EDITORIAL BOARD

ILAHIYAT STUDIES

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BOOK REVIEWS

FROM THE EDITOR

Dear readers,

Welcome back to the new issue of *Ilahiyat Studies*. Firstly, we would like to express our gratitude and extend a warm welcome to Dr. Samed Yazar, Res. Asst. Mehmet Angay, Res. Asst. Veysel Cuşkun, and Res. Asst. Muhammed Eren Karadağ. They joined us as field editors beginning with this issue, and their contributions will strengthen our journal even further.

This issue of *IS* features six research articles and two book reviews. In the first article, "Ibāḍī Maritime Law in the Indian Ocean: Transport, Trade, and Taxes in the 2nd-3rd/8th-9th Centuries", Anke Iman Bouzenita examines the significance of seafaring and Indian Ocean trade for Oman through the lens of early *Ibāḍī fiqh* encyclopedias, focusing on maritime legal dicta that have remained largely understudied. Rlying primarily on Omanī legal compendia, the research analyzes cases concerning ship hire, transportation, shipwreck, taxation, and persons missing at sea. By contextualizing these rulings within their socio-political setting and comparing them with later sources, the study identifies early authorities of *Ibāḍī* maritime law and evaluates whether the sea functioned as a determining spatial factor in the application of Islamic legal norms.

In the second article, "An Analysis of the Decline and Future of Conservative Judaism", Mustafa Şahin investigates the decline of Conservative Judaism in the United States since the late twentieth century by situating the crisis within the movement's founding ideology. Building on the thought of Solomon Schechter and the positive-historical approach, the study argues that the erosion of the "middle way" ideal, methodological inconsistency in halakhic interpretation, and the failure to sustain a coherent balance between tradition and modernity have weakened the movement's institutional and communal foundations. The

article further contends that the absence of a clear identity framework and a viable halakhic process has accelerated disaffiliation. It concludes by proposing that a value-based rapprochement with certain Orthodox groups could contribute to the movement's renewal.

In the article "Impact of Learned Helplessness on Social Media-Induced Secondary Traumatic Stress: Mediation by Religious Coping and Moderation by Quality of Life", Rahime Eymen Bakır and Muhammet Enes Vural provide an analysis of a study on social media-induced secondary traumatic stress (STS-SM) among Turkish Muslim adults, focusing on the roles of learned helplessness, negative religious coping, and perceived quality of life. The study shows that learned helplessness increases vulnerability to STS-SM, partly through negative religious coping, while a high perceived quality of life buffers this effect. The findings offer important insights for culturally sensitive mental health interventions.

Emine Enise Yakar and Zehra Betül Dindaroğlu's article, "The Latent Role of Islamic Responsa (*Fatwâ*) in Saudi Legal System During the Precodification Period", evaluates the role of the *Dār al-Iftāʾ* in Saudi Arabia's legal and legislative framework prior to the codification period. Focusing on the transformation of *fatāwā* into binding legal regulations through royal decrees, it draws attention to the institution's de facto legislative authority within a system characterized by the close integration of religion and governance. Grounded in the doctrine of *siyāsah sharʿiyyah*, the study demonstrates how the *Dār al-Iftāʾ* functioned as both a prelegislative mechanism and a source of religious legitimation. The article offers a nuanced analysis of the institutionalization of the *ʿulamāʾ* and their enduring influence on Saudi legislation despite increasing state centralization.

"Avicenna on Compositive Imagination in the Context of Active Perception Debates", by Mehmet Zahit Tiryaki, explores Avicenna's theory of active perception through an analysis of his doctrine of internal senses, with particular emphasis on the compositive imagination. Situating Avicenna within classical debates on passive and active perception, the study examines how imagination mediates between the sensible and intelligible realms. It asserts that perception, for Avicenna, emerges from a two-way process involving both external objects and the active operations of internal faculties. By highlighting the role of abstraction, emanation, and individualization, the article demonstrates

that Avicenna's account transcends a strict Aristotelian or Neoplatonic framework, offering a distinctive and enduring contribution to philosophical psychology.

In the last article of this issue, "*Hen Kai Pan*: The Influence of Spinoza on German Romanticism at the Intersection of Theology and Philosophy", Vehbi Metin Demir invites us to explore the reception and transformation of Spinoza within German Romanticism, tracing how his philosophy was reinterpreted in response to intertwined theological, philosophical, and political crises of late eighteenth-century German thought. Focusing on Romantic engagements with Spinoza rather than his original doctrine, the study shows how figures from Jacobi to Schelling recast Spinoza through multiple "faces", from mechanistic rationalist to spiritual monist. It argues that these shifting interpretations form a coherent and systematic pattern that illuminates the intellectual foundations of German Romanticism.

We, the editorial team, express gratitude to our authors, reviewers, and readers for their continued support and look forward to being with you in the next issues of *Ilahiyat Studies*.

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ARTICLES

IBAḌĪ MARITIME LAW IN THE INDIAN OCEAN: TRANSPORT, TRADE, AND TAXES IN THE 2ND-3RD/8TH-9TH CENTURIES

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Abstract

Seafaring and trade across the Indian Ocean have played a pivotal role for Oman and its scholars. Islamic law compendia are reflective of and an important source of the material culture of their times. They discuss all aspects of human life, questions of personal status, trade, and international relations. Despite the exposure of Oman and its scholars to the sea and related legal cases, maritime law in the Ibāḍī *fiqh* encyclopedias is a neglected field of research. This study aspires to close a gap in the literature. It focuses on the earliest extant Omanī *fiqh* encyclopedias and other relevant material of the 2nd-3rd/8th-9th centuries, mainly the *Kitāb Jāmiʿ Abī l-Ḥawwārī* (alive in 272/885), *Kitāb Jāmiʿ al-Faḍl ibn al-Ḥawwārī* (d. 278/891), and *Jāmiʿ Ibn Jaʿfar al-Izkawī* (alive in 277/892), with references to later sources, primarily the *Kitāb Bayān al-sharʿ* of Muḥammad ibn Ibrāhīm al-Kindī (d. 508/1115), the *Muṣannaf* of Abū Bakr al-Kindī (d. 557/1162), and others. This research analyses the available material to identify the earliest possible source material and authorities of dicta on Ibāḍī maritime law while referencing later material for clarification. Case studies on different questions, such as hiring ships and vessels for transportation, contract work, shipwreck and jettison, taxation, and

persons missing at sea, are analyzed with respect to the sea as a spatial factor that may (or may not) impact Islamic legal rule.

Key Words: Ibāḍī school, maritime law, Indian Ocean, taxation, transportation, shipwreck

Introduction

Islamic maritime law is still a neglected field. Although some fundamental research exists on Muslim trade, seafaring, and its cultural context in the Indian Ocean, very little has been published on the actual legal rules and codices by which this trade was governed. Some attention has been given to the Mediterranean and Mālikī schools, while the culturally more diversified Indian Ocean is still subject to research.[1]

Sea trade between Oman and regions along the Gulf and Indian Ocean littoral was already established when Oman became Muslim, and it must have been governed by certain rules and provisions. Islam did, however, introduce its own rules and regulations to trade, contracts, taxation, and personal status, along with adding entirely new factors, such as *ḥajj*, *daʿwah*, and *jihād* to matters of the sea. The Islamic call followed the trade routes to Africa, India, and Southeast Asia to China; Muslim communities formed along the coast of the Indian Ocean, while political power consolidated, secured, and pacified them. The growing cultural unity with the spread of Islam along the Indian Ocean shore must have had an impact on maritime laws and their unification in the Indian Ocean.

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[1]   See, e.g., Hassan S. Khalilieh, *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800-1050): The* Kitāb Akriyat al-Sufun *vis-à-vis the* Nomos Rhodion Nautikos (Leiden & Boston: Brill, 2006); Hassan S. Khalilieh, *Islamic Law of the Sea: Freedom of Navigation and Passage Rights in Islamic Thought* (Cambridge - New York: Cambridge University Press, 2019); George Fadlo Hourani, *Arab Seafaring in the Indian Ocean in Ancient and Medieval Times* (New York: Octagon Books, 1951); for more recent research, see Mahmood Kooria, "Zones of Origins: The Formation of Islamic Law in the Indian Ocean Littoral, c. 615-1000 CE", *Islamic Law in the Indian Ocean World: Texts, Ideas and Practices*, ed. Mahmoud Kooria - Sanne Ravensbergen (London: Routledge, 2021). Kooria remains very vague concerning the actual law and its documentation.

Sohar, Oman's capital and most important port, was the gateway to trade, *da'wah*, and international relations. Established Muslim (trading) communities along the littoral of the Indian Ocean saw an influx of judges and teaching authorities from their places of origin. It is to be expected that Islamic legal rules, generally, and probably partly in the garb of the early Ibāḍī Omanī *fiqh* authorities, were received in these places.[2] This study attempts to present and analyze some of the available legal material in relation to the sea in the early Omanī Ibāḍī *fiqh* encyclopedias as a point of departure in the study of Islamic maritime law.

A Note on the Source Material

Compared with their Sunnī and Zaydī counterparts, Omanī Ibāḍī *fiqh* encyclopedias yield considerably more material on maritime law. Although more research, particularly in Shāfiʿī and Zaydī *fiqh* compilations, is needed to meticulously assess and compare the available material, the sheer abundance of maritime legal cases in the Omanī *fiqh* legacy is strikingly obvious. This phenomenon may have its roots in geographical, political, or sociological reasons; we may cautiously suggest that geographical exposure to the sea paved the way to preoccupation with maritime cases, while the relative political isolation of the school (and its region) facilitated different internal mechanisms.

The second to the third/eighth to the ninth centuries in Oman were a historically decisive era in which the sea and sea trade were vital components. The political authority of the Imamate extended to Socotra and the East African coastline. The events and scholarly presence in this era are particularly well documented (in historical material such as Nūr al-Dīn al-Sālimī's *Tuḥfah*, the Omanī *siyar*, and the *fiqh* encyclopedias themselves).

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[2]   Historical sources mention several Islamic communities with an Omanī imprint in India (Malabar), Sri Lanka, and China, in addition to the East African coastline, see Muḥammad ibn Nāṣir al-Mundhirī, *Tārīkh Ṣuḥār al-siyāsī wa-l-ḥaḍārī min ẓuhūr al-Islām ḥattá nihāyat al-qarn al-rābiʿ al-hijrī* (Beirut: Dār al-ʿUlūm al-ʿArabiyyah li-l-Ṭibāʿah wa-l-Nashr, 2008), 90ff; Ram Prakash Anand, "Maritime Practice in South-East Asia until 1600 A.D. and the Modern Law of the Sea", *The International and Comparative Law Quarterly* 30/2 (1981), 440-454.

The third/ninth-century encyclopedias, the *Jāmiʿ al-Faḍl*,[3] *Jāmiʿ Abī l-Ḥawwārī*,[4] and *Jāmiʿ Ibn Jaʿfar al-Izkawī*[5] may be considered the

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[3]   Abū Muḥammad al-Faḍl ibn al-Ḥawwārī al-Sāmī al-Izkawī, *Jāmiʿ al-Faḍl ibn al-Ḥawwārī* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1406/1985). Al-Faḍl ibn al-Ḥawwārī (d. 278/891) was a student of Muḥammad ibn Maḥbūb, one of the outstanding Omanī scholars of his time and a contemporary of Imām al-Muhannā ibn Jayfar (226-237/841-852) and Imām al-Ṣalt (237-272/852-885). He was involved in the political events that followed the forced abdication of al-Ṣalt, opposed the newly sworn-in Imām ʿAzzān ibn Tamīm, and was subsequently killed (together with al-Ḥawwārī ibn ʿAbd Allāh) by the Imām's troops near Sohar in 278/891. He is the author of *Kitāb al-Jāmiʿ*; Muḥammad Ṣāliḥ Nāṣir - Sulṭān ibn Mubārak al-Shaybānī, *Muʿjam aʿlām al-Ibāḍiyyah min al-qarn al-awwal al-hijrī ilā l-ʿaṣr al-ḥāḍir, qism al-Mashriq* (Beirut: Dār al-Gharb al-Islāmī, 1427/2006), 345-346; Martin Custers, *al-Ibāḍiyya: A Bibliography Volume 1: Ibāḍīs of the Mashriq.* Hildesheim: Georg Olms, 2016), 1/192ff. Al-Sālimī has a lengthy abstract on al-Faḍl ibn al-Ḥawwārī, his rebellion against ʿAzzān ibn Tamīm, and the scholars' evaluation of this action; Nūr al-Dīn ʿAbd Allāh ibn Ḥumayd al-Sālimī, *Tuḥfat al-aʿyān bi-sīrat ahl ʿUmān* (al-Sīb: Maktabat al-Imām Nūr al-Dīn al-Sālimī, 2000), 250ff.

[4]   Muḥammad ibn al-Ḥawwārī al-Aʿmá Abū l-Ḥawwārī, sometimes referred to as al-Ḥawwārī Muḥammad ibn al-Ḥawwārī; alive in 272/885, probably died early in the 4th/10th century. Based in Nizwá, he is considered the most important among the famous Omanī scholars of the 3rd/9th century. He was a student of Muḥammad ibn Maḥbūb but mainly studied under Abū l-Muʾthir al-Ṣalt ibn Khamīs al-Kharūṣī, and he also learned from Muḥammad ibn Jaʿfar al-Izkawī. Among his extant works are the *Jāmiʿ Ibn al-Ḥawwārī*, the *Tafsīr khamsmiʾat āyah fī l-aḥkām* (both in print), and *Ziyādāt ʿalā Jāmiʿ ibn Jaʿfar* (Nāṣir - al-Shaybānī, *Muʿjam aʿlām al-Ibāḍiyyah*, 379-380; Fahad ibn ʿAlī al-Saʿdī, *Muʿjam al-fuqahāʾ wa-l-mutakallimīn al-Ibāḍiyyah: Qism al-Mashriq min al-qarn al-awwal al-hijrī ilā bidāyat al-qarn al-khāmis ʿashar al-hijrī* (Muscat: Maktabat al-Jīl al-Wāʿid, 2007), 2/66ff. According to Fahad al-Saʿdī, the original work of Abū l-Ḥawwārī is lost, and the printed version (Muscat, 1985) is the work of a later scholar and goes back to *al-Majmūʿ min jawāb Abī l-Ḥawwārī* with addition of the compiler from other sources (of Abū l-Ḥawwārī; see al-Saʿdī, *Muʿjam al-fuqahāʾ*, 2/67. This may explain the presence of the legal dicta of Abū Saʿīd al-Kudamī (305-361/918-972). The printed version of the *Jāmiʿ* still expresses the teachings that were disseminated in Ibāḍī circles in Oman; see Custers, *al-Ibāḍiyya: A Bibliography*, 1/189f.

[5]   Abū Jābir Muḥammad ibn Jaʿfar al-Izkawī (alive in 277 AH) is the author of one of the earliest *fiqh* encyclopedias (*al-Jāmiʿ*, also called "Qurʾān al-athar"); he was a

earliest available sources on Ibāḍī maritime law or, more humbly, legal cases (*masāʾil*) regarding the sea.

The third/ninth century was particularly characterized by Omani activity in the Indian Ocean. Sohar, as capital of the Imamate, with political-scholarly figures such as al-Imām al-Ṣalt and his chief judge Muḥammad ibn Maḥbūb,[6] set the pace for centuries to come. His

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disciple of Muḥammad ibn Maḥbūb and was supported Mūsá ibn Mūsá and Rāshid ibn al-Naẓar in the deposition case of al-Imām al-Ṣalt. Abū Jābir was deaf and one of the three eminent scholars of *fiqh* at his time ("Oman at that time referred to the deaf [Ibn Jaʿfar], the limping [al-Aʿraj: Nabhān ibn ʿUthmān], and the blind [al-Aʿmá: Abū l-Muʾthir] for knowledge"). Al-Izkawī was governor (*wālī*) of Sohar, the most important harbor and capital of the state in the time of al-Imām al-Ṣalt but was either terminated or resigned himself after two months; see Custers, *al-Ibāḍiyya: A Bibliography*, 212ff; al-Saʿdī, *Muʿjam al-fuqahāʾ*, 2/53ff. He preserved the responses of Muḥammad ibn Maḥbūb, Saʿīd ibn Maḥraz, and al-Waḍḍāḥ ibn ʿUqbah. Both al-Ḥawwārī and Abū l-Ḥawwārī ibn al-Ḥawwārī acquired knowledge from him (the latter commented on his *Jāmiʿ*). The original version of the *Jāmiʿ* is lost, but the book exists in redacted versions with additions. The printed version is *Tahdhīb al-athar fī talkhīṣ Jāmiʿ al-shaykh Muḥammad ibn Jaʿfar* by al-Sayyid Muhannā ibn Khalfān al-Būsaʿīdī; see al-Saʿdī, *Muʿjam al-fuqahāʾ*, 2/55.

6   Abū ʿAbd Allāh Muḥammad ibn Maḥbūb al-Ruḥaylī was an Omani scholar of Qurashite origins whose grandfather, al-Ruḥayl ibn Sayf, was among the first propagators of the Ibāḍī movement in Basra. Muḥammad ibn Maḥbūb was among the scholars who gave al-Imām al-Ṣalt the pledge of allegiance in 237/851. He was the *qāḍī* of Sohar, which was then the capital of the imamate, during al-Ṣalt's imamate (from 249/863 to his death in 260/874) and is considered by generations of Ibāḍī scholars an influential figure in the field of Islamic jurisprudence (Nāṣir - al-Shaybānī, *Muʿjam aʿlām al-Ibāḍiyyah*, 425-426; Farḥāt ibn ʿAlī al-Jaʿbīrī, *al-Tadwīn al-fiqhī: al-Imām Muḥammad ibn Maḥbūb namūdhaʿ*ᵃⁿ: *Aʿmāl nadwat taṭawwur al-ʿulūm al-fiqhiyyah* (Muscat: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyyah, 1422/2002), 17-71; Farḥāt ibn ʿAlī al-Jaʿbīrī, *Shakhṣiyyāt Ibāḍiyyah* (al-Sīb: Maktabat al-Ḍāmirī li-l-Nashr wa-l-Tawzīʿ, 2010), 83-84. For his scholarly and political role, see Badriyyah bint Muḥammad ibn Shāmis al-Nabhānī, *Āl al-Ruḥayl wa-dawruhum al-siyāsī wa-l-fikrī fī ʿUmān min al-qarn 3h/8m – 4h/10m* (Muscat: Sultan Qaboos University, Ph.D. Dissertation, 2017). Al-Shaybānī lists a *sīrah fī l-siyāsah al-sharʿiyyah* (contained in *Siyar wa-jawābāt*) under the authorship of Muḥammad ibn Maḥbūb. Sulṭān ibn Mubārak al-Shaybānī, *Amālī l-turāth: Naẓarāt naqdiyyah wa-qirāʾāt fī jadīd al-turāth al-ʿUmānī makhṭūṭihī wa-maṭbūʿihī* (Muscat: Dār al-Dhākirah, 2015), 1/46; see Custers, *al-Ibāḍiyya: A*

teachings and the practices of Amīr al-Sāḥil at the time may have exerted influence far beyond the shores of Oman, with the Omanī fleet as a protective force against merchant ships (as some legal cases indicate). These encyclopedias refer largely to his authority and the preceding generations of scholars, governors, and military leaders. As is typical of the time, many discussed cases are real-life responses and events that were decided by the authorities. The *dicta (aqwāl)* of al-Waḍḍāḥ ibn ʿUqbah, who was involved in military action in the Indian Ocean, and Abū Marwān, who was a scholar and governor of Sohar, the capital and most important port, are worth mentioning in this context.[7] The dicta on maritime laws are reflective of the legal rules practiced in the era of the first Imamates in Oman.

A note on these early sources may be called for. *Jāmiʿ al-Faḍl, Jāmiʿ Abī l-Ḥawwārī*, and *Jāmiʿ Ibn Jaʿfar* in the current printed versions that I relied on are most likely not the original works of these scholars but rather redacted versions by following generations of scholars with additions.[8] The interdependence of these sources needs to be assessed in terms of their totality. They can, however, be considered a reliable source of the legal dicta of Omanī Ibāḍī scholars on maritime rules in the 2nd-3rd/8th-9th centuries. References in *Jāmiʿ Abī l-Ḥawwārī* to Muḥammad ibn Saʿīd (al-Kudamī), who succeeded these scholars chronologically, may be due to later add-ons to the original writing.[9] Later sources, such as the *Kitāb Bayān al-sharʿ* of Muḥammad ibn

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Bibliography 1/441ff; see also Anke Iman Bouzenita, "A Reading in the Applied Ibāḍī Fiqh of International Relations: The Directive of Imām al-Ṣalt (d. 275/888) to His Army Concerning Socotra", *Ilahiyat Studies* 10/1 (2019), 7-45.

[7]   Al-Sālimī mentions the generations of scholars who disseminated knowledge in Oman; see Nūr al-Dīn al-Sālimī, *Tuḥfat al-aʿyān,* 83.

[8]   Fahad ibn ʿAlī ibn Hāshil al-Saʿdī, *Ḥaqāʾiq taḥta l-mijhar (1) Jāmiʿ al-Faḍl ibn al-Ḥawwārī* (n.p., n.d.); Fahad ibn ʿAlī ibn Hāshil al-Saʿdī, *Ḥaqāʾiq taḥta l-mijhar (2) Jāmiʿ Abī l-Ḥawwārī* (n.p., n.d.).

[9]   Fahad al-Saʿdī devoted considerable attention to these early sources and the printed versions (al-Saʿdī, *Ḥaqāʾiq taḥta l-mijhar* (1) and (2). To reconstruct the entirety of the *fiqh* teachings of these authorities, both al-Kindī's *Bayān al-sharʿ* and hitherto unpublished manuscripts (such as *Jāmiʿ Abī Qatādah, Jāmiʿ Abī Zakariyyā*, and others) need to be analyzed. Later additions by copyists (sometimes identified as "*ziyādāt*") are a well-known complication of working with the Omanī *fiqh* encyclopedias.

Ibrāhīm al-Kindī (d. 508/1115) and the *Muṣannaf* of Abū Bakr al-Kindī (d. 557/1162), are more encompassing and systematic in their discussion but tend to refer to older material with some additional explanation. They may also have preserved some of the previous dicta that have not come down to us independently or in the available printed versions of the earliest sources.[10]

More recent works, such as Ibn ʿUbaydān's *Jawāhir al-āthār*, al-Saʿdī's *Qāmūs al-sharīʿah*, al-Khalīlī's and al-Sālimī's works, may be reminiscent of later historical developments with respect to the sea. However, as a general rule, the early material is still referred to as authoritative.

Another potential source of early Ibāḍī maritime law is the *Kitāb al-Ashyākh*, a (probably lost) collection of *fatwā*s compiled by a number of scholars engaged in *ribāṭ* in Dima, currently Seeb near Muscat, in the third/ninth century. *Kitāb al-Ashyākh* is frequently referred to in later encyclopedias (particularly *Bayān al-sharʿ* and *Qāmūs al-sharīʿah*) and could, if found in its entirety, allow even more conclusions on maritime law up to the third/ninth century. *Qāmūs al-sharīʿah* also mentions additional material on the authority of the early sources that are not discussed in the printed versions of *Jāmiʿ al-Faḍl* and *Jāmiʿ Abī l-Ḥawwārī*.

The rules on *zakāh* and *jizyah* in al-Imām al-Ṣalt's state, for example, are extensively documented in his lengthy advice to the newly appointed governor of Rustāq, which is preserved in al-Sālimī's *Tuḥfah*.[11] Additional material on international relations is preserved in

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[10]   Aḥlām al-Jaḥwariyyah devoted part of her doctoral thesis to identifying al-Kindī's sources. See Aḥlām al-Jaḥwariyyah bint Ḥamūd, *al-Mujtamaʿ al-ʿUmānī fī l-qarnayn 4-5 H/10-11 M min khilāl baʿḍ masāʾil Bayan al-sharʿ li-Muḥammad ibn Ibrāhīm al-Kindī (t. 508 H/1115 M)* (Muscat: al-Jamʿiyyah al-ʿUmāniyyah li-l-Kuttāb wa-l-Udabāʾ, Ph.D. Dissertation, 2019). See also Fahad al-Saʿdī, *al-ʿUmāniyyūn min khilāl Kitāb Bayān al-sharʿ: dalīl tārīkhī ilá tarājim al-ʿUmāniyyīn min khilāl Kitāb Bayān al-sharʿ li-l-ʿallāmah al-Kindī* (Muscat: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyyah 2007).

[11]   Nūr al-Dīn al-Sālimī, *Tuḥfat al-aʿyān*, 181ff; Bouzenita, "A Reading in the Applied Ibāḍī Fiqh", 7-45.

Bashīr ibn Muḥammad ibn Maḥbūb's *Kitāb al-Muḥārabah*,[12] which, however, does not provide any material related to maritime law.

Earlier Ibāḍī *fiqh* sources, such as the *Mudawwanah* of Abū Ghānim,[13] presumably the oldest work of Ibāḍī *fiqh*, offer very little material on maritime law (see below). Research in other available material (*Jawābāt Jābir*, the Omani *siyar*)[14] did not yield any related material. The recently published *al-Sīrah al-muḍīʾah ilā ahl Manṣūrah min bilād al-Sind* by Imām Rāshid ibn Saʿīd al-Yuḥmadī al-ʿUmānī (d. 440/1049)[15] provides little insight into the existence of an Ibāḍī community in Sind at the time, which may (or may not) have an influence on the practice of Ibāḍī *fiqh* on the Indian Ocean; however, no specific material on maritime law is found here either. In contrast, a recently published manuscript[16] is reminiscent of legal responses to questions of North African Ibāḍī pilgrims and reiterates the teachings of Abū Saʿīd al-Kudamī[17] on the authority of Shaykh Ibrāhīm ibn ʿAbd

[12] Abdulrahman al-Salimi - Wilferd Madelung (ed.), *Early Ibāḍi Literature: Abu l-Mundhir Bashīr b. Muḥammad b. Maḥbūb:* Kitāb al-Raṣf fī l-Tawḥīd, Kitāb al-Muḥārabah *and* Sīra (Wiesbaden: Harrassowitz, 2011), 36-37.

