
Chapter 11

Reflexivity, Praxis, and “Spirituality”: Western Islam and Beyond

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Introduction: reflexivity, praxis, and “spirituality”

Axial Age theory is a research program for locating and explaining, in comparative-historical, sociological terms, the crucial breakthrough that allowed, through the shaping of notions of transcendence, for the emergence of institutionalized forms of human reflexivity through a transition conventionally identified as the passage from mythos to logos, or – sociologically speaking – from a compactness of visions of order to a differentiation of the religious and political spheres, and in particular towards critical reflexivity (Jaspers 1953 [1949]; Eisenstadt 1986; Stauth 1998). However, as suggested by Johann Arnason, this theory possesses a wider heuristic and methodological significance, since “the interpretation of the Axial breakthrough serves to concretize a critique of functionalism – and especially of functionalist conceptions of culture – that had been in the making at least since the early 1960s” (Arnason 2005: 37). Indeed, Axial age theory has been used as a compass in the long march of reckoning with modernization theory and represents a novel port of entry into the sociology of modernity.

If it is true that the Axial rupture implied the emergence of agential forms of reflexivity, transcendence itself should not primarily to be interpreted in theological terms, but as the capacity to imagine an order that transcends the particularism of rituals more immediately tied to the reproduction of life and generational cycles within a given community order based on cultic forms of representations of godly power and bestowal of prosperity. Thus the main novelty of axiality seems to reside in “the capacity of human beings to reflect upon and to give expression to an image of the world as having the potential of being different from what it was perceived to be here and now” (Wittrock 2005: 62). On the other hand, this key axial dimension cannot be rigidly equated with the demise of a certain type of cosmology (a cosmology of the mythos) and its replacement with an outright new cosmology (a cosmology of the logos). Transcendence gains a new profile within Axial breakthroughs or “syndromes” if we disjoin it from a cosmological typology and consider it the engine of a specific type of experience-rooted discourse proclaiming the problematic if not unsustainable character of any mundane order left on itself and the necessity to transcend it: by

making the power holders accountable to a transcendent power or divinity. God (or equivalents thereof) takes over the traits of unitary and supreme majesty over the cosmos, over human society, and over the individual soul. Reflexivity is therefore a function within the tension determined by transcendence.

A crucial node related to the issues of reflexivity is therefore the question of prophecy. Eric Voegelin, a virtual early participant in this theoretical field particularly concerned with the dimension of transformation (cf. Arnason/Eisenstadt/Wittrock 2005: 9), has evidenced a chain of momentous shifts of the discourse of the Hebrew prophets that targeted the shortcomings of the socio-political order. This is a good example of a path of reflexivity tied to transcendent within an unfolding Axial order. He called this discourse “metastatic,” because characterized by subsequent waves of instructing-exhortative speech that reassemble and metamorphose symbols of mundane and transcendent orders. The metastatic effect is to continually push forward the boundary between those orders, up to trespassing the critical threshold when the Hebrew prophecy was no longer concerned with the restoration of the Covenant that Moses did with Yahvé in the name of the “chosen people.” In this way, successive prophetic voices altered the meaning of Exodus, the Covenant, and the attainment of the “promised land,” by reflecting on their insufficiencies in containing the tension between mundane and transcendent orders. The metastasis results in nothing less than a full-fledged notion of “salvation,” which thus becomes one possible outcome of Axial reflexivity (Voegelin 1956: 428-513). Transcendence is rehabilitated as a propeller of reflexivity and so of Axial transformation. Moreover, Voegelin’s metastatic model of prophecy has the advantage of bringing to relief a cumulative change and not a “breakthrough.” Consequently the metamorphosis activated by prophecy, marked by increases and consolidations of reflexivity, was to last till Muhammad.

Yet there are key thresholds in the metastatic change, and the climax of the Axial drama among the Jews is reached when the prophets Jeremiah and Isaiah acknowledge that there is no one-for-all covenantal solution to the problem of order. This problem can only be managed via an ongoing “Exodus of Israel from itself”(zitat von wem?) that exemplifies in the most extreme fashion the rupturing potential of Axial transformations: that transcendence has less immediately to do with specific doctrines of the thereafter and dramas of salvation, than with the articulation of a discourse facing “the experience of the gulf between true order and the order realized concretely by any society.” The consequence is that “the terminus ad quem of the movement is not a concrete society with a recognizable order” (ibid.: 491). Transcendence is synonymous with movement, as the source of order but also as the perpetual questioning of any existing order.

Building on Voegelin, Jan Assmann (2005) has maintained that the Axial impetus is basically a revolution in the model of authority, which is solemnly declared independent from political domination, above of it. The notion of “salvation,” accordingly, is not a purely “religious” concept, but is – sociologically

speaking – a vector of the crystallization of a radical, metastatic contestation of political domination and of the foundation (subject to subsequent alterations and contestations) of a new, much more plastic notion of authority. Heil can only be understood as the antidote to absolute Herrschaft.

Due to the metastatic character of Axial transformations, the patterns of dependence of the derivative (mundanely socio-political) from the ultimate (transcendent) level of order cannot be a plain homework for orthodox virtuosi. Their emergence, the idea itself of orthodoxy, is the result of the need to tame the metastasis. Prophetic warnings, excoriating, and exhortations are first and by necessity couched in a poetic-imaginative language. The post-prophetic era of theological systematization intervenes after the proclamation of the end of the metastatic chain of prophecy. This is specific to each religious tradition. With Christianity, it was inaugurated by the coming of the Christ, while with Islam, were messianism is put at the margins or outside its orthodoxy and the Christ is consciously rejected, this era started right after the Qur’anic revelation, which was given to Muhammad, whom scripture proclaims the seal of all prophets. It is also symptomatic that both in Christianity and Islam, during the post-prophetic era the role of thematizing and reclaiming the implications of the imperatives of the salvational path for the socio-political order is most typically performed by heterodox movements, many of which not surprisingly reclaim a renewal or restoration of prophetic charisma. These movements are sometimes reabsorbed within institutional orthodoxy as “reform” movements.

Through such dynamics social conflicts became more complex and irreducible to contests for power and riches, since inherently clothed in a discourse that did not refer to localized and circumscribed issues, but to the wider realm of symbolic evocations of moral and transcendent order. At the same time when protest and reform movements tried to restore the balance, they also acted as forces of destabilization (Szakolczai 2001: 359). Orthodoxies and their virtuosi controlled the metastasis but could not neutralize it, in spite of frequent calls to the annihilation of heterodox movements, often pushed up to justifying the physical suppression of all its adherents (like with the Catholic extermination of the Cathars in the 12th century, or with the followers of the radical Christian movements led by Thomas Münzer and Jan van der Leyden in the 16th centuries).

We should acknowledge therefore that reflexivity denotes at the same time too much and too little of the specific format of prophetic discourse. As stressed by Voegelin (1997: 69-85), the “parabolic” nature of prophetic discourse requires to build a symbolically dense nexus between the perception of wrongness in ordinary interactions among people and a sense of disintegration of the cosmological order. The latter is the consequence of the erosion of the integrative force of the “pre-Axial” empires of the Nilotic and Mesopotamian areas. It has been observed that this type of rupture and corresponding reconstruction of order occurs in periods and situations of acute “liminality” (Eisenstadt 1985; Szakolczai 2003). This concept, launched by Victor Turner, was redefined, in the context of

Axial age theory but also of the sociology of modernity, as denoting the destruc-turing of social relationship and the rebuilding of order from its borders or limits. The prototypical example of this liminal situation can so be identified with the metastatic climax of prophetic voices proclaiming the collapse of the order and reclaiming a new order through salvation (*ibid.*).

