcribed as a gift or a commodity, and (b) how gifts and commodities figure social relations by entangling transacting parties within a regime of exchange. The first inquiry concerns rules of discourse whereas the second concerns the conditions of subject formation. In pursuing both inquiries, we begin to see connections between the epistemic contours of a paradigmatic regime of exchange and the modes of ethical subjectivation enabled by its rules of conduct. In my usage of the term, a historically constituted regime of exchange becomes "paradigmatic" when it acquires the totality of power relations that Michel Foucault broadly identified with governmentality. In other words, an exchange paradigm is not merely defined by an abstract logic of reciprocity. It is an assemblage of institutions, disciplinary techniques, and knowledge practices that not only sanction distinct economic concepts and modes of valuation but also produce particular ethical subjectivities. We can profitably speak of gifts and commodities, their epistemic framing and social functions within such a paradigm.

In the paradigm of financial capitalism or what is more nebulously called 'neoliberalism,' market-based utilitarian exchange becomes the primary organizing principle of political governance, bureaucratic administration, social welfare, and even interpersonal relations. Here property rights, infrastructure development, educational loans, healthcare, and carbon emission quotas are treated as commodities that can be efficiently allocated on principles of market exchange. Using Wael Hallaq's (2013) analytical framework, we can designate market-governance as the "central domain" of financial capitalism. Complementing this "central domain" is the "subsidiary domain" of gifts and philanthropy, which includes foreign aid, the gradually

diminishing realm of public works, social services by non-governmental organizations, charitable trusts and foundations, private philanthropies, and corporate social responsibility. In financial capitalism, the subsidiary domain of philanthropy is subordinate to the central domain of market exchange (Hallaq 2018, 35). Capitalist philanthropy is, in fact, made possible by global inequalities of wealth and yields returns on investment for donor nations and big businesses in the form of prestige, policy influence, strategic interests, and expanded markets.

It is within this paradigm of financial capitalism that gifts complement commodities as a remunerative modality of exchange, cementing hierarchies between wealthy donors and their poorer recipients. Unlike commodities, the subsidiary domain of gift-giving is marked by a moral ambivalence: it is presented as a gesture of generosity, but that very gesture is counteracted by the gift's performative effect of creating an obligation to return. Unsurprisingly, much criticism leveled at capitalist philanthropy—in disciplines ranging from international relations to anthropology and continental philosophy—is an attempt to unmask the truly exploitative nature of apparently selfless and free gifts (Kapoor 2008). Gifts are, therefore, rendered suspect by virtue of their hidden conditions of reciprocity. From the standpoint of the industrialized world, perhaps the closest approximation of selfless gift-giving occurs in the private realm. Generosity is genuinely extended, for example, from parents to their children. Such generosity may indeed be paid forward from generation to generation, but it cannot be equalized by a counter-gift from children to their parents. "It is strange enough to wish to be square with one's parents," remarks David Graeber, "it rather implies that one does not wish to think of them as parents at all" (Graeber 2011, 62). Yet, if one takes the morality of the gift to its philosophical limit, as Jacques Derrida (1994) has done, even parental kindness and generosity fails to escape the logic of exchange. The critical assumption

here is that any gift that cannot be perfectly anonymous and becomes the basis of a social relationship ceases to be a true gift.[206]

Commodities, on the other hand, are treated as transparent objects of exchange because their terms and conditions are explicitly set in contractual form. Herein lies the desirability of commodification in financial capitalism: it is far easier to allocate resources transparently and methodically by making objects calculable according to a standard medium of exchange, i.e. money. The calculating mechanisms of the market work more efficiently as a distributive mechanism compared to the messiness of moral contestations surrounding the gift. Given their entanglement in a complex web of moral responsibilities and expectations defined by custom, gifts cannot provide a stable foundation for social life.

In this chapter, I present an alternative conception of the gift, its ethical significance and social function as sanctioned in the authoritative discourses of the Sharī'a. In particular, I read pre-modern juristic discourses on the gift in the Ḥanafite tradition and use them to work towards an emendation and extension of the anthropological critique of utilitarian exchange. I then examine the transplantation of this Islamic discourse into the paradigm of financial capitalism, materialized in the form of an institutional arrangement called *takāful* or Islamic insurance. This transplantation is, in large part, rendered possible by the translation of Islamic donative contracts (*'uqūd al-tabarru'*) and the institutional model of the charitable endowment (*waqf*) into "Sharī'a Compliant" replicas of commercial insurance. In pre-colonial Muslim South Asia, donating one's property as an inalienable charitable endowment for the benefit of one's family (*waqf 'alā al-awlād*) was a recognized form of gift-giving. In contemporary Pakistan, *takāful* organizations appropriate the juridical structure of the *waqf* to function as limited liability insurance corporations. The basic

[206] I critique this assumption in the discussion of gift-exchange in the Sharī'a below.

working model of a *takāful* involves substituting insurance premiums paid to an insurance provider with charitable donations contributed towards an endowment (*waqf*) fund. In the event of unforeseen damages and losses, individual donors are indemnified from the collective pool of endowment funds. The alleged virtue of this model is that it functions on the principle of mutual aid through gift-exchange. Moreover, it meets the functional needs of commercial insurance while circumventing religious restrictions on financial interest (*ribā*), uncertainty (*gharar*), and speculation (*qimār*).[207]

The discursive architects of *takāful* are Deobandi jurists working in Islamic financial corporations in Pakistan and the Arabian Gulf. Their justificatory discourses have occasioned intense internal debate and contestation over the religious validity of *takāful* from within the Deobandi tradition. By closely reading arguments between Deobandi proponents and critics of *takāful*, I tease out points of alignment and diffraction between the pre-modern model of gift-exchange in the Sharī'a and its contemporary authorization as a Sharī'a Compliant insurance mechanism. As I document juristic disagreements over the adaptation of the charitable endowment (*waqf*) into the model of an Islamic insurance corporation (*takāful*), I show that such adaptation leads to a repurposing of Islamic practices of gift-giving from piety-driven social welfare into a market-based governance of financial obligations. Through *takāful*, gift-exchange in the Sharī'a is effectively co-opted into the subsidiary domain of gifts and philanthropy in capitalism.

Thesis:

I have been arguing in previous chapters that Sharī'a Compliance secularizes commercial concepts and practices of the pre-modern Sharī'a by engrafting them into the disciplinary framework of corporate governance. In this chapter, I explain how *takāful* enables the integration

[207] I thoroughly examine and deconstruct the juridical model of *takāful* in the sections below.

of gifts and charities into this pattern of secularization. At the level of textual discourse, proponents of *takāful* frame gifts by disentangling them from relations of reciprocity between donor and recipient. This disentanglement critically depends on discounting the role of intentionality in determining the ethical soundness of a gesture of generosity. The rooting out of reciprocity and intentionality as felicity conditions of gift-giving significantly alters the way gift-exchange in the Sharī'a fashions ethical subjects and figures social relations between them. In effect, *takāful* deracinates gifts and charities from a theological-economic paradigm in which alms and donations are given as reciprocal gestures of gratitude for the gift of wealth. In the Sharī'a, gift-giving and charitable donations function as technologies of the self in an ethical program of cultivating pious dispositions. Sanctioned as ethical actions aimed at inculcating generosity and curbing covetousness, both gifts and charities strive towards a mutually inclusive telos of strengthening social bonds and attaining proximity to God (*qurba*). *Takāful*, however, untethers gifts and charities from their normative telos and repurposes them towards utilitarian ends of self-interest and preservation of wealth.

Chapter Outline:

The chapter is divided into 5 sections. In section 1, I outline conceptual schema of gift exchange and market exchange as presented in economic anthropology. I then present a poststructuralist critique of the anthropological separation of gift exchange from market logics. I show that both the classical anthropological conception of gifts as well as its postmodern critique are premised on a Euro-Christian metaphysics of agape and divine grace. In section 2, I contrast this Euro-Christian genealogy of the gift with its discursive formation in the Sharī'a. I detail the ethical and social significance of gift-based reciprocity in the Sharī'a and develop an argument as to why the postmodern critique of gift exchange might be entirely misplaced. Section 3 presents a

juridical and historical overview of one of the most significant institutionalized forms of gift exchange in pre-colonial South Asia, the family-based charitable endowment (*waqf ʻalā al-awlād*). Section 4 analyzes the juristic reformulation of the *waqf* by the Deobandi scholarly community as an Islamic alternative to commercial insurance, i.e. *takāful*. Finally, section 5, which consists of the bulk of analysis in the chapter, follows the internal contestation in the Deobandi school over the religious validity of *takāful*. Central to this contestation is a debate over the role of intentionality in gift exchange. I offer an in-depth reading of this debate contrapuntally with anthropological examinations of intention, subjectivity, and practices of ethical cultivation.

5.1. Economic Theology and the Aporia of the Gift

In his pioneering work, *The Gift,* Marcel Mauss sought to uncover the animating force behind a "permanent form of contractual morality," that is, the obligation to reciprocate and to return (Mauss [1954] 2002, 4). His moral-philosophical and ethnographic quest led to the discovery of gift exchange, which Mauss understood both as an ancestor and antidote to the self-interested utilitarian exchange of modern capitalist societies. In contrast to the impersonal modes of market exchange that alienated objects from their exchanging partners, Mauss argued that gift exchange extended the giving subject into the object given. Consequently, whereas market exchange reached a terminus with the transfer of objects from seller to buyer, gift exchange tied gift-givers and recipients in a chain of reciprocal obligations. Market exchange was guaranteed by the juridical force of the contract; its pricing mechanism established equivalence between parties who exchanged objects for money. Gift exchange, on the other hand, generated debts of recognition and gratitude that were perpetrated by a cycle of reciprocal generosity. For Mauss, gift exchange was a way of life, a "total social fact" that integrated and suffused relations of kinship, commerce, religion, culture and politics in pre-capitalist society (3).

Building on Mauss's insights, later ethnographies of commercial life in the market economy have led anthropologists to question the stark dichotomy drawn between gift-based societies and the market economy (Appadurai 1988). Gift exchange, many have argued, could in fact coexist and be coterminous with market exchange (Hénaff 2010). Arguably, the most profound philosophical challenge to Mauss's separation of the gift from market exchange came from Jacques Derrida, for whom gift exchange did not escape market logic but rather exemplified the "madness of economic reason" (Derrida 1994). According to Derrida, the burden of reciprocity imposed by the gift on its recipient marks an irresolvable contradiction or aporia in the act of gift-giving. In other words, the gesture of giving selflessly counteracts itself by creating the need for compensation. In order for giving to be purely non-reciprocal, it must escape the compensatory logic that compels its return in the form of a counter-gift. Any knowledge or expectation of return, either on behalf of the gift-giver or its recipient, pollutes the gift and renders it suspect. A purely gratuitous gift must, according to Derrida, be completely anonymous. Yet, in being so, it ceases to be giving. Derrida therefore considers giving as that which constitutes "the very figure of the impossible" (7). Mauss indeed recognized that gift-giving was also calculated and never entirely altruistic. For Derrida, however, Mauss's inability to take the gift to its philosophical limit and identify its internal contradiction compelled the latter, rather prematurely, to place it outside of market logics. What Mauss failed to see was that "gift-exchange" was a contradiction in terms.

Derrida's critique of Mauss has spurred intense debate and philosophical ruminations over the truly selfless nature of the gift in post-structuralist and continental philosophy (Moore 2011). The normative and conceptual parameters of this discussion, however, remain heavily burdened with a Euro-Christian metaphysics of agape and grace. In his pioneering work, *The Price of Truth*, anthropologist Marcel Hénaff traces a genealogy of modern forms of privatized gift exchange—

from Hellenistic philosophy to the Protestant Revolution (Hénaff 2010). As per Hénaff, modern Western sensibilities concerning the selfless and non-reciprocal character of a true gift have their roots in the Christian valorization of divine grace as an absolute and unconditional form of unilateral giving. In Hénaff's Weberian genealogy, the emergence of grace in European Christendom subverted the reciprocity that was integral to gift exchange and put in its place a vertical schema of divine beneficence towards earthly creatures. This transcendentalization of the gift as a unilateral offering from above was coterminous with the reorganization of bilateral relations in European society on principles of utilitarian exchange (242-246). Hénaff describes this historical transformation as a "symbolic refoundation of the community," whereby the social bond, once secured by the gift, was reconfigured into the civic bond enforced by the contract (244). The gift, henceforth, could no longer be the foundation of social relations and was relegated to a private and morally sublime act of generosity. Hénaff therefore remarks that, for us moderns, gift-giving gestures can only be validated as unilateral and non-calculated offerings. A true gift must, in principle, elide the obligation to reciprocate.

5.2. Gift Exchange in the Sharī'a

This European genealogy of the gift forms a conceptual backdrop against which much anthropological analysis of gift exchange has taken place. The radical separation of gifts and commodities, and their corresponding systems of exchange, i.e. social custom and civic contract, are powerful conceptual schemata that economic anthropology continues to reckon with. These binaries, however, do not neatly map onto an alternative discursive formation of the gift. In the Islamic legal tradition, the gift has been richly theorized and debated over a span of twelve centuries. Gift exchange was an integral part of Muslim societies in which the Sharī'a took root. Muslim jurists (*fuqahā'*), therefore, developed an elaborate ethico-juridical framework to guide

practices of gift exchange. In this section, I provide a juridical taxonomy of the gift in Islamic jurisprudence and contrast its ethical functions from the categorization of gifts and commodities in the aforementioned Euro-Christian genealogy. I then present a brief genealogy of one of the major institutionalized forms of gift exchange in pre-modern Muslim societies, with a particular focus on family endowments (*waqf ʻalā al-awlād*) in South Asia. This discussion will serve as a prelude to our investigation of *takāful* as a modern institutional innovation of the *waqf*.