[13] Abū Ghānim Bishr ibn Ghānim al-Khurāsānī (d. early third century AH), preserved the teachings of Abū ʿUbaydah, al-Rabīʿ, Ibn ʿAbd al-ʿAzīz, Abū Ghassān, Abū l-Muʾarrij, Abū Ayyūb Wāʾil, and Abū Sufyān. The *Mudawwanah* is considered one of the most important works on Ibāḍī *fiqh*. Concerning maritime law, the *Mudawwanah* (2006) mentions only very few teachings, notably 102f regarding prayer on board a ship; *al-Mudawwanah al-kubrā* (2007) contains a case regarding people stranded on the beach (presumably after shipwreck) and the responsibility to transport them (471f), as well as a case on shipwreck (2/498).

[14] Sayyidah Ismāʿīl Kāshif, *al-Siyar wa-l-jawābāt li-ʿulamāʾ wa-aʾimmat ʿUmān* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1989); Saʿīd ibn Khalaf al-Kharūṣī (ed.), *Min jawābāt al-Imām Jābir ibn Zayd* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1984).

[15] Rāshid ibn Saʿīd al-Yuḥmadī al-ʿUmānī, *al-Sīrah al-muḍīʿah ilā ahl Manṣūrah min bilād al-Sind*, ed. Sulṭān ibn Mubārak ibn Ḥamad al-Shaybānī (Muscat: Dhākirat ʿUmān, 1436/2015).

[16] ʿAbd al-Raḥmān al-Sālimī, "Regulating Seafaring in Early Islamic Jurisprudence: A 3rd/9th century Ibadi Manuscript on Maritime Law", *The Silk Roads between China and Oman: Networks of Communication and Transmission of Ibadi Knowledge*, ed. Zhiming Fu - Angeliki Ziaka (Hildesheim: Olms, 2021), 37-48.

[17] Abū Saʿīd Muḥammad ibn Saʿīd ibn Muḥammad ibn Saʿīd al-Nāʾibī al-Kudamī (305-361/918-972) is the authority of the first half of the fourth century AH and leading

Allāh al-Rustāqī[18] regarding the sea. It may therefore have originated in the 4th/10th century. Its content echoes some of the detailed questions of *fiqh* generally discussed in the *fiqh* encyclopedias, such as etiquette on board, liability for damage, buying and selling on board, authority of the captain, jettison and prayer on board a ship. Starting from *Bayān al-sharʿ*, these rules are also referred to as *Sunan al-nākhudā* (using the Persian expression for the sea captain; also "Nawkhudhā").[19] This theme is not available in the 3rd/9th-century encyclopedias. Earlier sources mention the term *ṣāḥib al-safīnah* for the sea-captain instead.[20] Another important authority of the era, the 4th/10th-century scholar Ibn Barakah (300-362 AH), referred to a very limited number of cases related to the sea.[21]

The available material on maritime law in its most different aspects is considerably more extensive from the 5th-6th/11th-12th-century encyclopedias onward, particularly in Muḥammad ibn Ibrāhīm al-Kindī's *Bayān al-sharʿ*[22] and Abū Bakr al-Kindī's *Muṣannaf*[23] because

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proponent of the Nizwá school in the great Omanī *fitnah*. In the *fiqh* encyclopedias, he is usually referred to as Abū Saʿīd. See Custers, *al-Ibāḍiyya: A Bibliography*, 1/342f. Al-Kudamī authored *Muʿtabar li-Jāmiʿ Ibn Jaʿfar*, see al-Saʿdī, *Muʿjam al-fuqahāʾ*, 2/99.

[18] Ibn Saʿdī mentions Ibrāhīm ibn ʿAbd Allāh (without the *nisbah* al-Rustāqī) as one of the eminent scholars of the 4th/10th century; see Ibn Saʿdī, *Muʿjam al-fuqahāʾ*, 1/11.

[19] Muḥammad Ibrāhīm al-Kindī, *Bayān al-sharʿ* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1993), 6/107; 6/112.

[20] As in Salimi, "Regulating Seafaring in Early Islamic Jurisprudence".

[21] See his discussion on the status of sea water and whether it is suitable for ritual ablution (*wuḍūʾ*) (1/446) and a case on *muḍārabah* in maritime trade (4/1701): Should a merchant engage in *muḍārabah* in countries across the ocean? While mentioning differences of opinion in this case, Ibn Barakah overly weighs its permissibility given that the tradesman is known to engage in trade in countries across the sea. He prefers, however, that the muḍārib does not engage in planting trees, date palms or investing in agricultural lands as this is not consummated under the notion of "trade", even though some scholars allow it if it is in the best interest of the investor and himself (cf. al-Kindī, *Muṣannaf*, 14/345).

[22] Abū ʿAbd Allāh Muḥammad ibn Ibrāhīm ibn Sulaymān al-Kindī (d. 508/1111), author of the *fiqh* compendium *Bayān al-sharʿ*.

[23] Abū Bakr Aḥmad ibn ʿAbd Allāh ibn Mūsá al-Nizwānī al-Kindī (d. 557/1162). He authored the *fiqh* compendium *al-Muṣannaf fī l-adyān wa-l-aḥkām*, and of *Kitāb*

of their collection of preceding material. The following discussion focuses on the earliest available material that may be considered closest to the reality of maritime law in the Imamate era, with reference to later works and additional explanations where necessary. The 3rd to 5th/6th century AH is also the period before the consolidation of European powers and influence (Spanish, Portuguese, Dutch, and English) over parts of the Indian Ocean, which means that possible foreign influences on the practiced law may be excluded for this era.

Legal Cases Related to the Sea and Their Discussion in the Ibāḍī *Fiqh* Encyclopedias: An Attempt at Categorization

How are cases related to the sea reflected in the Omanī *fiqh* literature? There are very few separate chapters or treatises in the *fiqh* literature on legal issues related to the sea (such as a *bāb zakāt al-baḥr* in al-Izkawī's and al-Kindī's works or *qitāl al-bawārij,* fighting pirates[24]). An exception to this is the 4th/10th-century *sīrah,* which refers to al-Kudamī's views exclusively on questions related to seafaring. The scholars and their works examined for this research do not generally attempt abstract theorizations of the legal cases related to the sea. Typically, cases are not discussed separately but are treated as branches of *masāʾil* (in contracts, business partnership, *ijārah, ḍamān, waṣiyyah, shufʿah, zakāh, ʿushūr,* and international relations). It also corresponds to the nature of (early) *fiqh* encyclopedias to refer to dicta (*aqwāl*) without mentioning detailed evidence or an explanation of their derivation from legal sources. This is characteristic of both the literary genre and the era of compilation.

If a categorization of the transmitted legal dicta with a relation to the sea were to be attempted, then I would suggest three different tiers, reflected by the following discussion of cases.

First, in addition to the pure legal matter, there are administrative or organizational questions. Where do passengers sit? Where do they

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al-ibtidāʾ that discusses the division of Omanī scholars into the Nizwá and Rustāq factions after the forced abdication of al-Ṣalt. He divided the *Bayān al-sharʿ* of his teacher, Abū ʿAbd Allāh Muḥammad ibn Ibrāhīm ibn Sulaymān al-Kindī, into chapters and gave it its title. See Nāṣir - al-Shaybānī, *Muʿjam aʿlām al-Ibāḍiyyah,* 56.

24 Because of the constraints of this paper, the material on securing the seaways and maritime piracy will be analyzed in another research paper.

wash their clothes? In the Omanī context, these rules are often summarized under *sunan al-nākhudhā* (or: *nawkhudhā*). These are conventional and may (or may not) have been informed by established practices on the sea, unless there are Islamic particularities related to prayer on board a ship, for example. The early *fiqh* encyclopedias that I researched do not occupy themselves much with these questions; the earliest documentation seems to be on the authority of Abu Saʿīd al-Kudamī in the 4th/10th century,[25] while the relatively recent *Qāmūs al-sharīʿah*[26] is very rich in this regard. I also categorize the taxation *procedure* described in al-Izkawī's *Jāmiʿ* here. From the perspectives of the Islamic legal rule and its categories, these questions relate to the *mubāḥ* and are legally indifferent.

Second, the discussion of some legal cases reveals that they have been extracted in analogy (*qiyās*) to established cases on land. Some scholars reflect this explicitly in their terminology, as we will see.

Third, there are obviously some particularities of the sea, such as rules on *ḥarīm al-baḥr*, the appurtenance of the sea,[27] or pearls and other items found at the beach. The description of the sea as an "enemy" or, implicitly, its consideration as a spatial factor may impact the legal rule, particularly where the sea is seen as a spatial obstacle to redeem benefits (in *shufʿah*, *waṣiyyah*, covering debts). The underlying rationale is probably that the sea is a physical obstacle between people that imposes too much hardship to redeem certain rights or that traveling the sea is, at the baseline, only permissible for *ḥajj* and *jihād*. Although rights are established if these reasons are involved, they cannot be redeemed if the purpose of traveling the sea (as in trade) differs.

The following is a presentation of cases related to the sea with respect to shipment and transportation, contract work onboard a ship, shipwreck and liability, taxation, and missing persons. It is an initial introduction to the vast amount of available material on legal cases

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[25] As in Salimi, "Regulating Seafaring in Early Islamic Jurisprudence".
[26] Especially vol. 13.
[27] See Anke Iman Bouzenita, "The Division of the Seas in International and Islamic Law and the Concept of *Ḥarīm al-Baḥr*. A Comparative Fiqh Study", *Ilahiyat Studies* 12/2 (2021), 143-184.

related to the sea within the larger corpus of Islamic law in its Ibāḍī Omanī reading.

Shipment and Transportation

One of the earliest Omanī *fiqh* encyclopedias, *the Kitāb Jāmiʿ al-Faḍl ibn al-Ḥawwārī* (d. 278/891), discusses a number of detailed questions that concern the active trade across the Indian Ocean at the time. Many of these dicta relate to transportation at sea and hiring people and vessels for the purpose. The legal rules related to transportation at sea are integrated into discussions of transportation on land, with no particularities.

In the chapter on Hiring and the Likes (*kitāb al-ijārah wa-naḥwihā*), al-Faḍl ibn al-Ḥawwārī identified the case of a person who hires another to transport wood for him.[28] The wood is on the coastline. Afterward, the sea comes in because of (high) tide, and it carries the wood to its owner's door. In this case, the hired worker does not deserve a wage (as the wood was carried by the sea, not by him). If a person hires another individual to transport wood for a specified wage, the individual tosses it into the sea and rafts it until he reaches the house of the wood's owner, and the first person then denies paying the wage by claiming that he had hired him to transport the wood but that he had not actually carried it but tossed it into the sea and then rafted it, then the hired worker deserves the full wage, unless the water has harmed the wood. In the latter case, the contractor (*ajīr*) is fined for the loss but still receives his entire wage. The same applies to transportation on rivers.

If a contract is made to transport wood (or roots) to a specified place and the flash flood (sail) subsequently comes and carries it to the specified place, then the contractor is not entitled to any wages. Abū l-Ḥawwārī responded, in a quasi-educational manner, that the owner of the wood is told that the contractor may return the wood to its previous place so that he can transport it himself (and thereby deserves his wage); otherwise, he can (just) give him his wage. The same applies to wood that is carried by the tides to the owner's door and roots that

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[28] This teaching is mentioned on the authority of Abū l-Ḥawwārī. See Abū l-Ḥawwārī Muḥammad ibn al-Ḥawwārī al-Qarrī, *Jāmiʿ Abī l-Ḥawwārī* (Muscat: Wizārat al-Turāth wa-l-Thaqāfah, 1985), 3/68f.

have been carried by the flash flood (sail). As for the contractor who rafts the wood in the sea, he deserves his wage, however, he wants to transport it.[29]

On the authority of Abū ʿAbd Allāh (=Muḥammad ibn Maḥbūb al-Ruḥaylī), an important case in international shipment is discussed that has found its way into the major later *fiqh* encyclopedias:

> Who hired someone to transport himself and his merchandise from Basra to Sarnadīb (Sri Lanka) on board a ship, and he transports him until they reach Oman. The client then claims that he never went to Sarnadīb before and does not know it. He demands to have his goods disembarked and not to move out with him. Abū ʿAbd Allāh says: If he does not know the country, he has hired the transport of goods to, he may stay behind. He shall not be forced to move out with him, and his goods are being disembarked. The client shall pay him his wage in relation to the distance he transported him and his goods, according to the expertise of reliable specialists.
>
> I asked: What if the ship owner disputes him, saying his goods are at the very bottom of my ship and I cannot unload them without unloading the entire ship; while the other passengers on the ship dispute that, if he gets his goods unloaded, they will be delayed and then be stranded in Oman [due to the winds].
>
> Abū ʿAbd Allāh said: If the experts agree that there is a harm to the passengers of the ship, the (requestor) who wants to stay may stay in Oman, while his goods remain on board the ship. In this case, somebody will be authorized to receive the goods when they arrive in Sarnadīb.
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> He is also of the opinion that, if his goods remain on board the ship, the ship's owner guarantees the goods to their owner.[30]

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[29] Al-Faḍl ibn al-Ḥawwārī, *Jamiʿ al-Faḍl ibn al-Ḥawwārī* (Muscat: Wizārat al-Turāth wa-l-Thaqāfah, 1406/1985), 3/68f. Compare the same case in al-Kindī, *Bayān al-sharʿ*, 40/394: On the authority of Abū Muʿāwiyah (*masʾalah min al-ziyādah al-muḍāfah aḥsibu ʿan Abī Muʿāwiyah*); see also Abū Bakr Aḥmad ibn ʿAbd Allāh ibn Mūsá al-Kindī, *al-Muṣannaf*, ed. Muṣṭafá Ṣāliḥ Bājū (Muscat: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyyah, 2016), 12/617.

[30] Al-Faḍl ibn al-Ḥawwārī, *Jamiʿ al-Faḍl*, 3/79f. The same case is referred to in al-Kindī, *Bayān al-sharʿ*, 40/455f; al-Kindī, *Muṣannaf*, 12/607ff. See also Abū l-Mundhir Salamah ibn Muslim al-ʿAwtabī, *Kitāb al-Ḍiyāʾ*, ed. Sulaymān ibn Ibrāhīm

Contract Work on Board a Ship

The next case, interestingly, is about a worker who seems to have an agenda of neglecting work engagements:

> With reference to (*wa-min taʾlīf*) Abū Qaḥṭān,[31] as mentioned in the book of ʿAmr ibn Saʿīd,[32] about a man who had himself hired to work on sea in a vessel (*qārib*) for ten months for a specified amount of *dirham*s, and he (*al-ajīr*) usually works at sea. When he completed two months with him, he said: I am not able to work at sea, and I am worried for my life. He then moves on to another vessel to work there, and tells the owner: Your vessel is cracked, I am scared to drown. Can the ruler (the authorities) force him to complete his term?
>
> In case this worker is used to doing this work at sea, and he has seen that vessel and knows the nature of the work with it, the condition is binding on him, and he will be made to finish his term. If he claims that his vessel is damaged, the ruler needs to appoint two reliable experts in that particular work and boat damages, in order to confirm that it is damaged and that they fear for the safety of the workers.
>
> If they say that the damage is of a kind that does not allow it to be worked on, the ruler does not oblige him to work for the fear of perishing. In this case, he obtains the amount that is due for two months' work. And Abū ʿAbd Allāh used to act like this with the

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Bābzīz al-Warjalānī (Muscat: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyyah, 2015), 20/428; Khamīs ibn Saʿīd ibn ʿAlī ibn Masʿūd al-Shaqṣī, *Minhāj al-ṭālibīn wa-balāgh al-rāghibīn*, ed. Muḥammad Kamāl al-Dīn Imām (Muscat: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyyah), 6/509; see also Aḥmad Abū l-Wafāʾ, *Aḥkām al-qānūn al-dawlī wa-l-ʿalāqāt al-dawliyyah fī l-fiqh al-ʿIbāḍī* (Muscat: Wizārat al-Awqāf wa-l-Shuʾūn al-Dīniyyah, 2013), 2/294ff.

[31]   Abū Qaḥṭān Khālid ibn Qaḥṭān al-Ḥajarī al-Kharūṣī, from the village of Ḥajar in Wādī Banī Kharūṣ, is a contemporary of Abū l-Muʾthir al-Ṣalt ibn Khamīs al-Kharūṣī. A scholar of the 3rd century AH, he narrated from Muḥammad ibn Maḥbūb and his sons Bashīr and ʿAbd Allāh. He authored *Jāmiʿ Abī Qaḥṭān* and other books; see al-Saʿdī, *Muʿjam al-fuqahāʾ*, 1/175f; Custers, "Ibāḍis of the Mashriq", 1/172.

[32]   Not yet identified.

ḍarārī[33] who are hired to work on ships.[34]

Of particular interest here is also the consultation of two reliable experts to assess the possible amount of damage to the ship as a basis to decide the case – a procedure that reminds us of modern requirements and showcases the advanced level of jurisdictional decision-making at the time.

The author then specifies general terms and conditions on contracting, such as "hiring on a specified work, a specified time, and a specified wage, like a (riding) animal or a boat that carries a specified load to a specified place for a specified wage. All of these forms of hiring contracts are permissible by the agreement of the scholars."[35] This statement highlights how legal rules and cases related to the sea do not differ essentially from those on land.

Shipwreck and Liability

Cases of shipwreck must have been numerous in Omani history.[36] Some of these cases were preserved in the *fiqh* literature because they

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[33]   The term *ḍarārī* could not be identified and may be a copying mistake. What is meant is obviously servicemen.

[34]   Ibn al-Ḥawwārī, *Jamiʿ al-Faḍl*, 3/80f; see also al-Kindī, *Bayān al-sharʿ*, 40/456; al-Kindī, *Muṣannaf,* 12/608.

[35]   Ibn al-Ḥawwārī, *Jamiʿ al-Faḍl*, 3/83.

[36]   The oldest documented case of shipwreck occurred during the Imamate of ʿAzzān ibn Tamīm in the 3rd/9th century. Jumayyil al-Saʿdī mentions the case in his *Qāmūs al-sharīʿah*. Someone had hired a slave for 50 *dirham*s for pearl diving (*li-l-ghawṣ*). He did so for some time, then the ship wrecked, its people dispersed, and the slave escaped. The slave was then hired by other people for a specified wage and found pearls of immense value. Nāṣir ibn Sayf al-Saʿdī, "al-Baḥr min khilāl kutub al-jawābāt wa-l-nawāyil al-fiqhiyyah al-ʿUmāniyyah: al-nuẓum wa-l-ʿalāqāt wa-l-ḥawādith", *al-Awrāq al-ʿilmiyyah li-l-muʾtamar al-dawlī: Turāth ʿUmān al-baḥrī,* 23-25 October 2018, ed. Aḥmad ibn Ḥāmid al-Rubʿānī (Muscat: Sultan Qaboos University, 2020), 224; Jumayyil Khamīs al-Saʿdī, *Qāmūs al-sharīʿah al-ḥāwī ṭuruqahā al-wasīʿah* (Muscat: Maktabat al-Jīl al-Wāʿid, 2015), 27/337. The same case is mentioned in al-Kindī, *Muṣannaf,* 12/602. The *Qāmūs* mentions that the ship was met with strong winds on its way to India, which kept the ship from pursuing its journey. The owner of the merchandise wanted to take his property and reduce the wage, but the hired captain refused and insisted to either continue the voyage to India or take his full wage. The case was referred to Saʿīd ibn Bashīr

were submitted to scholars and judges at the time to solve questions of liability (*ḍamān*). The earliest mention of a shipwreck that I could identify in the Ibāḍī *fiqh* literature is in Abū Ghānim's *al-Mudawwanah al-kubrá*, and it also contains one of the few dicta regarding maritime law:

> If the ship of a sailor (*mallāḥ*) wrecks, and the food on it drowns due to a turmoiled sea or by the movement of the ship, while it was rented for transport, Ibn ʿAbd al-ʿAzīz used to say: He is liable. And al-Rabīʿ said: There is no liability on him in the water (the sea), especially as it is an enemy (has the status of an enemy).[37]

The *Jāmiʿ al-Faḍl* refers to the authority of Abū Saʿīd ibn Muḥammad[38] in "Another chapter on Hiring" concerning a shipwreck in the open sea:

> If the owner of the goods said, whoever can retrieve part of it, it belongs to him, and a person retrieved of the goods what he could. What if the actual owner steps down from his saying and claims his possession? He said: Whoever retrieved it is given a comparable wage. And if he said, 'Whoever retrieves something may keep half of it', he is bound by this condition he set up for himself.[39]

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al-Ṣubḥī who decided that the hired worker deserved his full wage in any case; see al-Saʿdī, "al-Baḥr min khilāl kutub al-jawābāt", 225.

[37]   Abū Ghānim Bishr ibn Ghānim al-Khurāsānī, *al-Mudawwanah al-kubrá*, ed. Muṣṭafá ibn Ṣāliḥ Bājū (Muscat: Wizārat al-Turāth wa-l-Thaqāfah, 2007), 2/498. There is very similar wording in al-Kindī, *Bayān al-sharʿ*, 40/472 (*min al-ziyādāt al-muḍāfah min Kitāb al-Ashyākh*); see also ʿĀmir ibn ʿAlī al-Shammākhī, *al-Īḍāḥ* (Muscat: Wizārat al-Turāth al-Qawmī wa-l-Thaqāfah, 1999), 4/30 (*li-anna l-māʾ ʿadū*); see also Abū l-Wafāʾ, *Aḥkām al-qānūn al-dawlī*, 2/348. See also al-Saʿdī, *Qāmūs al-sharīʿah*, 51/308–309 (*li-anna l-baḥr lā yamlik*), cf. Abū l-Wafāʾ, *Aḥkām al-qānūn al-dawlī*, 2/350.

[38]   This authority cannot be clearly identified. In his *Jāmiʿ al-Faḍl*, Ibn al-Ḥawwārī refers to Abū Saʿīd Muḥammad al-Kudamī as Abū Saʿīd, which could be a mistake in the script or a reference to a different authority.

[39]   Ibn al-Ḥawwārī, *Jāmiʿ al-Faḍl*, 3/109; see also al-Kindī, *Bayān al-sharʿ*, 40/379. Compare the same case in al-Kindī, *Muṣannaf*, 12/650, on the authority of Saʿīd ibn Maḥraz, likely the son of the same scholar mentioned in *Jāmiʿ al-Faḍl*.

In the chapter on the liability of the hired worker, *Jāmiʿ al-Faḍl* (referring to the dicta of Abū ʿUthmān[40]) discusses the case of a man "who hired a ship and loaded his goods, and then stayed as long as Allah wanted him to stay, until the season for ships to disembark is over. He (the client/) then tells the ship owner to unload his goods as he does not want to move out, but rather intends to stay. If the delay was caused by the owner of the goods, he (the ship owner) may disembark and continue his journey, and he (the owner of goods) is bound by (the terms of) his hiring. And if the ship owner caused the delay and kept him until the ship had already left, the storm (*al-khabb*) rose, and the danger of the ocean intensified? In this case, the owner of the goods may unload his goods, and he is not bound to pay the wage."[41]

In another chapter, *Jāmiʿ al-Faḍl* specifies the following:

> About a man who hired another to transport him on his ship to Aden, then the ship wrecks on the way, and he returns and builds another one? He has to transport him on the ship that he built, unless he had specifically hired him to be transported on that (wrecked) ship. In this case, he does not have to transport him. He then has to return the amount of the wage that is left for the transport to Aden.
>
> I said: And if he gets lost and wants to return to where he started from, and tells the passengers who hired him, return with me, until the wind comes back, then I will transport you, and they dislike it, he said: He has to carry them from the position they have reached once the wind returns to where they want. And if they want to return with him, he does not have to return any of the wages they paid. And if he does not want to transport them, while they had told him to transport them, and they want to take part of the wage back that corresponds with the missing distance, they can do so.[42]
>
> If a group of people has hired a worker to carry them onboard a ship to a known country, and he then does not want to transport

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them, can he be compelled to transport them and himself on the sea at risk? He said, yes, if he knows the country that they have hired him to transport them to. Moreover, if he does not know it, then he is not obliged to transport them.[43]

Jāmiʿ Abī l-Ḥawwārī also discusses, in some detail, questions of trading in jettisoned goods. The dictum refers to the authority of the 4th/10th-century scholar Abū Saʿīd al-Kudamī and is therefore a later addendum.

> And on the authority of someone else (*wa-min ghayrihī*; this expression indicates that the following dictum is an addition to the original text). Abu Saʿīd –may Allah have mercy on him– was asked about the Muhra, if they arrive in Adam with their goods and say those stem from shipwrecks. And some of them say: He dived for it (the goods) by order of the owners of the boat for a share of the goods. Others say: It was transported to Adam for them (the owners). Others again say: It is stranded good (*luqṭah*) from the coastline. He said: It is permissible to buy from them, as long as it (the goods) cannot be allotted to the possession of a particular person and they could make this claim later.[44]

How can we distinguish between similar jettisoned goods?