At this point, however, in order not to remain trapped in the plot of the Axial prophetic narrative, the focus should be shifted from metastatic dramas of salvation to the concrete social patterns that facilitated prophetic intervention into everyday situations, which legitimized the deep metamorphosis of concepts of order: on the shaping of a praxic, interactional compassion for the other as the “poor.” The specific focus of this chapter is in a distinctive Islamic trajectory, with specific developments centered in the Western part of the Islamic world, indeed in Europe, which particularly exalts the praxic dimension of Axial reflexivity. This development also constitutes an immunization of Islamic traditions from the post-eschatological separation of the spirit from praxis that influenced the totalistic and immanentistic syndrome of what Voegelin called modern European “political religions” (Voegelin 1993 [1938]). Nested within certain intellectual and juridical cultures within specific schools of Sunni Islam, this praxic orientation emerged in spite of their sharing some “reformist” and “gnostic” motives with the European Latin Christianity that provided the background to modern political religion. The issue of reflexivity as it emerges from the analysis of these developments might assist us in the work of reassessing and reformulating basic Axial categories in their relations to the theory of modernity/modernities. In particular reflexivity is related to practical rationality and communication, which are key concepts in modern theories of the “public sphere.” The implication of this move is that some dimensions and trajectories within Islamic traditions not only prove their Axial affiliation and post-Axial development, but contribute key elements to distinctive patterns of modernity within the history of Western Europe or the “West” at large. Moreover, these emerging patterns, which have been quite influential in the elaboration of Muslim reformers worldwide from the 18th century to the present, are particularly interesting for their distance from the modern syndromes and tragedies that political religions, which, as truly Axial heterodoxies which both affirmed and denied key Axial tenets, have inflicted on the shaping of Western European modernity: from the liquidation of the Jewish and Muslim presence in the Iberian peninsula and the massacres of those who resisted the English Puritan Revolution, to the destruction of the two world wars and the genocidal crimes of 20th century totalitarianism.

But let us start over again from those ends of prophetic chains that Axial Age theory for a while improperly identified as “secondary” and even “tertiary” breakthroughs (Arnason/Eisenstadt/Wittrock 2005: 4), more than as large scale processes of governance of the metastasis and of its symbolic apparatus. The final prophetic voices, who happened to be founders of new religious traditions – like Jesus, Mani, and Muhammad – made use of a discursive approach that

linked the parabolic form of prophesy to more continuous and effective mechanisms of inculcation and dissemination of their messages. These transformations made preaching particularly important as a discursive genre. This perfecting of the effectiveness of the exhortative instruments of the Axial traditions went along with momentous reformulation of the attending forms of reasoning, based on the act of making the logos itself available to the faithful: through the Christ in Christianity, and through the Qur'an in Islam. Axial traditions became intrinsically discursive tradition (cf. for this definition Asad 1986).

In particular, the work of the emerging Axial virtuosi of the word was concentrated on justifying the supreme good with regard to a more mundane notion of the “common good,” which ended up occupying a strategic position within the hierarchy of goods of excellence. The culmination of this work on the common good was reached in the 13th and 14th centuries, at the end of an era which, both in Latin Christian Europe and within the area dominated by Sunni Islam, can be defined as the “Axial renaissance”: an epoch of intensive elaboration on the traditional fundaments of Axial thought and practice in order to make them match a social reality in upheaval and fit with the emergence of new social actors within the thriving town economies (cf. Salvatore 2006). As evident in the work of Aquinas, who engaged directly with Ibn Rushd (Averroes) at a time when the new Dominican monks started to build the intellectual leadership and cadres to the Spanish *reconquista*, Catholicism and Islam are not only competitors, but interactant in the process. At stake were not only purely theoretical concepts (philosophical and theological), but the modalities to implement them not only within social worlds that were growing increasingly complex, but also through a more assertive universal projection of the message.

A model of praxic Axiality?

By the 7th century AD, Christianity found a valid Axial emulator and a powerful challenger in Islam. The centrality of preaching is a strong element of commonality between Christianity and Islam in spite of all their institutional and dogmatic differences, which also reside in the different status of “scripture” as logos and speech, within the textual and discursive economy of the tradition. There are several reasons why focusing on Islam can substantially enrich and complexify the view of the post-Axial potential of elaboration on praxis, communication and reflexivity. Islam is the latest comer in the family of Abrahamic prophetic religions. Its scriptural bases and the ensuing traditions are quite coherently reflected in the awareness by the prophet Muhammad and his successors among the leaders of the Islamic community that they were grounding – via revelation, its recording, canonization, and authoritative interpretation – a religious civilization setting upright and remolding key elements of the other main “religions of the book,” i.e. Judaism and Christianity. Additionally, the Greek philosophical heri-

tage had a substantial influence on key tenets of Muslim traditions. Even Roman law had an impact on some aspects of Islamic law and jurisprudence, though the measurement of this influence remains controversial (cf. Crone 1987; Masud 1995 [1977]). As a result, it is fair to say that Islam has attempted to bring to perfection a crucial feature of Axial civilizations in the reconstruction of the social bond, through the final overcoming of archaic ties of authority and domination lacking a transcendent source of legitimacy. Its goal was the reconstruction of an uncontaminated nexus of “connective justice” inscribed in the triad between ego, alter, and God. As aptly formulated by Shmuel N. Eisenstadt,

the emphasis on the construction of a political-religious collectivity was connected in Islam with the development of a principled ideological negation of any primordial element or component within this sacred political-religious identity. Indeed, of all the Axial Age civilizations in general, and the monotheistic ones in particular, Islam was, on the ideological level, the most extreme in its denial of the legitimacy of such primordial dimensions in the structure of the Islamic community [...] In this it stood in opposition to Judaism, with which it shared such characteristics as an emphasis on the direct, unmediated access of all members of the community to the sacred (Eisenstadt 2002: 148-149).

The rise of Islam is therefore the last and most consciously managed manifestation of the Axial transformations in the “West,” in spite of the fact that Islam later spread in Central and Eastern Asia as well. The Qur'an gives prominence to the earlier chains of Judaic prophets, from Abraham to Jesus, and stresses the opposition they met in their call to submission to God's will, which is condensed in the meaning of the Arabic word *islam*. In this sense, Muhammad's message was neither new nor intended to be new, but was conceived as the full restoration of the true Abrahamic faith through a completion of its prophetic chain and, though it, a final and unequivocal revelation of God's word and will to humankind.

However, not only the content of the Qur'an but the communicative and authoritative infrastructure itself of prophetic discourse and its means of inculcation were made particularly effective by Muhammad and by the generations of Islamic scholars and “friends of God” (the Sufi spiritual leaders) who came after him. God's message revealed through the earlier prophets had been received and incorporated in Judaism and Christianity in imperfect ways – so Muhammad's message – due to sectarianism. Islam, the new-old call to submission to God, was to overcome sectarianism and embrace mankind in a truly universal *umma*, i.e. community of all believers.

However, the model of constructing the ego-alter-God triadic link was a quite pristinely Abrahamic one, based on faith, compassion, and obedience. And it was the sweeping success, after initial resistance and difficulties, of Muhammad's career in the specific Semitic tradition of the armed prophet that made the turn from parabolic exhortation to an activist reconstruction of the social fabric a crucial

part of his preaching and leadership during the last part of his own life. Muhammad’s practice and judgment in shaping and regulating human relationships acquired paradigmatic value beyond the Qur’an itself, which, centered on the call to conversion and on the retelling and reshaping of several Biblical and other mythical narratives, only dealt – unlike the encompassing Deuteronomic Torah – with a limited number of issues immediately related to the ordinance of social life. Law emerges therefore less from a covenantal process than through the building of a tradition of modes of interaction and judgement that could be referred back to the life of Muhammad and his companions. To dare a synthetic formula, Islam is built on a re-energized, but also secularized kernel of Western prophetic axiality, reflected in a just mundane order regulated by the obedient and active commitment of man to God that makes him his trustee and “viceregent” (the meaning of “caliph”) on earth. If each Axial pattern is a set of selective radicalizing shifts compared with earlier patterns (Arnason 2005: 41), the rise of Islam consciously selects out the Christ and radicalizes the focus on the moral glue of the community to be reached through reaching out to the other as a brother in faith. The gap between mundane and transcendent orders neither produces a metastasis of the orders nor its encapsulation into a mystery of incarnation, but a relatively open-ended balance with mild messianic undertones.

The nexus between salvation and human action in the Qur’an appears from a Christian viewpoint, but also from the perspective of the salvational drama of metastatic prophesy depicted by Voegelin, as not the primary concern of Islam. Islam’s founding document is a teaching chiefly concerned with producing the correct approach to human action, understood as ‘*ibada* or “the service due to God,” in order to produce and maintain the open-ended balance between *al-’alamayn*, the two worlds. The Qur’an, therefore, emphasizes all those psychological tensions that, rooted in that unstable balance, generate the correct moral frame for action and interaction. A crucial warning in the core Islamic scripture is directed against positing human agency as proudly self-sufficient, while on the other hand the Qur’an also scorns passivity and hopelessness. A key exhortation to man is to be one’s own guard via fear of God (*tagwa*), while the faithful is also reassured about God’s mercy toward his creatures, based on the assumption that man has been created good in essence (Rahman 1979 [1966]: 241).