Muslim jurists divided norms of the Sharīʻa into two broad categories: worship (*ʻibādāt*) and transactions (*muʻāmalāt*). Whereas the former pertained to the rights of God over human subjects, the latter extended to all categories of human interactions, including social intercourse and commercial exchange. In the realm of *muʻāmalāt*, jurists modeled different transactions according to rules of conduct that bound them together. This notion of binding or tying a practice with a set of rules and conditions is expressed by the term *ʻaqd* (pl. *ʻuqūd*), which is the Islamic counterpart to the modern contract.[208] The jurists further divided *muʻāmalāt* contracts into two types: *ʻaqd al-muʻāwaḍa* (commutative contract) and *ʻaqd al-tabarruʻ* (donative contract). The former constituted bilateral and compensatory forms of exchange whereas the latter entailed gratuitous and non-compensatory modes of giving. The fact that both commutative and donative transactions are categorized as *ʻuqūd* shows that Islamic jurisprudence doesn't restrict "contracts" to forms of binding that are subject to the compensatory logic of utilitarian exchange. A major example of one such transaction that falls into the category of donative contracts is the gift (*hiba*).

[208] Most commentators simply translate *ʻaqd* as contract, which is not an altogether inaccurate translation. However, while recognizing their similarity, one must be careful not to collapse the distinct metaphysical and ethico-juridical foundations of Islamic contracts with the positivistic and coercive underpinnings of contractual obligation in liberal capitalism. In its more expansive definition, a contract is a "pledge" (*ʻahd*) undertaken by a person (*kullu ʻahdin yalzimu bihī al-shakhṣ*) (ʻIṣmatAllāh 2017, 41). Such a pledge could be made to oneself or to another party. In other words, it could be both unilaterally and bilaterally binding. For a comprehensive discussion of contracts in the Sharīʻa, see Hallaq (2009, 239-270).

All four Sunni schools of Islamic jurisprudence recognize *hiba* as an independent contract and dedicate a chapter to it in their writings on the jurisprudence of transactions (*fiqh al-muʿāmalāt*). In the Ḥanafite school, whose adherents constitute a majority of South Asia's Sunni Muslims, the technical definition of *hiba* is given as "transferring ownership of a property without stipulating compensation" (Ibn ʿĀbidīn n.d., vol. 12, 534).[209] In other words, *hiba* entails gifting an entity to someone such that its recipient (a) becomes the owner and (b) no stipulations for compensation are attached to such ownership.

Muslim jurists recognized the slippery slope between gifts and sales (*buyūʿ*; sing. *bayʿ*). Key to the difference between *hiba* and what is called a *bayʿ* is the term *ʿiwaḍ*, which means compensation, return or recompense. The towering Syrian-Ottoman Ḥanafite jurist, Ibn ʿĀbidīn (d. 1836), clarifies the significance of *ʿiwaḍ* in his definition of *hiba*: "without compensation actually means that compensation is not stipulated, as opposed to the case of sales and rents" (ibid).[210] In other words, lack of compensation itself is not a limiting condition for an offering to be a gift. Instead, a gift is an offering that does not *stipulate* compensation for the object given (ibid). Jurists fully recognized that, in practice, gifts are indeed reciprocated with counter-gifts. What is required for an offering to be a gift rather than a sale is the absence of a *stipulation* for compensation. A sale, in contrast to *hiba*, is a commutative contract (*ʿaqd al-muʿāwaḍa*) that *stipulates* a compensation in exchange for an object given. This subtle difference between gifts and sales becomes consequential when the object of exchange is money. When money is exchanged for money in the form of a loan, Muslim jurists strictly forbid any stipulated surplus

[209] Text (Arabic): *tamlīku ʾl-ʿayni majjānan*.

[210] Text (Arabic): *bi-lā sharṭi ʿiwaḍin ʿalā maʿnā anna ʾl-ʿiwaḍa fīhā ghayru sharṭin bi-khilāfi ʾbayʿi wa ʾl-ijārati*.

returns as constituting usury. On the other hand, since donative contracts are forms of gratuitous giving that do not entail stipulated compensation, jurists do not consider an in-kind counter-gift that exceeds the value of an original gift as constituting interest.[211]

The Ends of the Gift - Mutual Recognition, Gratitude and the Ethics of Reciprocity:

The way Ḥanafite jurists disentangle gift (*hiba*) from sale (*bay'*) as forms of gratuitous giving and compensatory exchange respectively warrants a return to the aporia of the gift discussed earlier. For Derrida, the gift could not be separated from utilitarian exchange as a compensation-free gesture of generosity because it was constantly haunted by the prospect of return in the form of a counter-gift. Did Muslim jurists fail to see the reciprocal character of gift exchange, thus creating an artificial distinction between *hiba* and *bay'*? Quite the contrary. Not only did they recognize the reciprocal character of exchange, they in fact encouraged it. In the Sharī'a, the gift served a distinct moral-ethical function in society precisely owing to its reciprocal character. Ibn 'Ābidīn describes the purpose of the gift: "*hiba* serves to create goodwill towards the gift-giver. In its worldly form, the good (*khayr*) comes in the form of reciprocity, mutual love, and earning a good reputation. In the hereafter, the good is achieved in the form of spiritual reward, provided one has noble intentions." (533) Further, in making the argument that offering and accepting gifts is a praiseworthy act, Ibn 'Ābidīn cites a prophetic narration (*ḥadīth*) in which Prophet Muhammad

[211] The obvious difficulty in such cases is determining if the in-kind counter-gift was given voluntarily or as a cover for usury. For instance, if A loaned B $100 without stipulating an excess return but B still paid back $110 as a gesture of gratitude, would that excess $10 constitute usury or a gift? For the Ḥanafites, when an in-kind counter-gift is given as part of a customary norm, it ceases to be voluntary and occupies the place of a stipulated compensation. In this example, if it can be determined that B's additional $10 return was part of a customary norm, it would be counted as usury and not as a gift. The underlying reason for this judgment is a legal maxim that elevates customary practices to the level of legal stipulations: "That which is known through custom is equivalent to a stipulated condition" (*al-ma'rūfu 'urfan ka al-mashrūṭi sharṭan*).

is reported to have said, "Exchange gifts [with one another] and promote friendship" (536).[212] Ibn ʻĀbidīn mentions these social virtues of gift exchange right after establishing the juridical qualification that gifts must be free from stipulated compensation (*sharṭ al-ʻiwaḍ*). The condition of non-stipulation is, therefore, a negative limit against coerced reciprocity. The Sharīʻa discourages ingratitude and encourages countering generosity with generosity. But reciprocity in gift exchange must occur organically and not as a result of contractual obligation. Only thus would it create mutual love and social harmony. Recognition of a gift does not reduce it to an exchange between self-interested strangers; it completes the social bond between donor and recipient.

The towering Indian philosopher-theologian Shāh WalīAllāh al-Dihlawī (d. 1762), revered by Deobandis as their intellectual and spiritual progenitor, expounds on the ethical virtues and societal benefits of gift exchange. WalīAllāh explains that gift exchange is an antidote to mutual resentment and bitterness. It promotes congeniality and social harmony. He narrates a Prophetic tradition: "Exchange gifts [with one another]. Verily the gift removes grudges and ill will" (al-Dihlawī 2009, 4:611).[213] In order for a gift to remove a grudge and restore goodwill between donor and recipient, it must be recognized by both as a gift. Recognition could take the form of a counter-gift or even verbal acknowledgment. Towards this end, WalīAllāh narrates another Prophetic tradition: "Whoever receives a gift should reciprocate it. If he has nothing to give back, he should praise [the gift]. For he who praises has expressed gratitude. And he who conceals [his gratitude] has been ungrateful" (609).[214] The importance of reciprocating gifts with counter-gifts couldn't be

[212] Text (Arabic): *Tahādaw taḥābbū*.
[213] Text (Arabic): *Tahādaw fa-inna al-hadiyyata tudhhibu al-ṣaghā'in*.
[214] Text (Arabic): *Man u'ṭiya 'aṭā'an fa-wajada fa al-yazji bihī wa man lam yajid fa al-yuthni fa-in man athnā fa-qad shakara wa man katama fa-qad kafara*. The ḥadīth continues: "And whoever adorns that which he was not given is likened to the one who garbs two cloths of lies" (*wa man taḥallā bimā lam yu'ṭa kāna ka-lābisi thawab zūrin*). The allusion is to the person who exaggerates and engages in hyperbolic praise. 'Wearing two cloths' of lies implies being an impostor.

more explicitly stated. Even in the absence of a counter-gift, the recipient is at least expected the courtesy of lauding the gift and verbalizing his appreciation for it.

WalīAllāh gives two reasons for this Prophetic commendation of counter-gifts and gratitude. Firstly, since the purpose of the gift is to establish amity and mutual affection between the donor and recipient, an unreciprocated gift will have instilled admiration for the donor in the recipient's heart but not vice versa. If such admiration is to be made complementary between the donor and recipient, the latter should bestow the former with a gift. If giving back is not possible, the recipient should affirm his goodwill towards the donor with an expression of gratitude. WalīAllāh is, of course, not blind to the dangers of vanity and denigration that could germinate from a unilateral gesture of generosity. His second rationale for the importance of counter-gifts, therefore, is to maintain parity between donor and recipient. Citing a well-known proverbial expression extracted from a longer Prophetic tradition, "The upper hand is better than the lower hand,"[215] WalīAllāh maintains that the donor of the gift gains leverage over the recipient as his benefactor (ibid). A counter-gift from the recipient, therefore, not only balances the hierarchy between beneficiary and benefactor but also affirms the recipient's gratitude and goodwill towards the donor. But isn't the very need to balance hierarchy through reciprocity symptomatic of the compensatory logic of economic exchange? If the recipient of a gift must always guard against the undue leverage of its donor by making counter-gifts, do such gestures of 'goodwill' not seem disingenuous or, even worse, coerced? How do we square WalīAllāh's first justification for counter-gifts as securing mutual affection with the second one of maintaining parity between donor and recipient? To my understanding, the first justification is a positive one whereas the second is solely preventative. For WalīAllāh, the ultimate purpose of reciprocal gift exchange is to promote

[215] Text (Arabic): *Al-yadu 'l-'ulyā khayrun min al-yadi 'l-suflā*.

social harmony and to foster a culture of generosity. However, reciprocity also undercuts the donor's leverage over the recipient and prevents the former from advertently or inadvertently denigrating the latter.

Whereas WalīAllāh entertains the possibility of both a generous and self-serving impulse as animating the counter-gift, Derrida's critique of gift exchange reduces all reciprocity to the laws of economic exchange and circulation (Derrida 2002, 7).[216] For WalīAllāh, the counter-gift has the benefit of neutralizing the donor's leverage over the recipient. For Derrida, it is the very leverage assumed by the donor that annuls the unburdened generosity of the gift at the moment of its inception: "The simple intention to give, insofar as it carries the intentional meaning of the gift, suffices to make a return payment to oneself… in a sort of auto-recognition, self-approval, and narcissistic gratitude" (Derrida 2002, 23). Derrida is by no means the first to notice the risk of narcissism that comes with gift-giving, but he is certainly more fatalistic about it. He sees the donor's intention as terminal to the very possibility of generous giving. But as we will read in the section on intentionality below, the Sharī'a assigns a central role to intention as a moral technology in the work of fashioning a pious self. Intention is not an isolated phenomenon of cognition or reflexive self-awareness—what according to Derrida gives rise to the "simple consciousness of the gift" (ibid)—but is wired with visceral and affective registers of subjectivity. It permeates an action and endows it with a transformative capacity to alter the subject's moral sensibilities and dispositions. Practices of the self in the Sharī'a therefore give paramount importance to intention as a means of guarding against narcissism and vanity (*ḥubb-i jāh*). Indeed, the donor's intention

[216] In other words, reciprocity runs counter to the gift's promise of unconditional and unilateral generosity. For Derrida, a gift "must not circulate, it must not be exchanged, it must not in any case be exhausted, as a gift, by the process of exchange, by the movement of circulation of the circle in the form of return to the point of departure. If the figure of the circle is essential to economics, the gift must remain *aneconomic*" (Derrida 2002, 7).

may mold a gift into an orchestrated act of humiliation or a humble token of appreciation. The drift of the gift would depend on, amongst other things, the character and circumstances of the donor-subject. We have no reason to assume that a gift consciously given will always recoil into narcissism.

The fact that gift exchange was a public good that created mutual recognition and established friendships was not cause for worry for Muslim jurists. It also did not signify any internal contradictions as they did not presume an asocial and sublime morality as the primordial goal of gift giving. Agonistic gift exchange, for them, was a morally sound and socially apt practice. A totally anonymous gift, unbeknownst to its giver and receiver, would not only be impossible to reciprocate, as Derrida rightly pointed out, but also undesirable. As Hénaff remarked in the context of ceremonial gift exchange,

> The end of the gift is neither the thing given (which captures the attention of economists) nor even the gesture of giving (which fascinates moralists) but the creation or renewal of an alliance. Ceremonial gift exchange is a relationship: a public act without which there is no community; from the perspective of ceremonial gift exchange, to wish for a gift that remains unknown is to wish for the death of reciprocal recognition. (Hénaff 2010, 141)

There is, however, one form of donative transaction in which the Sharī‘a prescribes anonymity: charity (*ṣadaqa*). The *ṣadaqa* meets the technical definition of *hiba* in that it entails the voluntary transfer of ownership of an entity without the stipulation of compensation. However, the key difference between a *ṣadaqa* and a *hiba* is in their telos: whereas the latter seeks the goodwill of the donee (*mawhūb lahū*), the former is an act of aiding the poor as a means to achieve proximity to God. The *ṣadaqa* is prescribed by the most authoritative sources of the Sharī‘a as an

anonymous mode of giving. As per the Qur'ānic injunction, "Believers! Do not deprive your charitable deeds [of divine acceptance] by stressing your benevolence and hurting [the feelings of the needy], as does he who spends his wealth only to be seen and praised by men…" (2:264).[217] *Hiba*, on the other hand, is a gift that is given to someone to seek their admiration and friendship. In other words, the end goal of *ṣadaqa* is to seek the pleasure of God, whereas the end goal of *hiba* is to establish social recognition and solidarity. Keeping this distinction in mind, Ḥanafite jurists did not recognize "charity" given to the rich as a *ṣadaqa* and instead considered it a *hiba*. A *ṣadaqa* could only be given to the needy and deserving. A gift, on the other hand, was not conditional on the needs of its recipient.