> On the authority of Abū l-Ḥawwārī, if a ship owner transports dates and goods that resemble each other, then the ship wrecks at sea, and some of the goods are lost, while others stay in his hands, and the labels of ownership get mixed up, so that not every person can

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[43] Ibn al-Ḥawwarī, *Jāmiʿ al-Faḍl*, 3/177. Al-ʿAwtabī mentions in his *Ḍiyāʾ* a number of similar case studies that are reminiscent of the busy trade relations between Oman and China: "Who hires a man from the people of Basra to China for a specified amount of *dirham*s, and when they were on the way, something happened to them that prevented them from continuing their journey to China, until the time where ships can sail was over, then the hired worker only deserves to be paid to wherever they reached, that is in case something happened that was out of their control. If the ship owner caused the delay without an excuse, the hired worker deserves the full pay." (20/431). In a variation of this question, al-ʿAwtabī discusses the case of a hired worker on a ship from Sindān (in India) on condition that he works on the ship until he reaches Aden. However, wind and waves divert the ship from Sindān to Oman (20/427).

[44] Abū l-Ḥawwārī, *Jāmiʿ Abī l-Ḥawwārī*, 2/107.

have his belongings returned. What is the procedure in this case? According to your description, the owners of these goods should come to an agreement amongst themselves and find a compromise in this regard. If this is not the case, the goods are held back until they agree on something, or they are distributed among the poor. This is so because it may also be said with regard to the *Raqīb* (supervisor) who guards people's grains, then a storm rises, and the grains get mixed up, and the *Raqīb* does not know which grain belongs to whom. The owners of the grains do not recognize their grains themselves, so some of the scholars say, if the owners can come to an agreement; if not, the grains are distributed among the poor. We like to follow this example with regard to the goods. If they agree, otherwise, the goods will be withheld forever until they agree or distribute them among the poor."[45]

This case study provides an explicit example of the usage of *qiyās*, that is, analogy, from land to the sea. In the case of known ownership, *Jāmiʿ al-Faḍl* rules that "Property from the villages that gets flooded into the sea, as well as date palms, and more, and it is known to be in someone's possession; the rule on these goods is that they belong to their owners, and entering the flash flood (*al-sayl*) and the sea does not annihilate their ownership, and Allah knows it best."[46]

Taxation

Zakāh and *ʿushūr* are, given the economic importance of sea trade in the Indian Ocean, a pervasive issue in the Omanī *fiqh* compendia. Most striking to the reader is the common thread in these *fiqhī* discussions that *any* taxation in terms of *zakāh*, *ṣāfiyah* (*kharāj*), *ʿushūr*, and even *jizyah* is to be collected by the authority – here, the Imām of Oman and his agents. This must follow one condition: the state provides protection (*ḥimāyah*), be it for the Muslims originally residing in Oman, Muslims of other origins, *dhimmī*s, and even non-Muslims entering the port as tradesmen. Protection extends across the country and across trade routes. *No taxation without protection* is the common denominator of many cases. The emphasis on this point in the discussion also sheds light on securing the trade routes during this

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[45]   Abū l-Ḥawwārī, *Jāmiʿ Abī l-Ḥawwārī*, 2/308f; al-Kindī, *Bayān al-sharʿ*, 6/111.
[46]   Ibn al-Ḥawwārī, *Jāmiʿ al-Faḍl*, 2/125.

time: the Omanī fleet showed a strong presence. Numerous case studies on piracy and how to handle it testify to this.[47]

The first Imām of Oman, al-Julandá ibn Masʿūd (d. 134/752), sent a question to Abū ʿUbaydah and Ḥājib,[48] whose answer is preserved in al-ʿAwtabī's *Ḍiyāʾ*: "You mentioned that you are taking the *zakāh* of people coming in from the sea, while there is a distance of three or two days between you and you do not protect them. Be informed that we do not like that you take anything from them while you do not protect them."[49]

We may state that although some differences of opinion on certain branches of the legal cases are reported, the practices described in the early *fiqh* encyclopedias mirror the reality practised during the Imamate in the 2nd-3rd/8th-9th centuries.

Zakāh on Goods Coming from the Sea (*Zakāt al-māl al-qādim min al-baḥr*)

The following excerpt from *Jāmiʿ Abī l-Ḥawwārī* seems to be the oldest examination available in print, chronologically followed by a very detailed discussion in Ibn Jaʿfar al-Izkawī's *Jāmiʿ* (of the same period), which includes details on the exact procedure of paying *zakāh*/taxes upon arrival and Ibn Jaʿfar's criticism of it. Ibn Jaʿfar's dicta are reproduced in the literature (*Bayān al-sharʿ*, *Muṣannaf* et al.). I focus on the excerpt in *Jāmiʿ Abī l-Ḥawwārī* first, with some additional detail from his contemporary al-Izkawī. It seems that Abū l-Ḥawwārī's text was not copied in subsequent encyclopedias, although the corresponding cases show the same content.

> On incoming capital from the sea, and the Muslim (owner) does not hail from Oman and brings merchandise from the lands of *ahl al-ḥarb* of the polytheists, with capital to Oman. If the incoming person sells it, the Imām of Oman or his representatives take the amount of *zakāh* that has to be levied from it (2.5 %) if it is among the goods eligible for *zakāh*, or if he has transferred it to a different

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47   See, for instance, Abū l-Ḥawwārī, *Jāmiʿ Abī l-Ḥawwārī*, 1/95; al-Kindī, *Bayān al-sharʿ*, 69/188ff; al-Kindī, *Muṣannaf*, 8/191–198.

48   This was possibly Ḥājib ibn Mawdūd Abū Mawdūd al-Ṭāʾī al-Azdī, a scholar of the second century AH; see al-Saʿdī, *Muʿjam al-fuqahāʾ*, 2/132.

49   Al-ʿAwtabī, *Kitāb al-Ḍiyāʾ*, 9/305.

good *zakāh* is taken from, and this is the overweighing dictum. And some say: No *zakāh* needs to be paid unless the lunar year (*ḥawl*) has passed by while he is in Oman with his merchandise. In case he hasn't sold it, or he sold a part of it that is less than the minimum amount (*niṣāb*) for paying *zakāh*, and he leaves Oman, he (the Imām) does not take the *zakāh* from it unless the year has passed over it in Oman. The same applies if he arrives with unminted gold or silver; it has the same status as the merchandise with regard to taking *zakāh* from it, and there is a difference of opinion on it as well. With regards to *dirham*s and *dīnār*s, the *zakāh* is only taken once the lunar year has passed by in Oman and the complete *niṣāb* has been reached. In case the arriving person came from a Muslim country, he only pays *zakāh* once the lunar year has passed in any case.[50]

If he came from the land of *ahl al-ḥarb* from the polytheists, while he (originally) hails from Oman, but he had travelled from Oman to that place and then returned to Oman, he is treated like the people of Oman with regard to the *zakāh*, and every place (*dār*) of those who are not in obedience to the Imām of the Muslims is called *dār al-ḥarb*. If the merchandise of this Muslim who arrived with it from *ahl al-ḥarb* of the polytheists is beneath the minimum amount (*niṣāb*) of *zakāh*, *zakāh* is not being levied from it, and the money (*darāhim*) he brought with him in addition to his merchandise is not subject to *zakāh*, unless it is unminted gold or silver, and it will be allotted, if he sells it, to the value of his merchandise, and *zakāh* is taken from it until he sells some of it, according to some Muslims. As to the dictum: It is only deducted after the lunar year has passed; and also if he travels to the land of *ahl al-ḥarb* from the polytheists after he had sold his merchandise, *zakāh* was taken from it and he then returned to Oman with his merchandise, then *zakāh* is only taken from it once every lunar year according to the practiced teaching, and this in case the incoming person is not from the people of Oman.

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[50]   This is an important distinction, as a differentiation is made not only between Muslims of different origins but also regarding the origin of goods, whether from a Muslim country or a non-Muslim country.

> If that person who came from Oman after he had sold his merchandise and *zakāh* was taken from it stayed, he does not have to pay *zakāh* on it afterwards, unless the lunar year has passed since he had sold and submitted the *zakāh*, regardless of whether the sale took place when he arrived, or after the lunar year had passed. If he has not sold, and the merchandise is still with him, the time to deduct the *zakāh* is once the lunar year has passed in Oman.[51]

In another case study, the *Jāmiʿ* states,

> If the *mushrik* arrives from the land of war (*arḍ al-ḥarb*), from the land of the polytheists, to the port of the Muslims? Some Muslims say: ʿ*Ushr* is taken from him. Others say: What is taken from him is like what their king takes from the Muslims if they arrive there; and every dictum of the Muslims is allowed (to be implemented). As far as I remember, this applies only if the Muslims protect the sea, and Allah knows best. And if the *mushrik* arrives with merchandise from other than the territory of the people of *shirk* to the land of the Muslims? Some say: ʿ*Ushr* is taken from his wealth. Others say: It is not taken from him, unless he turns it in out of his free will, and Allah knows best.[52]

The lengthy chapter on *zakāt al-baḥr* in al-Izkawī's *Jāmi*[53] may confirm the importance of sea trade and the details given to questions of taxation at the time. The text has been –with minor variations and some additions– rendered in both al-ʿAwtabī's *Ḍiyāʾ* (9/305ff), al-Kindī's *Bayān al-sharʿ* (19/303-310, 311-320), and al-Kindī's *Muṣannaf* (5/380ff), all from the 5th-6th/11th-12th centuries. The text is complementary to Abū l-Ḥawwārī's text with additional detail while preserving the same overall tone.

The practical detail mentioned concerning the exact procedure of taxation is striking. Al-Izkawī gives us a picture of the protocol that may have been in place in the coming centuries.[54] He states that

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[51] Abū l-Ḥawwārī, *Jāmiʿ Abī l-Ḥawwārī*, 1/307f.

[52] Abū l-Ḥawwārī, *Jāmiʿ Abī l-Ḥawwārī*, 1/309.

[53] Abū Jābir Muḥammad ibn Jaʿfar al-Izkāwī, *Jāmiʿ Ibn Jaʿfar* (Muscat: Wizārat al-Turāth wa-l-Thaqāfah, 2018), 2/113–125.

[54] Taxation was carried out in Sohar in the first 6 centuries AH; cf. al-Saʿdī, "al-Baḥr min khilāl kutub al-jawābāt", 214.

> The first thing *ṣāḥib al-sāḥil* in Sohar, who takes the *zakāh* of those
> coming in from the sea, does is to send an *amīn* (secretary) once he
> hears of the arrival of a ship. He documents all slaves and goods
> belonging to anyone and the wealth of every person on a paper in
> his name. He then passes this document to the owner of the vessel
> and asks him to proceed to the *ṣāḥib al-sāḥil* wherever he is, give
> him the document and write down his possessions. If the owner of
> the goods is a foreigner, he himself assigns a patron (*kafīl*) to him
> until he sells his goods, returns it to the patron, and if he sells it, his
> *zakāh* is taken. When his goods are transported, he comes to *ṣāḥib
> al-sāḥil* so that he may see him and allow him to return to the sea.

Al-Izkawī criticizes the procedure as too strenuous for the owner of
the merchandise:

> Maybe his (*ṣāḥib al-sāḥil*'s) home is in ʿAwtab, and he needs to
> transport himself and his goods at peril, or he gets into a strong
> wave to get to *ṣāḥib al-sāḥil,* who is in the garrison (*al-ʿaskar*) or
> wherever he is, and then he needs to return to his house. Maybe he
> is a stranger and cannot find (afford) a patron, so that he and his
> goods will remain stranded until a patron arrives.

Al-Izkawī discussed the issue with Sulaymān ibn al-Ḥakam,[55] who
answered: "The governor (*wālī*) keeps him in his presence and orders
a patron for him. If he cannot find any, he writes down his name and
lets him go, and maybe Abū Marwān intended that otherwise the
zakāh would be lost. Once the ship owner sets his foot on land, and
everybody gets mixed up, and they are strangers; then who is going to
identify their goods or themselves and turn them in to the governor?"
He goes on to state that only the Wālī on the coast of Sohar has the
authority to collect the *zakāh*. In the time of al-Muhannā, he reports, it

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[55] Abū Marwān Sulaymān ibn al-Ḥakam ibn Bashīr died before 260 AH/874 AD, and
he was a reputed scholar and *qāḍī* with links to Muḥammad ibn Maḥbūb; see al-
Saʿdī, *Muʿjam al-fuqahāʾ*, 2/138. Al-Sālimī's *Tuḥfah* mentions him as *wālī* of Sohar
at the time of al-Muhannā (al-Sālimī, *Tuḥfat al-aʿyān*, 151); al-Ṣalt terminated him
whereupon he returned to Nizwá and stayed there until his death (al-Sālimī, *Tuḥfat
al-aʿyān*, 161).

happened that other instances took the *zakāh*, and the Imām returned that authority to *ṣāḥib al-sāḥil*.[56]

Al-Izkawī also indicates that the sea does not in any way impact the legal rule:

> Know that *zakāh* on the Muslims' possessions that come from the sea is like the *zakāh* on their possessions on land; the sea does not introduce any aspect that would change it from its due date, and it neither increases nor decreases what Allah has made obligatory; but those possessions that are brought to the people of Oman from the land of *shirk* carry some difference of opinion.[57]

Regarding the possessions introduced to Islamic land from the lands of war (*bilād ahl al-ḥarb*), the Muslims (here, the Ibāḍīs) are of the opinion that tax merchandise imported from the polytheists to Islamic lands should be taxed just like the ruler of those lands taxes Muslims on their merchandise. With respect to the people of Iraq and other Muslims from Islamic lands who brought merchandise from non-Muslim lands and then stopped in Oman and traveled to Iraq or Persia, the Muslims do not see that *zakāh* should be taken from their wealth, even if it is due. This is so in case they have not been protected on their merchant route from the beginning to the end. *Ṣadaqah* (*zakāh*) is not levied on those who have not been protected for a year. However, if the wealth of those foreigners remains in Oman for a year, *zakāh* is to be levied on it. If they come to Oman with capital in the form of gold or silver, they confirm that *zakāh* has not been levied on it for years and that they are strangers (non-Omanīs) and did not sell them (possessions), then it is not levied. In this case, the Muslims see that they have an option; if they want to pay them their *zakāh*, then they will accept it from them, and if they do not do it out of their own will, then they are not forced to deduct their *zakāh*.[58]

Al-Izkawī mentions, on the authority of Abū Marwān, that for every 20 *dīnār*s, not less than one *dīnār* should be taken (as *ʿushr*, which amounts to half of *ʿushr* or 5%). Otherwise, he emphasizes the

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[56] Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/120, cf. al-Saʿdī, "al-Baḥr min khilāl kutub al-jawābāt", 213.

[57] Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/112; al-Kindī, *Muṣannaf*, 5/380.

[58] Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/113f; al-Kindī, *Muṣannaf*, 5/380; compare the treatment of *zakāt al-baḥr* in al-Kindī, *Bayān al-sharʿ*, 19/303-310.

principle of reciprocity; if their king takes one dinar out of two, then we take the same amount from them.[59]

To complete the picture, in the chapter on the *distribution of zakāh funds* (according to the categories mentioned in Q 9:60), the *Muṣannaf* explicitly states that *ṣadaqāt* (here: *zakāh*) of the sea and the coastline is not permissible to be levied without sufficient protection and defense.[60] It then mentions (implicitly) that protection of the coastline is financed from the category of (*sahm*) *fī sabīl Allāh*. Al-Izkawī details that the purpose of the use of *ʿushūr* taken from the *ahl al-ḥarb* is the same as that of *jizyah* and *ṣawāfī* (*kharāj*).[61]

Zakāh was typically levied on the merchandise once the merchant set foot on the Omanī coastline. The *Muṣannaf* discusses whether a merchant who is on the Omanī coastline (*sawāḥil ʿUmān*) under Muslim rule has to pay *zakāh* on capital (*raʾs al-māl*) that is currently on the sea or only on what is in his hands. The *Muṣannaf* reports a difference of opinion in this case.[62] Abū l-Ḥawwārī states concerning *zakāt al-fiṭr* that the head of the family has to pay this duty for dependent family members if they are on the other side of the ocean.[63] The sea is not considered a spatial factor that impacts the individual obligation in this case.

In contrast to the preceding case, the sea is accounted for as a spatial factor of differentiation in implementing the Islamic legal rule here. In a lengthy discussion in al-Izkawī's *Jāmiʿ*,[64] as the dictum of Abū Sulaymān,[65] the case is contemplated of a man who gives merchandise (such as clothes) to somebody else so that he may purchase a servant for him. The time for deducting *zakāh* then arrives, and the person

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[59]   Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/118.

[60]   Al-Kindī, *Muṣannaf*, 5/185; cf. al-Kindī, *Bayān al-sharʿ*, 19/261, 263.

[61]   Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/119.

[62]   Al-Kindī, *Musannaf*, 5/189.

[63]   Abū l-Ḥawwārī, *Jāmiʿ Abī l-Ḥawwārī*, 1/300.

[64]   Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/112; cf. al-Kindī, *Musannaf,* 5/189.

[65]   Abū Sulaymān has yet to be identified. Al-Izkāwī mentions an Abū Sulaymān Ḥadād ibn Saʿīd al-Nizwī (5th/11th century), and it may be the same authority; see al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/114. The latter was *qāḍī* and *faqīh* from the Wilāyah of Nizwā; he was judge in Sohar in the era of Imām Rāshid ibn Saʿīd. Because of the time gap, it could either be a different scholar, or he is mentioned in a later redaction of the book.

(who was supposed to buy the servant) is absent behind the sea, and the client does not know whether he has purchased what he has been commissioned with or not. Therefore, he deducts his *zakāh* money but postpones paying *zakāh* on that particular merchandise. The man then returns, having already purchased what he was commissioned to buy. He asks him when exactly he purchased the servant. He is then informed that it may have been before or after he deducted the *zakāh*. Should he take his word for granted, regardless of whether he is trustworthy or not? And if he has purchased a servant boy or girl with this merchandise, and the owner of the merchandise wanted the slave girl to work in his house, should he immediately (today) pay for the value of the servant boy or for his entire wealth? The answer concludes that he should pay his *zakāh* on the wealth that he holds in his hands, not on what is absent, as he cannot be sure about whether that wealth is intact or has perished. Once his wealth returns to him, he should deduct the *zakāh* from it. Whatever he owns of labor slaves and has been purchased for him before *zakāh* was due, no *zakāh* needs to be paid; but he has to pay it on his capital for trading. The statement of the purchaser of slaves and slave girls is considered (regarding the time of purchase).

What about wealth that has been sent to the sea (for trading), and it takes a long time to come back to him? How is *zakāh* to be deducted from this wealth? The *Muṣannaf* quotes differences of opinion: *Zakāh* needs to be paid for one year, for every single year that has passed, or for every year that has passed minus the *zakāh* that was due.[66]

An important and pervasive aspect of the Ibāḍī school is mentioned in al-Izkawī's *Jāmiʿ*. What about taxation in the absence of the rightful Imām (*al-imām al-ʿādil*)? On the authority of Abū Marwān, the Wālī of Sohar in the $2^{nd}/8^{th}$ century stated the following:

> If their authority has perished and goods are brought to them during a time of absence of authority, it is preferable that the same amount is taken from these goods that has been taken previously by their Sultan. And if goods of the *ḥarbī* polytheist are brought (to Oman), and there is no rightful Imām who would tax it in Oman; if they tax the goods of the Muslims even if there is no authority (Sultan), one of the Muslims who is in charge of them taxes them in the province

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[66]   Al-Kindī, *Muṣannaf*, 5/194.

(*miṣr*) they approach from Oman if there is no Imām, and he allots what he takes from them to the poor Muslims, and the state's strength (*ʿizz al-dawlah*) and Islam and it will be fine so Allah wills. And the same applies, in my opinion, to the *jizyah* of *ahl al-dhimmah* in Oman if there is no authority.[67]

Missing Persons (*al-Mafqūd fī l-baḥr*)

Cases of missing persons and their treatment in the *fiqh* encyclopedias clearly show a relation to the sea. Ibn Jaʿfar defines this as follows: The missing person is the one who is on board a ship, the ship wrecks, and it is unknown whether he was saved or drowned.[68] The *Muṣannaf* specifies, on the authority of Muḥammad ibn Maḥbūb, that "The missing person is the one who was on board a ship, and the ship wrecks at a place, and it gets destroyed, or who falls off a ship in the sea or war and he is left behind".[69] The possibly earliest definition of the missing person can be traced back to al-Rabīʿ's *masāʾil*, who defines the *mafqūd* as "a man who travels on board a ship, the ship wrecks, and he is not seen after that, neither dead nor alive; or he gets caught up between the lines in war, or there is heavy fighting that then wears off, and he is not seen dead or alive."[70]

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[67] Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 2/118. Compare the description of events in al-Sālimī's *Tuḥfah* (106): Al-Faḍl ibn al-Hawwārī was asked about the case of Shabīb, and he mentioned that he was appointed as tax (*zakāh*) collector in the villages; "and when the Sultan came, he left it and distanced himself (*iʿtazala*). I said: Maybe his distancing was in a year where no tax was collected from the villages, and he only collected taxes when he was able to protect (the villages) and whenever he was able to protect them, he collected taxes to the possible extent, and when he could not protect them, he refrained from doing so. Abū l-Hawwārī is quoted to have confirmed allegiance to Shabīb and his followers and a disassociation to whoever disassociates with him.

[68] Al-Izkāwī, *Jāmiʿ Ibn Jaʿfar*, 6/337.

[69] Al-Kindī, *Muṣannaf*, 13/462.

[70] Al-Ḥasan ibn ʿAlī ibn Ḥumayd al-Bādī, *Dhikr masāʾil mimmā suʾila ʿanhu al-Rabīʿ ibn Ḥabīb* (Muscat: College of Sharīʿa Studies, Undergraduate Thesis, 2019), 85.

The *Jāmiʿ al-Faḍl* (on the authority of Maḥraz ibn Muḥammad[71]) mentions a real-life case in this context:

> A lady came to ʿAbd al-Raḥmān ibn al-Ḥasan, and three men had a case against her, everyone claiming he was her husband. The judge asked her, and she confirmed that they were all her husbands, and he asked her about the story. She said: The first one married me and travelled the ocean, and I waited for some time; then his obituary reached me, and I waited for two years or more. Then someone else married me, and he travelled the sea. I stayed for some time, then his obituary reached me, and I waited for some time. Then the last one here married me. The judge then required evidence. She said: I had the evidence, but maybe (the witnesses) and the slaves are all dead now. ʿAbd al-Raḥmān told her: Choose whom you like among them, and she chose the last one. He forwarded a proof (of being married), and they accepted the verdict and died.[72]

The sea is given transformative consideration in the following cases. Abū l-Ḥawwārī indicates that one who is absent on the sea does not have his share of a *waṣiyyah* (testament) allotted, unless he moved out for *ḥajj* or *jihād* (which are seen as legitimate reasons to travel the sea).[73] Along the same line of argumentation, *Jāmiʿ al-Faḍl*[74] refers to the dictum of Abū Marwān regarding the right to *shufʿah* (preemption) of a person who travelled the sea and has a right to preemption in land (*mushāʿ*):

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[71] A Maḥraz ibn Muḥammad is yet to be identified, but he is mentioned as a scholarly authority in Ibn al-Ḥawwārī, *Jāmiʿ al-Faḍl,* 3/109, 2/107 and al-Kindī, *Muṣannaf,* 19/601.

[72] Ibn al-Ḥawwārī, *Jāmiʿ al-Faḍl,* 1/16f. The same case is mentioned, on the same authority of Maḥraz ibn Muḥammad, in al-Kindī, *Muṣannaf,* 19/601; al-Kindī, *Bayān al-sharʿ,* 47/259.

[73] For a discussion of the legal rule on the absent person at sea or behind the ocean (*al-ghāʾib*), see al-Kindī, *Muṣannaf,* 9/385ff; 16/213; see also 13/221: a legacy (*waṣiyyah*) of relatives is not forwarded to an absent person who travelled the sea and his place is unknown.

[74] Ibn al-Ḥawwārī, *Jāmiʿ al-Faḍl,* 1/245; identical to al-Kindī, *Muṣannaf,* 14/642.

If the possession in question comes under rights,[75] there is no right to preemption if he travelled by sea and did not intend residence (across the sea). If he is a resident (on the other side of the ocean), he does not have a right to preemption. If he is traveling to Mecca as a pilgrim and does not reside there, he needs to stay in Mecca for a full lunar year; then, he will have his preemption right to land (*mushā*ʿ).

On someone else's authority, it was mentioned that he does not have a right to preemption other than in *mushā*ʿ if he has left the province (*miṣr*). Others said that he does not have this right unless he travelled for *ḥajj*, as *ghāzī* or *mawālī*. Still others said that he does not have this right unless he travelled for *ḥajj* or as *ghāzī*.[76]

There may be various considerations in the derivation of this legal rule. Apparently, some scholars considered only *ḥajj* and *jihād* as legitimate reasons for traveling by sea;[77] therefore, individual (financial) rights need to be guaranteed in this case only or, by extension, to the *mawlā* who is obedient to his master. Another reason could be the lack of (Omani) state authority on the other side of the sea or the hardship involved in following someone to redeem his benefits. The sea is considered a spatial factor in all of these cases but with different levels of argumentation.