Even more since distant more than a millennium from the original Axial “breakthrough,” the type of Axial transformation reflected by Islam’s irruption into world history is a unique case of traditionalization and canonization of prophetic discourse, and of its amalgamation with other sources and forms of post-Axial and post-prophetic conceptions of legal and political order. It is also a case of strong and early social objectivation of the normative import of prophetic discourse. The Qur’an itself consecrates the Prophet’s *sunna* as authoritative, and Muhammad adjudicated and pronounced authoritatively on a number of problems or disputes, so the prophet’s voice, claiming to convey God’s speech, was immediately effective in its own time. However, the social objectivation of the

normativity of prophetic discourse went one step forward, based on the fact that most social transactions in the pristine Muslim community were settled without the intervention of the Prophet or his close companions, yet in terms that were largely understood as reflecting the new faith and its normativity (ibid.: 51). We see here a specific sociological strength of Islam and its immunization from an uncontrollable eschatological metastasis, in spite of the fact that many aspects of Muhammad's preaching, especially in its earlier face, did have a strong eschatological connotation, in line with earlier prophetic speech. Now however instead of opening up new breaches in the conceptualization of order, prophetic discourse (indeed not only Muhammad's but, retroactively, the interpretation of the entire prophetic chain included in the Qur'an) acquires a paradigmatic value through its extension and "application" to actual social practice: not however based on a listing of rules like in the Torah, but mostly through the delineation of key principles of correct behavior to be submitted to human, and so consciously imperfect interpretation and application. Islam so closes the normative gaps of earlier Abrahamic manifestations of prophetic voices that had metastatically anticipated – yet in reality indefinitely deferred – a just world of reconciliation with God. While a messianic projection is not erased by Islam, for which the Day of Judgement is as central an article of faith as is belief in God's oneness and in Muhammad's prophecy, Islam tames symbolism, myth and messianism through a normative approach whose solidity yet also flexibility is unprecedented – not surprisingly, due to the historical distance from the original breakthrough – compared with other Western Axial traditions.

A concomitant factor of differentiation of Islamic orthodoxy was that the process of canonization of sources and traditionalization of methods and schools was not centralized. As we will see, disagreement emerged and crystallized first of all on the issue itself of what tradition is and how it has to be constructed. "Orthodox," Sunni Islam was based on a principled acceptance of a regulated disagreement and on the rejection of any charismatic source of authority in adjudicating the "dogma" (in fact, the *sunna*). The orthodox Islamic community emerged as a basically lay ecumene engaged in a competitive search for knowledge (*ilm*). AYN Its inherent risk of fragmentation created a counter-impulse to establish non-scriptural ordering principles. These were found in the principle of *ijma'* AYN (consensus) and in the notion of *maslaha*, covering a semantic terrain close to common good, public weal, *res publica*.

Essential to both the idea of consensus and the search for implementing the common good was the method of *ijtihad*, intended as an original effort of jurisprudential reasoning necessary to supplement the insufficiency of the other main sources of the law. However, *ijtihad* was gradually hijacked by a more basic and less creative method of analogical reasoning (*qiyas*) that in particular the *Shafi'i* school of law succeeded in consecrating as a canonical method of jurisprudence formally on a par with *ijma'* and factually with a much larger practical influence in everyday jurisprudential work. *Qiyas* was a quite strict method of deduction of

rulings by analogy from other rulings anchored in the text (Qur'an or certified *hadith*). Therefore, it imposed strict limits on *ijtihad*. This latter method was inherently bent to a more inductive, less text-oriented, and therefore more creative kind of reasoning, which found much less application in routine jurisprudence (Rahman 1979 [1966]: 71-77). On the other hand, neither *ijtihad* nor *ijma'* were ever fully institutionalized. While the former depended on the commitment of the individual scholar to pushing forward the jurisprudential reasoning wherever no solutions were readily available on the basis of the study of the main sources, *ijma'* was more of a pragmatic approximation of the ideal, and never accomplished situation where all those who possess knowledge by necessity agree on truth.

The emergence and consolidation of four schools within the Sunni orthodox mainstream (the Shafi'i, the Maliki, the Hanafi, and the Hanbali schools, all named by their founders) out of several hundreds restricted this potential of ordered disagreement, up to the point that the myth of a “closure of the gates of *ijtihad*” emerged by the 10th century AD. The conditions for exercising *ijtihad* were then formulated in such a restrictive way as to make this method unfeasible for normally talented practitioners. *Ijma'*, now facing a truncated *ijtihad*, ended up being absolutized at an ideological level, though its impact on actual jurisprudence was limited. A doctrine of the infallibility of *ijma'* emerged, which severely restricted its original scope of consecrating the authority of the living tradition through pragmatic accommodation. This authoritarian dogmatization of consensus did not rest on concilia like in Catholicism, presiding over the fixation and revision of dogma. Therefore, the infallibility of *ijma'* and its authoritarian potential, remained largely fictitious and scarcely effective. It simulated the existence of an impossible consensus and reduced the stimuli for creativity, while factual spaces of autonomy were preserved as essential to the daily work of Sunni jurisprudence.

We can now better appreciate the degree of complexity, ambivalence, but also sophistication of tradition-making in Sunni Islam, which makes it a unique case for conceptual and theoretical reflection on the post-Axial development of patterns of practical rationality, reflexivity and communication. It is also a good case for showing how restrictive the obsession with consensus can work when authority is structurally fragmented. But this limitation was matched by the ongoing, never suppressed strength of Sunni Islam in streamlining theological nodes of Abrahamic Axiality and prophetic discourse and combining them with the aspiration to a greater and more realistic adherence of doctrine to practice. The grand scheme of classification of action within Islamic legal-moral traditions – under the five categories of *wajib* (mandatory), *mandub* (recommended), *mubah* (permissible or indifferent), *makruh* (reprehensible), and *haram* (illicit, forbidden) – offers a particularly ingenious grid of categories to all practitioners, including the commoners. It also encourages a diffuse effort to categorize types of action and determine the degree of creative interpretation permitted vs. undue in-

novations (or “heterodox” practices). The consequence is an ongoing work of reformulating and reconceptualizing the spaces of freedom and the responsibility of the agent and of persuading a Muslim audience that any such solution is acceptable (Asad 1993: 211-212).

Being based on a grid and not on a strictly binary code of good and bad, the actions that are covered by all categories and on particular by the three mediane ones have to fit into a general rule of “resoluteness and relaxation.” This approach exalts the link between the agent’s practical judgment in the application of a given rule to a specific situation, and the modulation of his will that is therefore no subjective *voluntas*, but an interaction-oriented channeling of “intention” (*niyya*). The frequent verbalization of the agent’s will through the formula “I intend” clarify the voluntary character of the action, yet through its subsumption under a given rule the action is also pragmatically linked to the given interactive situation. This operation does not entail a philosophically or theologically cogent substantiation of human will as e.g. related to the avoidance of sin. Thus Sunni Islam inoculates against an hyperinflation of subjectivity, a risk lurking behind the Augustinian, and, to a minor extent, the Thomist elaboration of the will underlying action within Latin Christianity.

This channeling of intention by the agent clarifies reflexivity as first of all a reflective understanding of the situation. Therefore, while the Qur'an's goal is to create a just society by shaping righteous men and women submitting to a God enjoining good and prohibiting evil, the emphasis is on faith guiding action via a praxis-oriented reflection (Rahman 1979 [1966]: 85). While ‘ilm was intended as knowledge in the sense of learning, the activity of *fiqh* denoted the capacity to understand a situation on the basis of ‘ilm. *Fiqh* means therefore praxis-oriented interpretative activity, finally coinciding with (juris) prudential work, which is the way it is usually translated (ibid.: 101; Crone 1987: 103). However, *fiqh* still retains a shade of the meaning of judgement based on Aristotelian phronesis, which is exactly the capacity to act based on a telos and given all factors at stake and in particular the legitimate interests of all interactants. This reflective competence cannot be completely incorporated into a body of knowledge.