Mauss made a category mistake when he equated gift exchange in the Kula Ring with the "Arabic *sadaqa*" (Mauss 2002, 99). The Kula Ring is an elaborate form of ceremonial gift exchange with the aim of establishing social hierarchies and recognition of status.[218] What Mauss observed, therefore, was a much closer analogue to *hiba* and not *ṣadaqa*. Since the *ṣadaqa* was an offering made for the sake of the deity, its spiritual merit was guaranteed by righteousness of intent. It may perhaps be said that the *ṣadaqa*, compared to the Maussian *hiba*, comes closer to Derrida's condition of anonymity. However, even the *ṣadaqa* does not disrupt the circle of reciprocity as it binds the donor in a relationship with God. Both the *ṣadaqa* and *hiba*, despite being non-compensatory forms of offering, partake in a non-utilitarian framework of reciprocity: a *hiba* seeks the pleasure and recognition of society whereas a *ṣadaqa* seeks proximity and closeness to the divine.

[217] I have slightly modified Muhammad Asad's translation of the verse.

[218] The Kula Ring ceremony would not have met the condition of property transfer that is necessary for *hiba*. This is because the valuables exchanged were considered inalienable and there was never a permanent transfer of ownership. Nevertheless, its social function of establishing social solidarity was still closer to that of *hiba*.

5.3. Social Welfare and Institutionalized Gift Exchange: the Charitable Endowment (*Waqf*)

One of the most historically significant institutional channels for gift-giving and charity in pre-capitalist Muslim societies was the welfare endowment (*waqf*, pl. *awqāf*). A *waqf* was an inalienable property dedicated to a welfare or charitable purpose. It came into being through the will of a *wāqif,* a person donating their property for such a purpose. Properties converted into the *waqf* functioned variously as agricultural land, mosques, hospitals, orphanages, hostels and *madrasa*s or schools for religious education (Hallaq 2018, 115). The specific operations and services of a *waqf* were determined by the inviolable will of its donator (*wāqif*), the importance of which is expressed in the Ḥanafite legal maxim "a stipulation of the *wāqif* is akin to a binding text from the law-giver."[219] Whereas the *waqf* came into being through a gift deed from a property owner, it functioned through financial patronage of the elite and charitable contributions from the public. For the masses, a *waqf* was an ideal institutional channel for their donations of *hiba* and *ṣadaqa*. For the landed aristocracy, however, the *waqf* served another important function: preservation of property.

Inheritance and Family *Waqf*s (*Waqf 'alā al-Awlād*):

The Sharī'a prescribes strict rules of inheritance, according to which the property of a deceased is divided and distributed amongst designated inheritors. The *waqf* made a property immune to such division by rendering it inalienable. But the Ḥanafite school of jurisprudence authorizes a *wāqif* to designate himself or his progeny as beneficiaries of the *waqf*. In this manner, returns from an income-generating *waqf* could be confined to one's family rather than be dispensed towards welfare and charitable purposes. Such a *waqf* was called *waqf 'alā al-awlād* (family *waqf*).

[219] Text (Arabic): *Sharṭ 'l-wāqif ka-naṣṣ 'l-shāri'*.

Yet, one significant rule constrained the establishment and operations of *waqf 'alā al-awlād*. The Ḥanafite school mandated that even a *waqf 'alā al-awlād* should eventually be devoted to charitable purposes in its entirety. This meant that the *wāqif*'s family could not remain beneficiaries of the *waqf* in perpetuity; their exclusive access to benefits and services of the *waqf* was temporary. The Ḥanafites therefore allowed a *waqf* to be *initiated* as a family endowment, but stipulated that all such endowments be eventually diverted towards serving the needy in the way of God. This stipulation was in accordance with the telos of the *waqf* as seeking proximity to God (*qurba*). The *waqf* shared this telos with the *ṣadaqa*: they were both charitable acts meant to seek proximity to God through good deeds. A *wāqif*'s endowment could therefore not be recognized as a *waqf* unless it was established with the express condition of working towards charitable purposes in perpetuity. This condition could be met either immediately or, in the case of *waqf 'alā al-awlād*, at some point in the future.

The Cash *Waqf*:

The Ḥanafites did not specify a limit on the period over which a *waqf* remained within the family. In Muslim South Asia, many family endowments within the landed aristocracy continued to benefit their *wāqif*s' descendants over multiple generations (Kozlowski 1983). The Ḥanafites generally accepted that a *waqf* could only take the form of property that was permanent and non-transferrable, since it was meant to function in perpetuity. *Waqf*s based on property, valuables or commodities that were fungible, perishable and consumable were therefore not permissible (al-Kāsānī, 329). Jurists formalized this distinction as one between "immovable things" (*ashyā' ghayr manqūla*) and "moveable things" (*ashyā' manqūla*). For instance, whereas it was permissible for a person to make a *waqf* of his water well or fruit garden, the same could not be done with water extracted from the well or fruit produced in the garden. Jurists vehemently disagreed over the

permanent versus fungible character of certain goods. The greatest controversy was over a *waqf* whose property was made up of cash (*waqf al-nuqūd*). Since cash was a perishable commodity, the traditional Ḥanafite position did not recognize a *waqf* based on cash. Yet Ḥanafites of the Ottoman era, under specific conditions and by no means unanimously, allowed *waqf al-nuqūd* (Mandaville 1979). The principle justification of founding a *waqf* based on cash was based on considerations of (custom) (*'urf*) or prevalent market practice (*ta'āmul al-tujjār*). Since cash had become a permanent aspect of commercial life and was commonly perceived as an imperishable reservoir of value, Ottoman Ḥanafites argues that it could henceforth be treated as a non-fungible commodity. The idea was that in a larger cash economy, money did not perish through consumption but rather circulated and exchanged hands. The Ottoman *waqf al-nuqūd* was unprecedented in Islamic history. Nevertheless, it was devoted to charitable purposes. This situation would change in the aftermath of European colonialism and the demolishing of *waqf*s in the Muslim world.

5.4. *Takāful*: Debating the *Waqf* as an Islamic Alternative to Conventional Insurance

During the past decade, a major rift has developed within the Deobandi clerical community over the ethico-juridical validity of the Islamic finance project. The revival of the *waqf* occupies center-stage in this discursive battle between Deobandi scholars. In the 1980s, Muftī Muḥammad Taqī Usmani, a Deobandi scholar of transnational influence and one of the pioneers of Islamic finance, combined insights from contemporary Arab scholars and the Ḥanafite juridical canon to propose a working model of Islamic insurance based on *waqf*. Conventional insurance had been unanimously rejected by the Deobandi community on grounds of three fundamental prohibitions that applied to it: *ribā* (interest), *qimār* (gambling), and *gharar* (uncertainty). Note that these three

prohibitions apply to commutative contracts (*'uqūd al-mu'āwaḍa*) and, by extension, to conventional insurance as a form of exchange. Conventional insurance involves payment of insurance premiums to purchase a contingent financial coverage by an insurance company in the event of unforeseen loss or damages. Since the amount of money received as indemnity is unequal to the money paid as insurance premium, the monetary surplus resulting from such an exchange constituted *ribā* (interest). Furthermore, since the promise to provide financial coverage by the insurance company is contingent upon an outcome based on chance, such a transaction constitutes *qimār* (gambling). Finally, signing an insurance contract entails purchasing a service whose materialization cannot be guaranteed and neither can its date of provision be specified. This last characteristic meets the textbook definition of *gharar* (uncertainty).

Taqī Usmani's Model of *takāful*:

Usmani claimed that the act of insuring someone or offering mutual protection was neither intrinsically reprehensible in Islam nor peculiar to capitalism. In fact, he listed a number of *'uqūd* (contracts) in Islamic jurisprudence—*muwālāt*, *ḍamān*, and *'āqila* etc.—that entailed offering some form of guarantee, indemnity and protection by one transacting party to another. For Usmani, it was the contractual means by which conventional insurance functioned that needed reform. Muslims had to find a way to benefit from insurance but without partaking in its impermissible contractual forms. Usmani's model therefore made *waqf* into the cornerstone of Islamic insurance. Since unilateral modes of gratuitous giving were not subject to regulations of *ribā*, *gharar* and *qimār* that applied to bilateral commutative contracts (*'uqūd mu'āwaḍa*), they could be used to create a juridical framework for insurance operations. The term used for this institutional innovation is *takāful* (mutual security). It was linked to the practice of *kafāla* (financial security) in classical Islamic jurisprudence, which meant taking financial responsibility for someone. The

idea of *takāful* is premised on mutuality: individuals pool their resources towards the creation of a collective safety net.

Usmani's ingenious *takāful* model translated the legal structure of a conventional insurance corporation into the taxonomy of a *waqf*. A typical *takāful* constituted of principal-agent relationships between three essential bodies: (a) the *waqf* fund; (b) the *waqf* operator; and (c) *takāful* participants. The *waqf* fund was the substitute of the insurance company. It performed two major roles. Firstly, it served as a cash *waqf* that pooled financial resources by collecting cash donations and using them to offer protection coverage for its beneficiaries. Secondly, it acted as the *rabb al-māl* (principal investor) by investing its monetary reserves in businesses through the services of a financial manager. The *waqf* operator was the substitute for an insurance company's management. In the parlance of Islamic jurisprudence, it served as the *mutawallī* (caretaker) of the *waqf* fund. This caretaking role was performed in the role of a *muḍārib* (business manager) of the *waqf*'s monetary resources. Finally, the *takāful* participants occupied the place of an insurance company's policyholders. Instead of purchasing coverage by paying insurance premiums, they made gift payments to the *waqf* fund and became its beneficiaries. As beneficiaries of the *waqf*, they were eligible to receive indemnity in the form of financial coverage for losses and damages to life and property. Of the three bodies constituting *takāful*, the *waqf* fund is a juristic person whereas the *waqf* operator and *takāful* participants are human agents. Usmani also designated the *waqf* operator as the *wāqif* through whose will the *takāful* came into being as an inalienable property. More importantly, similar to *waqf 'alā al-awlād*, the *waqf* operator could designate both himself and *takāful* participants as its exclusive beneficiaries. Of course, as per the conditions of a valid *waqf* in Ḥanafite jurisprudence, a *takāful* could only be founded with the express condition that it would serve charitable purposes in perpetuity.

The aforementioned *waqf*-based model of *takāful* has been a subject of fierce debate amongst Deobandi scholars in Pakistan. Those allied with Usmani's thought now occupy influential positions in Islamic financial organizations in Pakistan and the Arabian Gulf. In particular, the Dār al-'Ulūm Kōrangī and Jāmi'at al-Rashīd seminaries in Karachi are now churning out jurisconsults (*muftī*s) who end up serving as Sharī'a Advisors and Sharī'a Compliance Officers to Islamic financial organizations. These Deobandīs are at the forefront of buttressing Usmani's arguments and implementing his vision of creating Islamic juridical enclaves within the country's capitalist financial system. On the other side are the vast majority of Deobandī *madrasa*s and their *muftī*s who critique Islamic finance as a travesty of the ethos of the Sharī'a and a misappropriation of the tradition of Ḥanafite jurisprudence.[220] Muftī Aḥmad Mumtāz and Muftī 'Abd al-Wāḥid, based in Karachi and Lahore respectively, have been two prominent critics of *takāful*. Both of them have published books with meticulous *fiqh* based evaluations of *takāful*. They have also carried out exchanges, sometimes polemical and acerbic, with Usmani and two of his star students, Muftī 'IṣmatAllāh and Muftī 'Ijāz Ṣamdānī, both of whom serve as Sharī'a Advisors at the Pak-Qatar Takaful Company Ltd. I will now detail major criticisms of *takāful* in light of the discursive exchanges between these Deobandi opponents and proponents of *takāful*. We will see that falling on one or the other side of technical disagreements on matters of legal formalism can carry severe ethical consequences.

On the Perishability of Money: Questioning the *takāful*'s Juristic Status as a cash-*waqf*:

Mumtāz and 'Abd al-Wāḥid's primary criticism of *takāful* is that it fails to meet the juristic as well as socio-ethical standards of the *waqf*. They maintain an orthodox Ḥanafite position by

[220] The most elaborate criticisms grounded in *fiqh*-based arguments have emerged from towering Deobandi scholars based in Jāmi'a 'Ulūm al-Islāmiyya Binōrī Town, Jāmi'a Khulafā al-Rāshidīn, and Jāmi'a Fārūqiya in Karachi, and Jāmi'a Madaniyya in Lahore. For my dissertation research, I conducted ethnographic fieldwork and semi-structured interviews with *muftī*s in all these seminaries.

refusing to accept the validity of a cash *waqf* on grounds of its perishable status. Even if they were to accept the normative status of the cash *waqf*, they found that *takāful* failed to meet two major criteria of validity for the cash *waqf*. Firstly, they reminded ʻIṣmatAllāh and Ṣamdānī that the Ottoman-Ḥanafites ratified the cash *waqf* on the principle of *ʻurf* (custom). Yet, there was no precedent of *takāful* either in the past or present Muslim societies. Even the Ottoman cash *waqf*s served charitable purposes and their beneficiaries were not restricted in the manner of *waqf ʻalā al-awlād*. Secondly, they argued that *takāful* could not be valid as a cash *waqf* due to its impossibility to meet the condition of *qurba* (proximity to God) in perpetuity. Since *takāful* was a cash-*waqf*, it could always be depleted after serving the interests of its beneficiaries before moving on to serve the poor. Ottoman cash *waqfs* were also perishable but they were dedicated to charitable purposes immediately upon their foundation. In the case of *takāful*, there was no way to ensure that the *waqf* fund would outlast its private beneficiaries. Mumtāz and ʻAbd al-Wāḥid therefore granted that a cash *waqf* could only be valid on the condition that it serve charitable purposes, which *takāful* did not. The combination of *waqf ʻalā al-awlād*, one that restricted benefits to select members, and a cash-*waqf* counteracted the very purpose and telos of the *waqf* and condemned it to serving the rich.