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[75] [*ḥaqāʾiq*: according to the preceding explanation: *wa-l-ḥaqāʾiq mithl al-ṭarīq wa-l-sāqiah*]

[76] Al-Kindī, *Muṣannaf*, 14/642; cf. 14/643 and the son's right to preemption. See also: "If someone bequeaths date palms to the poor in his area, only those people who are present at the time of distribution of the dates will receive their share, whoever travelled the sea will not receive his share unless he travelled for military purposes (*ghāzī*) or *ḥajj*"; al-Kindī, *Muṣannaf*, 12/129. "If someone has debts with a person who travelled the sea, he does not have to follow them to cover his debts, unless they ask him to do so. If he declines in that case, he is sinful. Unless he does not have the means to cover his debts, he must follow them wherever they are and pay his debts once he finds the means after they have left"; al-Kindī, *Muṣannaf*, 12/381. He mentions a similar distinction concerning divorce (al-Kindī, *Bayān al-sharʿ*, 34/52): if someone intends to travel the sea, his wife can be given the right to divorce upon her request, unless he is a warrior.

[77] The *Muṣannaf* records the initial scholarly discouragement of travelling the sea to earn a living, other than for *ḥajj* and jihād, and it underlines the superior role of jihād at sea and protection of the coastlines; see al-Kindī, *Muṣannaf*, 8/38ff.

Conclusion

The earliest available *fiqh* compendia scrutinized for this study offer a variety of *aqwāl* (dicta) concerning Islamic legal rules related to the sea. The practical content and the personal involvement (as *qāḍī*, *wālī*, military leader) of these scholars, whether they were the authors of or scholarly references in the compendia, offer insight into some of the maritime rules practiced in the 2nd-3rd/8th-9th centuries and later. The main point of reference for the rules related to the sea is the early Imamate in Sohar with its scholarly authorities, among them Muḥammad ibn Maḥbūb, al-Waḍḍāḥ ibn ʿUqbah, Abū Marwān, Abū Muʿāwiyah ʿAzzān ibn al-Ṣaqr, Abū Qaḥṭān, ʿAmr ibn Saʿīd, Abū ʿUthmān, Sulaymān ibn al-Ḥakam, *Kitāb al-Ashyākh*, and finally al-Faḍl ibn al-Ḥawwārī, Abū l-Ḥawwārī, and al-Izkawī themselves. Compared to later compendia (here mainly *Bayān al-sharʿ*, *al-Muṣannaf*), the discussion of many questions at hand was more detailed, and it referenced material of the early centuries that may not have been preserved in independent sources.

The available sources do not leave any doubt that what was implemented in the Indian Ocean and its littoral concerning legal rules (in trade, shipment, taxation, collision, found items, personal status, and many more) under Omanī control was nothing but the detailed Islamic legal rules. The earliest Ibāḍī *fiqh* encyclopedias testify to this. The implementation of these rules necessitated state authority within the areas under the rule of the Imām and along the trade routes. The general guidelines on any type of taxation, with its principle of *no taxation without protection,* had ample repercussions not only on maritime law and the taxation of incoming merchandise, as detailed herein, but also on *zakāh*, *jizyah,* and *kharāj* (*ṣāfiyah*).

State authority for the implementation of legal rules was important enough to discuss its absence, as some cases show. It is therefore to be expected that the very same Islamic legal rules that are discussed in the *fiqh* encyclopedias were implemented wherever the state (Imām) was strong enough to implement them, while provisions were taken for their implementation in case of the absence of state authority, as the discussion on taxation revealed.

If we were to extend this idea to other Muslim political entities along the coastline of the Indian Ocean, we would have a case for a strong presence of the Islamic legal rule in the area. More comparative

research on the legal dicta of Muslim scholars of different legal schools along the Indian Ocean littoral (Africa, India, and Southeast Asia) is needed to investigate this case.

The maritime legal dicta themselves are generally discussed within the relevant chapters (of transportation, taxation, and *shufʿah*) and are sometimes discussed explicitly in analogy (*qiyās*) to legal rules on land. In some instances, scholars would explicitly state that the sea is not considered to be a changing factor in the rule, while in some cases, it obviously was considered to be one. In cases related to *shufʿah*, *waṣiyyah*, and covering debts, the sea may have been seen as too difficult an obstacle, that is, too dangerous or time-consuming to overcome, or the reason for traveling the sea was not recognized as legitimate in the first place.

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AN ANALYSIS OF THE DECLINE AND FUTURE OF CONSERVATIVE JUDAISM

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Abstract

Compared with the Reform and Orthodox movements in the United States, Conservative Judaism has experienced the tension between tradition and change much more intensely. The "middle way" ideal has inevitably left the Conservative movement open to criticism in every period. Conservative Judaism, which remained the most popular movement in the United States from the last quarter of the 19th century –when it began to evolve into an institutional dimension– until approximately the end of the 20th century, is currently experiencing a period of crisis.

This article, which aims to reveal the main reasons that played a role in the decline of the Conservative movement and to develop a framework for its future, examines both of these areas with reference to the founding ideology of the movement. Within this framework, the research has been conducted in the context of the vision of Judaism advanced by the movement's founding leader, Solomon Schechter (1849-1915). This main groundwork performs a critical function in helping to compare the idealized Conservative understanding of religion with the current state of the movement, thus helping to identify problematic points and to make forward-looking comments and predictions.

The Conservative movement has not been able to evaluate the ongoing process of decline as part of a comprehensive research initiative from within the movement itself. It is hoped that this article will contribute to the literature as a critical study. Regarding the future of the movement, this article defends the thesis that establishing a close relationship with Orthodox Jews who have certain characteristics can play a vital role in the Conservative movement's recovery from its present state of crisis.

Key Words: History of religions, Conservative Judaism, intellectual movements, Solomon Schechter, Catholic Israel, institutional crisis, Modern Orthodox Judaism, Open Orthodoxy

Introduction

Until approximately the last quarter of the 20th century, Conservative Judaism was the most popular movement among American Jews. However, as many statistical studies in recent years have shown, Conservative Judaism has experienced a clear downward trend. Among Conservative Jews, a shift toward other movements – particularly Reform Judaism– can be observed. According to the National Jewish Population Survey (NJPS) 2000–2001, approximately 35% of Jews who grew up in the Conservative movement described themselves as Reformist and 9% as Orthodox.[1] In a study conducted by the Pew Research Center (PRC) in 2013, the share of Conservative Jews among American Jews was 18%, the share of Reform Jews was 35%, and the share of Orthodox Jews was 10%.[2] In the last twenty-two years, one-third of Conservative synagogues have closed.[3] Hence,

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[1] Jack Wertheimer, "Judaism and the Future of Religion in America: The Situation of Conservative Judaism Today", *Judaism* 54/3-4 (2005), 131.

[2] Pew Research Center (PRC), "Jewish Americans in 2020" (Accessed August 29, 2024).

[3] Cathryn J. Prince, "In the US, some fading Reform and Conservative synagogues go Orthodox to stay afloat", *The Times of Israel* (Accessed August 29, 2024). It is possible to multiply examples of indifference toward halakhah. See Daniel J. Elazar - Rela Mintz Geffen, *The Conservative Movement in Judaism: Dilemmas and Opportunities* (Albany: State University of New York Press, 2000), 56; Abraham J. Karp, *Jewish Continuity in America: Creative Survival in a Free Society* (Tuscaloosa: The University of Alabama Press, 1998), 255; Steven M. Cohen, "Assessing the Vitality of Conservative Judaism in North America: Evidence from a Survey of Synagogue Members", *Jews in the Center: Conservative Synagogues and*

Conservative Rabbi Edward Feinstein is not wrong to be concerned when he stated that "there isn't a single demographic that is encouraging for the future of Conservative Judaism. Not one".[4]

This study first explores the main reasons for the crisis that Conservative Judaism is currently facing. Second, the possibility for and means by which the movement may rise again are considered. In this context, the following questions are addressed: What are the reasons for this decline? How successful is the movement in consolidating Conservative communities with its current stance? What did Conservative Judaism, which was the first choice of American Jews for a long time, do wrong or fail to do? To what extent does the movement's ideology or the way in which it follows this ideology in practice influence the process of decline? Is it possible to reverse this decline? These fundamental questions can be answered by considering both the current internal dynamics of the movement and external factors, as well as its ideological and institutional foundations. Evaluating the main factors that played a role in the decline of the movement will reveal the extent of the relationship between the current representation of the Conservative movement and its original codes.

The *positive-historical approach* or the *Historical School,*[5] proposed by Rabbi Zacharias Frankel (1801-1875) in the mid-19th century and carried to the United States by his followers, forms the basis of Conservative Judaism's approach to the Jewish sacred texts and the religious tradition. The fact that the historical approach has been accepted as a distinguishing feature from the past to the present makes it necessary for all actions taken in the practical field within the Conservative movement to be evaluated in the context of this basic characteristic. At this point, it would be appropriate to view Solomon

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their Members, ed. Jack Wertheimer (New Brunswick: Rutgers University Press, 2000), 24-25.

[4]   Edward S. Shapiro, *A Unique People in a Unique Land: Essays on American Jewish History* (Boston: Academic Studies Press, 2022), 100.

[5]   See David Rudavsky, "The Historical School of Zacharias Frankel", *The Jewish Journal of Sociology* 5/2 (1963), 224-244; Ismar Schorsch, "Zacharias Frankel and the European Origins of Conservative Judaism", *Judaism* 30/3 (1981), 344-354; Elliot N. Dorff, *Conservative Judaism: Our Ancestors to Our Descendants* (New York: Youth Commission, United Synagogue of America, 1977), 20-32.

Schechter (1849-1915), the name that gave the true identity to the Conservative movement in the United States both ideologically and institutionally, as a starting point. Therefore, in this study, the downward trend of the movement is evaluated in connection with the ideological stance adopted from the beginning.

There is no comprehensive or satisfactory study in the literature concerning the downward trend of the Conservative movement. Similarly, it is noteworthy that there is no specific research or comprehensive and collective work within the movement itself. Hence, this study also reveals that the movement has not undergone a serious process of self-criticism regarding this issue. Since the study has been carried out with reference to the Conservative ideology, Schechter's work entitled *Studies in Judaism* and his other works, as well as books and articles by later Conservative leaders, are taken as the basis. On the other hand, Daniel H. Gordis' article "Positive-Historical Judaism Exhausted: Reflections on a Movement's Future" (1994) within the movement and "Does Conservative Judaism Have a Future?" (1998), written by Reformist Rabbi Clifford E. Librach, stand out in relation to the research topic. The first, which criticized the movement for giving too much authority to the phenomenon of "history" and laypeople, pointed out the need to re-emphasize the value of traditional Judaism. The second considers the rapprochement trends between the Conservative movement and the Reform movement and expresses the difficulty of making a reasonable prediction about the future of the Conservative movement. As such, it is difficult to say that the causes of the given crisis are directly addressed. Considering this situation, apart from these studies, the views proposed regarding the period of crisis of the movement in many different sources, such as Edward Shapiro's *A Unique People in Unique Land* (2022) and Jack Werthemier's *The New American Judaism* (2018), were considered as a whole and placed within a framework.

In these studies, the context related to both official Conservative theology and Conservative halakhah, and related to the historical background and the roots of the movement, has generally not been explored. In line with the belief that the current situation can be properly understood only with reference to the founding principles and historical background of the movement, this article endeavors to

fill this significant gap. These areas performed a guiding function as cornerstones in this study in illuminating the current crisis period and providing insight and opportunities to interpret the future of the movement. In this sense, this study attempts to present a more holistic and clear perspective on the present representative power of the movement and on the current Conservative identity.

1. The Basic Ideology of Conservative Judaism

1.1. Change Based on Tradition: Historical Approach

Conservative Judaism truly entered the process of identification with the Historical School after Solomon Schechter's presidency of the Jewish Theological Seminary (JTS) (1902). Through his vision, the historical approach became more central to the orientation of the movement. Schechter, who discussed the theological position of the Historical School most clearly in *Studies in Judaism*, attributed a central value to the role of history and, therefore, of human interpretation in the development of religious tradition. Accordingly, what is of primary importance to Jews is the Tanakh (the Hebrew Bible), as interpreted by tradition throughout history rather than purely revealing the Tanakh. The interpretation of the Tanakh, which he calls *secondary meaning*, is fundamentally the product of changing historical conditions. In this context, the center of authority is not located in the Tanakh but in the *living body*, that is, in the Jewish people.[6]

Schechter argued that divine revelation would gain meaning and fulfill its true function only when it meets the Jewish people within history. His statement that oral law or tradition was "the more deeply felt"[7] by Jews compared with revelation is important because it points out that social experience and the will of the people are decisive in the formation of religious tradition and that, therefore, change is inevitable. Stating that old Jewish thought is essentially "against the certain" and urges caution and sobriety,[8] Schechter wanted to bring

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[6]   Solomon Schechter, *Studies in Judaism* (Philadelphia: The Jewish Publication Society of America, 1896), 1/xvii-xviii.

[7]   Schechter, *Studies in Judaism*, 1/xvi.

[8]   Solomon Schechter, *Some Aspects of Rabbinic Theology* (New York: The Macmillan Company, 1909), 1.

this principle to the Conservative movement. In this context, the concept of *Conservative* did not mean merely preserving the status quo for him. In other words, it is not right to regard Conservative Judaism as an absolute system that defends a uniform form.[9] Although on the occasion of a session led by Conservative Rabbi David Wolpe (1958-) at the United Synagogue convention in 2006, the name *Dynamic Judaism* was proposed instead of the term *Conservative* in reference to the constantly developing and growing nature of Judaism,[10] in fact, from the early period, the concept of "Conservatism" was already envisioned such that it contains the ideal of *tradition and change*, that is, the principle of organic growth of tradition within itself. According to Schechter, who criticized Orthodoxy through the traditional education system, which he saw as merely repeating the past,[11] the aim of the Conservative movement is to integrate the necessities arising in modern life with the legacy of belief passed down from the past.[12]

Notably, at the core of Conservative Judaism lies the concept of "change" rather than the preservation of the status quo. In this regard, the distinctive feature of Conservative Judaism, which has from the outset maintained a certain distance from Reform Judaism, lies in its avoidance of fundamentalist and literalist approaches to Jewish sacred texts and tradition. When evaluating the current state of Conservative Judaism, it is essential to keep this critical point in mind. In Conservative thought, the content of both written law and oral law is actually restricted to Jewish history.[13] In other words, according to the historical approach, the dominant belief is that the Jewish people were an active, guiding and determining dynamic in the shaping of the religious tradition. The historical approach has determined the official ideology of Conservative Judaism from the time of Louis Ginzberg

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[9]   Elliot B. Gertel, "Is Conservative Judaism-Conservative?", *Judaism* 28/2 (1979), 203.

[10]   Rabbi David Wolpe, "Conservative Judaism Seeks Its True Name", *HuffPost* (Accessed August 29, 2024).

[11]   Schechter, *Studies in Judaism*, 1/57-58. According to Schechter, who described the static ahistorical approach as *Mosaism*, the effort to return to it is illegal and, indeed, impossible. See Schechter, *Studies in Judaism*, 1/xix.

[12]   Bernard Mandelbaum, *The Wisdom of Solomon Schechter* (New York: The Burning Bush Press, 1963), 12.

[13]   David Novak, "The Distinctiveness of Conservative Judaism", *Judaism* 26/3 (1977), 308.

(1873-1953) to Jacob B. Agus (1911-1986), Robert Gordis (1908-1992), and the present. In the context of the general acceptance that the process of revelation continued after Sinai through the activities of rabbis, the codes and responsa,[14] Schechter influenced Conservative Judaism as a follower of traditional Judaism, in which "change" is inherent. The point that needs to be emphasized here is that Conservative Judaism does not, in principle, position itself completely outside traditional Judaism. This also provides us with a clue about the target audience of the movement.

1.2. The Ultimate Authority: Catholic Israel

Giving clues about authority by emphasizing *living body*, Schechter presented *Catholic Israel* (the whole of the Jewish community) as the decision-maker in shaping Jewish law. In his words, "The Torah is not in heaven. Its interpretation is left to the conscience of Catholic Israel".[15] However, the semantic field of the concept has certain limits beyond its literal meaning.

Schechter pointed to today's Jewish will by stating that the general trends and practices that are current in society reflect the consciousness of Catholic Israel.[16] On the other hand, by referring to Rabbinic Judaism in the context of the collective consciousness of Catholic Israel,[17] he took into account the weight of the religious

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[14] *Emet ve'Emunah: Statement of Principles of Conservative Judaism* (New York: The Jewish Theological Seminary of America, 1990), 19. This basic approach is also clearly present in Conservative prayer books. For instance, in *Siddur Sim Shalom*, which sees revelation as a process that changes depending on conditions without confining it to a certain period, it is stated that "creativity and innovation are legitimate". See Jeffrey Rubenstein, "Siddur Sim Shalom and Developing Conservative Theology", *Conservative Judaism* 41/1 (1988), 27.

[15] Solomon Schechter, *Studies in Judaism* (Philadelphia: The Jewish Publication Society of America, 1908), 2/116.

[16] Schechter, *Studies in Judaism*, 1/xviii-xix.

[17] Schechter, *Some Aspects of Rabbinic Theology*, viii; Solomon Schechter, *Seminary Addresses and Other Papers* (Cincinnati: Ark Publishing Co., 1915), 23, 62. It is not difficult to find examples from the rabbinic tradition about the decisiveness of the collective consciousness that directs halakhic life. See Schorsch, "Zacharias Frankel and the European Origins of Conservative Judaism", 349; Rudavsky, "The Historical School of Zacharias Frankel", 239; *The Babylonian Talmud*, ed. Isidore Epstein (London: The Soncino Press, 1935-1952), Pesahim 66a, Sanhedrin 22a,

tradition and the body of knowledge that developed in this mainstream. Thus, Schechter bequeathed to the Conservative ideology the belief in the continuity of the relationship between revelation and the Jewish people throughout history. In this context, Conservative Rabbi Mordecai Waxman (1917-2002) emphasized that not only the current generation but also previous generations have a say in the acceptance or rejection of inherited traditions.[18]

Schechter has drawn a framework for the Jewish identity that constitutes Catholic Israel. First, it is well known that he had a negative attitude toward the Reform movement.[19] It is clear that the Reform movement, in its form at that time, pushed itself outside the line of Rabbinic Judaism. This means that, in Schechter's eyes, just as Karaism remained outside the mainstream in terms of representing Judaism, Reform Judaism remains far from the legitimate Jewish collective will. On the other hand, the Orthodox tradition in which Schechter was born naturally appears to be the most suitable wing with the potential to contribute to Catholic Israel because the importance of adherence to the Torah, Rabbinic Judaism, halakhah and the concept of "nation" for the community that will form Catholic Israel is indisputable. In this case, Schechter was ready to incorporate traditional Jewish communities into Catholic Israel. In fact, doing so was his main goal. Accordingly, it follows that Jews who have adopted the historical

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Berakoth 45a, Erubin 14b, Menahot 35b.

[18] Mordecai Waxman, "Conservative Judaism - A Survey", *Tradition and Change: The Development of the Conservative Movement*, ed. Mordecai Waxman (New York: The Burning Bush Press, 1958), 18-19.

[19] His correspondence with various scholars and rabbis on this matter gives a clearer idea about his approach to the Reform movement. See Norman Bentwich, *Solomon Schechter: A Biography* (Philadelphia: Jewish Publication Society of America, 1938), 301-302; David B. Starr, *Catholic Israel: Solomon Schechter, A Study of Unity and Fragmentation in Modern Jewish History* (New York: Columbia University, Ph.D. Dissertation, 2003), 252, 256; Abraham E. Millgram - Emma G. Ehrlich, "Nine Letters from Solomon Schechter to Henrietta Szold", *Conservative Judaism* 32/2 (1979), 29, 32; David B. Starr, "Saving the Union: Solomon Schechter and Abraham Lincoln", *Modern Judaism: A Journal of Jewish Ideas and Experience* 35/3 (2015), 307-308; Meir Ben-Horin, "Solomon Schechter to Judge Mayer Sulzberger: Part II. Letters from the Seminary Period (1902-1915)", *Jewish Social Studies* 27/2 (1965), 85.

approach and those who have a moderate and innovative tendency within traditional Judaism have the competence and responsibility to interpret Judaism. In other words, it seems that the concept of Catholic Israel, which was to shape the Conservative identity, in fact represents the union of these two structures.

Another dimension of Catholic Israel concerns the laypeople-rabbi relationship. Importantly, the concept of Catholic Israel includes not only Jewish laypeople but also rabbis.[20] Conservative Rabbi Neil Gillman (1933-2017) noted that the term Catholic Israel suggested by Schechter does not simply refer to the practices of Jews; rather, it implies that there, in fact, is a sharing of power between the Jewish community and rabbis.[21] Essentially, what is idealized with the concept of Catholic Israel is the establishment of a consensus between rabbis and ordinary Jews.[22] Together, then, rabbis and the Conservative Jewish community are conceived as active determinants of the process of change in religious tradition. Consequently, it should not be forgotten that Catholic Israel essentially corresponds to a dynamic structure, not a static structure.

2. Why is the Conservative Movement in Decline?

2.1. Weakening Adherence to Jewish Law and Insufficiency in Religious Education

The expansion of the sphere of influence of tendencies such as liberalism, secularism and egalitarianism since the mid-century and, in particular, of feminism after the 1960s represented a clear challenge for American Jews. The reason is that in this period, the degree of consistency between the fundamental ideologies of the religious movements and their practical responses to these intellectual trends

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[20] Schechter included prophets, Soferim, scribes, rabbis, interpreters, and teachers within the concept of the *Universal Synagogue*, which he associated with Catholic Israel. See Schechter, *Studies in Judaism*, 1/xviii.

[21] Neil Gillman, *Conservative Judaism: The New Century* (West Orange: Behrman House, 1993), 54-55.

[22] Schechter described rabbis only as *primus inter pares* and openly opposed *sacerdotalism*, which would disrupt this relationship. See Committee of the Central Conference of American Rabbis, "Dr. S. Schechter's Views (1905)", *Views on the Synod* (Baltimore: The Lord Baltimore Press, 1905), 135, 141.

was tested. This, in turn, shaped Jews' relationship with the movements to which they belonged, either positively or negatively. In the case of the Conservative movement in the early period, the fact that its ideology largely remained at a theoretical level made it easier for those affiliated with the movement to accept it as the most reasonable and reliable interpretation of religion, without yet being confronted with its practical implications.

In parallel with the increase in liberal tendencies, the general state of indifference to tradition and halakhah in American Jewish religious life, which continues to increase in the 21st century, is evident. According to a study in 2000, two out of every five Jews no longer consider Judaism their religion. Instead, they described themselves as "secular" or "Christian Jews".[23] According to more recent data, only one in five American Jews regularly attends synagogue on a monthly basis.[24]

In the context of the tendency to move away from the established religious tradition, it has become inevitable for American Jews to shape their own Jewish traditions with a more selective approach to halakhah. This approach has dealt a blow to the tradition built based on halakhah and continued by Conservative rabbis,[25] as adherence to religious tradition is one of the two main principles –tradition and change– on which Conservative Judaism is based. On the other hand, considering the growing number of intermarriages among American Jews, it is not surprising that many Conservative individuals have chosen to position themselves within the Reform movement. At this point, it is meaningful that Schechter, who noticed signs of indifference to Jewish law in his time, stated that the primary problem for the Jewish community would be to remain within Judaism in parallel with the process of Americanization.[26] Fritz A. Rothschild (1919-2009) also

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[23] Bruce Phillips, "American Judaism in the Twenty-first Century", *The Cambridge Companion to American Judaism*, ed. Dana Evan Kaplan (Cambridge: Cambridge University Press, 2005), 398.

[24] Prince, "In the US, Some Fading Reform and Conservative Synagogues Go Orthodox to Stay Afloat".

[25] Pamela S. Nadell, "Developing an American Judaism: Conservative Rabbis as Ethnic Leaders", *Judaism* 39/3 (1990), 360.

[26] Bentwich, *Solomon Schechter: A Biography*, 215. By saying that "the challenge today is not to liberate traditional Jews, but to bring liberated Jews back home to

remarked that in 1953, Conservative Jews had a tendency to move away from traditional religious practices. In his opinion, in such a situation, finding an acceptable path for the development of halakhah had become the most serious problem for the movement.[27]

Notably, the transfer of both traditional religious knowledge and the sense of devotion to congregation structures to the new generation is not very strong. While there were many children in the Conservative movement whose family members were rabbis in the past, by 1987, this rate had dropped considerably. Additionally, the tradition of serving Jewish congregations, common in rabbinic families, is clearly on a downward trend within the Conservative movement.[28] According to Conservative scholar Arnold M. Eisen, who draws attention to the significant gap between Conservative rabbis and secular society in terms of the level of obedience, at most 10% of secular people overlap with rabbis on this issue.[29] Thus, for example, the Mitzvah Initiative, led by him, was launched as an initiative aimed at increasing reflection on, the study of, and commitment to mitzvot among Conservative community members. Pointing out that the emphasis on spirituality is gradually weakening within the movement, Rabbi Tracee L. Rosen is of the opinion that Conservative leaders should place more emphasis on readings such as the weekly *parashah*[30] (section) or *haftarah*[31] (conclusion).[32]

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their tradition", Daniel Gordis pointed out the same problem. See Daniel Gordis, "Conservative Observance, Then and Now", *Commentary* (March 2014), 30.

[27]   Fritz A. Rothschild, "Conservative Judaism Faces the Need of Change: In What Direction, How Much, and How?", *Commentary* (Accessed September 1, 2024).

[28]   Aryeh Davidson - Jack Wertheimer, "The Next Generation of Conservative Rabbis: An Empirical Study of Today's Rabbinical Students", *The Seminary at 100: Reflections on the Jewish Theological Seminary and the Conservative Movement*, ed. Nina Beth Cardin - David Wolf Silverman (New York: Rabbinical Assembly of America - The Jewish Theological Seminary of America, 1987), 35.