Knowledge, spirituality and praxis within the Sunni consensus

A non-speculative, quite anti-metaphysical philosophy of law reached its peak in 14th century al-Andalus (the Islamic name of the Iberian peninsula) and laid the basis for the reconstruction of reflective public reasoning in Islam well into the modern era. It would be however a gross mistake to think of speculative philosophy or philosophy proper (*falsafa*) as being erased from any influence on the Islamic consensus and thus on this trajectory of public reasoning. Islamic philosophy contributed key elements to a theory of prophetic discourse that affected,

though indirectly, the most penetrating reflection of the Islamic philosophy of law. The same Islamic philosophy was also to enter reflections on the common good and the *res publica* within European modernity in particular through the work of Spinoza, a thinker of Jewish-Sephardi origin heir to the rich theoretical heritage of al-Andalus, from which his family fled due to the Christian persecutions. In particular the leading Islamic philosopher, Ibn Sina (980-1037), known in Europe as Avicenna, formulated the path-breaking hypothesis that prophetic discourse was wrapped in mythical imagery in order to match the imagination of the commoners and induce them to perform good. This does not mean – so his argument – that prophetic discourse is untrue (Rahman 1958). The use of imaginative symbols is necessary for effectively communicating the truth of religion. Ibn Sina was the prime formulator of a theory of religion as an equivalent of philosophy of and for the masses that found eager reinterpreters among leading modern European thinkers such as Spinoza, Vico, Leo Strauss and even Gramsci. According to this theory the prophets translated the philosophical maxim “if you pursue moral good, your mind shall attain the real spiritual freedom which is bliss” into the command “if you are virtuous and perform these specific acts, you shall enter Paradise and will be saved from the flames of Hell” (Rahman 1979 [1966]: 119-120).

Not unlike his European followers, however, Ibn Sina’s theory had an intellectualist bent and elitist overtones. It was mainly for this reason, and not for any heretical character towards Sunni dogma – since it acknowledged that specific discursive forms of prophetic speech were carriers of truth – that this approach and *falsafa* in general raised the suspicion and often the overt opposition of the orthodox legists. In other words, *falsafa* had a different constituency from *fiqh*. While it was the most ingenious systematization of the relationship between revelation-based and speculation-driven strands of Axial thought, between “Jerusalem and Athens,” Islamic philosophy was in itself of limited practical use in reconstructing the Sunni consensus. In spite of these limitations, *falsafa*’s later influence on the modern European coping with prophetic discourse as “religion” shows how this theory was a unique contribution to the long term post-Axial debate on the fundaments and modalities of reflective public reasoning. The relation of philosophy to Islamic jurisprudential traditions will leave nonetheless significant traces, however indirectly. Many among those scholars who were overtly using the rational methods of *falsafa*, like Fakhr al-Din Razi (d. 1209), or writing against philosophy, like Abu Hamid al-Ghazali (1058-1111), or taking a distance from philosophical methods, like Abu Ishaq al-Shatibi (d. 1388), contributed to introduce philosophical rigor into theology, Sufism, and, finally, into the theory or philosophy of law.

With philosophy on the sidelines of the socio-political confrontation, Sufism represented the biggest challenge to the hegemony of the legists. The precarious balance that resulted from the challenge favored the crystallization of weakly institutionalized models of governance of the social bond. The advantage of the

Sufi approach, compared to the theologians and the philosophers, was in its capacity to anchor its spiritual goals within collective practices. This focus helped Sufism avoiding the dogmatist impasse of the theologians and the elitist trap of the philosophers. The roots of Sufism are as old as the translation of Muhammad's message into practice by his companions and other contemporaries. From a first nucleus of Medinese piety and asceticism based on the Qur'anic notion of faithful trust in God (*tawakkul*) and of love for God, the Sufi path took a first shape during the first two centuries of Islam. It was however not before the 11th and 12th centuries that Sufism was included into the mainstream Islamic consensus and took up a clear organizational form (Hoexter and Levzion 2002: 12).

At that stage, the Sufi path appeared as highly innovative in that it formulated a solution to the problem of the relationship between rational speculation on the one hand, and the prophetic discourse's impact on the categories of practitioners on the other. This inherently tense relationship seemed to have reached a grave stalemate in the Sunni Islamic world with the work of the Andalusi philosopher Ibn Rushd (d. 1198), known in Europe as Averroes. His rationalist philosophy was the object of vehement attacks by the *fuqaha*,¹ in spite of the fact that he was also a leading jurist. Sufism exploited this tension to its advantage in order to show its commitment to orthodoxy via a focus on the exemplary value of the *sunna* of the Prophet. Sufism demanded to the single Muslim the appropriation of the *sunna* through a disciplined training placed under the guide of a master, and finalized to access the essential truth, the *haqiqa*. This inner truth could only be achieved through establishing a close relationship to the human being who is particularly close to God, the prophet Muhammad, and to the other "friends" of God, the new Sufi saints.

However, Sufism was in many ways the flip side of the legists' authority in Sunni Islam, and took upon itself the task of shaping that form of faithful trust among brothers in faith that the *fuqaha*' discourse was not able to capture on its own. This is why several interpreters (among whom the already mentioned, authoritative 20th century Muslim scholar and reformer Fazlur Rahman) tend to see the relationship between Sufism and jurisprudence more as a concerted, though tense division of labor than as a conflict between mutually exclusive approaches to Islam. Noteworthy is that the emerging orthodox shape of Sunni Islam prevented Sufism from establishing a form of monasticism, which was not unknown to the spiritual ferment in Arabia that provided the immediate antecedent to Muhammad's preaching. Similarly, however, to the new monastic movements in 13th century Latin Christian Europe, the simultaneous consolidation of Sufism took from the beginning the form of a socio-religious movement of the commoner. The main differences with Latin Europe concerned the institutional environment, the organizational forms of Sufism, and its understandings of the basic disciplines demanded to its practitioners.

While liminality was a key element of Axial transformations and in particular of prophetic discourse, it acquires in the 13th century a distinctive sociological

anchorage. At this historical stage marginal forces occupying a low institutional level within hierarchies of Axial authority start to play a central role both in Latin Christian Europe and in the Islamic world, and initiate a lengthy and continuous – though in no way smooth – march into social institutions. While the connecting and in-between role of these forces is not a novelty, what is new in this period is that they developed their strengths and penetrative capacities starting from the margins or interstices of the socio-political order (Szakolczai 2001: 361-362).

In the case of the European *saeculum* these forces – whether they were ecclesiastical or lay, and Franciscans did at the beginning understand themselves as lay – manifested an acutely liminal character by showing an initial resistance to follow a clear path of institutionalization. While they spurned social and cultural creativity, they also engendered a spiraling confusion on the categorization of the ongoing process of the fragmentation of the Latin Christian ecumene. Partly in analogy and partly by contrast to them, the most interesting aspect of the wave of institutionalization of Sufism in the 12th and 13th centuries was that while the new monastic movements in Europe colonized civic life, the Sufi movement entered into a symbiotic relationship with urban associations. Sufism provided them a permanent infrastructure of ties of trust, underpinned by the authority of the shaykhs of the brotherhoods. The associations that overlapped with the brotherhoods were the craftsmen guilds and other groups, including military or paramilitary organizations, like, among the Ottomans who were advancing in the Anatolian peninsula, the Turkish Janissaries and groups of frontiers warriors, as well as the urban *fituwwa*, a sort of youth gangs based on a chivalry code and committed to the protection of shared values.

Sufi leaders played a role of conciliation and arbitration in civic disputes, up to the point that their houses were considered sanctuaries, also in the sense of extraterritorial sites for peace and arbitration meetings, and therefore safe havens from factional violence (Levtzion 2002: 110). Sufi orders reached out to a variety of constituencies, like traders, townspeople, peasants, and people of diverse social classes, regions, and economic condition. Sufi leaders used not only scholastic Arabic but also the vernacular languages of their regions. Ruling authorities were often suspicious of the orders because of their autonomy and capacity for independent action, linking the local with much wider spheres of influence. For the same reasons, rulers often sought links and advice from Sufi shaykhs.