Entanglements of Gift and Commercial Exchange: The Problem of Reciprocity in *takāful*:

Mumtāz and ʻAbd al-Wāḥid also refused to recognize the donative character attributed to *takāful* operations. They claimed that a *takāful*'s services did not qualify as gift exchange but were in fact *ʻuqūd al-muʻāwaḍa* (commutative contracts) that functioned on the compensatory logic of commercial exchange. Both Mumtāz and ʻAbd al-Wāḥid argued that the contractual relationship between *takāful* participants and the *waqf* fund was a compensatory exchange of insurance coverage in lieu of premiums. For them, calling these payments "gifts" or "donations" couldn't

change the fact that they obligated the *waqf* fund to provide coverage and protection to its members. Furthermore, the fact that the monetary exchange was a commutative contract effectively rendered the so-called gifts payments from *takāful* participants into loans. Benefits given to participants from the *waqf* fund were in effect surplus monetary payments on those loans. This unequal exchange of money for money constituted *ribā* (interest). Finally, since monetary returns from the *waqf* fund were both uncertain and contingent upon uncertain outcomes, such exchange also constituted *gharar* (uncertainty) and *qimār* (gambling). As a restricted cash *waqf*, both donations and compensatory benefits in the *takāful* were dispensed in the form of cash within the same transacting parties, effectively making it an organized form of transacting interest.

'IṣmatAllāh and Ṣamdānī respond to these accusations by insisting that the donations given to the *waqf* fund and the monetary coverage received by *takāful* recipients are two separate and fully independent donative transactions (*mu'āmalāt tabarru'iyya*). According to them, their critics make the mistake of seeing these contributions and coverage together as a single transaction, which gives it the form of a commutative exchange. But the *takāful* model is different from conventional insurance in this regard. Unlike conventional insurance companies, where policyholders pay insurance premiums in exchange for compensation in the form of coverage, the *takāful* functions on the principle of mutuality. Donations made by a *takāful* participant could be used to cover damages for other participants as well. The *waqf* fund is responsible for the collective good of all its beneficiaries. To the contrary, a conventional insurance company reaches a bilateral agreement with each policyholder and legally binds itself to provide them coverage. In *takāful*, the coverage provided by the *waqf* fund is due to its internal functional objective of protecting beneficiaries and not as *compensation* for gift payments. To disentangle the two, they designate the former as an

independent and continuous donation (*ʻaṭāʼi mustaqil*) and the latter as an individual donation (*ʻaṭiya*).

ʻIṣmatAllāh and Ṣamdānī further buttress their argument by offering the example of a *madrasa* that accepts donations from conscientious Muslims while benefiting them by imparting education to their children. Here the donation made by the person and the educational service provided by the *madrasa* are two independent transactions (*muʻāmalāt*) and should not be thought of as a commutative exchange. The benefit given by the *madrasa* is, again, a continuous service that is provided regardless of the person's individual donations. The fact that a Muslim prays in a mosque or sends his children to a *madrasa* that he also makes donations to does not establish a quid pro quo relationship between benefactor and beneficiary. As long as there are no stipulations attached to such donations, the donor's ability to access benefits from the recipient institution does not warrant collapsing gift exchange into utilitarian exchange. ʻIṣmatAllāh and Ṣamdānī urge critics to view operations of *takāful* in the same light.

In response, Mumtāz and ʻAbd al-Wāḥid accuse their counterparts of engaging in sophistry and dressing up commercial exchange as gift exchange through the use of legal stratagems (*ḥiyal*). According to them, no amount of hermeneutical gymnastics could effectively disentangle the single commercial transaction between *takāful* participants and the *waqf* fund into two separate gift payments. The compensatory logic of this exchange was even more evident from the fact that the amount of coverage received by a *takāful* participant was proportionate to their contribution towards the fund. Further, unlike other *awqāf* that redistributed charitable donations to society at large, the *takāful* organization restricted benefits to its donating members.

Mumtāz and ʻAbd al-Wāḥid also dismissed the *madrasa* example as misleading. A person who made charitable contributions to a *madrasa*, they argued, did not expect to receive surplus

cashback from the same *madrasa*. Further, the benefits of a *madrasa* were *not* restricted to its financial benefactors only and neither did *madrasa* education discriminate between "high volume" versus "low volume" contributors. The *takāful*, on the other hand, served only its policyholders and not society at large. In other words, the services of the *madrasa* were indeed an independent and continuous donation (*'aṭā'i mustaqill*) whereas *takāful* services were entirely conditional. The *madrasa* example used by *takāful* proponents was therefore a misplaced analogy (*qiyās ma' al-fāriq*) at best and disingenuous at worse. As we will see in the discussion ahead, this formalistic disagreement over the commutative versus donative character of "gift exchange" in *takāful* runs into greater moral dilemmas.

5.5. Contesting Intention and Subjectivation in Gift Exchange

Mumtāz and 'Abd al-Wāḥid raise the stakes of the debate by provisionally granting, for the sake of argument, that the donations made to and from the *waqf*-fund in a *takāful* are indeed unilateral gifts and not commercial exchange. But if that were the case, it further compounded the problem for proponents of *takāful* as gifts are subject to a condition in the Sharī'a that remains legally ineffective for sales: correctness of intent (*niyya*). In his systematic critique of contemporary Islamic insurance, *Prevalent Takāful and the Lawful Waqf* (*Murawwaja Takāful aur Shar'ī Waqf*), Mumtāz expounds the role of intentionality in donative contracts according to Ḥanafite jurisprudence. Since sale contracts are guaranteed by the making of an offer and acceptance (*al-ījāb wa 'l-qubūl*) between contracting parties, a sale is considered valid and complete once the transfer of ownership of a property (*tamlīk*) takes place. A gift, like a sale, also entails transfer of ownership. However, since gifts are unilateral offerings, they can be given by simply making an offer (*al-ījāb*). The transfer of ownership of a gift does not require an explicit statement of acceptance (*qubūl*) on behalf of the gifted party (46). This difference is consequential

in determining the validity of gifts for Ḥanafites. Unlike sales, where transfer of ownership and offer and acceptance are sufficient indicators of mutual consent (*al-tarāḍī*), the validity of a gift is conditional upon the *satisfaction* of the person making the gift. This satisfaction and willfulness on the part of the gift-giver (*wāhib*) is reflected in a term derived from the Qur'ān, "contentment of the self" (*ṭībat al-nafs*).[221] Consequently, a gift given under duress, coercion or as a bribe would not be considered valid.

It is important to note that righteous intent does not cease to matter in commutative contracts either. Rather, the verbalized agreement of offer and acceptance is itself taken as an indicator of mutual consent.[222] In donative transactions, however, such reciprocal expressions of consent aren't available. How can a state of contentment behind a donation be thus determined? Do jurists consider such acts justiciable on the basis of intent? Before I delve into the Ḥanafite method of adjudicating between genuine versus deceptive gifts, it is useful to briefly consider the role of intent (*niyya*) and its connection with the character of the self (*nafs*) as conceived in Islamic jurisprudence.

The Location of Intent and Justiciability of Intent-based Acts:

In an important article on the relationship between intent and its modes of expression in Islamic legal interpretation, anthropologist Brinkley Messick examines contending juristic views on ascertaining intent behind legal acts. Messick maintains the centrality of intent to both bilateral and unilateral acts in Islamic law.[223] Juristic disagreement, however, occurs over the means of

[221] Text (Arabic): *Fa in ṭibna lakum 'an shay'in nafsan fa kulūhu hanī'an marī'an*.

[222] The Ḥanafites, of course, entertain situations where verbalized offer and acceptance itself may be coerced or used as legal subterfuge for forbidden ends.

[223] Here "bilateral" and "unilateral" refers to the broader division between worship (*'ibādāt*) and transactions (*mu'āmalāt*) and not to the subdivision of the latter between commutative and donative transactions that we have been discussing thus far.

accessing intent—through verbal expressions, written signs and other contextual indicators (*qarā'in*, sing. *qarīna*)—in order to determine the ethical soundness of an act. For Messick, juristic treatments of intent reveal the constitution of a "*shar'ī* subject," an Islamic self whose true intentions are located in an interior (*bāṭin*) realm. In Islamic legal analysis, Messick notes, "a kind of culturally specific foundationalism assumes that a bedrock of human authority and truth exists, located at a remove from ordinary discourse, inwardly (in the "heart" or in the "self") in the elemental 'language,' if that is the appropriate term, of human intention (*qaṣd, niyya*)." (Messick 2001, 162)

While Messick is certainly correct in affirming the importance of intent to both acts of worship (*'ibādāt*) and transactions (*mu'āmalāt*), his framing of the doctrinal contours of intent creates a bifurcation between an interiorized locus of intent and an exterior realm of its outward markers. The latter then serve as interpretable signs corresponding to the inner truth that resides in the *shar'ī* subject's intentions. In my reading, Messick understands the jurists as using a representationalist framework in which the expressive dimension of actions communicates the intentions preceding them. To be sure, Messick details the various hermeneutical categories of verbal and written expression—"unambiguous" (*ṣarīḥ*) and "indirect expression" (*kināyah*)—used by jurists to indicate degrees of clarity and proximity between an action and its intent. Further, the jurists themselves explicitly identify the "heart" (*qalb*) as the locus of intent behind expressions that are both "informational" (*khabarī*) and "performative" (*inshā'ī*) (159, 175). Messick's careful analysis of the jurists' textual hermeneutics and their spatial metaphors seem to lend credence to his foundationalist conception of intent in Islamic law. Yet, this emphasis on the interiority of intent and its attendant bifurcation between motivations and actions could potentially lead to a mischaracterization—which Messick avoids—of the architecture of the self and ethical acts in

Sharī‘a jurisprudence. I want to address two levels at which such mischaracterization could take place in understanding the role of intention in gift-giving: the agentive and the ontological.

At the agentive level, one could confuse the criterion of satisfactory intent for gift-giving with the pure will of a private self. In Kantian fashion, one may thus misread the condition of "satisfaction of the self" (*ṭībat al-nafs*) as meaning that genuine gifts can only be guaranteed by the free and unhindered will of an autonomous self. Intentionality, thus construed, becomes confined to the realm of private morality and is contrasted to the public—read *secular*—realm governed by law.[224] On a related level, it is also possible to confuse the interiority of intent spoken of by Muslim jurists with an ontology of the Cartesian self. According to Descartes' mind-body distinction, the mind is immaterial and exists separately from bodily matter. Whereas the body cannot think, the mind is the seat of consciousness and intentionality. Not only does the mind create mental representations of external reality, it also causally interacts with the body—"intellect" and "will" being the two major faculties of the mind (Hartfield 2018). My concern is that a 'foundationalist' conception of interiorized intent risks compartmentalizing intentionality—as Descartes did with the 'mind-in-a-vat'—into an isolated sphere of consciousness.[225]

[224] Although not explicitly grounded in a theory of intent or an ontology of the self, recent attempts to 'excavate' the idea of an "Islamic secular" similarly stress the circumscribed sphere of the Sharī‘a's jurisdiction over human affairs (Jackson 2017). Given the finitude of revelatory norms, proponents of the Islamic secular argue that the Sharī‘a has always left room for alternative legal, customary and ethical norms to govern society. While I do not disagree with assertions of normative pluralism made in connection with the historical Sharī‘a, I take conceptual issue with the ways in which certain normative realms are artificially demarcated and sanitized from the influence of the Sharī‘a. Another recent example of such demarcation is Shahab Ahmed's *What is Islam* (2015), which confuses a characterization of the Sharī‘a in terms of the Maussian 'total social fact' (Messick 1993) with a kind of Sharī‘a totalitarianism. In contrast to theories of the Islamic secular and an allegedly Sharī‘a-free zone of Muslim culture, poetry, art and philosophy etc., Wael Hallaq's theory of paradigms (2013) offers a useful analytic to think about the range and scope of the authority of the Sharī‘a in relation to other normative systems. I address this issue in more detail in the chapter on custom (*'urf*) and ordinary ethics, where I am in conversation with anthropologists who wish to circumscribe ethics to an 'immanent' as opposed to 'transcendental' realm (Lambek 2010).

[225] The expression "mind-in-a-vat" is taken from Bruno Latour's critique of the Cartesian mind-body dualism (1999). My own reading of Descartes is indebted to critiques of Cartesian representationalism and

Intentionality can henceforth be separated, artificially that is, from both the self's actions and manifest expressions as (a) their subjective trigger and (b) the source of epistemic certitude for their underlying meanings.

Talal Asad has recently noted the influence of these Cartesian precepts on treatments of intentionality in Islamicist scholarship. Commenting on a major misconception in the seminal work of Paul Powers (2006) regarding the role of intent-based acts of worship (*'ibādāt*), Asad argues that the non-justiciability of such acts—whose validity depends on the worshipper's intent—is not due to intent being a "purely subjective phenomenon" that is inaccessible to an outside observer (Asad 2018, 82).[226] Powers' compartmentalization of intent aligns closely with the differentiation made in symbolic anthropology between (a) the expressive dimension of a ritual and (b) what goes on in the heads of those performing it. Symbolic anthropologists insisted that the meaning of a ritual could be understood by decoding (a), which existed independently of and remained unaffected by (b).[227] Whereas Descartes gave primacy to the consciousness of the individual subject, symbolic anthropologists placed meaning in a higher symbolic order which

foundationalist epistemology presented in the writings of Latour and American pragmatists, mainly Charles S. Pierce and Richard Rorty.

[226] To be sure, Muslim jurists do elaborate rules and conditions for an apt performance of rituals of worship, such as the making of ablution (*wuḍū*) and covering of the body prior to prayer (*ṣalāt*). Despite these arrangements, a prayer is considered invalid if not motivated by an intention to please God. These rules, however, only serve as a "script" to regulate the correct performance of a ritual (Asad 1993, 57). The script is not identical to the performance itself; it is the post-facto justiciability of the latter that concerns us here.