[29]   Manfred Gerstenfeld, "The Future of Conservative Jewry: An Interview with Arnold M. Eisen", *American Jewry's Comfort Level: Present and Future*, ed. Manfred Gerstenfeld - Steven Bayme (Jerusalem: American Jewish Committee [AJC] - Jerusalem Center for Public Affairs [JCPA], 2010), 233-234.

[30]   The weekly section of Torah read in Jewish liturgy.

[31]   The traditional reading from the Biblical books of the Prophets in Shabbats and festivals.

[32]   Tracee L. Rosen, "Conservative Judaism at the Crossroads: Choosing the Path of

The indifference among Conservative Jews not only to the creation of an obedient Conservative community bound by halakhah but also to other fundamental elements of the Jewish religious tradition has attracted attention. For example, the importance of Hebrew cannot be fully conveyed to Conservative communities. Although Hebrew forms an important part of the curriculum in Conservative educational institutions, in a 1986 survey, only 9% of Conservative Jews stated that they knew a minimum level of Hebrew. While rabbinic students had strong Hebrew proficiency until approximately the 1960s, the situation began to reverse toward the 1980s as acculturation gained momentum.[33] This meant that religious education could not be properly brought together with Conservative communities. Many people raised in Conservative synagogues have minimal Jewish education and therefore have difficulty attending religious services that are largely conducted in Hebrew.[34] As a result, it becomes easier for these people to turn to Reform synagogues, which follow a much more flexible line on these and similar issues. Therefore, it is difficult to assert that Conservative leaders were successful in keeping Jewish memory alive with respect to halakhah and other fundamental principles embraced by the movement.

This weakness has resulted in a negative impact on the functionality, popularity and efficiency of Conservative educational institutions. For example, negative developments such as the liquidation of the United Synagogue's Leaders Training Fellowship in 1971 and Ramah's Mador in 1980, which were two important institutions established to recruit Conservative leaders of the future, must be related to this disrupted situation. Additionally, in the last quarter of the 20th century, most rabbinic students were not nurtured by the institutions of the movement.[35] Pointing out that both Reform Judaism and Orthodox Judaism have succeeded in strengthening religious institutions and congregational unions through their

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Outreach", *Judaism* 54/3-4 (2005), 199-200.

[33]   Nitza Krohn, *The Hebrew Language Needs of Rabbinical Students in the Conservative Movement* (New York: Columbia University, Ph.D. Dissertation, 2008), 6-8.

[34]   Jack Wertheimer, *The New American Judaism: How Jews Practice Their Religion Today* (Princeton: Princeton University Press, 2018), 129.

[35]   Davidson - Wertheimer, "The Next Generation of Conservative Rabbis", 43.

investments, Jonathan D. Sarna is of the opinion that Conservative Judaism should invest in this area. For example, in his opinion, shutting down the Conservative movement's college program, KOACH, was a serious mistake.[36]

In the broad context described above, it is natural that Conservative communities have difficulty internalizing the halakhic Conservative identity and experience a problem of belonging. Establishing a sense of belonging and community and creating congregations that properly observe halakhah are fundamentally of great importance within Conservative ideology[37] because the most important reason for the movement's existence is its belief in the binding nature of halakhah. However, despite the constant emphasis on adherence to Jewish law, as Rabbi Elliot N. Dorff noted, the primary problem of the Conservative movement concerns its practical dimension. The creation of an obedient community should now be, in his view, the most important agenda of the Conservative movement.[38] Considering Schechter's founding perspective, which envisages stopping the radical steps of the Reform movement and reviving traditional Judaism, for Conservative Judaism, it will be possible and valid to truly conceive the evolution of religious tradition and halakhah and, therefore, changes and innovations only if a model of obedient society can be proposed.

2.2. Gap in the Laypeople-Rabbi Relationship

While, in fact, there is no deviation from the ideal of "tradition and change", another of the main problems is the failure to present this central ideology to laypeople in an understandable and convincing way. Indeed, many Conservative Jews are confused about what they believe. Arnold M. Eisen noted the widespread belief that many Conservative Jews have no idea what the Conservative movement

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[36] Jonathan D. Sarna, "Learning from History", *Jewish Review of Books* (Accessed September 10, 2024).

[37] Similarly, saying that religious authority is found in communities of committed and observant Jews, Sommer also drew attention to the importance of observance of halakhah. See Benjamin D. Sommer, "Where is Authority Found?", *Jewish Theological Seminary* (Accessed October 24, 2024).

[38] Elliot N. Dorff - Arthur Rosett, *A Living Tree: The Roots and Growth of Jewish Law* (New York: State University of New York Press, 1988), 342.

means in relation to the Reform and Orthodox movements.[39] This ambiguity in the Conservative mind indicates that there is a lack of communication and dialogue from top to bottom within the movement. In this context, another critical factor that plays a role in the decline of the movement is the failure to properly establish the organic relationship between Jewish people and rabbis, idealized by Schechter, in making the historical approach functional.

In fact, this implies that there is confusion about Schechter's Catholic Israel. The will that determines the course of halakhah essentially arises from the trust, organic relationship and consensus between rabbis and the Jewish community. This principle was inherited in theory by Conservative Judaism.[40] However, it is difficult to say that the relationship and harmony between the two is achieved as required in practice. When the ideology cannot be passed to laypeople in a comprehensible manner, the will that would determine the Conservative halakhah is naturally bankrupt. Even in the 1940s, there was ambiguity regarding the issue in question. For example, Conservative Rabbi Jacob B. Agus, who understood Catholic Israel literally, saw waiting for a consensus among secular society as a complete failing of religious leadership. Therefore, in his opinion, Conservative leaders should, if necessary, enact *takkanot* (decrees) that depart from all previous precedents.[41] With this approach, Rabbi Agus displayed an attitude that gave more priority to the initiative power of rabbis vis-à-vis the Jewish community. On the other hand, Rabbi Elliot B. Gertel opposed this idea on the grounds that it would make the role of the secular Jewish community passive.[42] Like Rabbi

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[39] Arnold Eisen, "Torah, Scholarship and the Mission of the Jewish Theological Seminary", *The Reconstructionist* 71/2 (2007), 37.

[40] For example, in 1975, Rabbi Seymour Siegel (1927-1988), president of the Committee on Jewish Law and Standards (CJLS), stated that there needs to be a common attitude together with the community striving to observe halakhah so that they could be true interpreters of Jewish law. See Herbert Rosenblum, *Conservative Judaism: A Contemporary History* (New York: United Synagogue of America, 1983), 125.

[41] See Jacob B. Agus, "Law in Conservative Judaism", *The Essential Agus: The Writings of Jacob B. Agus*, ed. Steven T. Katz (New York: New York University Press, 1997), 461-469.

[42] Gertel, "Is Conservative Judaism-Conservative?", 213.

Argus, Daniel Gordis sees it as a vital mistake to leave halakhic decisions entirely to the will of the community in the form of the Rabbinical Assembly (RA), as in the issue of traveling to synagogue by vehicle on the Shabbat. He also sees it as a mistake to follow the approaches of leaders such as Ismar Schorsch, who believe that the voices of laypeople should be listened to.[43]

Samantha Shapiro also notes that Conservative Judaism does not adequately explain how rabbis and congregants will decide to adapt Jewish law to modern times. Shapiro, who believes that the center of gravity in the concept of Catholic Israel is shifting toward secular society, noted that, for example, the decision to ordain women rabbis in the JTS in 1972 was defended not by Talmudic scholars but by a committee of laypeople. As a result, they failed to base their approach on Jewish law.[44] Therefore, it seems that the Conservative consciousness is not strong enough or cannot be reflected in practice as required to bring together and interpret the guidance of rabbis, who are experts in the field of halakhah, and the dynamic structure and foresight of the will of the Conservative community.

Unsurprisingly, this situation has reduced reliance on the movement and created an environment of more doubt and ambiguity. For example, although the three different and opposing approaches that emerged in the CJLS' *teshuvot* (answers) regarding homosexuality were all declared legitimate, a public opinion poll revealed that there were considerable disagreements among the different groups within the movement, from Conservative rabbis to synagogue presidents and from student groups to lay congregational structures. Thus, two-thirds of rabbis stated that they felt embarrassed by the CJLS decisions on the issue, and more than half of lay leaders stated that they were openly confused.[45] Although in 2006, the responsum written by Dorff et al.

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[43] See Daniel H. Gordis, "Positive-Historical Judaism Exhausted: Reflections on a Movement's Future", *Conservative Judaism* 47/1 (1994), 3-19.

[44] Samantha Shapiro, "Conservative Judaism Gets a Kick in the Pants", *Slate* (Accessed August 30, 2024). Orthodox Rabbi Avi Shafran reported that only one of the 14 seats on the commission was allocated to a Talmud faculty member, although the Talmud faculty of the JTS opposed ordaining women. See Avi Shafran, "The Conservative Lie", *Moment* (Accessed October 17, 2024).

[45] Steven M. Cohen - Florence G. Heller, "Gays, Lesbians, and the Conservative Movement: The JTS Survey of Conservative Clergy, Students, Professionals, and

entitled *Homosexuality, Human Dignity & Halakhah*[46] received the support of the majority of the committee,[47] the fact that this was not reflected in the collective conscience of the Conservative community in an absolute sense is another example that fails to coincide with the laypeople-rabbi consensus idealized under the roof of Catholic Israel. Daniel Gordis notes that only a small number of Conservative Jews act in accordance with the guidance of their rabbis. For instance, in regard to kosher or Shabbat observance, the Jewish community does not pay much attention to what rabbis think.[48]

It is important to remember that interpreting halakhah within the framework of the laypeople-rabbi consensus is one of the main principles on which the Conservative movement is based. Schechter, who did not identify the living community, that is, Catholic Israel, with either any part of the nation or a pure association of rabbis,[49] envisioned a compromise between the Conservative community attached to halakhah and the rabbis. In this context, unless Conservative leaders, who are in fact concerned that Conservative Judaism will turn into a *rabbi religion* rather than a *people religion*, without a committed and learned laity,[50] are able to translate this principle of consensus into practice, discussions and possible divisions within the movement will be inevitable in the future.

2.3. Failure to Achieve a Balance between Tradition and Change

In addition to the disharmony in the laypeople-rabbi relationship, the balance between "tradition" and "change" in the decisions made

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Lay Leaders", *Berman Jewish Policy Archive* (Accessed September 10, 2024), 35.

[46] See Elliot N. Dorff et al., "Homosexuality, Human Dignity & Halakhah: A Combined Responsum for the Committee on Jewish Law and Standards", *The Rabbinical Assembly* (Accessed August 28, 2024).

[47] Avinoam Rosenak, "Halakhah as Education: Philosophical and Halakhic Trends Within the Conservative Movement", *The Jewish Law Association Studies 20: The Manchester Conference Volume*, ed. B. Jackson - L. Moscovitz (2010), 226.

[48] Gordis, "Conservative Observance, Then and Now", 28.

[49] Schechter, *Studies in Judaism*, 1/xviii.

[50] Franklin D. Kreutzer, "Foreword - The Layperson's View", *Emet ve'Emunah: Statement of Principles of Conservative Judaism* (New York: The Jewish Theological Seminary of America, 1990), 7.

by the CJLS regarding halakhah is often disrupted in favor of one of them. The existence of disunity instead of concurrence within the movement regarding the weight and influence of these two elements is another factor that causes Conservative Judaism to be up for debate. This situation also manifests at the community level, essentially creating two structures: modernists, who prioritize the notion of change in religious beliefs and practices, and traditionalists, who emphasize timeless truths.[51] In such a case, it naturally becomes difficult to bring together Conservative communities in a common stance and to speak about a consensus concerning any halakhic matter.

In this context, some Conservative leaders have noted that the belief that the Jewish tradition is in constant development has not been properly demonstrated. Apart from Rabbi David Gordis, for example, Rabbi Alan J. Yuter claimed that the Conservative ideology and practical application do not coincide, which is why the movement appears static. Believing that the Conservative movement should not be dependent on Orthodoxy in making halakhah functional, Yuter emphasized that the structure of norms of halakhah was developed by the rabbinate.[52] According to him, the Conservative movement failed to properly use the dynamism and flexibility inherent in halakhah and appeared almost Orthodox. This also stands out as one of the factors that has played a role in participation in the Reform movement.

In fact, in the Conservative approach, rather than an unprincipled desire for change, there is a principle of maintaining traditional legal precedents and practices of the past as much as possible[53] unless conditions are met and, therefore, keeping changes to a minimum. Specifically, *gradualism* is essential, in principle, in the changes and reforms that are deemed necessary in Conservative Judaism, especially those that have a social dimension, and it is a crucial criterion for gaining acceptance and approval from the vast majority of people. When historical circumstances and social changes in the latter half of

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[51] Arnold Dashefsky et al., *Jewish Options: Pluralistic Identities in 21ˢᵗ Century America* (Cham: Springer Nature, 2024), 326.

[52] Alan J. Yuter, "Halakhah and Ideology in Conservative Judaism", *Proceedings of the Rabbinical Assembly of America* 42 (1980), 102-103.

[53] *Emet veʾEmunah: Statement of Principles of Conservative Judaism*, 21.

the twentieth century compelled Conservative Judaism to take more concrete actions, in contrast to its earlier period, disagreements, debates, and schisms began to emerge. Therefore, the halakhic stance of the Conservative movement became a matter of debate.

Here, leaders such as Rabbi Neil Gillman and Rabbi Joel Roth have noted that within the movement, traditional religious law and historical religious experience are being ignored. The halakhic confusion, especially regarding how to reconcile the issue of homosexuality with Jewish sacred texts and the Jewish tradition, is evident. In this regard, considering the abovementioned responsum, which had a positive attitude toward homosexuality, for example, Roth is convinced that "Conservative Judaism could no longer lay claim to halakhic authenticity".[54] Thus, Roth, Gillman and those who are of the same mind are of the opinion that, at least on the matter in question, the principle of change has been taken to extremes and that the established halakhic tradition has been compromised.

The fact that there were 13 votes in favor of and 12 against the responsum in question,[55] as well as 13 votes in favor of and 8 against rabbi Joel Roth's responsum *Homosexuality Revisited*,[56] is another concrete sign that demonstrates how controversial the issue is. It is difficult to say that the concepts of gradualism and *process* are prioritized here in interpreting halakhah and translating change into practice. Apart from names such as Rabbi David Golinkin and Joseph H. Prouser,[57] Ismar Schorsch is among the leading figures criticizing the movement's hasty and inclusive attitude toward homosexuality. According to Schorsch, who emphasizes consultation of the basic texts of Judaism and a comprehensive research process over such quick solution seeking, if homosexuality is accepted, one of the greatest differences between Reform and Conservative Judaism will

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[54] Leonard Levin, "Is the 'Halakhic Authenticity' of Conservative Judaism a Broken Myth?", *Personal Theology: Essays in Honor of Neil Gillman*, ed. William Plevan (Boston: Academic Studies Press, 2013), 130.

[55] See Dorff et al., "Homosexuality, Human Dignity & Halakhah".

[56] See Rabbi Joel Roth, "Homosexuality Revisited", *The Rabbinical Assembly* (Accessed December 2, 2024).

[57] See Joseph H. Prouser, "The Conservative Movement and Homosexuality: Settled Law in Unsettling Times", *The United Synagogue Review* (Accessed August 3, 2024).

disappear.[58] In this environment of incompatibility between theory and practice, for example, after the decision to ordain women, the address of Reformist leader Rabbi Eugene Borowitz (1924-2016) to Rabbi Gillman, "Welcome to Reform Judaism",[59] is remarkable, as it indicates the loss of ground of the Conservative movement. The fact that such a call is now coming from a Reform leader, unlike in the past, implies that the Conservative movement has not adequately put into effect the main criteria that distinguish it from the Reformist stance. In other words, the Conservative movement has failed to develop a much more consistent and convincing language both for itself and for Jews outside the movement regarding what is ahistorical and what is the subject of history and science, that is, change.

On the other hand, the tendency to become closer to tradition and secularization within Reform Judaism and Orthodox Judaism, respectively, once again places on the agenda for Conservative Judaism the necessity of presenting or redefining the message of the Conservative movement in a more distinctive and comprehensible way. One of the names that draws attention to this fact is the Conservative scholar Arnold Eisen. He said that from the left wing, the Reform movement was making changes that would bring it closer to the Conservative movement, while from the right wing, the appointments of female rabbis were perhaps imminent, especially through Yeshivat Chovevei Torah, the seminary of Orthodox Rabbi Avi Weiss. Thus, those who wish to take a more left or right position within Conservative Judaism can leave the movement much more easily.[60] One of the disadvantages of a movement that essentially has a middle-

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[58] Shapiro, *A Unique People in a Unique Land: Essays on American Jewish History*, 106; Jennifer Siegel, "Conservative Rabbi, in Swan Song, Warns Against Liberal Shift", *Forward* (Accessed October 27, 2024).

[59] Levin, "Is the 'Halakhic Authenticity' of Conservative Judaism a Broken Myth?", 143.

[60] Gerstenfeld, "The Future of Conservative Jewry", 228. After the second half of the 20th century, the Orthodox movement gradually began to form a more distinctive identity. This change brought Conservative Jews, who wished to live a more traditional life centered on the Torah, closer to Orthodoxy or, more precisely, to structures formed by some groups such as Chabad-Lubavitch. On the other hand, Conservative Jews who accepted and practiced mixed marriages were able to easily switch to Reform Judaism. See Roberta Rosenthal Kwall, "Saving Conservative Judaism", *Commentary* (Accessed September 3, 2024).

ground principle is that it can contain within itself a very wide range of people, including those close to the left and right wings and even an undecided mass. Therefore, the shift of the center of gravity in favor of any of them in putting the theory in question into practice makes it easier for people with these inclinations to join other movements.

3. Is a Conservative-Orthodox Alliance Possible Again?

Another –perhaps the most important– critical issue for the future of Conservative Judaism is related to its addressable audience. Might movement leaders be open to reconsidering and reshaping or updating the identity of the ideal Conservative society? In this sense, is there any structure outside the movement that would be compatible with and identify with the Conservative interpretation of religion? Can its historical background inspire the movement on this issue? Essentially, it is not impossible to positively answer these questions.

In the first half of the twentieth century, when intellectual challenges had not yet reached a wide sphere of influence, the Conservative movement made maximum use of its "middle way" discourse and became a refuge for many Eastern European Jewish immigrants. In the words of sociologist Marshall Sklare (1921-1992), the Conservative movement became the natural partner of Orthodox immigrants, who, caught between the modern world and Orthodoxy, found themselves confronted with a state of disorganization.[61] Particularly during the period between 1880 and 1924, the desire of immigrants arriving in large numbers from Eastern Europe to open themselves to and adapt to a new world was not independent of their religious orientations. Although not all, many Orthodox Jews who were willing to integrate came to regard their Yiddish-centered Orthodoxy as unacceptable as their living conditions improved. Highlighting the role of Eastern European Jewish immigration in the development of the Conservative movement, American historian Pamela S. Nadell stated that while most of these immigrants rejected Orthodoxy as a remnant of the ghettos, they simultaneously found Reform Judaism too extreme. Instead, during the 1910s and 1920s, they established new Conservative synagogues independent of these two

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[61] Marshall Sklare, *Conservative Judaism: An American Religious Movement* (New York: Schocken Books, 1972), 23-24.

movements.[62]

On the other hand, as reflected in the NJPS and Pew surveys, in the recent period, many individuals who have left the Conservative movement have done so in pursuit of greater freedom, most often by joining Reform Judaism. While at first glance it may appear more natural and likely for Conservative individuals and congregations to find continuity within the Reform framework, it must be noted that such a trajectory is fundamentally inconsistent with the movement's founding principles. By the founding principles, what is meant is the organic bond with the Orthodox tradition that has existed from the beginning. The tension between the present reality revealed by the survey data and the movement's foundational principles and ideals actually exposes the weakness in the transmission of Conservative ideology to its congregations. Therefore, the current tendency of Conservative Jews toward the Reform movement should be understood not as an initiative of Conservative leaders but as a quest for religious transformation at the individual and communal levels. In this context, when considering the ideological and historical background discussed below, it becomes evident that for the Conservative movement, institutional alignment with Reform thought, based on an absolute progressive perspective, basically represents an incidental tendency, whereas a rapprochement with Orthodoxy reflects the essential orientation. Today, one of the main reasons for the crisis that the Conservative movement is in is the failure to properly put this equation into practice. In this context, American law professor Roberta Rosenthal Kwall draws attention to the still considerable tendency within the movement toward traditional religious observance, underscoring that significant distinctions from Reform Judaism remain. In her view, the Conservative movement should emphasize its points of divergence from Reform while simultaneously investing in its core constituency inclined toward tradition.[63]

Undoubtedly, the idea of a "revival of traditional Judaism" is, in principle, the most important characteristic of Conservative Judaism. It should be emphasized that what Solomon Schechter wished to save

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[62]   Nadell, "Developing an American Judaism", 349.
[63]   Kwall, "Saving Conservative Judaism".

was not Orthodoxy[64] but "traditional Judaism", which always possesses dynamism and the ability to develop. In this respect, the main aim of Conservative thought is not to create a new religious movement completely independent of the existing structure but to strengthen and develop the existing structure, that is, traditional Judaism. The early founders of the movement regarded this new movement, that is, the Conservative movement, as a modernized version of traditional Judaism. Marshall Sklare even stated that the Conservative movement was designed by its pioneer leaders as "a kind of 20th-century Orthodoxy". According to him, "if Orthodoxy had retained the ability to change, it would have evolved into Conservatism".[65] Sklare is right in his determination. In Conservative Judaism, the acceptance of the authority of halakhah and the weight of tradition are the most fundamental common denominators today, not with Reform Judaism but with Orthodox Judaism.[66]

The second important issue is that the organic relationship between the Conservative and Orthodox traditions has clearly manifested in practice. Although Reformist Rabbi Clifford E. Librach (1951-2021) argued that the Reform and Conservative movements had been in close contact with each other from the beginning, especially through the Hebrew Union College (HUC) and the JTS,[67] in fact, it is possible to observe clear examples of manifestations of the Conservative-

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[64]   Meir Ben-Horin et al., "Solomon Schechter to Judge Mayer Sulzberger: Part I. Letters from the Pre-Seminary Period (1895-1901)", *Jewish Social Studies* 25/4 (1963), 256.

[65]   Sklare, *Conservative Judaism: An American Religious Movement*, 263-264.

[66]   Despite the weakness in adherence to halakhah, it is certain that Conservative Jews present an incomparably more positive image than do Reform Jews on the most essential issues, especially attendance at religious services or Shabbat and kosher law. See Jack Wertheimer et al., "Op-Ed: On Conservative Judaism, Why All the Talk about Failure?", *Jewish Telegraphic Agency* (Accessed September 3, 2024). David Lieber (1925-2008), senior editor of *Etz Hayim* (Tree of Life), stated, "Although Conservative Jews are not, in the main, 'shomrei halakha', observers of Jewish law, they are 'chovevei halakha', admirers and fans of halakha". See Harvey Meirovich, "Time and Tradition as Reflected in The Etz Hayim Torah Commentary", *Modern Theology* 35/2 (2018), 15; Also, Kwall, "Saving Conservative Judaism".

[67]   See Clifford E. Librach, "Does Conservative Judaism Have a Future?", *Commentary* 106/3 (1998), 28-33.

Orthodox bond in the formation process of both the JTS and the United Synagogue of America shaped by Schechter. It is an indisputable fact that both of these main institutions owe their existence essentially to a Conservative-Orthodox alliance. The main motivation that united some supporters of the Historical School and some Orthodox figures during the formation process of the JTS was the desire to create an alternative center against the HUC. These leaders were able to overlook the differences between the Historical School and the Orthodox tradition in line with the same objective. On the other hand, the USA, founded under Schechter's leadership in 1913, is similarly essentially the product of a Conservative-Orthodox alliance. In line with the framework drawn by Schechter, the USA has determined and accepted as its audience the congregations that keep a certain distance from the Reform movement.[68] In this context, the congregations that have formed the USA are those that are traditional but open to development and innovation to a certain extent.[69]

In light of the discussion above, it seems that a possible redevelopment of the alliance in question, which constituted a basis for the two central institutions of the movement in the early period, is also at a level that can provide a basis for the Conservative movement to rise again. When the background in question is considered, the range of communities that will constitute the genuine Conservative

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[68] See Solomon Schechter, "The Work of Heaven", *Tradition and Change: The Development of the Conservative Movement*, ed. Mordecai Waxman (New York: The Burning Bush Press, 1958), 163-164, 170; In the preamble to the constitution of the USA, it was aimed to embrace all elements essentially loyal to traditional Judaism within the body of the USA. See Pamela S. Nadell - Marc Lee Raphael, *Conservative Judaism in America: A Biographical Dictionary and Sourcebook* (New York: Greenwood Press, 1988), 326.

[69] According to Marc Lee Raphael, the USA is the product of an effort to give identity to Catholic Israel. See Marc Lee Raphael, *Profiles in American Judaism: The Reform, Conservative, Orthodox, and Reconstructionist Traditions in Historical Perspective* (San Francisco: Harper - Row, Publishers, 1984), 90; As stated by Conservative rabbi Aaron L. Starr, who drew attention to the importance of Catholic Israel, the body that is the decision-making authority in shaping halakhah comprises the members of congregations affiliated to the USA and the rabbis who lead these congregations, which have adopted the historical approach pioneered by Schechter. See Aaron L. Starr, "Tradition vs. Modernity: The CJLS and Conservative Halakhah", *Conservative Judaism* 58/1 (2005), 5.