It is important to keep in mind the praxic orientation of Sufism and its material foundations, in order not to misunderstand its “spiritual” orientation as an “Eastern” illuminationist doctrine with dubious relationships to the core, orthodox Islamic teachings. This is also what set it apart from the socio-religious movements of 13th century Europe, in which Voegelin saw seeds of the immanentist, subjectivist, and spiritualist twist of modern political religions (Voegelin 1994). Nasab al-khirqa, one of the last writings of the “great master” of Sufism, Ibn al-’Arabi (1165-1240) from Murcia, al-Andalus, and in many ways the testament of his praxic spirituality, delineates the relationship between the inner and

the outer dimensions of the truth. It provides an almost prototypical catalogue of Axial praxic compassion, calling to observance of pious behavior to Other (Elmore 1999). The *khirqa*, i.e. the mantel of Sufi initiation, is *malabis ahl al-taqwa*, i.e. the vestiture of the God-fearing, which is the core Islamic virtue to operate wisely and interactively in a social and practical life of orientation to Other. The spiritual realm is not constructed as a separate domain of the Geist, but is solidly anchored in praxis. “What stands out in Sufi esoterism is that it relates to the domain of Islam’s faith and works, and it is contrasted with an exoterism that relates to the same domain” (Chittick 1992: 9). Ibn al-’Arabi grew in al-Andalus, in the far West of the Islamic world, not only influenced by Sufi masters but also through matching his own mystical experience against the background of the great philosophical teachers, among which, prominent in his age, Ibn Rushd, whom he knew personally. At the age of 35 he started disseminating, in a continual development, his teachings into the East, through North Africa, towards Mecca and Damascus.

It is not surprising, therefore, that partly in analogy and partly in contrast with the new, mendicant, monastic movements that mushroomed in Latin Christian Europe in the 13th century, the Sufi orders provided moral leadership, a discourse of justice, and a permanent channel of communication that facilitated the link between commoners and authorities (Levtzion 2002: 117). The monastic movements in Europe were able to take over the issue of local sainthood so as to mediate between popular drives and the church’s suspicion towards a bottom-up approach that challenged the centralized procedures of saints’ canonization. They thus made local saints the symbols of civic allegiances. The Sufi brotherhoods, instead, followed a straighter path: they instituted on their own a notion of saintliness that was in principle excluded by the Sunni dogma. This was and still is a contentious issue. The Sunni incorporation of prophetic charisma into a highly fragmented notion of authority does not recognize, in principle, authoritative sources external to the Qur'an and the *sunna*. Therefore, the making of saintliness through movements and groups distinct from the colleges of teachers and the corporations of lawyers, yet laying a claim to the preservation and transmission of Qur'anic piety, constituted a new, parallel form of authority that also claimed orthodox status and inclusion in the consensus.

In organizational terms, the Sufi movements impacted on the socio-political configuration of forces in both urban and rural contexts. The making of saintliness became strictly associated with autonomous civic powers, mostly linked to professional organizations, not unlike in Europe. In the Islamic case there was a weaker religious legitimacy of political power in increasingly fragmented Muslim potentates after the 11th century, and towards which the Sufi organizations acted as a bulwark and as a permanent source of popular unrest. Yet the main difference with Europe was that the organizational unit of Sufism, the *tariqa*, was kept much more malleable than the monastic form prevalent in Europe, which ended up imprinting on even those radical monastic movements which were ini-

tially conceived as alternative to it. The *tariqa* did not necessarily coincide with a brotherhood and not even to a lay confraternity like those promoted in urban contexts by the new monastic movements in Europe. A *tariqa*, which literally means a “way,” remained basically a network of variably organized levels of master-disciple relations, kept together by strong congregational moments epitomized by the collective séances of the adepts. It might appear as a puzzle – at least from a Weberian perspective – that the lower formalization and institutionalization of Sufi authority made it less “liminal” and more institutionally “absorptive,” to use Voegelinian categories (cf. Szakolczai 2001).

We can therefore summarize the picture by identifying in the urban centers a variable geography of legal schools (several hundreds in the early centuries, then consolidating into a dozen, and with four emerging as “canonical schools”), guilds, brotherhoods and ethnic communities. This organizational map found a transversal institutional glue in how public services were funded: not by non-existing municipalities, but by pious endowments, originating from the institution of *waqf* (Mardin 1995: 286-287). More than a prevalence of outright informal ties in the relationships among scholars and between scholars, commoners, and rulers, we see here an approach to organization of a more “scalable” kind than in European counterparts, in terms of degree (and reversibility) of formalization. At stake here is the type of reflexivity incorporated into institutions. This is nicely illustrated by the institution that best incorporates the inclusion of the commoners in the practices and discourses of doing good: the *waqf*. While *shari'a*-based jurisprudence provided the normative ideal to Muslim society, and Sufi orders provided it moral leadership, the *waqf* represented the social and even fiscal infrastructure that secured the public weal. Though being a clearly formalized type of institution, based on a specific law, unlike the legists' schools and the Sufi orders, the *waqf* retains and optimizes the scalability of formalization and flexibility of use of resources for the pursuit of its institutional ends, based on local demands but also structures of power based on networks and clans. For sure, this flexibility did not protect it from abuses and diversions of resources from their institutionalized objectives. The imperative of “doing good” and the principle of “common good” were nonetheless well served by a continuous renegotiation and interpretation of all legitimate interests at stake. Therefore it is through the practice of *waqf* and not only through jurisprudential reflection that an “ongoing discourse” on common good and associated methods of public reasoning emerged. This process facilitated the emergence of a rich jurisprudential knowledge, but also one that eschewed rigid codification. To the theoretical fundaments of this ongoing, practical and juridical, yet also reflective, discourse on the common good I will now turn.

The philosophy of law of praxic Axiality

The fundaments of jurisprudence, the *usul al-fiqh*, required a method of reasoning different from that of theology and philosophy. They demanded a focus on the simultaneously intentional and interactional dimension of human action, in order for man to be held not just morally but also legally responsible for his acts. It has been stated that the main issue of the philosophy of law was that, “since obedience to Divine Commands [...] depends on human volition, the Command must be shown to be motivated by the consideration of human interest” (Masud 1995 [1977]: 119). It is therefore unsurprising that especially from the 11th century onwards various thinkers started to concentrate their reflections on *maslaha* (common good/public weal) as the universal general principle which permeated all commands with legal value (ibid.: 122). *Maslaha* provided the conceptual proof stone for underpinning theoretically informed but practice-oriented views of the common good liable to become platforms for concrete articulations of the pursuit of the public interest.

The notion of *maslaha* is based on the root s-l-h that denotes being and becoming good, in a sense that conveys the full scale of positive values from uncorrupted to right, honest, virtuous, and further up to just (ibid.: 135). By the 11th century, *maslaha* and the related notion of *istislah* – stemming from the same root, and indicating the actual method of reasoning for seeking *maslaha* – emerged as the principal key-words in the discussion. The emerging method of reasoning stood out against other approaches that sought an exclusive basis on scriptural sources. But it is also interesting to note that in the method of the Maliki school, one of the four canonical Sunni legal schools – the one among them that worked to uphold the centrality of *maslaha* most consistently – the approach to *maslaha* was also employed to discard the earlier mentioned limitations of the notion of *ijma*, i.e. consensus.

The orientation to *maslaha*, which still stands out as the most progressive and open method of Islamic legal reasoning, appears, symptomatically, not only a less text-bound and more context-friendly approach, compared to other methods. It also promotes a processual view of the common good not enslaved to a fictitious, fragile, and largely arbitrary view of consensus existing at any given point in time. The related methodology (*istislah*) was from its inception quite suitable to shift the boundaries of any existing consensus, on the basis of modes of public reasoning applied to any given actual situation (ibid.: 137). Concomitantly, any reduction of *istislah* to a form of *qiyyas*, i.e. to an analogic reasoning strictly adhering to textual sources, was rigorously opposed. The attempt to dilute the approach to *maslaha* in terms of *qiyyas* was upheld especially by Shafi'i jurists and, most strongly, by al-Ghazali, who confined *istislah*, i.e. the seeking of *maslaha*, to the discretionary realm of the *mujtahid*, and therefore subjected it to the strict limitations and exceptional character of *ijtihad* (ibid.: 140-142).

