Classical Islamic Legal Theory and Modern European Philosophy in Conversation:

Language, Ethics, History, Politics, and Phenomenology

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Constructing Islamic Philosophy of Law: Obstacles, Challenges and Solutions

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These slides are available at vishanoff.com

Mohamed Mohamed Yunis Ali

- *Medieval Islamic Pragmatics: Sunni Legal Theorists' Models of Textual Communication* (2000)
- Parallel concerns and insights
- Muslims did it first

Particularization (*takhṣīṣ*)

- Universal principles vs. particular cases
- Contrasting notions of consistency
- Illuminating differences and impasses

Performative speech (*inshāʾ*)

- An untapped resource
- New ways of imagining *uṣūl al-fiqh*

- Language
  - Mohamed M. Y. Ali
  - *Takhṣīṣ*
  - *Inshāʾ*
- Ethics
  - Natural law

Natural law theories of ethics

- George F. Hourani, *Islamic Rationalism: The Ethics of ʿAbd al Jabbār* (1971)
  - British Intuitionism
- Anver M. Emon, *Islamic Natural Law Theories* (2010)
- Mariam al-Attar, *Islamic Ethics: Divine Command Theory in Arabo-Islamic Thought* (2010)
- Sophia Vasalou, *Moral Agents and Their Deserts: The Character of Muʿtazilite Ethics* (2008)
- Apologetic distortion
- Overcoming Western dichotomies

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  - Western typologies

Typologies of Western ethics

- Deontic: what one ought to do
  - Vs. relational or virtue ethics
- Deontological: what is obligatory, etc.
  - Vs. consequentialism, utilitarianism
- Agent-centered
  - Vs. patient-centered, rights-based
- Imagine what *uṣūl al-fiqh* could have been or might become
- Integrate other Islamic discourses

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- History
  - Sidelined in *uṣūl al-fiqh*

The sidelining of history in classical legal theory

- Hadith transmission
- Abrogation (*naskh*)
- Occasions of revelation (*asbāb al-nuzūl*)
- "What matters is the generality of the verbal expression, not the specificity of the occasion [of revelation]" (*al-ʿibratu bi-ʿumūm al-lafẓ lā bi-khuṣūṣ al-sabab*)
- Eternal or created Qur'an

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- History
  - Sidelined in *uṣūl al-fiqh*
  - Historical context
  - Wilhelm Dilthey

Modern Muslim emphasis on historical context

- Fazlur Rahman (1919–1988)
- Nasr Hamid Abu Zayd (1943–2010)

Dilthey, history, and Qur'anic hermeneutics

- Wilhelm Dilthey (1833–1911)
- Indirect engagement
- History undertheorized
- Potential contribution re: transmission

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  - Historical context
  - Wilhelm Dilthey
- Politics

Political philosophy
- Abdullahi An-Naʿim, *Islam and the Secular State* (2008)

Consensus and *ijtihād*
- Yudian Wahyudi (b. 1960)

Interpretive authority
- Rumee Ahmed, *Sharia Compliant* (2018)
- Khaled Abou El Fadl, *Speaking in God's Name* (2001)
  - Engagement on authority
  - Expansion of *uṣūl al-fiqh*
  - Two-way conversation

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- History
  - Sidelined in *uṣūl al-fiqh*
  - Historical context
  - Wilhelm Dilthey
- Politics
- Phenomenology
  - *Uṣūl al-fiqh* transposed

Hasan Hanafi's "transposition"

- *Les méthodes d'exégèse: Essai sur la science des fondements de la compréhension "ʿilm uṣul al-fiqh"* (published Cairo, 1965)
- *Uṣūl al-fiqh* → phenomenology
  - Shāfiʿī, Ibn Ḥazm, Ghazālī, Āmidī, Shāṭibī, Shawkānī, et al.
  - Husserl, Heidegger, Lalande
- Revelation → historical consciousness
- Interpretation → eidetic consciousness
- Legal values → active consciousness
- Particular consciousness universalized through interpretation and consensus

Revelation humanized

- Qur'an → anonymous experience
- Sunna → privileged experience
- Consensus → intersubjective experience
- Analogy / *ijtihād* → individual experience

- *ijtihād* (grasping reality) most basic source of law
- Fabricated *ḥadīth* most genuine revelation

Anthropological theology

- Revelation → progressively universalized and idealized human experience
- God → universal human consciousness
- Action toward universal human ideal
- No longer Islamic?
- Human ideal too homogenous?

Hanafi's mode of engagement

- Deep (ahistorical) grasp of *uṣūl al-fiqh*
- Relevant to mid-20th-century Europe
- Independent of Islamic premises
- Potentially constructive contribution

Engagement between *uṣūl al-fiqh* and European philosophy

- Reduces theology to anthropology?
- Parallel concerns and insights
- "Muslims did it first"
- Illumine differences and impasses
- Apologetic distortion
- More nuanced history of *uṣūl al-fiqh*
- Overcome Western dichotomies
- Reveal tacit influences
- Imagine what *uṣūl al-fiqh* could be
- Revise and expand *uṣūl al-fiqh*
- Integrate other Islamic discourses
- Contribute to European philosophy