Jewish identity is actually potentially wider than it seems today. Hence, Jonathan D. Sarna justifiably stated that the word "Conservative", which Schechter envisioned to include everyone to the right of Reform, has become much more restrictive today.[70] Even Orthodox Rabbi David S. Shapiro is of the opinion that the Conservative movement made a significant mistake by choosing to become an independent movement. In his opinion, the movement should never have separated itself from Orthodoxy. Unable to do so, the movement brought itself close to an alliance with Reform Judaism.[71] According to Kwall, on the other hand, the traditional core group within the Conservative movement and modern Orthodox members can unite on a common ground and contribute to the movement.[72]

In fact, it would not be wrong to say that there are Jewish communities with the tendency in question under the umbrella of Orthodoxy and that there exists an opportunity to focus on common points between Conservative groups and these communities today.[73] It is necessary to remember again that the Orthodox movement is not a uniform structure today. The prominent structures in American Orthodoxy (in order from the strictest to the most moderate) are Haredi (Ultra-Orthodox) Orthodoxy, Modern Orthodoxy and Open Orthodoxy. Within this religious spectrum, the Haredim are the most distant group from the Conservative movement, while the other two, especially Open Orthodoxy, seem to be the movements with the strongest possibility of reaching a consensus. By claiming that "a large percentage of Modern Orthodox Jews are not *theologically* Orthodox", Daniel Gordis is correct in his determination that this segment is guided by sociology as much as theology.[74] It is a fact that the ideal of balance between revelation and history or between halakhah and *aggadah* (narrative) advocated in Conservative Judaism finds a partial

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[70]   Sarna, "Learning from History".

[71]   Dorff, *Conservative Judaism*, 219-220.

[72]   Roberta Rosenthal Kwall, "Op-Ed: Conservative Judaism has just 2 viable options", *Jewish Telegraphic Agency* (Accessed September 4, 2024).

[73]   For example, there are Orthodox synagogues participating in the USA, such as Agudas Achim in Columbus. See Tami Kamin-Meyer, "An Orthodox Shul Goes Conservative", *Jewish Telegraphic Agency* (Accessed September 14, 2024).

[74]   Daniel Gordis, "Cognitive Dissonance", *Jewish Review of Books* (Accessed September 18, 2024).

counterpart in Modern Orthodoxy. On the other hand, it is noteworthy that some Haredim describe their opponents as "closet Conservative Jews". According to a famous rabbi, Open Orthodoxy should actually be seen as "the observant non-Orthodox".[75] Needless to say, this kind of point of view indicates the existence of a ground compatible with the Conservative ideal, which emphasizes the label "traditional" rather than "Orthodoxy" and attaches importance to both adherence to Jewish law and progress.

There has been a serious Orthodox background in the formation of Conservative communities since the early period. These communities have somehow managed to unite under the motto of "tradition and change". The adoption of mixed seating at the Orthodox Jewish Center of Cleveland in 1925 under the leadership of JTS-trained Rabbi Solomon Goldman (1893-1953) is an example of the close relationship between Conservative and Orthodox movements in the early period. Abraham Katz's description of Conservative Judaism as "Orthodox Judaism slightly modernized" also speaks to the same reality.[76] The close relationship between the Conservative movement and Yeshiva University in the 1920s was another remarkable development on the issue in question.[77] At that time, it was quite common for Yeshiva University graduates to serve in the JTS and to hold pulpits in Conservative congregations. In the context of the organic relationship with Orthodoxy, some of the 130 congregations that joined the USA in the 1956-1957 period were newly established congregations, while a significant portion were congregations that were previously Orthodox.[78] The fact that Michael R. Cohen emphasized that

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[75]   Wertheimer, *The New American Judaism*, 156.

[76]   Ira Robinson, *"A Link in the Great American Chain": Studies in the Evolution of the Orthodox Jewish Community in Cleveland, Ohio* (New York: Touro University Press, 2023), 78, 84, 86-87.

[77]   Even attempts to merge the JTS and Yeshiva College in the 1926-1927 period were called into question. See Aaron Rakeffet-Rothkoff, "The Attempt to Merge the Jewish Theological Seminary and Yeshiva College, 1926-1927", *Michael: On the History of the Jews in the Diaspora*, ed. Llyod P. Gartner (Tel Aviv: Tel Aviv University, 1975), 254-280.

[78]   Shapiro, *A Unique People in a Unique Land*, 101-102. Some Orthodox Jewish publications labeled those who defended mixed seating within Orthodoxy as "Conservative Jews" and that some congregations that defined themselves as

Schechter's introduction of certain innovations –such as the use of English in traditional services, an emphasis on decorum, and modern education– was largely compatible with Modern Orthodoxy and that his Orthodox students in the USA were generally identified as modern Orthodox is remarkable since it indicates the historical roots of the Conservative-Orthodox alliance.[79]

Considering the principal factors discussed above, it appears likely that in the current context, the Conservative movement will continue to encounter challenges in consolidating its congregations in the future. Apart from Reform Rabbi Paul Menitoff, who predicted that Conservative Jews might join other religious movements in the near future, for instance, Conservative scholar Rela Mintz Geffen regarded it as more likely that traditionalists within the Conservative movement could align themselves with the Modern Orthodox movement.[80] Indeed, between 1990 and 2000, the proportion of those raised as Conservatives who later joined Orthodoxy doubled, rising from five percent to ten percent.[81] Even Rabbi Avi Shafran, the director of public affairs for Agudath Israel of America, openly called upon those within the Conservative movement who still seriously adhered to halakhah to join the Orthodox community.[82] All these predictions, in themselves, point to the crisis currently faced by the Conservative movement.

Apart from Haredi groups, the idea of innovation and integration is among the basic principles in modern Orthodox Judaism. There is a clear positive and inclusive attitude toward secular knowledge, world culture, secular Jews and Jewish unity.[83] Within the scope of

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Modern Orthodox joined the Conservative movement after adapting mixed seating after the 1960s. See Jonathan D. Sarna, "The Debate over Mixed Seating in the American Synagogue", *The American Synagogue: A Sanctuary Transformed*, ed. Jack Wertheimer (Cambridge: Cambridge University Press, 1987), 386.

[79] Michael R. Cohen, *The Birth of Conservative Judaism: Solomon Schechter's Disciples and the Creation of an American Religious Movement* (New York: Columbia University Press, 2012), 9.

[80] "Reform Leader's Swipe Sparks Angry Rebuttals from Conservatives", *Jewish Telegraphic Agency* (Accessed October 7, 2025).

[81] Steven M. Cohen, "Change in a Very Conservative Movement", *Sh'ma: A Journal of Jewish Ideas - Jewish Family & Life* 36/628 (February 2006), 6.

[82] Shafran, "The Conservative Lie".

[83] See Shmuel Singer, "Modern Orthodoxy: Crisis and Solution", *Tradition: A Journal*

Wissenschaft des Judentums (Science of Judaism) (WdJ), the idea of *synthesis* between religious knowledge and secular knowledge has an important place, especially through Yeshiva University.[84] It seems quite significant that fundamentalism does not find a place for itself in Modern Orthodoxy or, more importantly, the Open Orthodoxy movement[85] and that the idea of change based on halakhah is generally an acceptable and even a desired goal. In Modern Orthodox Judaism, there is a clear tendency to view oral law as *divinely inspired* rather than attributing a divine origin to it. For example, Rabbi Ysoscher Katz, chairperson of the Department of Talmud at Yeshivat Chovevei Torah, believed that the tradition essentially contained progressive change within itself.[86] In this context, the acknowledgement that halakhah has been shaped by rabbis partly in response to historical influences and that it is therefore open to a certain degree of flexible interpretation reinforces the basis of the relationship between the Conservative and Orthodox movements.[87]

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of *Orthodox Jewish Thought* 23/4 (1988), 47-53.

[84] David Singer, "The New Orthodox Theology", *Modern Judaism* 9/1 (1989), 36-37.

[85] For more information about Open Orthodoxy, see Avraham Weiss, "Open Orthodoxy! A Modern Orthodox Rabbi's Creed", *Judaism* 46/4 (1997).

[86] Avrohom Gordimer, "Open Orthodoxy and the Orthodox Rebirth of the Conservative Movement", *The Jewish Link* (Accessed September 23, 2024).

[87] Scott A. Shay, *Getting Our Groove Back: How to Energize American Jewry* (Jerusalem: Devora Publishing, 2007), 187. On the issue of *agunah* (chained women), in 1953, when Talmud scholar Saul Lieberman (1898-1983) attempted to solve the problem by adding an additional phrase to *ketubah* (Jewish wedding document), the Rabbinical Council of America and the Rabbinical Assembly came together to discuss the issue under the leadership of Rabbi Joseph Soloveitchik (1903-1993) and Saul Lieberman. Conservative and Orthodox representatives agreed on adding this phrase to ketubah and using it in marriage ceremonies. See Mayer E. Rabinowitz, "The Joint Bet Din of the Conservative Judaism", *Hakol Kol Yaakov: The Joel Roth Jubilee Volume Series: The Brill Reference Library of Judaism*, ed. Robert A. Harris - Jonathan S. Milgram (Leiden: Brill, 2021), 268-269. Modern Orthodox Rabbi Emanuel Rackman (1910-2008) also strived for Orthodox-Conservative cooperation on the same matter. See Emanuel Rackman, "Political Conflict and Cooperation: Political Considerations in Jewish Inter-Denominational Relations, 1955-1956)", *Comparative Jewish Politics vol. II: Conflict and Consensus in Jewish Political Life*, ed. Stuart A. Cohen - Eliezer Don-Yehiya (Jerusalem: Bar-Ilan University Press, 1986), 118-127.

In this direction, within Orthodox Judaism, especially since the 1970s, there have been some trends that put women's rights on the agenda, even if not the matter of female rabbis.[88] On the issue of feminism, commentators such as Rachel Adler and Tamar Ross have discussed that there can be a legal basis for feminism in halakhah.[89] In addition to the Hartman Institute in Jerusalem, institutions such as Nishmat in Jerusalem and the Drisha Institute in New York have become prominent for allowing women to participate in Torah studies. Recently, graduates of Nishmat, Drishma, and the women's Talmud program at Yeshiva University have been assigned to provide religious services as religious mentors, even if not completely as rabbis, in various Orthodox synagogues in the United States.[90]

All these tendencies draw attention as points of overlap with the Conservative ideology. Referring to this fact, Noah Benjamin Bickart emphasized the potential of the Conservative movement to appeal to a wider audience than it appears. He reported that the fundamentalist Haredi press strongly condemns Open Orthodoxy and Yeshivat Chovevei Torah by calling this structure "Conservative". He also stated that many people define themselves as Orthodox but are sympathetic to relations with gentiles, approve of women's rights, and additionally accept critical historical research and that these Jews, in fact, have adopted the basic principles of Conservative Judaism.[91]

It would not be a wrong determination to assert that Open Orthodoxy is somewhere between the Conservative movement and

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[88]   See Michael Maher, "A Break with Tradition: Ordaining Women Rabbis", *Irish Theological Quarterly* 72 (2007), 53-56.

[89]   See Tamar Ross, "Can the Demand for Change in the Status of Women Be Halakhically Legitimated?", *Judaism* 42/4 (1993), 478-492.

[90]   Samantha Shapiro, "Damned if She Does, Damned if She Doesn't", *Slate* (Accessed September 2, 2024).

[91]   Noah Benjamin Bickart, "The Problem Is Not Ideological", *Jewish Review of Books* (Accessed September 8, 2024). At this point, it is necessary to mention Rabbi Emanuel Rackman. Rackman, who wanted to create a renewal within Modern Orthodoxy with his emphasis on the thought of integration and the interpretation of halakhah on a legitimate basis, was one of the leaders who tried to base his liberal approaches on halakhah and legitimate Jewish sources. See Norman Lamm, "Rabbi Emanuel Rackman z'l: A Critical Appreciation", *Tradition: A Journal of Orthodox Jewish Thought* 42/1 (2009), 9.

the Modern Orthodox structure and that it therefore corresponds to the closest structure, within American Orthodoxy, to the Conservative movement. In this context, it is significant that the former vice-chairperson of the Rabbinical Council of America, Rabbi Steven Pruzansky, stated that Open Orthodoxy continues on the path that the Conservative movement took 100 years ago and, moreover, described this movement as *neo-Conservatism.*[92] Finally, American writer and journalism professor Samuel Freedman also drew attention to the relationship in question. According to Freedman, who describes the new structure that this potential relationship would create as *Conservadox*, Modern Orthodoxy will one day end its current weak relationship with Haredim and find more reasonable partners within the right wing of the Conservative movement.[93]

In light of the discussion above, the question that needs to be answered is whether Conservative Judaism will take this organic relationship with Orthodox Judaism and the historical memory based on it into account in the future. The crucial matter is whether this process is an unrepeatable historical period, in the eyes of Conservative Judaism, or a model from which it can be inspired to rise again in American Judaism. In his letter to Henry Pereira Mendes (1852-1937) in 1913, the vision and farsightedness of Schechter, who stated that the two structures classified as Modern Orthodox and Conservative should definitely unite for the future of Jews,[94] might have the potential to offer today's Conservative leaders a way out of the crisis that they are in.

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[92] Ari Soffer, "'Open Orthodox' or 'Neo Conservative'?", *Israel National News* (Accessed September 15, 2024).

[93] Samuel G. Freedman, *Jew vs. Jew: The Struggle for the Soul of American Jewry* (New York: Simon and Schuster, 2000), 355-356. The Union for Traditional Conservative Judaism, which was founded in 1984 and rejected feminist approaches in the Conservative movement, kept the name "Conservative" until 1990. It can be interpreted from this that it considered itself to be associated with the Conservative structure for quite a long time. See Judith Hauptman, "Conservative Judaism: The Ethical Challenge of Feminist Change", *The Americanization of the Jews*, ed. Robert M. Seltzer - Norman J. Cohen (New York: New York University Press, 1995), 304.

[94] Bentwich, *Solomon Schechter: A Biography*, 211.

Conclusion

Since Conservative Judaism places the "middle way" ideal at the center of its ideology, it inherently contains an element of risk in the struggle for existence within American Jewry during every era. By virtue of occupying two opposite ends of the religious spectrum, Reform and Orthodox Judaism have been able to respond to historical changes with greater clarity and decisiveness, largely demonstrating a performance aligned with the expectations of their adherents. Hence, both movements have experienced less division. On the other hand, one of the most fundamental factors underlying the Conservative movement's decline, which became evident after the last quarter of the 20th century, appears to be that the concept of "balance", which is the main element that shapes its ideology, is losing its central place and importance. In this sense, the problems experienced in establishing the idealized harmony and coherence between tradition and modernity, between secular society and the rabbinate, between the Torah and science, and between halakhah and ethical values have led members of the movement to doubt the reality or applicability of the "middle way" ideal.

In the face of intellectual movements such as feminism, which increased its influence toward the end of the 20th century, that is, in the face of "history", the Conservative movement looks far from displaying a stance that is compatible with its main founding codes, which were largely shaped by Schechter. This means that the main goal, which aimed at the revival of traditional Judaism and indicated "gradual change", has remained in the background. In this sense, a strong Conservative community model based on halakhah could not be proposed as a prerequisite for change and innovation. Owing to the failure of Conservative movement leaders to realize such a model, the authority coming from the laypeople-rabbi consensus that would guide Conservative halakhah has been undermined and become unhealthy and unstable in its functioning. On the other hand, the absence of a road map regarding the identity or basic characteristics of what is historical, that is, what is open to change, and what is ahistorical, that is, what needs to be protected, feeds this unstable picture. In the activity of halakhic interpretation, it is difficult to say that a certain methodology was followed among leaders in the pendulum between the traditional religious approach and the current widespread

paradigms of the period. This situation presents itself as a halakhic model that is not bound by certain standards, and in the current environment of ambiguity, it becomes much more possible for members of the movement to shift to the right wing or the left wing.

Another concept that seems to have decreased in importance in the Conservative movement is the concept of "process" in the interpretation of halakhah. This study has explained that in the steps taken toward interpretations and changes, insufficient room was provided for the organic process required for both the collective will of society to be able to express itself clearly and comprehensive research activity on religious texts. In this context, the "organic development of halakhah", which was attractive for Conservative people in the early period and distinguishes the Conservative movement from the Orthodox tradition and the Reformist approach, seems to have been undermined by reflexive moves. The failure to include the collective social conscience, one of the most central elements in Conservative discourse, in the process in a balanced manner as a decisive aspect of the development of halakhah is another factor that alienates Conservative Jews from the movement. Therefore, the general approach exhibited in the practical field usually contradicts the belief that Conservative Judaism seeks an agreement between laypeople and rabbis in Conservative halakhah, as emphasized in *Emet ve'Emunah.*

The fact that Conservative Judaism, which is still experiencing the process of decline in question, has not been able to initiate a restructuring process is a significant deficiency on its part. Leaders generally seem to have turned a deaf ear to the deep-rooted problems mentioned above. In this study, it is emphasized that reconsidering the ideal Conservative individual and social identity and the scope of this identity might be a highly critical step for the future existence of movement. This study draws attention to the importance of the strong historical background for the organic relationship with the Orthodox tradition on both ideological and institutional grounds, and it reveals how the movement could not benefit from this historical experience as it should.

In this respect, approaches that draw attention to a consensus ground between Conservative Judaism and certain groups under the umbrella of Orthodoxy, based on certain values, deserve to be paid

attention to earnestly. This study proposes that if Conservative identity, which has a much narrower framework in its current form than that which was originally constructed and envisioned, can be redefined and updated on the basis of the aforementioned relationship, then Conservative Judaism has the potential to directly increase its audience and influence among American Jews. This initiative, which will also redefine the boundaries with the Reform movement, might contribute to the emergence of a more acceptable and moderate Conservative halakhic model based on values such as the religious body of knowledge based on rabbinic tradition, the consensus between the will of the obedient community and the rabbinate, and the organic development of halakhah.

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IMPACT OF LEARNED HELPLESSNESS ON SOCIAL MEDIA-INDUCED SECONDARY TRAUMATIC STRESS: MEDIATION BY RELIGIOUS COPING AND MODERATION BY QUALITY OF LIFE

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Abstract

The use of social media, which has rapidly increased in recent years, directly or indirectly affects people's mental health. The aim of this study is to determine the effects of learned helplessness (LH) on social media-induced secondary traumatic stress (STS-SM) and the role of quality of life and religious coping in this relationship in Türkiye. This cross-sectional study sample consisted of 397 Turkish Muslim adults. The results revealed significant links among LH, negative religious coping (NRC), and quality of life with STS-SM. Moderation analyses revealed that perceived high quality of life moderated the positive effect of LH on STS-SM, whereas mediation analyses revealed that NRC partially mediated this relationship. The results support the idea that disturbing content on social media can trigger traumatic stress, especially among individuals who feel helpless and resort to negative

religious coping, but perceived high quality of life has a buffering effect.

Key Words: Secondary traumatic stress, social media, learned helplessness, religious coping, quality of life

Introduction

Secondary traumatic stress, defined as "the natural consequent behaviors and emotions resulting from knowing about a traumatizing event experienced by a significant other, the stress resulting from helping or wanting to help a traumatized or suffering person" (Figley, 1995), has generally been discussed in the context of professionals such as nurses, social workers, rescue workers, and mental health counselors (Badger et al., 2008; Greinacher et al., 2019; Kuckertz et al., 2024; Rigas et al., 2023) who are directly involved with a given traumatic event. However, there is a growing scholarly interest in the investigation of laypersons' secondary traumatic stress induced by social media.

The second generation of the web, which prioritizes interactivity and collaboration, has transformed users from static viewers of information into dynamic actors, thus making the use of social media widespread (Sykora, 2017). News that was previously censored and could only be accessed at certain times can now be accessed at any time, unfiltered and directly through the eyes of the individual exposed to trauma. Social media use has a high potential risk for secondary traumatic stress because the news is timeless, unfiltered, and supported by effective images and videos (Comstock - Platania, 2017; Lamba et al., 2023; Pearson, 2024).

Learned helplessness (LH), regarding the qualities inherent in it, is a concept related to secondary traumatic stress. LH is a psychological state that arises from the belief that individuals have no control over their environment, developed because of the adverse events they encounter (Seligman, 1975). Initially developed in the context of animal studies by Seligman and Maier (Overmier - Seligman, 1967; Walker et al., 2021), learned helplessness theory was subsequently extended to human experiences (Abramson et al., 1978; Hiroto - Seligman, 1975). LH is typically observed when an individual is confronted with adverse situations beyond their control and is unable to overcome these situations with their actions.

Individuals with a sense of helplessness tend to acknowledge and generalize the inadequacy of their actions. Hence, in the presence of an adverse event, the individual experiences a decline in motivation to respond and a decrease in confidence in taking effective action (Seligman, 1972). Abramson et al. (1978) associated the attribution style, attributing adverse events to internal, global, and stable causes, with learned helplessness (Palker - Marcus, 2004). This attribution style makes coping with adverse and traumatic situations difficult, leading to LH and various forms of psychological distress (Seligman, 1972). Thus, individuals with LH, characterized by a passive response to traumatic events, are expected to be in a psychological state that is prone to developing secondary traumatic stress caused by social media.

Addressing secondary traumatic stress can directly facilitate the coping process. Coping refers to the cognitive, behavioral, emotional, and physiological effort by individuals to overcome situations that exceed their resources (Lazarus, 1993; Pargament, 1997; Vukčević Marković - Živanović, 2022). It corresponds to a dynamic process that includes virtually every facet of an individual. Owing to its inherent dynamism, it is intricately influenced by the individual's sources of meaning and situational context (Pargament, 1997; Vukčević Marković - Živanović, 2022). In times of stress, individuals frequently turn to religion, one of their most important sources of meaning (Koenig et al., 1988; Pargament, 1997; Pargament et al., 2001; Schuster et al., 2001).

Religion has a transformative effect on the lives of individuals who have lost control and meaning as a result of the traumatic event experienced and provides these individuals with the intimacy and support necessary to cope with the traumatic event (Pargament et al., 2000). Despite these functions, it is crucial to acknowledge that religion does not offer unequivocally positive support for the individual. The religious coping style of an individual is shaped by their perspective on religion and the nature of their relationship with God. For this reason, religious coping has been divided into two categories in the literature: positive and negative. In individuals who apply positive religious coping (PRC), God's mercy and reliability are emphasized, whereas in those who apply negative religious coping (NRC), the condemnatory and punitive aspects of God are emphasized. The image of a loving, merciful God is dominant in positive religious

coping, whereas the image of an angry, punitive, and abandoning God is dominant in negative religious coping (Bryant - Davis et al., 2011; De Luna - Wang, 2021; Hebert et al., 2009; Pargament et al., 1998).

Numerous studies have been conducted to examine the relationship between religious coping and mental health (Alsamara et al., 2024; Pankowski - Wytrychiewicz, 2023; Walker et al., 2021; Yıldırım et al., 2021). Divergent findings are because religious coping varies according to individuals' perceptions of religion and has a complex structure. Although PRC generally has a positive relationship with positive mental health indicators and NRC has a negative relationship (Abu-Raiya - Pargament, 2015; Ano - Vasconcelles, 2005), nonsignificant or inconsistent relationships have been detected (Abu-Raiya et al., 2011; Gerber et al., 2011; Walker et al., 2021).

In addition to the factors mentioned above, quality of life is linked to secondary traumatic stress levels. Numerous studies have investigated the impact of quality of life and its indicators on individuals' stress levels (Naz - Sehrish, 2022). These findings indicated a negative correlation between stress and high quality of life and a positive correlation between stress and low quality of life (Vukčević Marković - Živanović, 2018; Prati et al., 2010; Tuchinda, 2020). Therefore, individuals' perception of their quality of life can predict secondary traumatic stress.

This Study

Secondary traumatic stress, which is the main focus of this research, is discussed in the context of social media users. As mentioned before, although secondary trauma studies for professionals are common, those conducted on laypersons are quite limited. Given the pervasiveness of social media usage and the fact that it has become a popular source of news, social media has emerged as an important area of secondary traumatic stress.

The main purpose of this study is to determine the effects of perceived quality of life, LH, and religious coping on STS-SM, which are determined on the basis of the literature. Additionally, the aim is to examine the potential indirect role of quality of life and religious coping in the relationship between STS-SM and LH. Drawing on the theoretical and empirical evidence, the following hypotheses are proposed:

H$_1$: Perceived quality of life and PRC have negative effects on STS-SM, whereas NRC and LH have significant positive effects on STS-SM.

H$_2$: Perceived quality of life will moderate the effect of LH on STS-SM. The association between LH and STS-SM is weaker among people with higher perceived life quality.

H$_3$: NRC will mediate the relationship between LH and STS-SM.

Methods and Materials

Participants

The sample of the study consists of Turkish Muslim adults between the ages of 18 and 50. The average age of the sample is 24.89 (SD = 6.09). After the questionnaires that were incomplete and inaccurate from the 421 questionnaires obtained were excluded, analyses were conducted on a total of 397 individuals (n = 397). A total of 67% (*n* = 266) of the participants were female, and 33% (*n* = 131) were male. Most of them had a medium economic level (n = 302) and an undergraduate degree (n = 260) (see Table 1).