Using in particular the method of induction and generalization shaped by the

Hanafi school, and merging it with the Maliki notion of the common good as intrinsic to *shari'a*, the Andalusi jurist al-Shatibi asserted that the principle underlying all *shari'a* rulings is and cannot be other than *maslaha*. It is the intent of the Lawgiver, and therefore the objectives of the law (*maqasid al-shari'a*), that make *maslaha* central to legislation (ibid.: 118). In other words – so his claim – legal reasoning could not focus on a single doctrine or case while looking at the legal sources, but had to simultaneously relate to the telos of the law. The theological premise was as simple as it had been controversial in the earlier philosophy of Islamic law: “the premise is that God instituted the [...] laws [...] for the [...] good of the people, both immediate and future” (ibid.: 119). According to this approach a reliance on *qiyas* (analogic reasoning) was not acceptable, because it limited legal reasoning to deducting rulings from a particular text, thereby inhibiting any inductive reasoning based on aggregated textual evidence and not on a single text (ibid.: 128).

Furthermore, *istislah* as the method of inductive search for *maslaha* differed from the *istihsan* preferred by the Hanafi school. While the latter promoted the discretion of the individual jurist in searching for the most useful solution to a given case whenever the reasoning by analogy would yield a solution harmful to such utility (and has been therefore compared to the notion of equity in common law), *istislah* relied on a more integrated method for identifying and promoting the public interest (ibid.: 129). In this sense, *istislah* departs from any merely utilitarian logic, which is not completely extraneous to Islamic thought. The result is that, based on *maslaha* and on *istislah*, a ruling should not be simply useful in itself, i.e. by reference to a notion of utility seen as inherent in a given empirical situation, but with regard to a wider concept of common good, comparable to the *res publica* of the Roman law tradition and that provides the root concept to all European notions of the public sphere (Salvatore 2006). The common logic is the application of existing rules within the background and with the backup of a wider collective interest that corresponds to the basic finality of the law itself (Masud 1995 [1977]: 130-131). This is a remarkable achievement in the long Axial genealogy of ideas of connective justice rooted in prophetic discourse (cf. Assmann 2005).

Maslaha is different from sheer utility and has a clear Axial prophetic affiliation also because it is not limited to this world but links the good in this world to the hereafter. Sociologically, it does not limit the common good to material utility, and especially not to the sum of the utility of various agents (Masud 1995 [1977]: 132). Moreover *maslaha* does not show the limitations of the *utilitas publica* of Roman law (Crone 1987: 11), whereby the faculty to reinterpret a law in the name of the public weal became in the imperial epoch subordinated to the prerogative of edictal legislation that undermined the traditional law and reconstructed ad hoc rulings based on specific situations, thereby torpedoing the ratio of *res publica* at its fundaments (ibid.: 104-105). In those cases, *utilitas publica* hijacked *res publica*, while *maslaha*, as a theoretical construct, approximates an

interpretation of *res publica* uncontaminated by power considerations, also thanks to its Axial prophetic origin. In more recent epochs and also in the popular perception, however, *maslaha* also became associated with power abuse for pure expediency.

One can detect a sense of *caritas* incorporated in *maslaha*, which crosscuts the service function of the *waqf* institution, as the pivotal establishment for seeking and implementing *maslaha*. However, this cannot be equated with the incorporation of *caritas* that was the achievement of European Latin Christianity, via the elaboration on the notion of *respublica christiana* developed during the Middle Ages. The latter was the product of the combination of at least two different traditions (the Christian tradition of *caritas* and the legal tradition of Roman law centered on *res publica*), while *maslaha*, although it incorporated several legacies ranging from Greek philosophy, to the influence of Judaism and Christianity, and to Roman law itself, was developed in a more linear way from within the assets of the ongoing and precarious search for an Islamic consensus.

At the same time, the notion of *maslaha* can be easily articulated in a plural way, in the form of the *masalih* (plural of *maslaha*), i.e. the goods to be sought in different situations and legal cases. In this sense, it structurally crosscut the realm of private and public law. Nonetheless, *maslaha* is never a particularistic good even when it is identified with a discrete good. Various species of *maslaha* refer to *maslaha* as a genus. It is interesting that in a *fatwa* (legal opinion) on a case concerning a *waqf* controversy issued by al-Shatibi, the principle of *maslaha* was applied in order to safeguard the nature of *waqf* as a type of endowment that creates a good that is collective yet specific (a particular mosque, or school etc.). Al-Shatibi's ruling was intended to fight the practice, which was widespread at his time, of using *waqf* revenues for the undifferentiated funding of a general category of collective service (i.e. all mosques in a town) and therefore as a supplement to the sultanic treasure (*bayt al-mal*) (Masud 1995 [1977]: 93). The protection of *maslaha* – al-Shatibi judged – requires to stick to the particular will of the endower, provided it is finalized to *qurba* (coming closer to God) and conform to the related notion of actively performing the good that is required by this search for closeness to God.

The solution pursued by al-Shatibi highlights the relation between *phronesis* and *telos* from a practical and legal angle that helps evidencing some of the nodes encountered in the process of upgrading practical reasoning into reflective public reasoning. Moreover, it shows a conception that makes transparent how *phronesis*, in such a developed post-Axial prophetic context, is still linked to command, while on the other hand it cannot be defined by authority alone and has to rest on reasoning and reflection. God's command – according to most theologians, including al-Ghazali – has to coincide with the *maslaha* of man, but “in order to decide that something is *maslaha*, even to say that God's commands are based on *maslaha*, some criterion outside of these commands has inevitably to be accepted” (ibid.: 145). *Istislah* represents therefore nothing less than the specific

phronetic criterion to ascertain and seek in concrete situations the *maslaha* on which God’s commands are based. Al-Shatibi inherited from some of the theorists spanning the period from the 11th century to the 14th century the view that the objectives (*maqasid*) of God’s will, and therefore of the *shari’ā*, are derived from the *maslaha* of the people. He was particularly straightforward in considering the finality of the *shari’ā* being one with *maslaha*. We find therefore a view of *maslaha* that is at the same time strongly objectified and quite concrete, not unlike the pristine Roman view of *res publica*, with the difference that as a theoretical notion denoting good or interest, *maslaha* was also immediately applicable to the modalities of legal reasoning. It is symptomatic that in his work on the philosophy of law, al-Shatibi manifested his outright distaste for any purely intellectual or theological discussion of *shari’ā*.

Wherever unrelated to questions immediately relevant for action and judgement, such an abstract discussion was, in his view, hostile to the scope itself of *shari’ā*. It is remarkable that it was precisely on the basis of such a radically anti-intellectualist platform that al-Shatibi delivered the probably most compelling theoretical formulation of Islamic notions of “common good” and “public interest.” The emergence of his concern for *maslaha* was also stirred up by the serious socio-economic changes that Andalusian society was experiencing in the 14th century. These transformations made a reliance on analogy and precedent insufficient to solve legal cases, and raised the necessity to reflexively reconstruct broader principles of Islamic law from which to derive rulings (ibid.: 55).

Al-Shatibi was quite outspoken in asserting that within legal reasoning one must give priority to the results of action in order to check whether any given action serves the purpose of law (ibid.: 123). He also introduced a welcome element of complexification when he insisted on distinguishing between the *masalih* as defined in the discourse (*khitab*) of the Lawgiver, and as found in the world of human life and relations. He thus considered the discursive tradition and the world of practice and “common sense” as two distinct, though interrelated layers of human action and reflexivity. And he admitted that human relations are complex enough, so that they cannot configure pure *masalih*, i.e. goods to pursue for the human benefit, but are mingled with hardship and discomfort.

For Al-Shatibi it is habit and practice (*’ada*) that customarily defines certain things as *masalih* and other as *mafāsid* (nuisances, discomforts). This specification indicates that practical common sense is not purely receptive towards needs, but has also a definitional and, as it were, discursive and reflexive capacity (ibid.: 155). It is therefore social practice in the first instance that deploys phronesis in seeking *maslaha*. This faculty is not part of a specialized enterprise led by expert knowledge, but is in the hands of the commoner, so it is – we would say – common sense driven. On the other hand, one cannot deny that the discourse of *shari’ā* also defines the *masalih* in a more direct way. As an extension of the function of prophetic discourse, this definitional effort by the experts of the law inculcates a telic sense of right and wrong in human agency and practical ration-

ality, without which action would degenerate into a pure utilitarian hunt for discrete and separate goods.