[227] Talal Asad (1993) has famously critiqued the anthropological distinction made between the public and legible character of rituals versus the private and ineffable character of human feelings, emotions and intentions. It is not difficult to see how this distinction is undergirded by a foundationalist conception of an essential inner self and its external representations. Stanley Tambiah's statement, quoted by Asad, summarizes the analytical consequences of such a philosophical anthropology:

> …Rituals as conventionalized behavior are not designed or meant to express the intentions, emotions, and states of mind of individuals in a direct, spontaneous, and "natural" way. Cultural elaboration of codes consists in the *distancing* from such spontaneous and intentional expressions because spontaneity and intentionality are, or can be, contingent, labile, circumstantial, even incoherent and disordered (Tambiah 1979, 124).

could only be authoritatively deciphered through the anthropologist's ethnographic gaze. Both these divergent, yet strictly cognitive, approaches quarantine intention as a mental state of the actor that is distinct from the outer performance of the worship ritual.

Intention as a Moral Technology of the Self:

For Asad, the locational emphasis given to the interiority of intent reduces it to a feature of consciousness. This misleading compartmentalization obscures the ways in which intent permeates an action to produce desired effects on the subject. Intent, in other words, does not merely give *direction* to an action but suffuses it with the potency to shape and transform the acting subject. For instance, a prayer ritual performed with the intent to please God is both (a) 'expressive' in that it follows established conventions of movement and recitation and (b) 'instrumental' in that it creates appropriate attitudinal dispositions within the subject of prayer.[228] Asad extends the functionality of intent from a purely cognitive exercise of consciousness/willfulness to the work of subjectivation. This is an important intervention as it clarifies the reflexive character of intentionality. The popular construal of intention as 'reflexive awareness' is only partially correct. Intention is indeed a form of reflexivity, but not in the limited sense of self-awareness or

[228] The distinction between "expressive" and "instrumental" acts is another key analytic in British social anthropology that Asad unravels in his revisionist study of ritual (1993). According to this distinction, instrumental or technical acts are those that can be explained in terms of observable causes and effects. A typical example of a technical act is using a tool (cause) to create something (effect). Expressive acts, such as rituals, are symbolic and governed by convention. Unlike instrumental acts, their logic is not coeval with their visible sequence. Instead, their conventions and visible forms encode meanings that must be uncovered through interpretation. Asad argues that no such disjuncture between expressive and instrumental acts exists in virtue ethics and disciplinary models of ethical self-cultivation. Using the monastery as an example, Asad details the rigorous routine of imitation pursued by monks so as to approximate the moral sensibilities and dispositions of a religious exemplar. Here repetitive behavior driven by ritualistic convention brings about an ethical transformation of the subject; it is therefore simultaneously expressive and instrumental. While appreciating Asad's Foucaultian critique, I must also note the significance of what Latour has called modernity's process of "purification" in creating the bifurcation between expressive and technical acts. A predecessor to this bifurcation can be found in Wilhelm Dilthey's analytical separation between "understanding" and "explanation" as appropriate to natural-scientific and humanistic phenomena respectively.

introspection; it partakes in the reflexive fashioning of the self. Herein lies the ethical significance of *ṭībat al-nafs* for a gift given as a token of one's appreciation and gratitude.

In Islamicist scholarship, however, cognitivist understandings of intent persist. This persistence may partially stem from the manner in which intent has been discussed in juristic discourses. The student of *fiqh* may note that jurists require the verbalization of intent—in thought or pronouncement—for certain acts of worship. Furthermore, jurists ascertain the intention behind certain acts through linguistic indicators. Given the centrality of language as a vehicle for establishing intent, Messick surmises that intent may be thought of as an "elemental 'language'" of the Islamic self (Messick 2001, 162). I would venture with Asad to qualify Messick's perceptive insight further. "Language," Asad reminds us, is best understood as "rooted in a somatic complex (hearing-feeling-seeing-remembering) and as involved in people's making/remaking themselves or others over time" (Asad 2006, 212). If intention has a linguistic component, it must be understood as part of the same "somatic complex" that integrates thoughts, feelings and bodily sensations to perform the work of subjectivation. In Islamic acts of worship, intention does more than make the subject *aware* of being in the presence of God; it binds her in an authoritative relationship of willful obedience to God and makes worship an act of self-transformation.[229]

[229] In a different context, Asad explains why it is insufficient to conceive of an authoritative discourse in semantic terms. When a subject submits to the authority of a tradition and inhabits its norms, much more is at stake than mere "recognition" of authority. Asad's analysis helps illuminate the role of intention in binding the subject in an authoritative relationship with God.

> …If we think of authoritative relationship as one person's ability to grasp and obey a compelling truth, then what matters is not that the subject interprets given signs by other signs, but that she connects to "the truth" of what is made apparent to her, and that she is thereby able to transform herself in that moment. It is that moment—extended through recollection and desire—that subjects her to its authority and alters her, that marks a beginning. She is struck by what she has not noticed before, by a "new presence" that works to become a spontaneous part of her self. Like someone love-struck, she lives in a compelling truth, she inhabits a relationship with someone who is at once internal and external. (Asad 2006, 213)

Wael Hallaq has captured the political significance of intention in Islamic acts by making a constructive contrast with the coercive norms of political liberalism. In the latter, authoritative norms established through a procedure of overlapping consensus become legally binding, irrespective of a citizen-subject's agreement with or willfulness to abide by those norms.[230] On the other hand, as Hallaq notes, authoritatively sanctioned acts of worship and rules of conduct in Islamic transactions act as "moral technologies of the self" (Hallaq 2013, 110). In sharp contrast with political liberalism, where the sovereign will of the state is exercised through coercion and legal authority functions independently of moral substance, the Sharī'a presupposes and engenders harmony between the prescribed norms of tradition and the subject's volitional enactment of those norms to cultivate a pious disposition.[231] Hallaq sharpens the contrast further: "It would be meaningless to attempt the fulfillment of a religious obligation if the performer dislikes the

[230] I do not have the space here to get into a discussion of the authoritarian compromises that are endemic to a contractarian system of political liberalism. These authoritarian limits to freedom do not entirely escape the foremost thinkers of political liberalism. In his *Political Liberalism*, John Rawls reluctantly acknowledges the coercive thrust of norms that emanate from his procedural model of public reason, but without wasting ink to ponder on its consequences:

> Thus when, on a constitutional essential or matter of basic justice, all appropriate government officials act from and follow public reason, and when all reasonable citizens think of themselves ideally as if they were legislators following public reason, the legal enactment expressing the opinion of the majority is legitimate law. *It may not be thought the most reasonable, or the most appropriate, by each, but it is politically (morally) binding on him or her as a citizen and is to be accepted as such.* (Rawls 2005, 446; emphasis mine)

For a comprehensive critique of the authoritarian bearings of political liberalism, see Connolly 2000.

[231] The positing of a hierarchical relationship between the subject and any other authority—the state or tradition—necessarily gives rise to the question of agency. I do not have the space here to delve into the problematic of subjective autonomy/heteronomy, but I consider it sufficient to mention that the Sharī'a conceives of Islamic subjects as heteronomous agents. The very centrality of intention—conceived in the non-Cartesian and non-Kantian terms I've described above—in Islamic acts is premised on the subject's agency to bind herself in an authoritative relationship with tradition. As Hallaq notes, "*niyya* precludes a sense, on the part of the subject, of imposed obligation." (Hallaq 2013, 124) But this intent-based agency of the subject is not unconstrained or absolute; it must be aligned with forces beyond human control—the most important of which is described in the Qur'ān as divine "excess" (*faḍl*)—for the work of subjectification to have effect. Saba Mahmood's theoretically sophisticated ethnography (2005) unsettles liberal conceptions of agency that equate Islamic practices of subject-formation with absolute subordination. For a philosophically engaged contrapuntal reading of Immanuel Kant's autonomous agent and Abū Ḥāmid al-Ghazālī's heteronomous conception of ethics, see Moosa 2005, 209-236.

performance—if, that is, the *niyya* is caught in an emotive web of reluctance or resentment. Inasmuch as God is to be loved, performance of acts directed toward Him are to be loved as well, for *niyya* presupposes love" (121).[232]

Ṭībat al-nafs in donations means that one gives gifts or does charity as an act of love, not out of coercion. Our discussion thus far should make evident why intent-based acts of worship should be non-justiciable in Islamic law. Since the purpose of worship is to establish a relationship between the subject and God, the justiciability of such acts lies with God. This is not the same as saying that worship is a private act and is hence illegible to an outside observer. As we will see ahead, the jurists did devise methods of retroactively tracing the intention behind an act, but this does not presuppose an autonomous agent whose intentions are coterminous with the will of a sovereign subject. Intent is but part of a complex assemblage of cognitive and somatic factors that animate Islamic acts and transform the subject according to a telos. To quote Asad,

> …If intention in Islamic worship is not the business of governors, this is not because it can never under any circumstances be accessed by other than the subject of intent but because according to shari'a texts, intention in worship is supposed to aim at forging the right relationship between the worshipper herself and her God—and this applies to all acts of worship, not only to the ritual of prayer (*salāt*)… Their aim is, by repetition, to cultivate an appropriate attitude toward God, a relationship articulated by appropriate intention, thought, and feeling; they are not matters for a court to decide. (Asad 2018, 83-84)

Gift Exchange, Intention and the Economy of Gratitude:

The preceding discussion provides a useful background for us to now consider the role of intention in gift exchange. As was stated earlier, the prescribed telos for all acts of worship is the

[232] Hallaq's observation is informed by a close reading of discourses of intent in texts of *fiqh* and *taṣawwuf* (mysticism). It is in the latter that emotive-affective aspects of intent receive their most careful treatment. In another analysis not explicitly grounded in discourses of mysticism, Asad describes the state of being bound by the authority of tradition in the following terms: "It is not signs in themselves that explain people's recognition of authority; it is how people have learned to do, feel, and remember signs that helps explain it. Or (in another key) how they apprehend signs of the beloved when they 'fall in love.'" (Asad 2006, 214)

attainment of *qurba* or proximity to God. Correctness of intent, therefore, is an essential if not sufficient requirement for acts of worship to have their intended effects.[233] Since charity (*ṣadaqa*) is also considered an act of worship, it is a form of giving that must be geared towards the attainment of *qurba*. Money given to charity out of coercion or in exchange for material/immaterial benefits would not meet the condition of *qurba* and will therefore not count as a *ṣadaqa*. As Hallaq correctly notes in the context of the obligatory alms-tax (*zakāt*), which is a mandatory form of charity (*ṣadaqa*) and one of the five pillars of Islam, intention could be the sole marker of difference between an act of generosity and financial extortion: "The indispensability of *niyya* draws a thick line of separation between, on the one hand, the voluntary and willing performance for the sake of God and, on the other, the coerciveness that is involved in what might be termed here secular taxation" (Hallaq 2013, 124). Furthermore, charity serves a crucial function of ethical self-cultivation that is rendered ineffective without appropriate intentions. Charity is not only meant to curb avarice and greed that stems from wealth acquisition, it is a reminder that wealth ultimately belongs to God. Spending money in charity cultivates an attitude of social responsibility in the believer. On a spiritual level, it is the only means of expressing gratefulness for the gift of wealth by dispensing from it a divinely ordained share for the poor. Asad summarizes the "technical" and "symbolic" significance of charitable giving in Islam:

> …Thus charity (*zakāt*) aims at transforming the giver and not the receiver in awareness of God's presence; it is not to be regarded as an expression of personal generosity for which the recipient is expected to be grateful or, for that matter, simply as the "right of God" (*haq Allah*) but as a formal act of worship that is—

[233] It is an insufficient condition as one cannot perform a prayer simply by intending it. Intention must be accompanied with the apt performance of prayer, including proper recitation and bodily movements.

> given its significance for the worshipper—at once instrumental and expressive. (Asad 2018, 83-84)

Intention is thus part of an economy of gratitude and is used to distinguish gifts seeking proximity to God from gifts geared towards utilitarian ends.

The Purity of Giving - Distinguishing Gifts from Loans and Bribes:

Thus far I have argued that intention is not an isolated act of cognition performed by a Cartesian subject with a mind/body split. It is neither necessarily anterior nor posterior to action but permeates the latter from multiple directions. For instance, a believer may begin the obligatory five prayers as a routine practice devoid of devotion or sincerity. However, with practice one may acquire a habit of praying five times a day, gradually attuning one's affective, sensational and psychological registers to the bodily movements of prayer.[234] In Islamic charitable acts, intention is a key felicity condition that renders a virtuous deed effective within an economy of gratitude by integrating cognition, feeling, and action. The Sharī'a prescribes helping the poor and the needy as a means of expressing gratitude towards God for the gift of wealth. Since the wealth one earns is not conceived as the sole outcome of entrepreneurial spirit but also a function of divine beneficence, the Sharī'a imposes on the wealthy a moral obligation to allot a share for the poor (Hallaq 2013, 123-125). Unlike the Protestant ethic, being wealthy does not signal a divine decree of success in the afterlife. Wealth is a moral liability and not an entitlement. A believer meets this liability by spending in the way of God as an act of gratitude. It is in this context that Ḥanafite jurists tie charitable acts closely to the subject's intentions. Intention thus becomes a key determining factor in separating charitable acts that partake in an economy of gratitude from those that are driven towards utilitarian ends.

[234] Saba Mahmood's ethnographic discussion of prayer captures the complexity of interaction between intention and practice in an Aristotelian model of virtue ethics. See Mahmood 2005.

Having clearly defined the ethical significance of intention in gift-giving and charitable acts, I want to return to the debate over the religious validity of *takāful* amongst Deobandis. Mumtāz and ʻAbd al-Wāḥid insist that policy-holders of a *takāful* do not make donations seeking proximity to God (*qurba*); they make these payments with the intention of protecting their assets from unforeseen damage. Both the *takāful* company and policy-holders understand that receiving donations from the latter obliges the former to cover for potential damages. They are charitable offerings only in name because the mutual intent behind these donations is to secure the policy-holder's assets in a way that reaps profits for the *takāful* company.