Variable	Group	Frequency (f)	Percentage (%)
Gender	Male	131	33.0
	Female	266	67.0
Education status	Undergraduate	260	65.5
	Graduate	58	14.6
	Master/Doctoral	79	19.9
Income status	Low	75	18.9
	Medium	302	76.1
	High	20	5.0
Daily screen time	1-3 hours	220	55.4
	3-5 hours	117	29.5
	5-7 hours	34	8.6
	7+ hours	12	3.0
	No social media account	14	3.5
Religiosity	*M*=4.05 (*SD*=.857; min.=1, max.=5)		
Age	*M*=24.89 (*SD*=6.09)		

Table 1. Characteristics of Sample (*n*=397)

Procedure

In this cross-sectional survey-designed study, data were collected by the questionnaire method, which is a quantitative data collection technique. The questionnaire form created by combining the measurement tools was transferred to Google Forms and then administered to the participants voluntarily. Informed consent was obtained from all individual participants included in the study during survey administration. The questionnaire was administered to the participants between June and August 2023.

Measures

In the explanation section of the questionnaire, the form provided brief information about the research. Then, some sociodemographic questions, such as questions concerning gender, age, income, and education level, were asked. The income status question is based on subjective reporting and consists of low, medium, and high options.

Secondary Traumatic Stress for Social Media Users. The Turkish version of the Secondary Traumatic Stress for Social Media Users Scale was used to measure the participants' secondary traumatic stress levels due to social media (Balcı Çelik - Altınışık, 2021). The original scale was developed by Mancini (2019) and is composed of three subdimensions: attack, avoidance, and arousal. However, in the Turkish adaptation study, 17 items were grouped into a single subdimension. Participants respond to each item using a 5-point Likert scale (e.g., "Things that remind me of what I see on social media make me sad"; 1=never, 5=very often). The minimum score is 17, and the maximum score is 65. Low scores indicate low STS; high scores indicate high STS. Çelik and Altınışık (2021) obtained a Cronbach's alpha value of .95 in their study. In this study, the Cronbach's alpha coefficient of the STSS-SM was found to be .95.

Learned Helplessness. To measure the level of LH, the Learned Helplessness Scale originally developed by Quinless and Nelson (1988) and further developed by Yavaş (2012), which was adapted into Turkish by the authors of the study, was used. Although the original consists of 20 items, the scale was revised to 15 items as a result of exploratory and confirmatory factor analyses, which were applied to the scale in the adaptation study. The Learned Helplessness Scale consists of internal controllability and external uncontrollability

subdimensions, and the level of learned helplessness increases as the scores increase. The scale is organized on a 5-point Likert scale (e.g., "I have difficulty finding solutions to difficult problems"; 1=never, 5=very often), such that it has a minimum score of 15 and a maximum score of 75. Yavaş's (2012) adaptation study revealed that the Cronbach's alpha reliability coefficient for the whole scale was .80. In this study, the reliability coefficient was found to be .75.

Religious Coping. To determine the participants' religious coping styles, the Turkish version (Ekşi - Sayın, 2016) of the Religious Coping Scale (RCS), developed by Abu Raiya et al. (2008) and based on Islamic religiosity, was used. The RCS, which consists of 10 items, measures participants' religious coping styles in two subdimensions: positive and negative religious coping (e.g., "When I face a problem in life, I ask God for forgiveness", "When I face a problem in life, I wonder what I have done to cause God to punish me"). A total score cannot be obtained from the RCS, which is developed on a 4-point Likert scale (1=never, 4=very often). Calculations are made separately for each subdimension. The minimum score for the positive religious coping (PRC) subdimension is 7, and the maximum score is 28, while the minimum score for the negative religious coping (NRC) subdimension is 3, and the maximum score is 12. In their study, Ekşi and Sayın (2016) calculated the internal consistency coefficient of the RCS as .91 for PRC and .86 for NRC. In the present study, these values were found to be .91 for PRC and .88 for NRC, which are quite close to the values reported in their study.

Perceived Quality of Life. The mean perceived quality of life was measured through the question "How would you rate your quality of life?". In this self-report-based question, participants were asked to rate their quality of life between 1 and 5 (1=very bad, 5=very good). The mean of the sample in this question was M = 3.42 (SD = 0.72).

Religiosity. To determine the religiosity levels of the participants, the Brief Religiosity Scale developed by Ayten (2009), which is based on the Islamic Religiosity Scale developed by Uysal (1996), was used. The scale consists of two dimensions and nine items rated on a 5-point Likert scale (1=never, 5=always). Cronbach's alpha reliability coefficient for the whole scale was .77. In this study, the reliability coefficient was found to be .91.

Data Analysis

Data analyses were conducted on the dataset formed after the questionnaires with missing data and those deemed inaccurate were excluded. All analyses were conducted using SPSS version 24. First, the averages for the participants, the standard errors, and the normality distribution of the data were obtained through descriptive analysis. Pearson correlation analysis was used to determine the relationships between the variables of the study. SPSS macro-PROCESS for moderation and mediation analyses (Hayes, 2018) was used. To determine the significance level of the mediation and moderation effects, a bootstrapping procedure with 5,000 random resamplings within a 95% confidence interval was applied.

Results

Preliminary Analysis

Table 2 shows the descriptive statistics, including the means, standard deviations, range, and Cronbach's alpha of the study variables, and their zero-order Pearson correlation coefficients. The results indicate that STS-SM is positively related to LH (β = .366; p < .001) and NRC (β = .244; p < .001) and negatively related to perceived quality of life (β = -.261; p < .001). No significant relationship was detected between STS-SM and PRC (β = .004; p > .05).

Variable	1	2	3	4	5
1 LH	-				
2 STS-SM	.366**	-			
3 PRC	.135	.004	-		
4 NRC	.145**	.244**	.329	-	
5 Quality of Life	-.020	-.261**	.138**	-.058	-
M	2.78	2.18	3.29	2.42	3.42
SD	0.49	0.87	0.67	0.91	0.72
Range	1-5	1-5	1-4	1-4	1-5
Cronbach (α)	.75	.95	.91	.88	-

Table 2. Descriptive statistics, reliability, and correlation analysis
for the study variables
Abbreviations: LH, learned helplessness; STS-SM, social media-
induced secondary traumatic stress; PRC, positive religious coping;
NRC, negative religious coping; *M*, mean; *SD*, standard deviation.
**$p < 0.001$.

Hierarchical Regression on Secondary Traumatic Stress for Social Media Users (H_1)

The primary analysis of the study involved a hierarchical regression procedure for predicting STS-SM. Variables were included in the model from the one whose effect was contained to be controlled toward the focal variable (Field, 2017). The tolerance statistics ranged from .85 to .97, and the VIFs ranged from 1 to 1.16; thus, there is no concern for multicollinearity (Table 3).

	Independent	Coefficient		Standardized Coefficient	ΔR2	ΔR2Change
		B	SE	β		
Model 1	Quality of Life	-,313*	,058	-,261	,068*	,068
Model 2	Quality of Life	-,289*	,058	-,240		
	NRC	,234*	,048	,244	,122*	,054
	PRC	-,056	,066	-,043		
Model 3	Quality of Life	-,277*	,054	-,231		
	NRC	,198*	,045	,207	,235*	,113
	PRC	-,101	,062	-,078		
	LH	,605*	,079	,342		

Table 3. Hierarchical Regression Models
Dependent Variable: STS-SM. Abbreviations: B, unstandardized coefficient of effect; *β*, standardized coefficient of effect; SE, standard error; LH, learned helplessness; PRC, positive religious coping; NRC, negative religious coping; *M*, mean; *SD*, standard deviation. *$p < 0.001$.

In the first model, quality of life was the only significant predictor ($\beta = -.261$; $p < .001$) of STS-SM ($F_{1, 395} = 28.76$; $p < .001$). Quality of life was inversely associated with STS-SM scores. Model 2 was also significant ($F_{2, 393} = 18.22$; $p < .001$). In the second step, religious coping

was added to the model. As such, although the effect of perceived quality of life on STS-SM has decreased, it has continued to have a negative effect ($\beta = -.240$; $p < .001$). NRC had a positive and significant relationship with STS-SM ($\beta = .244$; $p < .001$), whereas PRC was not a significant predictor of STS-SM in Model 2 ($\beta = -.056$; $p = .397$). Model 3 was again significant ($F_{1, 392} = 30.15$; $p < .001$). LH was added to this model; a positive and significant effect of LH on STS-SM was determined ($\beta = .342$; $p < .001$). With the addition of LH to Model 3, the negative effect of perceived quality of life and NRC on STS-SM decreased, while no significant effect of PRC was observed ($\beta = -.078$; $p = .102$).

An analysis of explanatory rates reveals that perceived quality of life explains 7% of the change in STS-SM ($\Delta R2 = .068$; $p < 0.001$). In the second model, the combined influence of NRC and perceived quality of life explains 12% of the variation in STS-SM ($\Delta R2 = .122$; $p < 0.001$). With the addition of NRC to the model, the perceived quality of life continued to affect this relationship, but a decrease was observed in the negative effect of quality of life on STS-SM ($\beta_1 = -.261$, $\beta_2 = -.240$, $p < 0.001$). When LH was added to the independent variables in the last step, the explanatory rate of the model reached 23% ($\Delta R2 = .235$; $p < 0.001$). Compared with Model 2, Model 3 exhibited notable improvement and explained 23% of the variance in STS-SM. Thus, the variables that predicted 23% of the variance in STS-SM were identified. As a result of hierarchical regression analyses, it was determined that LH was the most predictive variable of STS-SM. Therefore, moderation and mediation analyses were conducted to determine how the other variables were related to STS-SM and LH (Memon et al., 2019). On the basis of the hierarchical regression findings, H_1 was partially confirmed, as the model did not reveal a significant influence of PRC, suggesting that other factors may have contributed.

Moderation (H_2)

LH predicted STS-SM, but the effects depended on levels of perceived quality of life. Perceived quality of life moderated the relationship between LH and STS-SM: $F_{3, 393} = 34.24$; $p < 0.001$; $R2 = .207$; interaction $\beta = -.235$; $p < 0.05$; $t = -2.15$; 95% CI = (-.4515, -.0204). The moderation effect of perceived quality of life is shown in Figure 1.
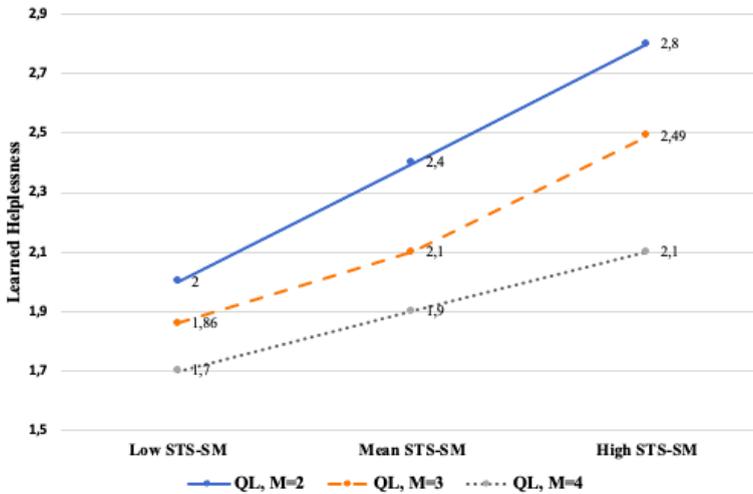
Figure 1. Moderation effect of perceived quality of life (QL) on the association of learned helplessness and secondary traumatic stress for social media users (STS-SM)

The slope for the effect of LH was significant when the quality of life was 1 SD below the mean, at the mean, and 1 SD above the mean. When the perceived quality of life was high, LH had a weaker effect on STS-SM. STS-SM was greatest among those high in LH but was particularly low in perceived quality of life. In summary, perceived quality of life has a moderating effect that reduces the strength of the relationship between LH and STS-SM; thus, H_2 is supported.

Mediation (H_3)

A mediation model was designed to determine the role of NRC, one of the variables predicting STS-SM in the previously mentioned hierarchical regression model, in the relationship between LH and STS-SM. In this mediation model, LH had a positive relationship with STS-SM (β = .597; t = 7.2806; p < .001) and NRC (β = .268; t = 2.9125; p < .01). Furthermore, NRC had a positive relationship with STS-SM (β = .186; t = 4.2116; p < .01; see Figure 2).
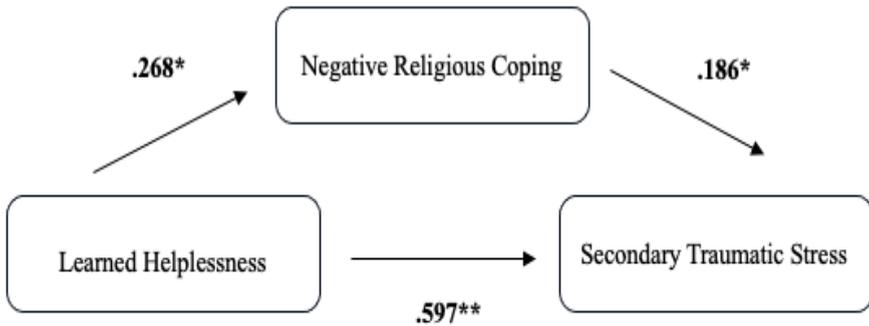
Figure 2. The mediation effect of negative religious coping on the association of learned helplessness and secondary traumatic stress, demonstrated with unstandardized path coefficients. *p < 0.01; **p < 0.001.

The indirect effect of NRC on the relationship between LH and STS-SM was significant (β = 0.05; 95% CI = .0118, .1026; see Table 4). The impact of LH on STS-SM is mediated by NRC. LH caused an increase in NRC, which in turn caused an increase in STS-SM.

Relationship	Total Effect	Direct Effect	Indirect Effect	CI		t statistic	Conclusion
				LB	UB		
LH > NRC > STS-SM	0,647 (0.000)	0,597 (0.000)	0,0501	0,0118	0,1026	7,811	Partial Mediation

Table 4. Mediation Analysis Summary
Abbreviations: LH, learned helplessness; STS-SM, social media-induced secondary traumatic stress; NRC, negative religious coping; LB, lower bound; UB, upper bound; CI, confidence interval.

NRC mediated the relationship between LH and STS-SM. Partial mediation is evident, as both the direct effect of LH on STS-SM (β = .597; p < .001), the indirect effect mediated by NRC, and the overall total effect (β = .647; p < .001) were statistically significant. Accordingly, H_3 is supported.

Discussion

Past research on secondary traumatic stress has generally focused on individuals such as health care professionals, social workers, and rescue workers who work with individuals who are directly exposed to trauma (Bride, 2007; Ogińska-Bulik et al., 2021; Rayner et al., 2020). In the contemporary era, the burgeoning use of social media, coupled with rapid interaction, has made individuals aware of each other's hardships and traumas more quickly and firsthand than ever before. Unlike the multiple criteria required for being newsworthy in traditional media, current media platforms provide everyone with the opportunity to reflect on their own narratives and experiences, including traumas and hardships. Furthermore, this process works rapidly. Hence, each social media user is exposed to the flow of trauma, regardless of his or her choice. Therefore, every social media user is also a potential victim of secondary traumatic stress. Nevertheless, studies on social media-induced secondary traumatic stress are quite limited (Scott et al., 2023; Secker, 2021).

In this context, this research aims to examine the effects of quality of life, learned helplessness, and religious coping, which are likely to predict secondary traumatic stress caused by social media. To fulfill the purpose of the study, the first hierarchical regression analysis was conducted, followed by mediation and moderation analyses.

In the first stage of the hierarchical regression analysis, it was determined that perceived quality of life was a negative predictor of STS-SM. On the basis of these findings, individuals who are satisfied with their living circumstances are less affected by traumatic stimuli on social media. One of the reasons individuals are affected by the trauma they see on social media is the possibility that this hardship may happen to them. Individuals who evaluate their lives positively and find themselves more advantaged economically or socially may find that they are less likely to experience these hardships. Therefore, the likelihood of STS-SM may be lower. These findings are also consistent with studies addressing the relationship between various forms of stress and quality of life (Ormiston et al., 2022; Prati et al., 2011).

In the second stage, religious coping was included in the model, and it was observed that NRC plays a significant role in increasing STS-SM. PRC did not play a significant role in the model. By adding religious coping to the model, the influence of quality of life in

reducing STS-SM was weakened, indicating that NRC had a stronger effect on STS-SM. Religious coping emerges as a powerful resource for adherents dealing with problems (Abu-Raiya - Pargament, 2015). However, the fact that it is a very effective phenomenon for religious individuals also points to the danger of religious coping potentially leading to a negative effect.

According to the literature, when the positive effect of PRC is compared with the negative effect of NRC on an individual's mental health, the effect of NRC appears stronger and more consistent. In other words, the analyses reveal that the relationships between NRC and psychological stress are stronger (Park et al., 2018; Roggenbaum et al., 2023). In this study, similar to the common findings in the literature, NRC exhibited a positive relationship with STS-SM, which is an indicator of negative mental health, whereas PRC did not have a significant effect (Ano - Vasconcelles, 2005; Gerber et al., 2011).

In the third stage, LH was included in the model as a variable that could determine the individual's attitude toward life experiences and the suffering of others. It has been determined that LH has an enhancing effect on STS-SM. When the variables considered were compared, LH emerged as the most influential predictor of STS-SM. Past research has shown that individuals who feel helpless may experience symptoms of depression and post-traumatic stress disorder (Conoscenti - Fanselow, 2019; Palker - Marcus, 2004). Taken together, individuals with learned helplessness are more vulnerable to the trauma they are exposed to on social media and are prone to developing secondary traumatic stress.

Moderation analysis was conducted to examine the potential indirect effects of quality of life and religious coping on the relationship between STS-SM and LH. It has been determined that perceived quality of life has a moderating effect on this relationship. A high level of LH emerges as a factor that increases STS-SM, but this positive relationship varies depending on whether individuals perceive their quality of life as low, medium, or high. As the perceived quality of life increases, the effect of LH on STS-SM decreases. In other words, high perceived quality of life has a buffering effect on individuals who experience a sense of helplessness while they develop STS-SM. In summary, STS-SM is lowest in individuals who perceive LH as low and quality of life as high.

Finally, mediation analysis was applied to determine the indirect effect of NRC on the relationship between LH and STS-SM. NRC has a significant mediating role in this relationship. LH increases STS-SM through NRC. The fact that the sample consisted of individuals with above-average religiosity scores (*M*=4.05; see Table 1) may have caused religion to be an important coping source. However, individuals who feel helpless may tend to apply NRC more frequently. In accordance with the belief style of individuals who apply NRC, the aspect of God that abandons and punishes them is dominant (Pargament et al., 1998). For this reason, it is plausible that their religious coping style may not have a protective effect against the impact of traumatic events encountered on social media. Therefore, they may develop STS-SM by feeling more vulnerable to the trauma they are exposed to on social media. Consequently, LH increases STS-SM levels by increasing individuals' adoption of NRC.

Strengths and Limitations of the Study

Secondary traumatic stress is a mental and emotional condition that is more common among professional groups such as health care professionals, crisis response teams, and social workers. The distinctive and strong aspect of the findings in this study lies in their nonspecificity to any professional group, as they are derived from laypersons. Social media users are unintentionally exposed to traumatic content that they do not want to encounter on these platforms. More importantly, they are passive recipients when confronted with such content. Therefore, the findings obtained in this research provide empirical evidence for neglected research areas, such as the stressful processes that disturb the content on social media induced by individuals, the factors affecting this stress, and ways to cope with it.

Despite the distinctive features inherent in this research, it has several limitations. First, the study was conducted in a cross-sectional design. Findings are limited to the time the data were collected and the instruments employed for measurement. In addition, the study consists of Turkish Muslim individuals who can be considered relatively religious (*M*=4.05; see Table 1). These circumstances restrict the extent to which the findings can be generalized. Finally, the comprehensive term "social media" was employed as a research metric. However,

investigations focused on prominent social media platforms such as Instagram, X, or YouTube would facilitate the discernment of specific platforms where participants are more exposed to distressing content and experience heightened stress.

Conclusion

This study revealed that perceived quality of life emerged as a negative predictor of STS-SM and demonstrated a moderating effect on the association between STS-SM and LH. As the perceived quality of life increases, the amplifying impact of LH on STS-SM decreases. NRC significantly increased STS-SM and acted as a mediating factor in the association between LH and STS-SM. LH increases secondary traumatic stress through NRC. As a result, STS-SM is lowest in individuals who perceive LH as low, perceive quality of life as high, and apply NRC less frequently.

It is anticipated that the findings will provide distinctive contributions to both theoretical and empirical understanding within the realms of mental health, social media, and the psychology of religious coping. Health care professionals can integrate the findings of this study into their intervention programs for people who experience this stressful situation.

Intervention by practitioners to help people proactively address the process can lead to more effective results. Furthermore, discerning the contexts in which individuals tend to apply positive or negative coping can enhance the efficacy of religiously/spiritually integrated and culturally sensitive intervention programs. Each of these factors is an indirect contributor that positively affects the mental health of both individuals and societies.

For further research, studies in the context of events that profoundly affect society, such as natural disasters, pandemics, terrorist attacks, and wars, will enable a better understanding of the subject by revealing its different dimensions. Societies as well as people have codes of conduct. Within this framework, comparative studies across diverse cultural contexts and socioeconomic landscapes illuminate and elucidate the origins of secondary traumatic stress and its correlated constructs.

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LATENT ROLE OF THE ISLAMIC RESPONSA (*FATWÁ*) IN THE SAUDI LEGAL SYSTEM DURING THE PRECODIFICATION PERIOD

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Abstract

The General Presidency of Scholarly Research Iftā' (the Dār al-Iftā') was established as part of the Saudi government's policies of bureaucratization and institutionalization in 1953. In the absence of a constitutionally binding source of legislation, the Saudi government could consult the Dār al-Iftā' to issue a *fatwá* with the intention of either standardizing a legal ruling or enacting a law. For instance, the *fatāwá* regarding abduction/usurpation and drugs/alcohol were transformed into a legal regulation that considerably facilitated judges' (*qāḍīs*) application of the prescribed penalties. Before starting the codification process, many social regulations and norms (e.g., the segregation of sexes, women's dress codes, and the legality of forensic autopsies) could also be traced back to the *fatāwá* issued by the Dār al-Iftā'. This

article intends to elucidate the complementary role of *fatāwá* in Saudi society as well as the judicial and legislative system by referring to the *fatāwá* transformed by royal decrees into legal regulations before the codification period. This paper provides a detailed analysis of the role of the practice of *iftā'* within the Saudi politico-legal area for the precodification period.

Key Words: Islamic Legal Opinions (*fatwâ*), Saudi society, legal procedure, Royal Decree

Introduction

The practice of issuing Islamic responsa (*iftā'*) is an important mechanism that brings vitality to Islamic law while enabling the development of new Islamic responsa. This mechanism enables Muslim scholars to produce legal formulas for predicaments that are engendered by the encounter of Islamic law and modernity. Islamic responsa (*fatāwâ*), the outputs of the *iftā'* mechanism, are defined as nonbinding in terms of their sanctioning power, so many scholars inadvertently bypass the role of the practice of *iftā'* in Islamic legal systems.[1] Saudi Arabia has been identified with Islam more than other Muslim countries have been since the country is known as the cradle of Islam and the two holiest places (Mecca and Medina) lie within its borders.[2] The ruler of the country, the king, is considered to be and presents himself as the custodian of these sacred sites (*Khādim al-Ḥaramayn*, or the servant of the two shrines). The population is described as entirely Muslim, so non-Muslims are not allowed to become permanent residents of the country. In this regard, it could be noted that the country did not need any legal system other than Islamic law to address and resolve any legal conflicts and disagreements

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[1] Carool Kersten (ed.), *The Fatwa as an Islamic Legal Instrument: Concept, Historical Role, Contemporary Relevance* (Berlin: Gerlach Press, 2019); Omer Awass, *Fatwa and the Making and Renewal of Islamic Law: From the Classical Period to the Present* (New York: Cambridge University Press, 2023), 1-13.

[2] Alexei Vassiliev, *The History of Saudi Arabia* (New York, NY: New York University Press, 2000), 3-40; Michael Darlow - Barbara Bray, *Ibn Saud: The Desert Warrior Who Created the Kingdom of Saudi Arabia* (New York: Skyhorse Publishing, 2012), 430-460.

among its populace.

Since the establishment of Saudi Arabia in 1932, it has become amply clear that the legal system of the country is based on and regulated by Islamic law. The superiority and primacy of Islamic law were formally declared in the Kingdom's Basic Law of Governance (*al-Niẓām al-asāsī li-l-ḥukm*), which was legalized by Royal Decree A/90.[3] It was clearly affirmed that Islamic legal regulations and royal decrees constituted the foundation of the country's legal system, with orders issued by the Saudi king and government given the same level of importance as Islamic legal regulations. Royal decrees functioned as authoritative legal regulations in the absence of the Islamic legal regulations related to any issue at hand.[4] Nonetheless, the nature of royal decrees was restricted to their conformity with Islamic law. The two sources (Islamic legal regulations and royal decrees based on Islamic law) governed all administrative, executive, and legislative affairs of the state. It should be noted that the Kingdom's Basic Law of Governance theoretically and ideally draws a picture of the traditional Islamic governance system that divides the authority between religious scholars (ʿulamāʾ) and rulers (umarāʾ) by accentuating the importance and necessity of obedience to the regulations issued by these two types of authority holders.

The establishment of the Saudi Kingdom was based on the alliance formed in 1744 between Shaykh Muḥammad Ibn ʿAbd al-Wahhāb (d. 1792), the founder of the Wahhābī movement, and Muḥammad Ibn Saʿūd (d. 1765), the predecessor of the Saudi dynasty.[5] This alliance played a crucial role in the power structure, taking into account Islamic

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[3] Royal Decree A/90 (1992), Article 1, 7; Sümeyra Yakar, *Islamic Jurisprudence and the Role of Custom: A Comparative Case Study of Saudi Arabia and Iran* (Piscataway: Gorgias Press, 2022), 23-44.