It is precisely in this permanent tension between the complexity of the social world were goods and ills are not found in a pure form, and the moral command of *shari'a*, that the agential capacity of phronesis grows on the bedrock of the faculties of man as a free agent (*mukhtar*) who is responsible for his acts, not only morally, but, through his inclusion in an ordered community, also legally (ibid.: 156). In those cases where neither habit or custom, nor the *shari'a* provide a clear definition of what is right or wrong, *ijtihad* (the effort to find creative solutions through reasoning) has to be exerted. Laying emphasis on *ijtihad* is for al-Shatibi essential to explain deliberation and satisfying the underlying need for certainty in the legal process. After all hypothetical answers to the question whether a certain act is right or wrong (like e.g. whether eating carrion is allowed when it is indispensable to survival) have been weighed off, the decision of the mujtahid has to be considered binding (ibid.: 157).

The complexity of the social worlds and the related intricacies of the process of defining and adjudicating *maslaha* are incontestable, yet this recognition cannot be equated with a relativistic conception. Al-Shatibi firmly distinguishes *maslaha*, which carries – since it is plunged into an intrinsically plural dimension of human action – the connotation of “interest” in the general sense of what is good to man, from the pursuit of purely particularistic interests, personal preferences and passionate desires. Al-Shatibi clearly reaffirms that *maslaha*, in as far as it is the motor of the human pursuit of the objectives of the *shari'a*, is finalized to free the human actor from the dictates of passion and make him the servant of God and his Law (ibid.: 158). He insists in clarifying that *maslaha* is the engine itself of the law in that it serves human welfare and the removal of hardship in general, and is therefore present as a genus in all rules. It is retrieved by the phronetic approach of jurisprudence via the application of the method of *istislah* and cognates. In contrast with the hierarchic-dualistic model of the subject prevalent in Latin Christian Europe and that liberal modernity will not dissolve but aggravate (see Santoro 2003 [1999]), in the Islamic case epitomized by al-Shatibi's post-Axial, legal and social thought the superior interest is not rooted in a pure volition of the virtuous subject, but emerges through interaction and is therefore intrinsically intersubjective.

It is revealing that one synonym of *istislah* used by al-Shatibi is *istidlal*, which does not mean “finding good” in a given situation but “finding the right sign” (Masud 1995 [1977]: 161-162). This is not surprising, because al-Shatibi's theory of law reposes on a theory of language that compares the *shari'a* issued of prophetic discourse to an “ordinary language.” The Islamic scholar maintained quite straightforwardly that “the judgement (*hukm*) is not derived on the basis of what meanings are posited (*wad'*) for the words but on some other basis, that is the aspect of following the action (*iqtida' bi-l af'al*)” (ibid.: 175). Al-Shatibi explains the enigmas of the regulating impetus of the “logic of practice” via the

ummi (“common” or “ordinary”) character of prophetic discourse, i.e. its being addressed to the “common man.” One cannot understand *shari'a* and its objectives without referring to the common sense of the addressees of the Qur'an, who are commoners. Clearly – and this sets the prophet Muhammad apart from his predecessors – the *ummi* disposition of the receptor of the Qur'anic message matches the character of the speech of al-nabi al-*ummi*, as Muhammad is designated in the Qur'an, i.e. “the common prophet,” or “the prophet of the commoners.” Here the Axial sense of connective justice culminates into the Islamic invention of the pious commoner.

The ordinary character of prophetic speech might seem to clash with the concomitant notion of the sacral, miraculous features of Qur'anic discourse. However, the latter was understood as rooted in the immediacy or unmediated power of the word. The words of the Qur'an weren't even mediated by “scripture,” since the prophet Muhammad was considered illiterate, and the written recording of the Qur'an is a later process determined by obvious practical and institutional reasons, on whose necessity, significantly, Muhammad was completely silent. Clearly the Qur'an, which means recitation or precisely speech, intended to abrogate the previous scripture – collected in the Bible – exactly because they were scripture, and so they had been – according to Qur'an – manipulated by impious and unscrupulous men for their own particularistic interests. This time God speaks to Muhammad through Jibril (Gabriel), and the prophet in turn transmits the revealed word to his followers who retain it by heart. The Qur'an is thus held to have been recited and transmitted in “pure Arabic.”

Al-Shatibi clarifies that the first level of intelligibility of *shari'a* resides precisely in the fact that its primary source, the Qur'an, was cast in ordinary Arabic, which makes the rules, on a first level, context-bound. The ideal speech situation configured by the Qur'an and the circumstances of its initial transmission build, nonetheless, a second level of intelligibility that is universal since translatable in all existing languages. This level operates via a mechanism of retrieval through the type of reasoning promoted by al-Shatibi, consisting in an induction of collective meaning from the text on the basis of the presumption of *maslaha* inherent in the situation addressed. It is this type of induction that helps instituting universal intelligibility. In other words, it is through this method of *istislah* teleologically oriented to the objectives of *shari'a* that the pure ordinary language of prophetic discourse is translated into a universal language upholding and regulating social practice. Its phronetic dimension is brought to a level of sophistication that helps transcending the close boundaries of a given primordial community, and therefore constitutes a high point in the Axial pursuit of universality on a practical level. The analogic method of *qiyyas*, in its double constraint of being text-bounded and based on a binary, scarcely dialectical Aristotelian logic, is insufficient for responding to this Axial promise of universality (ibid.: 178-179).

Al-Shatibi goes one step further and clarifies that the attribute *ummi* as used by the Arabs for designating themselves and their language was also intended to

differentiate them from the Greeks and all civilizations of antiquity that rested on literacy and on the massive use of the written world, while they, the Arabs, preferred oral transmission and tradition. This orientation was due to change quite rapidly in the first two centuries of Islam, mainly as an effect of Islam's rise and rapid spread. This process also encompassed the recording first of the Qur'an and then of *hadith* collections, and encouraged the flourishing of the written sciences of the law, theology, philosophy, not to speak of medicine and other sciences in which the Arabs attained excellence, not least in the rich social and cultural worlds of al-Andalus. In spite of the acquisition and development of these post-Hellenistic cultural assets that were quite consolidated by the time of al-Shatibi, his insistence on the *ummi* character of the Islamic *shari'a* as well as of the prophetic discourse from which it originated is a clear rebuttal of the specific trajectories of the civilizations of the written world which culminated in philosophy, but were deprived of prophetic voices, like the Greek civilization.

Al-Shatibi's theory puts in evidence how in the shaping of what he – and indeed many Muslim reformers inspired by him up to our times – saw as the superior Axial universality of Islam's notions of connective justice based on a praxic reflexivity the civilization of the written world played the role of a sufficient condition for the spread and consolidation of the civilization, while prophetic discourse in its pure *ummi* form was the necessary one. This observation can be linked to what some scholars have evidenced as a likely concurrent meaning of *ummi* as referred to Muhammad, his language, and the Arabs in general. It is a meaning derived from Hebrew and denoting “the people of the world in general,” therefore with a meaning close to “gentile.” Muhammad as the “gentile prophet” would then highlight an additional dimension of post-Axial maturity of his message, i.e. its capacity to transcend its first level of being *ummi*, i.e. native and confined to a given community of ordinary language seeing itself as the chosen people. This second meaning of *ummi* could be linked to the asserted character of Muhammad's prophecy as completing and sealing the whole chain of Semitic prophecy, by projecting it towards embracing the people of the world in general, i.e., “man” (ibid.: 179).

Even if the reference to Ibn Sina is not explicit, it is apparent how al-Shatibi's argument owes something to the above mentioned theoretical approach to prophetic discourse by the leading Islamic philosopher, in spite of al-Shatibi's ostentatious disregard for philosophical, and in particular Aristotelian discourse, and his more general conviction of the superiority of the prophetic way. The Andalusi scholar, who not unlike Ibn Sina considered not only Muhammad but all his prophetic predecessors and their laws (*shara'i*, plural of *shari'a*) as admonishing and exhorting their people to the right path in ordinary language, has the merit, however, of putting on its head the elitist approach of Ibn Sina. Instead of assuming a superior truth made understandable and palatable to the commoner who cannot command the sophisticated rational discourse of the philosopher, al-Shatibi takes entirely the perspective of the common social and legal actor and

asserts that legal obligation can only be legitimate if a rule can be understood by the commoner. For him there is no responsibility of the legal actor without comprehension of the law.