Returning to the example of the *madrasa* used in defense of *takāful* by ʻIṣmatAllāh and Ṣamdānī, Mumtāz and ʻAbd al-Wāḥid concede that it is indeed possible for a person to make charitable contributions to a *madrasa* whilst simultaneously benefiting from its services. They agree with their interlocutors that enrolling one's child in a *madrasa* that one also makes donations to does *not* establish a bilateral exchange for two reasons: (a) the donation is not contingent upon receiving proportionate services from the *madrasa*, and (b) benefits of the donation accrue to all *madrasa* students without discrimination. As I showed earlier, ʻIṣmatAllāh and Ṣamdānī extend the same logic to *takāful* by arguing that donations made by policyholders and the protection coverage provided by the *takāful* company are two independent unilateral provisions. Mumtāz and ʻAbd al-Wāḥid, however, point to the fact that the magnitude of coverage given to a policyholder is proportionate to the contributed amount of donations. This proportionality clearly shows the bilateral linkage between contributions made to the *takāful* company and protection coverage. Furthermore, unlike the *madrasa* where education is provided free of cost to students enrolled through a need-blind admissions process, the services of *takāful* are restricted to its policyholders.

Whereas the *madrasa* serves society at large in true *waqf* fashion by acting as a sanctuary for the poor, the *takāful* only serves the rich and those who can afford its membership.

Mumtāz and ʻAbd al-Wāḥid recognize that these subtle points of distinction may still be insufficient to distinguish the transactional character of *madrasa*s and *takāful* organizations. With sufficient skill, defendants of *takāful* may always disentangle a single bilateral commutative transaction into two unilateral and gratuitous donations. However, Mumtāz and ʻAbd al-Wāḥid truly turn the tables against the defense by provisionally granting that transactions taking place in the *takāful* are indeed donations (*tabarruʻāt*) and not commutative contract (*ʻuqūd muʻāwaḍa*). If so, these transactions must still meet the all-important criterion of correctness of intent that guarantees the validity of charitable contributions.

ʻAbd al-Wāḥid thus notes that the objectives of both policyholders and service providers in *takāful*, for all practical purposes, run counter to the intentions required of charitable acts, i.e. seeking proximity to God (*qurba*) by aiding the poor. From the perspective of policyholders, ʻAbd al-Wāḥid notes that the only possible way of imagining their donations as charitable contributions would require us to presume extreme ignorance on their part. Had policyholders made donations to the *takāful* without knowing those same donations would entitle them to protection coverage, we may have had reason to think they were engaged in charitable activity. Had they then been unexpectedly indemnified by the *takāful* company for damages/loss of property or life, they would have truly welcomed such coverage as a gratuitous act of generosity. In practice, however, policyholders are well aware of the financial arrangement between them and the *takāful* company (ʻAbd al-Wāḥid 2014, 211).

As a form of insurance coverage, *takāful* is a highly specialized product that has to be customized for each client. Each time a client steps foot in the office of a *takāful* company, s/he is

debriefed by an advisor about the range of protection plans available to him/her and the plan most suited to his/her specific needs and budgetary considerations. The policyholder then signs multiple documents and is made aware of his/her payment plans and their associated compensatory benefits. ʻAbd al-Wāḥid therefore concludes that all arguments for the separation of donations made by policyholders and protection coverage provided by the *takāful* company fall flat in the face of how *takāful* functions. There can be no question that the transaction is intended by both parties—policyholders and the *takāful* company—as bilateral exchange (payment of insurance premiums in return for protection coverage) and not as unilateral acts of generosity.

ʻAbd al-Wāḥid further sharpens the contrast between the utilitarian interests of *takāful* participants and the kind of social solidarity that motivates community level cooperatives in Pakistan called *birādarī* (fraternal) funds.[235] These were self-sustaining communal initiatives intended to create safety nets for workers outside state and market-based insurance mechanisms. ʻAbd al-Wāḥid notes that such *birādarī* funds functioned as welfare institutions where a community would pool financial resources to aid those who needed them the most. They therefore served as an actual wealth redistribution mechanism from the rich to the poor: financially well-endowed members of a community contributed most to the fund and its beneficiaries were often households whose earning members had been laid off, families who needed to finance a daughter's wedding or a child's education, and insolvent debtors who couldn't pay off their loans. Members made contributions to a *birādarī* fund to help the downtrodden in their community; they didn't make payments as safeguard against losses to their own wealth.

[235] Such community-level cooperatives were also common in industrial era England. They provided a safety net for workers outside state-market relations. Commercial insurance, however, gradually eroded these "informal" insurance mechanisms and replaced them with market institutions. For an insightful commentary on the erosion of "friendly societies" with the rise of the modern nation-state and commercial insurance based on actuarial sciences, see Asad 2018, 127-131.

In contrast, the *takāful* practically functions as a for-profit organization. Social welfare and poverty alleviation are not even invoked as corporate social responsibility initiatives. A *takāful* policyholder contributes money to the so-called *waqf*-fund knowing that s/he would receive a greater return as indemnity. Even if the need for indemnity never arises, ‘Abd al-Wāḥid notes with scorn that the policy holder’s monetary contribution is intended to preserve expensive vehicles, mansions, and other luxuries of life available only to the rich. Given their needs of subsistence, the poor are effectively barred from the many protection plans—life, health, vehicle etc.—offered by *takāful*. A *birādarī* fund strengthens social solidarity through mutual aid (*imdād-i bāhamī*), whereas a *takāful* uses the model of the *waqf* to satisfy the kind of self-interest (*gharaḍ-i dhātī*) that breeds wealth accumulation.

A Juristic Formula for Determining Intent in Gift-Exchange:

While ‘Abd al-Wāḥid’s intention-based critiques seem intuitively convincing, his evidentiary basis of accusing *takāful* practitioners of malintent remains conjectural. On the one hand, his interlocutors cannot challenge the principles he invokes regarding the centrality of intent in charitable acts. On the other hand, since intentions are famously difficult to access, it ultimately remains to be determined whether *takāful* practitioners *actually* do violate those sacrosanct principles or not. In other words, ‘Abd al-Wāḥid doesn’t offer any sound jurisprudential means to apply a legal ruling (*ḥukm*) against *takāful* practitioners on the basis of malintent. Proving himself to be the more skillful jurist-critic, Mumtāz launches a systematic attack on the intentional front by offering a jurisprudential criterion of sorting righteous intentions from false ones. He first appeals to a foundational legal maxim on contracts in Ḥanafite jurisprudence (henceforth referred to as the maxim of ‘contractual intention’): “Consideration in contracts is given to intentions and

meanings, not to words and forms."[236] As per this maxim, if the wording of a contract or its linguistic form doesn't correspond to the outcome intended by its contracting parties, its legal permissibility will be judged according to the latter. A classic example of such a contract where wordings conceal the true intent of a transaction is the buy-back sale (*bay' al-'īnah*). The buy-back sale is often used as a cover for an interest-based loan, where two sale transactions are combined to meet the functional needs of a single loan transaction.[237] Contracts like *bay' al-'īnah* are structured to achieve impermissible outcomes through legally permissible means by circumventing interest. They belong to a specific family of contracts known as legal devices or stratagems (*ḥiyal*, sing, *ḥīla*).[238]

Since Mumtāz alleges that the entire system of *takāful* deploys the terminology of gift-exchange to enact conventional insurance mechanisms, he invokes the maxim of contractual intention to highlight the discrepancy between the wordings (*alfāẓ*) and objectives (*maqāṣid*) of *takāful*. As a Ḥanafite, however, Mumtāz knows that the maxim of contractual intention cannot be applied indiscriminately to all commercial contracts.[239] The Ḥanafites are known for their

[236] Text (Arabic): *Al-'ibratu fī al-'uqūdi al-maqāṣid wa al-ma'ānī lā li al-alfāẓi wa al-mabānī.* A lengthier discussion on legal maxims is provided in Chapter 2 on *'āda*.

[237] A simple two-step example can demonstrate this. In step 1, person A in need of $100 in cash purchases an asset from person B for $110 on a deferred payment basis. In step 2, person A immediately sells the same asset back to person B for $100 on spot. Once the two sales are concluded, person A has $100 in cash and s/he owes person B $110 (from the first sale). Had person A simply borrowed $100 from person B with the promise of paying back $110 at a future date, this would have constituted an interest-based loan transaction which is categorically forbidden.

[238] They are "devices" because they deploy contracts as tools to enact particular effects. These effects are performative and they elide any straightforward correspondence with the verbal representations of contracts themselves. Hence the deviation between the wordings of a contract and its concrete outcome.

[239] The maxim of contractual intention is recognized by all four schools of Sunnī jurisprudence, but there is disagreement in terms of its interpretation and application. The Ḥanafites and Shāfi'ites restrict its application to a specific variety of contracts, whereas the Mālikites and Ḥanbalites consider it universally applicable. The Ḥanbalites in particular are staunch critics of *ḥiyal* and rigorously apply the maxim to dismiss any transactions that seek to achieve unlawful objectives through lawful means. The Shāfi'ites have

toleration of *ḥiyal* in commercial contracts, most of which carry intended aims and objectives that exceed the wordings of their contractual forms.[240] Mumtāz must therefore explain why the maxim of contractual intention applies to the specific case of *takāful*. Here he relies on an early 17th century Ḥanafite authority, Mullā ʻAlī al-Qārī (d. 1605), who remarks on a subtle linguistic difference between the offering of a gift and that of a sale. As I noted earlier, both gifts and sales entail a transfer in the ownership of property (*intiqāl al-milk*). In the case of sales, the transfer is conditioned upon compensation, whereas in the case of gifts no return or compensation is stipulated. Al-Qārī argues that the performative efficacy of words used to make a gift—"I gave you" (*aʻṭaytuka*)—is not strong enough to establish possession for the giftee.[241] In contrast, the verbal expression used for sales—"I sold you" (*biʻtuka*)—evinces a transfer of ownership to the buyer (Al-Qārī , Vol. 4, 270).[242] Al-Qārī therefore concludes that intentions carry no legal effect in the matter of contracts of sale. For gifts, however, if a contravening intention can be identified with the act of gift-giving, the intention will be taken into consideration in determining the legality of the gift. Herein lies the value of the maxim of contractual intent for Mumtāz as a Ḥanafite:

the opposite tendency and give precedence to wordings over intent, even in situations where the two are clearly at odds with one another. For instance, they recognize *bayʻ al-ʻīnah* as a valid contract on the basis of its wordings and formal structure. Due to Shāfiʻite influence in the Malay Archipelago, *bayʻ al-ʻīnah* remains a popular mode of Islamic financing in present-day Malaysia.

[240] While noting Ḥanafite notoriety for tolerance of *ḥiyal* from the perspective of Ḥanbalites, for example, one must be careful to distinguish this internal-traditionalist critique of Ḥanafites from Orientalist propaganda regarding the alleged centrality of *ḥiyal* in Islamic law.

[241] It is important to note that the specific linguistic convention for gift-giving or a sale used by al-Qārī is not merely a juridical expression. Its performative efficacy also derives from its customary usage. In other words, effective expressions for offering gifts and conducting sales will vary across sociocultural and linguistic contexts. I deal with the significance of custom in linguistic performativity in Chapter 2 on *ʻāda*.

[242] Text (Arabic): *Wa li-ḍuʻfi dalālati al-iʻṭāʼi ʻalā al-milki … bi-khilāfi al-ʻaqdi fa-innahū dāllun qawiyyun ʻalā al-milki*.

consideration in *gift-exchange* is given to intentions and meanings, not to words and contractual forms.

Having established the centrality of intention to practices of gift-giving, Mumtāz can now attack *takāful* on its own terms. If *takāful* is indeed a donative contract (*'aqd al-tabarru'*) of gift-giving, as 'IṣmatAllāh and Ṣamdānī insist, and not a commutative contract (*'aqd al-mu'āwaḍa*) of sale, the intentions and objectives of *takāful* participants will be of greater legal significance than the contractual terms in which their activities are couched. But how will Mumtāz parse contractual forms from their motivating intentions? Here Mumtāz moves from jurisprudence (*fiqh*) to a more foundational source of the Sharī'a: Prophetic tradition (*ḥadīth*). Mumtāz narrates a tradition in which the Prophet is reported to have said: "gifts given to authorities are unfaithful."[243] The backstory of this tradition is that the Prophet once assigned a person from the influential tribe of al-Azd as an alms-tax collector. In addition to collecting *zakāt* on duty, he also received surplus money as gifts from his subjects while on duty.[244] Upon returning from his mission, he deposited the alms-tax and claimed the gifts for himself. Lest there be any suspicion of embezzlement, he clearly distinguished the alms-tax from the gifts he had received as two independent and unrelated offerings.[245] The Prophet, however, questioned the alleged detachment of those gifts from the administrator's authority as alms-tax collector. He rhetorically asked: would a tax collector still receive gifts had he decided to stay home?[246] The implication here is that the gifts did not reach

[243] Text (Arabic): *Hadāyā 'l-umarā' ghulūlun*.

[244] Money here should not be understood as fiat paper currency. In premodern times, the obligatory alms tax (*zakāt*) was also paid in the form of fungible goods such as wheat, silver and gold.

[245] As indicated in his clarification: "This is for you and this was given to me as a gift" (*hādhā lakum wa hādhā hadiyatun uhdiyat lī*).

[246] "For if he had stayed in his father's or mother's home, he would have seen whether he was given gifts or not" (*fa hal lā jalasa fī bayti abīhi aw ummihī fayanẓur ayuhdā lahū am lā*).

the alms-tax collector in his personal capacity but were meant to curry favor with him as an administrative authority.[247] The Prophet therefore dismissed gifts received by governors and administrators in the line of duty as fraudulent on account of the wrongful objectives they were intended to serve. Since the *ḥadīth* highlights an instance of gratuitous giving where the line between gifts and bribes gets blurred, jurists have used it as a basis for forbidding bribes. For Mumtāz, however, *the ḥadīth* serves an additional purpose of strengthening his intention-based critique of gifts exchanged in *takāful*.