This is also the part of al-Shatibi’s argument where it appears that one cannot rely on a self-enclosed view of ordinary language matching a Bourdieuan “logic of practice.” Any self-sustaining practice needs efficient communication, and it is the understanding and active seeking of *maslaha* that makes communication among human actors possible via agreements on shared goods and methods to attain them. Here it also appears that the phronetic, reflective and communicative task of the jurist only is only feasible as an extension of the phronetic activity residing in the practice of ordinary people. This basic layer of practice, however, already incorporates a knowledge of *maslaha* through the intelligibility of *shari'a*. In this sense, *maslaha* has not to be taught and inculcated ex nihilo by a class of ‘ulama, neither does it ground obligations for the elite of knowledge alone. Obligation in the *shari'a* is rational and therefore universally comprehensible. The task of the jurists is to keep open and functioning the circles of communication, seeking in *maslaha* the methodological guidance necessary for helping to solve those problems of the commoners that they cannot solve on their own. The condition for performing this job is to cast into a *ummi*, comprehensible, ordinary language the solutions sought under the umbrella of the universalistic method of induction provided by *istislah* (ibid.: 181).

Faced with the problem of how to deal with what by his time was a quite powerful and established spiritual elite, i.e. the Sufis, who had recruited wide masses of commoners and had penetrated many civic institutions, al-Shatibi drew a distinction between the ordinary people who act on the basis of self-interest (and therefore need the guidance of *maslaha*), and the Sufis, whose approach to *shari'a* obligations he considered extraordinary and therefore transcending the rule applicable to common man. He called the Sufis “the people who disregard their self-interest,” and therefore saw them as consciously transcending the common sense of right and wrong of the ordinary people. Though it is known that al-Shatibi did not sympathize with the Sufis, he justified their approach as indirectly beneficial to how *maslaha* orients the legal actors toward the just middle between the opposite extremes of too much hardship and too much laxity in performing obligations, thus echoing a well-known Aristotelian motive concerning the virtues (ibid.: 192-193). He saw that the great stress laid on piety and asceticism by the Sufis was ultimately useful, on a social level, to counter the looming risk of a fall into laxity of commoners. Sufism therefore contributed to Islamic normativity through their permanent, exemplary correction of the latent laxity of the commoner, in spite of a lack of regulative strength, in strictly legal terms, of their way, or *tariqa*.

It remains that al-Shatibi’s view of the legal actor, of his obligations and of the notion of *maslaha* underlying them was based – in an indeed quite anti-Aristotelian and in general un-Greek fashion – on a view of the actor not as a

“subject” of virtuous or vicious conduct, but as a genuinely relational agent, who discharges duties incumbent on him, whose origin and justification are inscribed in the triangular relationship between ego, alter, and God, and therefore on the proto-Axial view of “connective justice.” God matters here as the initiator of a Law that provides goals and guidelines, and activates an engine (*maslaha*) that gives orientation, activates discernment and induces reflexivity into human agents. Whereas Sufism reflects the closest approach in Islam to a subjectivity of virtue and excellence through an ethic of renunciation – the nearest therefore to the monastic path, whose legitimacy was explicitly denied in a famous *hadith* by the prophet Muhammad – al-Shatibi was coherent in considering the Sufi path as subsidiary and not central to the Islamic view and practices of the common good.

Conclusion. Which reflexivity: interactive vs. subjectivity based?

In spite of the evident differences with the synthesis achieved in Latin Christian Europe by Aquinas, al-Shatibi’s challenge of Sufi asceticism’s claim that only the negation of selfish interest is a basis for true obedience to God echoes Aquinas’ response to the challenge of the new monastic orders. The common answer was that self-interest is not denied by the notion of obedience to God, since conformity with the will of the lawgiver (based on *maslaha*) is what constitutes obedience to the law of nature (ibid.: 196). If fitting into *maslaha*, the pursuit of self-interest is not only legitimate, but necessary for common welfare. This apparently simple answer pushed al-Shatibi – similarly to Aquinas – towards clarifying and complexifying the view of the legal agent and the category of intention in a way that, while it added sophistication to his theory, put in evidence its points of vulnerability. Practice, custom and the pursuit of legitimate self-interest therein are embedded in a sort of natural law whose relationship with *shari'a* has been scarcely problematized in Islamic legal philosophy. Al-Shatibi’s distaste for Aristotelian approaches and more generally for the speculative theology that had largely relied on Aristotle – in spite of his partial and unacknowledged indebtedness to *falsafa* – was doubtless a limiting factor in his theorizing. However, the terrain on which al-Shatibi’s theory sought to vindicate its coherence is where he established a nexus between act and intention, with a strategy quite different from the Christian Thomist theory of *voluntas*, which was still dependent on the Augustinian construction of the sinful subject.

Al-Shatibi maintained that intention (*niyya*) is necessary for an action to be valid. The social actor as a *mukhtar*, i.e. as an agent of choice endowed with freedom of the will, manifests, through acting, his intention to obey to the commands of the Lawgiver via orientation to *maslaha*, or to disobey. Seeking *maslaha* is therefore a requirement for a correctly directed intention, which is in turn indispensable to act (ibid.: 206-207). This definition of intention is called to

attenuate the ambiguities of al-Shatibi’s dealing with passions, self-interest, and common good. Ultimately the commitment to *maslaha* and the orientation of self-interest to it become a matter of responsibility and reflexivity of the free agent. He adds a welcome sophistication to this view by admitting that in his seeking to do good, ego may happen to do harm to alter. The agent therefore should concur to the definition of *maslaha* in every specific case through undergirding his pious intention with a reflection upon the consequences of action. This operation requires going beyond the appearance or the simple assumption of good and bad, and the development of an analysis of the complex ways in which benefit and discomfort are intermingled in social life (ibid.: 209).

Therefore, the agent’s responsibility does include reflexivity, and reflecting about one’s action’s consequences is considered the highest form of phronesis, in spite of the fact that it is no antidote against macro-sociologically unintended consequences of action. This is a type of practical reflexivity that can be only ascertained after the fact, based on its effects, and cannot therefore be preemptively subsumed within a higher, collective dimension that *maslaha* is supposed to institute. This form of reflective phronesis is ultimately applied through *ijtihad*, as expounded above, intended as “a process in which one exhausts one’s efforts to one’s full capacity in order to acquire exact or probable knowledge to reach judgement in a given case” (ibid.: 230). We know that modern social theory is also concerned with the social technologies that are deputed to “anticipate” and neutralize such unintended consequences. Modern normative views of the public sphere do encompass – and often aspire to tame – such social technologies (cf. Eickelman and Salvatore 2004 [2002]). What I have analyzed here is that prior to the grounding of these social techniques, the modalities of intersubjective engagement instituted and nurtured by the praxic Axiality of the Western Islam from al-Andalus were based on a view of scientific probability that makes any dualism between traditional phronesis and modern techné extraneous to the development of this particular tradition.

As Aquinas, al-Shatibi clearly bypassed the type of Axial dichotomic polarization between *civitas terrena* and *civitas Dei* as constructed by Augustine in late antiquity, i.e. towards the end of what we might still call the primary Axial cycle of transformations. It is fair to say that the Dominican monk and the Andalusian jurist represent the culmination of a renaissance that reconstructed Axial formulas in an almost proto-sociological fashion, and can be therefore tentatively termed “Axial renaissance” (Salvatore 2006). But it is also possible to observe that as a representative – though not an uncontested one – of the Islamic philosophy of law, and more general as an Islamic theorist of the social and legal agent and, concomitantly, of the common good and public interest, al-Shatibi has the merit of posing limits to the unsociological oversubjectivation of the agent that has affected the Christian Europe’s genealogy of the hierarchic-dualistic subject and finally produced the Voegelinian syndrome of the “free spirit.” Al-Shatibi has the merit of sticking to a relational view of the agent as ego relationally involved

with alter on all nodal issues attending the construction and maintenance of the social bond. Therein the agent's responsibility is upheld without falling into the trap of oversubjectifying its volition by insulating reflexivity from its practical effects. Probably weaker in purely theoretical and theological terms if compared to the masterful architecture of its Thomist counterpart, al-Shatibi's approach holds a stronger potential for a socio-anthropological reconstruction of the social agent under modern constraints.

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