Using the *ḥadīth* as scriptural proof-text, Mumtāz draws on a second juristic principle on the authority of Mullā ʻAlī al-Qārī. In his commentary on the aforementioned *ḥadīth*, al-Qārī derives a juristic formula (*ḍābiṭa*) for determining the legal validity of multiple transactions occurring simultaneously.[248] In Islamic commercial law, jurists recognize that the functional purpose of a single transaction can be altered when it is combined with other transactions. For instance, in the case of *bayʻ al-ʻīnah*, two permissible sales transactions are combined to produce the impermissible effects of a single loan transaction. Therefore, in order to judge the validity of two or more transactions occurring sequentially or simultaneously, it becomes important to ascertain the relations of dependence between them. As per al-Qārī's formula, the jurist can determine relations of contingency (or lack thereof) between two transactions by conceiving a counterfactual situation in which each transaction is conducted separately, without foreknowledge

[247] It is important to note that the contrast drawn in the *ḥadīth* is not between an anonymous gift and one whose addressor is known. As I noted earlier with reference to Ibn ʻĀbidīn, a gift proper in the Sharīʻa creates a social bond through mutual recognition and reciprocal obligation. However, when the aim of the gift ceases to be the goodwill and affection of the giftee (*mawhūb lahū*) but is given as compensation for an impermissible activity, it becomes a bribe (*rishwa*). Ashraf ʻAlī Thānwī described a bribe (*rishwa*) as compensation for a service or commodity that lacks legal guarantee (*māl ghayr mutaqawwim*).

[248] Al-Qārī himself attributes the formula (*ḍābiṭa*) to pioneering *ḥadīth* scholar (*muḥaddith*) and Shāfiʻite jurist, Abū Sulaymān al-Khaṭṭābī (d. 996). Al-Qārī, however, offers a Ḥanafite interpretation of the *ḥadīth* and its derived formula, which is relevant for our purposes here.

of the other. If both transactions maintain the same functional character in the counterfactual as they do in their simultaneous occurrence, the jurist would have reason to believe they were independent of one another. However, if the counterfactual suggests that either transaction would not have occurred in the absence of the other, this clearly suggests their mutual dependence.[249] This criterion is directly derived from the aforementioned *ḥadīth*. The Prophet himself distinguished genuine gifts from bribes by posing a counterfactual: would the concerned authorities still have received gifts outside their capacity as alms-tax collectors? If not, this was an indication that the gifts were motivated by the desire to appease political authority.

Mumtāz now applies the same contingency-check to *takāful*: would policy-holders have any reason to make donations to the *takāful*'s *waqf*-fund without foreknowledge of receiving protection coverage? And, vice versa, would the *takāful* company still compensate policy-holders had they not made donations to its *waqf*-fund? Since the answer to both questions is in the negative, Mumtāz concludes that the alleged mutual exclusivity between donations made by policy-holders and protection coverage provided by *takāful* is fictional as it fails the test of al-Qārī's juristic formula. For Mumtāz, if policy-holders really wanted to do charity without expecting a proportionate return on investment, they would donate money to hospitals, orphanages, and *madrasa*s etc. Further, how could policy-holders donating money to a *takāful*'s *waqf*-fund intend proximity towards God knowing that their money served no real charitable purpose? As for the *takāful* organization, company policy clearly stated that protection coverage was an exclusive benefit available to policy-holders and that too proportionate to their contributions. Since a *takāful* organization discriminated between high and low volume clients, it could not even benefit its own

[249] Text (Arabic): *Hal yakūna ḥukmuhū 'inda al-infirādi ka-ḥukmihī 'inda al-iqtirāni am lā?* The permissibility/impermissibility of these simultaneously occurring transactions will vary depending on their agreement with the counterfactual situation.

policy-holders on the basis of need, let alone help the poor and downtrodden in society at large. The idea that transactions taking place in *takāful* were donations (*tabarru'āt*) made in the spirit of mutual aid (*imdād-i bāhamī*) was a complete sham.

5.6. Conclusion

In Chapter 4, we considered the discursive transformation of the Sharī'a through standardization. Focusing on the textual architecture of the Sharī'a as formed through intertextual linkages between the archival genre of legal opinions (*fatāwā*, sing. *fatwā*) and library texts of legal theory (*uṣūl*), we considered how standardization decontextualizes legal opinions by deracinating them from the authority of traditional legal schools (*madhāhib*), thus suppressing their polyvocality to yield distinct and transparent meanings as objective criteria for financial decision making. In this final chapter, we moved from questions of textual format to the ethical organization of social relations in the Sharī'a.

I have argued that Islamic insurance (*takāful*) reconfigures gift-exchange in the Sharī'a and transforms it from a communal practice of reciprocal generosity and a moral technology of the self into a market-based service of financial security. As with other forms of secularization described in this dissertation, the institution of *takāful* does not mark a radical disjuncture with the Sharī'a or affect de-theologization. Instead, it remains firmly grounded within the citational domain of the Sharī'a whilst altering its citational effects. As I showed through a close examination of interpretive contestations and polemical exchanges between Deobandī critics and proponents of *takāful*, attempts to reconfigure the citational domain of gift-exchange within the Sharī'a do not go uncontested.

Takāful's social reconfiguration of the Sharī'a involves appropriating the model of the charitable family endowment (*waqf 'alā 'l-awlād*) in traditional Ḥanafite jurisprudence into a

modern institution of private insurance. Whereas previously the *Waqf* served a social welfare function in Muslim societies, *takāful* perpetuates the inequalities of capitalism by restricting financial protection towards the wealthy. This transformation is made possible by disrupting the interminable and socially driven reciprocity entailed in the mimetic exchange of gifts. *Takāful* disentangles the gift from the counter-gift and recontextualizes them into the compensatory logic of market exchange. Consequently, under the pretense of gratuitous and socially generous gift exchange, *takāful* legitimates a contractual exchange of money paid in lieu of financial services.

This reconfiguration of social relations in the Sharī'a is also inextricably tied to a moral economy of selfhood and subjectivity. *Takāful* effectively subverts the significance of gift exchange as a moral technology of the self by undermining (a) intentional rectitude (*ṭībat al-nafs*) as a felicity condition for Islamic charitable acts and (b) gratuitous giving as a vehicle for the expression of gratitude and gaining proximity to God (*qurba*). In place of these moral technologies of the self that are a crucial accompaniment to the "spending ethic" of the Sharī'a and the formation of a *shar'ī* subject (Hallaq 2009, 270; Hallaq 2018, 144-145), *takāful* instrumentalizes gift exchange in service of the goals of the preservation and concentration of wealth.

Conclusion: Secularization and the Mimetic Affinity between Religion and Capitalism

In one of his famous written fragments, Walter Benjamin noted an uncanny resemblance between religion and capitalism in the following words: "A religion may be discerned in capitalism—that is to say, capitalism serves essentially to allay the same anxieties, torments, and disturbances to which the so-called religions offered answers" (Benjamin 1996, 288). Considering the importance Benjamin gave to the "mimetic faculty" as the ability to discern similarities between dissimilar things, this fragment should be read more than just a comparison of religion and capitalism.[250] If the mimetic faculty enabled one to acquire the power and character of something else by mimicking it, Benjamin's fragment can be read as speaking of a transformation. Let us substitute some key terms in Benjamin's quote and see how it applies to the inquiry pursued in this dissertation: "A capitalism may be discerned in Sharī'a Compliance—that is to say, Sharī'a Compliance serves essentially to allay the same anxieties, torments, and disturbances to which the so-called capitalisms offered answers." Whereas the original quote described capitalism as taking on the characteristics and functions of religion, our rephrasing reads Sharī'a Compliance as an intrinsically capitalist phenomenon. As we have witnessed through internal debates and discursive battles fought over the legitimacy of Sharī'a Compliance in the preceding chapters, these two readings also perfectly capture the positions taken by Deobandī proponents and critics of Islamic finance. Proponents argue for the need to harness the innate religious potential of capitalism and to exploit what they see as capitalism's functional similarities with institutions of the Sharī'a.

[250] For a lengthier discussion of the mimetic faculty, see Chapter 3: Corporate Personhood.

Capitalism, in other words, requires tweaking to work in the right manner. Conversely, Deobandī critics point to the innate capitalistic potential of Sharī'a Compliance and find their functional similarities threatening to the integrity of the Sharī'a. There is no such thing as a safe and pragmatic engagement with capitalism; miming the dominant other furthers one's subordination.[251]

I have argued in this dissertation that the translation project of Sharī'a Compliance enacts the transformation of the Sharī'a at two interrelated levels: the textual and the ethical. At the textual level, this transformation entails a reformatting of the Sharī'a from a polyvocal and intertextual discourse embedded in the authority of regional schools of jurisprudence to a standardized code. At the ethical level, Sharī'a Compliance reworks the pre-capitalist Sharī'a's organization of social relations and moral technologies of the self into a market-based government of conduct that sanctions an instrumental relation to the dictates of the Sharī'a. Observing these two levels of transformation allow me to connect a shift in the language and concepts of the Sharī'a with the practice of a new form of life under the paradigm of corporate sovereignty.[252] Finally, I have argued that these transformations and their reconstitution of the Sharī'a can be read as a form of secularization. I want to devote the conclusion to a discussion of the methodological bases and implications for such a claim of secularization.

First, as clarified in Chapter 3, my invocation of secularization does not refer to its Weberian iteration as a disenchantment of the world. I understand secularization in terms of its articulation by Carl Schmitt, but primarily through Agamben's extension of Schmitt's state-centered thesis to the domain of economic government. Here secularization is understood not as a vanishing of religion but its mutation and persistence in alternative political, economic, and

[251] For a more elaborate treatment of this argument on the transformative effects of imitation, see the discussion on *tashabbuh* in Chapter 1.

[252] A detailed discussion of corporate sovereignty can be found in Chapter 3.

technological forms. It is important, however, to qualify the sense in which I speak of secularization in the context of Sharī‘a Compliance as compared to its articulation in a Euro-American context. To begin with, secularization in the context of Islamic finance is qualitatively different from Euro-American secularization in that the former is firmly grounded within the citational domain of the Sharī‘a. In Islamic finance, secularization is not a mysterious force hidden beneath institutional forms and practices that have been sanitized of their religious referents. To the contrary, proponents of Islamic finance ground Sharī‘a Compliance in a jurisprudential foundation by tying modern financial concepts, practices, and institutions to religious and theological referents. This argument for secularization, therefore, is far more subtle in comparison to a claim about the latent influence of religion in modernity (Taylor 2009). Instead, it relies on a qualitative distinction within the Sharī‘a itself. The first 2 chapters of the dissertation explored the Sharī‘a's moral technologies of the self and its significance as a total social fact. The remaining 3 chapters document the secularization of the Sharī‘a as an instrumental practice of pragmatic decision making. One could also conceive this secular transformation in terms of mimesis: the pre-capitalist Sharī‘a, as examined in Chapters 1 and 2, thrived on practices of ethical self-cultivation that mobilized the mimetic faculty and its somatosensory apparatus to effect a transformation of the *shar‘ī* subject's dispositions, thoughts, feelings, and sensibilities. However, as discussed in the conceptual, textual, and social transformations mentioned in Chapters 3-5, the secular Sharī‘a fashions a disembodied subject of pragmatic decision making and optimization. Here the mimetic faculty and its attachment to tradition is also transformed into organized mimesis or a mimetic will to power within the competitive framework of capitalism.

A concrete example of this instrumental relation of organized mimesis established between the Sharī‘a and capitalism emerges in the work of Deobandī stalwart and pioneer of Islamic

finance, Taqi Usmani. As we discussed in Chapter 3, Usmani forges a mimetic connection between modern capitalist concepts of corporate personhood and limited liability with pre-capitalist Islamic institutional forms. In effect, Usmani's usage of literary devices such as the juristic parallel (*naẓīr*) establishes a formal-analogical continuity between modern capitalism and the classical Sharī'a. Usmani thus develops signatures of secularization from within the hermeneutical toolkit of the Sharī'a to re-signify secular concepts, institutions, and practices by connecting them to religious and theological referents.

Critically, Usmani's hermeneutics also secularize the Sharī'a by disentangling its formal procedures of ritual from their pedagogical effects. We know from the seminal work of Talal Asad that the secular, which is conceptually prior to both secularism as an institutional arrangement and secularization as a process of historical transformation, operates through a "series of particular oppositions" (Asad 2003, 16).[253] In contrast, Usmani's discourse on secularization—which is not framed as such—works through the creation of similitude and continuities between entities separated by distance and time. Yet, these mimetic connections themselves become the justificatory basis for reconfiguring the Sharī'a's past institutions and practices along contemporary lines of capitalism. The debt relief granted to a deceased individual who is also insolvent person (*tarika mustaghraqa bi 'l-dayn*) thus becomes the corporation's limited liability; the juristic personhood of the public-welfare treasury (*bayt al-māl*) becomes the modern legal personhood of the corporation; the charitable endowment (*waqf*) becomes the Islamic insurance

[253] It would be a travesty to suggest that the creation of oppositions is an exclusive feature of secular discourse or that all oppositions must lead to secularism. Conceptual oppositions and distinctions are as crucial to theology as they are to secularism. Asad is, of course, referring to particular kinds of oppositions between public/private and rational/irrational that constitute religion as a discursive object. Religion thus defined through these oppositions is a composite of beliefs, sentiments, and feelings that make it unsuitable to be used as an organizing principle for civic life and public discourse (Asad 2003).

corporation (*takāful*); and communal gift-exchange based on principles of reciprocal generosity becomes a contractual exchange of money for financial protection. None of these reconfigurations of the Sharī'a explicitly demarcate religion as a matter of private belief that is unsuited to public life. Their effect is a separation between what may be called a "thick" variety of Sharī'a that is laden with substantive ethical concerns and a "thin" variety in which procedural efforts to increase adaptability dilute the Sharī'a's ethical density.[254] (Kaviraj 2010)

My invocation of "thin" religion is not intended as a teleological projection of the gradual routinization and rationalization of religious life in modernity. The trouble with this reading of a progressive 'thinning' of religion in modernity—one that dominates academic narratives of secularization, the most prominent recent manifestation of which is Charles Taylor's magisterial work *A Secular Age* (2007)—is that it concedes the universality of a Western ideology of secularism (Taylor 2008; Gillespie 2011).[255] A major presupposition of this reading of progressive 'thinning' is that religion is gradually emptied of its metaphysical content and reduced to its true epiphenomenal form of false consciousness. It is thus readily instrumentalized for secular ends—mostly for political and material gain. As Talal Asad has pointed out in a different context, this reading of the triumph of secularism and the instrumentalization of religion for secular purposes contains the following paradoxical claim: religion is both inimical to secularism and also produced

[254] This distinction is drawn from Sudipta Kaviraj's elegant essay that outlines differences between traditionalist forms of Hinduism and the non-traditional religious character of modern Hindu nationalism in India. While I borrow Kaviraj's terminology of "thick" and "thin" religion, I depart from his conclusions in important ways as elaborated in the discussion ahead. This is primarily due to a range of historical and structural differences between contemporary Deobandī traditionalism and modernist Hindu nationalism.

[255] To be sure, Taylor himself qualifies his insights as applicable to the Euro-American world. The main contention, however, is whether secularism as generated by a Euro-American experience of history can travel and is replicable in other parts of the world. I should also note that revisionist histories of religion in Western Europe have already sufficiently critiqued the standard narrative of secularization as disenchantment. For a recent representative work of this trend, see Josephson-Storm (2017).

by it. (Asad 2003, 193) When I state that the "thick" and "thin" distinction is one between an ethically saturated and a diluted variety of the Sharī'a, I intend by this a qualitative transformation in which the ethical concerns of social justice and generosity are undermined in favor of an instrumental fidelity to procedure.

Another important consideration for secularization in the context of Sharī'a Compliance is a question of its directionality. For instance, when Taqi Usmani identifies resemblances and juristic parallels (*naẓā'ir*, sing. *naẓīr*) between corporate personhood and the juristic personality of the Islamic charitable endowment (*waqf*), he does not do so to delegitimize the corporation or to expose its insufficiently secular formation.[256] Usmani's explicitly stated purpose is to find a bridge between the Sharī'a and corporate personhood. The *naẓā'ir* he excogitates afford him formal-analogical connections that in turn facilitate the appropriation and habilitation of corporate personhood. However, as we read in Chapter 3, a *naẓīr* by definition is a weak form of correspondence between two dissimilar entities. By relying on *naẓā'ir* to establish a discursive connection between the *waqf* and the corporation, Usmani thus stretches the Sharī'a in a way that compromises its structural and substantive ethical differences with corporate personhood. At the same time, while the apparent movement and directionality of Usmani's *naẓā'ir* is *inward*, i.e. from the corporation to its parallel Islamic institutional forms, his critics consider it to be the reverse. In Usmani's hermeneutical operation, the *naẓīr* operates according to the backward movement of a signature of secularization, thus referring secular concepts back to their religious territory. Critics, however, see Usmani's *naẓā'ir* as enacting a movement outward from the Sharī'a towards capitalism. This movement spreads the Sharī'a too thinly to accommodate corporate personhood and limited liability. For Deobandī critics, such a movement can only be made by

[256] A detailed discussion of juristic parallels (*naẓā'ir*) appears in Chapter 3 on corporate personhood.

circumventing and compromising ethical principles of fairness and socioeconomic justice expounded in the Sharī‘a. When Usmani tries to suture the ethical disjuncture between the Sharī‘a and Western capitalism through *naẓā’ir,* his critics protest that it is the Sharī‘a that is ultimately compromised.

I want to argue that this indeterminacy of the directionality of secularization—the mutation of religion into capitalism or the mutation of capitalism into religion—is an outcome of its irreducibly mimetic quality. As Taussig has intelligently remarked, mimesis constitutes a “space between” wherein the lines between the imitator and imitated are constantly blurred. It is, as Taussig says, “a space permeated by the colonial tension of mimesis and alterity, in which it is far from easy to say who is the imitator and who is the imitated, which is copy and which is original” (Taussig 1993, 78).[257] Similarly, the mimetic quality of the secular makes it difficult to ascertain a subject-agent and object of secularization. This indeterminacy is not only reflected in the disagreement between Usmani and his critics as to the direction of secularization—what is secularizing and what is being secularized?—but also in Euro-American theories on secularization. In his recent critique of political theology, Stathis Gourgouris takes both Schmitt and Agamben to task for peddling a dogmatic historicism that “makes for an easy narrative, whereby modernity is nothing but the child of secularization, which in turn is nothing but a disguised continuation of Christian political theology.” Gourgouris continues, “The idea that modernity is just a lavish party

[257] Taussig takes an everyday example of parenting to reflect the difficulty of distinguishing the imitator from the imitated, which he aptly describes as a “chicken-and-egg” problem:

> …We find the same problem and the same "trick" of not seeing one's own indulgence in, and stimulation of, mimicry vis a vis the "savage" when it comes to the way that adults in Western societies teach and relate to infants and children. Adults imitate what they take to be baby talk or childish tones of voice and expression and insert themselves in what they take to be the "child's world," playing with the child, sometimes with the aim of controlling it, or teaching the child by getting it to imitate the adult's imitation patting the dog this way, not that way, eating this way, not that way, and so forth. (Taussig 1993, 77)

of historical imposters has been one of the most lucrative paths of recent scholarship on these issues" (Gourgouris 2019, 138). Gourgouris enacts a complete reversal of Schmitt's thesis by arguing that secularization and political theology work the other way round: "Schmitt's dictum signifies precisely the opposite of what it denotes: namely, it is not theological concepts that have been secularized but secular concepts— political concepts— that were theologized to begin with" (ibid, 141).[258] In light of Gourgouris's critique, we may even reconsider the directionality of Agamben's signature of secularization as discussed in Chapter 3: rather than the theological being displaced into the domain of politics and economy etc., it is actually politics that gets displaced into the domain of the theological.

Gourgouris's revisions of political theology concern claims of secularization made with respect to the state. Our inquiry, however, is a bit more complex in that we are concerned with secularization in finance as it occurs within the paradigm of corporate sovereignty. Furthermore, as I discussed above, this kind of secularization creates a qualitative distinction between two kinds of Sharī'a as opposed to making it fade away. How does one decide whether an observable resemblance or similitude between religion and finance is in fact a mark of secularization or theologization? In order to test the limits of my own answer regarding the mimetic quality of the secular, I refer to the work of one of the most insightful critics of the secular. In *Formations of the Secular*, Asad discusses Carl Schmitt's secularization thesis in the context of claims made regarding the religious character of nationalism. Asad's methodological insights, however, can

[258] Echoing arguments made by Blumenberg but primarily relying on the work of Jan Assman, Gourgouris argues that political theology is in fact political through and through; it is only couched in the language of theology:

> While the transcendentalist element in political theology is thus outmaneuverable and primary, the usage (or actualization) of political theology in different epochs, including our present time, testifies simultaneously to its insurmountably worldly character. The discursive space of political theology, in this respect, is always the realm of the political, even when the discussion that ensues is resolutely theological. (Gourgouris 2019, 140)

also be extended to Agamben's work on the theological underpinnings of economics and government.

As a matter of principle, Asad states that the mere repetition or occurrence of a theological vocabulary in secular contexts of nationalism—and, by extension, economics—cannot be taken as "decisive" evidence of secularization.[259] (Asad 2003, 189) He further claims that arguments about the continuity of religion in modernity often presuppose an ontological essence of religion, the persistence of which becomes identifiable in different forms across different historical epochs. (Ibid) The problem with this presupposition is that one can always draw a structural analogy between a variety of phenomena—sports, music, presidential swearing-in ceremonies, and even Oprah Winfrey—and its supposedly constant religious referent.[260] It is the presumed consistency of religion in relation to the variability of its forms that Asad finds most problematic, primarily because it ignores the fact that the very essence of religion is subject to continual contestation and redefinition. The "religion" studied in the Anglo-American academy—from Durkheim's sociology to Geertz's symbolic anthropology—and the religion of the Anglican Church of England in the nineteenth century are not the same discursive objects. To quote Asad, "it is not enough to point to the structural analogies between premodern theological concepts and those deployed in secular

[259] By secularization, as should be evident from his invocation of Schmitt, Asad is not referring to the subtraction of religion from modernity but to the theory of its persistence in different forms.

[260] The reference to Oprah Winfrey is from Kathryn Lofton's book, *Oprah: The Gospel of an Icon* (2011). I find Lofton's otherwise fascinating work as the most symptomatic manifestation of the methodology of 'formal-correspondence' between relisiou/secular concepts that Asad is critiquing here. Religious studies scholars are all too familiar with the problem of spreading the category of religion too thinly so as to evacuate it of any meaning and thereby lose analytical traction. This is not the occasion to rehearse debates about the essential versus epiphenomenal character of religion. My own inclination, however, is towards Asad's solution of dropping the search for a universal definition and observing how the category of religion is constituted through authorizing discourses. (Asad 1993) Gil Anidjar's emendation of Asad's theory in the form of treating religion as a "polemical concept" is also particularly instructive. (Anidjar 2009) In Chapter 2: *'Ada*, I consider the problem of discursivity and definitional overstretch in relation to recent anthropological theorizations of "ordinary ethics."

constitutional discourse… because the practices these concepts facilitate and organize differ according to the historical formations in which they occur." (191)

Asad wants us to focus instead on how concepts are actually deployed in language. Concepts are *not* secretly hidden underneath the surface of language usage and its variations, waiting to be exposed as marks of secularization. Rather, the meaning of things lies in the way they are used. It is not difficult to see how Asad's critique would implicate Agamben's signature of secularization. Agamben recuses himself of essentialism but nevertheless relies on the idea of a stable "semantic nucleus" of a concept. For Agamben, the signature of secularization marks the denotational extension of that concept and takes it back to its determinate field. If Asad's critique is correct, Agamben's meticulous documentation of the various iterations and permutations of theological *oikonomia* through different epochs of Western Christianity would boil down to an essentialization of theology. I find Agamben's referential framing of the connection between concept's semantic nucleus and its denotational extensions problematic. However, Agamben still doesn't assume the fixity of a concept of theology or economy but carefully traces their transformations. My purpose here is not to defend Agamben from the charge of essentialism. I intend to show that not all assessments of the historical continuity of a concept are necessarily based on an essentialist notion of that concept. If Asad's Wittgensteinian critique of conceptual analysis as marked by a separation between meaning and usage is taken to an extreme—which, to be sure, Asad does not—one could find essentialism lurking behind any genealogical inquiry that purports to show the historical compulsiveness of a concept.

Asad's solution to the aforementioned essentialisms is to focus on the "differential results" as opposed to the "corresponding forms" of secularization. (189) Only thus could we see how concepts are themselves transformed depending on their usage and changes in their conditions of

possibility. I find it much more plausible to read Asad's solution as asking us to *not* focus on formal resemblances between concepts at the cost of ignoring differences in their usage and practice. It would otherwise be impossible to appreciate difference of any kind in a purely disjunctive fashion. Just as one cannot detect difference without repetition, one cannot understand the transformation of a concept without having a sense of its discursive regularity. Attention to formal resemblances between concepts is an indispensable, albeit insufficient, aspect of assessing such regularities, as Wittgenstein makes evident in his discussion of family resemblances.

When Asad argues that the "meanings of words-in-use lie, as it were, on the surface of recognizable practices…" this surface has an irreducibly semiotic dimension to it that makes it recognizable. While Asad insists that the detection of such meaning-in-use is not the business of an "interpretive science," it is often owing to the epistemic competence one acquires through mastery of such interpretive sciences that one is able to discriminate between meaningful usages of language. (Asad 2006, 215) Historians of science Lorraine Daston and Peter Galison term such competence as "trained judgment." Trained judgment does not operate on the basis of an epistemological formula but is rather a skill cultivated through epistemic practices and experience. According to Daston and Galison, trained judgment is a non-representationalist mode of reasoning that accords with what Wittgenstein called "the ability of the practiced eye to seize with a glance." (Daston and Galison 2007, 337) Similarly, when Usmani's defendants insist on the validity of his juristic parallels (*naẓā'ir*), their emphasis is not on the representational accuracy of the *naẓā'ir* themselves but on the trained judgment and experience (*tajribah*) of their interpretive agent.

To my understanding, therefore, a genealogy of secularization should attend to both hermeneutical shifts and contestations over the meaning of concepts, their mimetic affinities, as

well as differences in their usage. Regardless of one's theoretical position on the indeterminacy of the question of secularization, I consider it absolutely crucial to follow Asad's directive:

> After all, religion consists not only of particular ideas, attitudes, and practices, but of followers. To discover how these followers instantiate, repeat, alter, adapt, argue over, and diversify them (to trace their tradition) must surely be a major task. And so too with secularism. We have to discover what people do with and to ideas and practices before we can understand what is involved in the secularization of theological concepts in different times and places. (Asad 2005, 194)

Throughout the 5 chapters in this dissertation, I have tried to follow Asad's advice by not doing an abstract conceptual analysis of Sharī'a Compliance without showing how that analysis is shaped by the discursive contestations of participants within the Deobandī tradition. In effect, this dissertation has extended the study of Islamicate languages, texts and their interpreters to the work of financial improvisation, market governance, and ethical subject formation. *Translating Capital* demonstrates the pliability of both scriptural reason and economic rationality. It substitutes symbolic and functionalist explanations of religious resurgence in a secular age with a fine-grained analysis of religious improvisation grounded in texts and ethnography. In showing how the Deobandīs contest and reconfigure secular markets towards religious ends, even when conscripted within hegemonic structures of capitalist modernity, I have taken up the all-important call to provincialize the history of capitalism. This is a necessary academic endeavor, if we are to disavow the hopelessness of historicism and imagine creative possibilities for the future.

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