[4] Frank Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden - Boston: Brill, 2000), 309-362.

[5] Muhammad al-Atawneh, *Wahhābī Islam Facing the Challenges of Modernity: Dār al-Iftā in the Modern Saudi State* (Boston: Brill, 2010), 1-3; Vassiliev, *The History of Saudi Arabia*, 10-50; Cole Bunzel, *Wahhābism: The History of a Militant Islamic Movement* (Princeton: Princeton University Press, 2023), 130-198. For the influence of Wahhābī-Salafīs in the Islamic world, see Reyhan Erdoğdu Başaran, "Boko Haram: Tarihsel Gelişimi ve Dinî-Siyasi Söylemleri", *Ankara Üniversitesi İlahiyat Fakültesi Dergisi* 66/1 (2025), 461-488.

thought on politics, in which the ruler was obliged to implement Islamic law while religious scholars were responsible for extracting legal rulings from the sources of Islamic law.[6] In the bilateral relationship between religious and political authorities, the citizens were required to obey the ruler without demonstrating any sign of resistance. The religious authority provided both legal and religious legitimacy to the Saudi monarchy to rule the country. Hence, it was quite possible to argue that the cooperation between political and religious authorities constituted the backbone of the Saudi state and enabled its continuity as a religious monarchy. Different views exist as to the exact nature of the relationship and the power distribution between the two (religious and political authorities).

While the traditional view defines the bilateral relationship as a symbiotic dual authority or partnership between the *umarāʾ* and the *ʿulamāʾ*, which means the descendants of Muḥammad Ibn Saʿūd (political authority) and Shaykh Muḥammad Ibn ʿAbd al-Wahhāb (religious authority), recent studies emphasize how the balance has evolved over time and, particularly in recent years, how it has radically shifted. These different approaches focus primarily on two axes: whether the relationship is a symbiotic partnership or a pragmatic instrumentalization based on the superiority of political authority. For instance, Krell identifies the basis of the relationship as the doctrine of *siyāsah sharʿiyyah* (governance in accordance with Islamic law). According to this doctrine, the legitimacy of Saudi kings depends on ensuring that all their policies comply with Islamic law. For Krell, this legitimacy creates a form of mutual authority between the *umarāʾ* and the *ʿulamāʾ*.[7] He analyses divergent views regarding the distribution of authority within this mutuality. According to one view (for example, Ibn ʿUthaymīn's interpretation as cited by Krell), the *ʿulamāʾ* are the real leaders (*hum ulū l-amr ḥaqīqat^{an}*), whereas the rulers merely implement the law as defined by the *ʿulamāʾ* (*umarāʾ munaffidūn*), so it may be briefly stated that the *ʿulamāʾ* define and the *umarāʾ*

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[6]   Emine Enise Yakar - Sümeyra Yakar, "The Symbolic Relationship Between *ʿUlamāʾ* and *Umarāʾ* in Contemporary Saudi Arabia", *Middle Eastern Studies* 13/1 (2021), 28-42.

[7]   Dominik Krell, *Islamic Law in Saudi Arabia* (Leiden - Boston: Brill, 2025), 24.

execute.[8] Other scholars, such as Frank Vogel, quoted by Krell, argue that in practice, the *umarāʾ* and the *ʿulamāʾ* are in a state of competition. From this perspective, the doctrine of *siyāsah sharʿiyyah* functions as a constitutional theory through which the excesses of rulers may be restrained.[9] Krell notes that the practical power distribution is far more complex: the *ʿulamāʾ* and the king often share a common agenda, yet when any conflict arises, the *ʿulamāʾ* tend to appease any social, legal, and political tension.[10] In Krell's analysis, the doctrine of *siyāsah sharʿiyyah* grants the king neither the authority to create nor to interpret the law but only to preserve and enforce it. Historically, the mutual cooperation between the *umarāʾ* and the *ʿulamāʾ* significantly limited the powers of the king and left the judiciary largely in the hands of the *ʿulamāʾ*.[11]

In a similar vein, al-Atawneh construes the relationship between the *umarāʾ* and the *ʿulamāʾ* as a continuation of the established alliance in 1744.[12] Although the institutionalization of the *ʿulamāʾ* resulted in a reduction in the focal power of the *ʿulamāʾ* in the area of Saudi politics, the allocation of power transformed the *ʿulamāʾ* into an official structure endowed with the power of intervention in the politico-legal sphere. Al-Atawneh observes, "[The incorporation of the *ʿulamāʾ* into State administration] may have enabled the *ʿulamāʾ* to increase their influence on official policies and in governmental circles. In other words, by holding official positions, the *ʿulamāʾ* became players from within the power structure. Had they remained outside the Government, their influence might have diminished over time".[13]

Rather than stripping *the ʿulamāʾ*, who serve to legitimize the regime, of its power, the Saudi government furnished the *ʿulamāʾ* with official authority. In al-Atawneh's view, the mutual dependence of the *umarāʾ* and the *ʿulamāʾ* therefore still reflects the historically established alliance between Wahhābī scholars and Saudi rulers because the official *ʿulamāʾ* has a semiautonomous structure that preserves the delicate balance of the triangle of state, society, and

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[8] Krell, *Islamic Law*, 25.
[9] Krell, *Islamic Law*, 25.
[10] Krell, *Islamic Law*, 26.
[11] Krell, *Islamic Law*, 39.
[12] Al-Atawneh, *Wahhābī Islam*, 14, 34-37.
[13] Al-Atawneh, *Wahhābī Islam*, 36.

religion.

Some analyses of the *ʿulamāʾ* within the modern Saudi state highlight a clear centralization of power in favor of the *umarāʾ*, namely, the political authority. In considering the role of the *ʿulamāʾ* and their *fatāwá* in the Saudi political system, Layish conceives of the *ʿulamāʾ* as a legitimizing mechanism of the Saudi government. Legal reforms were actualized by the Saudi government to bring the normative and institutional system of the theocratic state into conformity with the conditions of a state, a society, and an economy confronted with the challenges of the modern era, but in this process, the *ʿulamāʾ* began to slightly resemble a legitimizing mechanism.[14] Layish states, "In Saudi Arabia, there are increasing indications of the emergence of a legislative authority outside the control of the *ʿulamāʾ* which makes masterly use of the mechanisms and devices they have placed at its disposal. The administrative regulations and orders of the king and other government authorities, steadily increasing in volume and theoretically designed to supplement the *sharīʿah*, may to all intents and purposes be regarded as statutory regulations altering positive Islamic law".[15] Despite the fact that the Saudi government provided the *ʿulamāʾ* an ostensible authority in the politico-legal area because of its theocratic character, the integration of the *ʿulamāʾ* into the ruling elite resulted in their independent powers being curbed and controlled by the Saudi government. Similarly, Mallat conceptualizes the process of the relationship between the *umarāʾ* and the *ʿulamāʾ* as the "normalization of Saudi law". In his view, Saudi Arabia has been moving progressively from the exceptional traditional model, in which judges (*qāḍīs*) make rulings based on uncodified *sharīʿah* law, toward the modern, state-centric legal model of other Sunnī Arab countries. This process of normalization alludes to a transformation of law-making authority from the traditional religious elite to the state, namely, the king and the government. Mallat describes this transformation as the statization of law, in which the state replaces the

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[14]   Aharon Layish, "Saudi Arabian Legal Reform as a Mechanism to Moderate Wahhābī Doctrine", *Journal of the American Oriental Society* 107/2 (1987), 280, 288, 291-292.

[15]   Layish, "Saudi Arabian Legal Reform", 292.

ʿ*ulamāʾ* as the primary source of legal legitimacy.[16] Consequently, while the 1744 alliance remains the founding backbone of the state, the nature of the relationship between the *umarāʾ* and the ʿ*ulamāʾ* is not static. Contemporary analyses demonstrate that the balance has transformed decisively from a partnership based on mutual dependence to a hierarchical model in which the state (political authority) establishes clear legal, administrative, and political superiority over the religious authority.

With the intent of revealing the functional roles that the practice of *iftāʾ* assumed in the politico-legal area within an Islamic legal system, the article focuses primarily on the case of Saudi Arabia in light of the interactions and reflections of *fatāwā* issued by the Dār al-Iftāʾ within the Saudi politico-legal area before codification. Notably, because Saudi Arabia is a closed and complex country, gaining access to extensive and recent data about the changes and developments in the Saudi legal system is difficult and taxing. Nonetheless, the findings, as Yakar states, identify three politico-legal spheres in which the practice of *iftāʾ* played, either implicitly or explicitly, key roles during the precodification period. These were ruling family politics, internal politics, and external politics.[17] Each area in which the practice of *iftāʾ* either visibly or invisibly took an active role before the codification was elaborated upon with *fatwā* samples to highlight the reflections of the engrained doctrine of *siyāsah sharʿiyyah* (governance in accordance with Islamic law) upon the Saudi politico-legal sphere.[18] The objective is not only to investigate the legitimizing power of *fatāwā* for political issues but also to explain the unique nature of the relationship between religious and political authorities during the precodification period. Applying textual analytical methodology and contextual analysis, the article intends to uncover the connections between Saudi authority holders before the codification.

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[16] Chibli Mallat, *The Normalization of Saudi Law* (New York: Oxford University Press, 2021), 3-16.

[17] Emine Enise Yakar, "The Influential Role of the Practice of the *Iftāʾ* in Saudi Political-Legal Arena", *Manchester Journal of Transnational Islamic Law & Practice* 16/1 (2020), 5-6.

[18] Robert W. Hefner (ed.), *Shariʾa Politics: Islamic Law and Society in the Modern World* (Bloomington: Indiana University Press, 2011), 1-55; Qazi Fazl Ullah, *Sharia and Politics* (Los Angeles, CA: Hund Publishing, 2015), 7-30.

1. Legislation in the Saudi Legal System

Saudi Arabia is a state that has applied Islamic law in its legal system. The Qur'ān and the Sunnah were pronounced as the main sources of the Saudi legal system during the precodification period; thus, Islam emerged not only as a religion but also as a comprehensive system for providing public, social, and legal norms in Saudi society. This was very clearly specified in Articles 1 and 23 of the Basic Law of Governance, which were put into practice in 1992. Article 1 states:

> The Kingdom of Saudi Arabia is a sovereign Arabic Islamic State. Its religion is Islam. Its constitution is Almighty God's Book, the Holy Qur'ān, and the Sunnah (Traditions of the Prophet (PBUH).[19]

Article 23 also clarifies the following:

> The State shall protect the Islamic creed, apply the *sharī'ah*, encourage good and discourage evil, and undertake its duty regarding the propagation of Islām (*da'wah*).[20]

An outline of the Saudi legal system was formed on the basis of Wahhābī understanding that espoused the traditional view of governance in Islamic law.[21] Throughout history, Muslim scholars established a link between religion and government. In the views of these scholars, the community must have a leader to manage affairs and to protect the community in accordance with the right religious principles and values. In light of the established link between religion and government, *siyāsah shar'iyyah* (governance in accordance with Islamic law) developed into a well-engrained governance doctrine in traditional Islamic law. The term *siyāsah shar'iyyah* consists of two words: *siyāsah,* which means leading the community in accordance with its interest, and *shar'iyyah,* which means convenience to religion and law. The compound phrase *siyāsah shar'iyyah* is terminologically used to express the authority who makes public regulations and

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[19] Royal Decree A/90 (1992), Article 1.
[20] Royal Decree A/90 (1992), Article 23.
[21] Muhammad al-Atawneh, "Is Saudi Arabia a Theocracy? Religion and Governance in Contemporary Saudi Arabia", *Middle Eastern Studies* 45/5 (2009), 725-726; Bunzel, *Wahhābism*, 130-210.

adjustments within the scope of Islamic law.[22] The Shāfiʿī scholar al-Māwardī (d. 1058), one of the preeminent political Muslim thinkers, engaged with Islamic political philosophy while explaining rules of governance (*al-aḥkām al-sulṭāniyyah*).[23] In his view, the administration of state affairs should be implemented in accordance with the doctrine of *siyāsah sharʿiyyah*, which is acknowledged as a subsidiary legislative source. In addressing the authority assigned to the ruler within the doctrine of *siyāsah sharʿiyyah*, al-Shātibī (d. 1370), one of the influential scholars in the Mālikī school, observes that the authority entails the use of mental faculties in developing legal procedures in accordance with contemporary public interests.[24] Although the term *siyāsah* appears in Ḥanafī works, including al-Sarakhsī's *al-Mabsūṭ*, it is difficult to argue that it was employed as a fully articulated legal concept. Ibn Nujaym's (d. 1520) remark that he could not find a definition of *siyāsah* in the works of the earlier Ḥanafī scholars further indicates the challenges of tracing the conceptual development of the term throughout the tradition.[25] In Ibn Nujaym's definition, *siyāsah* means the use of authority by the ruler in making regulations regarding issues upon which there is no specific Islamic legal evidence.[26] The doctrine of *siyāsah sharʿiyyah* is also an accepted and developed theory in the Ḥanbalī school. In describing the doctrine of *siyāsah sharʿiyyah* as whatever draws people toward justice and distances them from corruption, the Ḥanbalī scholar Ibn ʿAqīl (d. 1119) recognized a broad discretionary power vested in the ruler.[27] Ibn

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[22] Yunus Apaydın, "Siyâset-i Şerʿiyye", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 2009), 37/299-302; Al-Atawneh, "Is Saudi Arabia a Theocracy?", 722.

[23] Abū l-Ḥasan Ḥabīb al-Māwardī, *The Ordinances of Government: al-Aḥkām al-Sulṭāniyya wʾal -Wilāyāt al-Dīniyya*, trans. Asadullah Yate (London: Ta-Ha Publishers, 1996), 109-115, 120-127.

[24] Ibrāhīm ibn Mūsá al-Shāṭibī, *al-Muwāfaqāt fī uṣūl al-aḥkām*, ed. Muḥammad Muḥyī al-Dīn ʿAbd al-Ḥamīd (Cairo: Maktabat wa-Maṭbaʿat Muḥammad ʿAlī Ṣabīḥ wa-Awlādihī, 1969), 4/60.

[25] Apaydın, "Siyâset-i Şerʿiyye", 37/299.

[26] Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *al-Baḥr al-rāʾiq sharḥ Kanz al-daqāʾiq*, ed. Zakariyyā ʿUmayrāt (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1998), 5/118.

[27] Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-ḥukmiyyah fī l-siyāsah al-sharʿiyyah* (Beirut: Sharikat Dār al-Arqam ibn Abī l-Arqam, 1999), 19.

Taymiyyah (d. 1328), another preeminent scholar who intellectually influenced Saudi scholars, asserted that an Islamic government is necessary to apply Islamic law and to establish justice in the community through the legal maxim of commanding right and forbidding wrong.[28] The prominent Ḥanbalī scholar Ibn Qayyim al-Jawziyyah (d. 1350), one of the disciples of Ibn Taymiyyah, acknowledges politics as part of religion. In his view, the Islamic government is an indispensable mechanism for protecting and sustaining religious values. In terms of the doctrine of *siyāsah sharʿiyyah* as a legal mechanism to identify the divine will and that of the Prophet, Ibn Qayyim al-Jawziyyah refers to its potential in providing legal regulations and adjustments.[29]

The traditional doctrine of *siyāsah sharʿiyyah* allocates a broad power to the ruler in making legal regulations, since the various problems and changes of the time need continuous adjustment of the law.[30] The doctrine therefore not only refers to governmental and administrative authority but also includes legislative authority in implicitly conferring legislative power upon the political authority. In this regard, the doctrine of *siyāsah sharʿiyyah* gives the impression that Islamic governance, to some extent, embodies an integration of religion and legislation as well as religion and politics. In alluding to the doctrine of *siyāsah sharʿiyyah* that underlies the Saudi governance philosophy, some scholars inadvertently portray the Saudi monarchy as politically secular and socially religious. Al-Rasheed observes that a form of separation between religion and politics had been indirectly practiced in Saudi Arabia by allocating the authority between the scholars (*ʿulamāʾ*) and the ruling family (*umarāʾ*); that is, the scholars were designated as the authority in conducting religious and social affairs, whereas the ruling family was entrusted with political and legal authority.[31]

The use of reason (*ʿaql*) and public interest (*maṣlaḥah*) in making legal regulations and adjustments regarding issues upon which there

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[28]   Taqī al-Dīn Ibn Taymiyyah, *al-Siyāsah al-sharʿiyyah fī iṣlāḥ al-rāʿī wa-l-raʿiyyah*, ed. Bashīr Muḥammad ʿUyūn (Damascus: Maktabat Dār al-Bayān, 1985), 176.

[29]   Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-ḥukmiyyah*, 5-7, 39-40.

[30]   Layish, "Saudi Arabian," 284.

[31]   Mawadi al-Rasheed, *Contesting the Saudi State: Islamic Voices from a New Generations* (Cambridge: Cambridge University Press, 2007), 57-58.

is no specific Islamic legal evidence possibly led some scholars to define the Saudi legal system as semisecular. However, the doctrine of *siyāsah sharʿiyyah* was not outside of Islamic law during the precodification period.[32] Referring to the legislative power allocated to the political authority, it is misleading to infer that religion and legislation were independent of each other. Apaydın asserts that legal regulations and adjustments made with the intent of public interest can be considered within the scope of the doctrine of *siyāsah sharʿiyyah* because the high principles of these regulations and adjustments are established by religion.[33] However, if these regulations and adjustments are only ascertained in accordance with the principles established by pure reason, then the argument regarding their secular characteristics can be considered valid.

In emphasizing the role of religion in society, some scholars refer merely to Saudi Arabia as a theocratic state. It would be misleading to delineate precodified Saudi Arabia either as a semisecular state or as a fully theocratic state because there was cooperation between the official *ʿulamāʾ* and the ruling *umarāʾ*.[34] These two authority holders paid attention not to interference in each other's spheres of power but instead worked together in a complementary manner.

In describing Saudi Arabia as a theo-monarchy, al-Atawneh emphasizes its distinctive character, which was shaped by pervasive religio-cultural norms and by the cooperation between the *ʿulamāʾ* and *umarāʾ* prior to the codification period. He states:

> [The Saudi monarchy] is based on an ongoing compromise between the two major authorities, the existing religious institutions and the Saudi monarchy. In other words, throughout their cooperation, the *ʿulamaʾ* maintained a central role in preserving the religious feature of the state, not only in the social realm, but also in the political one, thus contributing to the theocratic façade of the state. The King, on the other hand continued to consider the *ʿulama's* opinions,

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[32]   Sümeyra Yakar, "The Usage of Custom in the Contemporary Legal System of Saudi Arabia: Divorce on Trial", *Kilis 7 Aralık Üniversitesi İlahiyat Fakültesi Dergisi* 6/11 (2019), 400-411.

[33]   Apaydın, "Siyâset-i Şerʿiyye," 37/300-304.

[34]   Yakar - Yakar, "The Symbolic Relationship", 30-40.

consulting them and taking note of their interests.[35]

The views of Saudi scholars regarding governance and authority were shaped in accordance with the traditional doctrine of *siyāsah sharʿiyyah*, as articulated by the leading Hanbali scholars. According to these views, it was possible to observe the inseparable coalescence of religion and politics.

In engaging with the significance of the doctrine of *siyāsah sharʿiyyah* in the Saudi legal system, Alnemari refers to the intervention of royal authorities in the regulation of *ḥudūd* (paramount prescribed punishments) rulings. He focuses particularly on recent royal edicts, including the abolition of discretionary flogging punishment (*al-taʿzīr bi-l-jald*) and the abolition of criminal conviction based on doubt (*al-ḥukm bi-l-shubhah*). Alnemari asserts that these edicts constitute "direct royal commands to the judiciary to change some of its established *ḥudūd* precedents".[36] This may be construed as an intervention of the royal authorities in the Saudi judiciary. This is significant because *ḥudud* punishments are regarded as criminal demarcations established by divine authority; thus, any royal interference in this domain results in a particularly delicate theological dimension. The process of the intervention alludes to the changing interaction between the *umarāʾ* and the judiciary (or the *ʿulamāʾ*), demonstrating how classical Islamic legal doctrines are reinterpreted to align with the contemporary structures of the political authority. Alnemari situates the royal prerogative within the doctrine of *siyāsah sharʿiyyah*, which permits the king to issue statutes (*anẓimah*) that aim to promote the public interest (*maṣlaḥah ʿāmmah*), provided that they remain consistent with the teachings of the Qurʾān and Sunnah.[37]

Since religion was acknowledged as a comprehensive system that encompasses every aspect of human life, it could not be conceived of the Saudi legal system as being dissociated from Islamic law. In the interpretation of scholars, God is accepted as the source of all authority and the supreme lawmaker who has identified the good and evil, the

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[35] Al-Atawneh, "Is Saudi Arabia a Theocracy?", 733.

[36] Hazim H. Alnemari, "God's Law, King's Court: *Ḥudūd* Jurisprudence under Saudi Monarchical Decrees", *Journal of Islamic Law* 6/1 (2025), 85.

[37] Alnemari, "God's Law, King's Court", 91-92.

licit and illicit. All human actions and interactions must therefore be regulated in accordance with divine will and legislation. For instance, Ibn Bāz (d. 1999), an influential scholar in Saudi society, asserted that the Qurʾān and Sunnah constituted the eternal source from which all political, legal, social, and moral norms were extracted. In citing Q 4: 58-59, he observes the following:

> … the Muslim learns that applying Sharīʿah and seeking judgment from it is obligated by Allah and His Messenger (peace be upon him). It is a prerequisite of submitting to Allah and attesting that His Messenger Muḥammad (peace be upon him) came with the Message. Opposing these facts or any part of them brings forth Allah's torment and punishment. Moreover, the command applies to the way a Muslim country deals with its subjects and to Muslim individuals at any place and time.[38]

In the view of Ibn Bāz, secular political ideologies that are built upon the basis of man-made principles are equal to disbelief. Nonetheless, God does not regulate all human affairs; rather, human beings are implicitly regarded as His vicegerents who are furnished with the authority to identify the highest divine principles through endowed reason.[39] These principles, which intend to preserve and enhance human dignity and welfare, are established as the uninfringeable frontiers in which Islamic law is applied. Islamic law is therefore acknowledged as the primary mechanism that provides laws, regulations, bylaws, and norms appropriate to any time and place. It is incumbent upon Muslims to obey these instructions because they intrinsically have a kind of divine character. In this regard, considerable jurisdiction –including governance, administration, and legislation– is left to human beings to regulate their own affairs, provided that they do not wittingly transgress divine principles and moral standards. The authority of legislation was, even though God is the supreme lawmaker, allocated to the ruling authority, public institutions, and Muslim scholars of Saudi society. Ibn Bāz refers to the

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[38] ʿAbd al-ʿAzīz ibn ʿAbd Allāh Ibn Bāz, "Obligation of Applying the Law of Allah and Anything Contradictory to it", *English Translations of Majmooʾ al-Fatawa of Ibn Bazz* (Alifta, 2001), 1/79.

[39] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 2003), 20-45.

allocation of legislative authorization, and he observes that "… it is the duty of Muslim populace, their rulers and kings and those in charge of Muslim affairs to observe *taqwā* (fearing Allah as He should be feared) and apply Sharīʿah in their countries and in relation to all of their affairs".[40] It is obvious that in Ibn Bāz's thought, legislation is conducted by human agency. The system associated this agency with religious scholars and rulers who should be obeyed as long as they act in accordance with Islamic law.

The issue here is how the legislative authority operated while being allocated to both religious scholars and rulers and what kind of procedure was pursued by these authorities in making regulatory laws. The operational system could be traced back to the division of authority by Ibn ʿAbd al-Wahhāb, the eponymous founder of Wahhābī ideology.[41] The religious scholars were designated as the authority in the jurisprudential sphere, while the rulers were recognized as the authority in matters of state affairs, presumably on the condition of consulting the *ʿulamāʾ*. The ruler needed to apply to Islamic law and to enforce its instructions, but it was also concurrently in need of the legitimacy provided by the religious scholars through the mechanism of Islamic law. It was therefore possible to observe mutual cooperation between both authorities during the precodification period. However, the structure and function of this cooperation was not determined by Ibn ʿAbd al-Wahhāb through clear-cut terms.

In time, a model of cooperation was shaped through the institutionalization and bureaucratization process that followed the growth of oil wealth in Saudi Arabia. Although cooperation was not identified in a categorical way, it was possible to observe a cooperative process between the two authorities in the legal system of Saudi Arabia. Al-Atawneh refers to this cooperative relationship, and he states, "Clearly, Wahhābīs in all generations attributed authority to both the *ʿulamāʾ* and the political rulers. While the former were obliged to clarify the *sharīʿah*, the latter were expected to implement those instructions".[42] In the course of the process of modernization and

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[40]   Ibn Bāz, "Obligation of Applying the Law of Allah and Discarding anything Contradictory to it", 1/72-79.

[41]   Bunzel, *Wahhābism*, 192-220.

[42]   Al-Atawneh, "Is Saudi Arabia a Theocracy?", 728.

bureaucratization, religious scholars officially took the form of the *Dār al-Iftāʾ wa-l-Ishrāf ʿalá al-Shuʾūn al-Dīniyyah* (Institute for Religious Legal Opinions and the Supervision of Religious Affairs; henceforth: the Dār al-Iftāʾ). The traditional mode of cooperation between religious scholars and rulers, even though Dār al-Iftāʾ conceded some part of its independent character through the institutionalization process, continued to be practiced in Saudi legislation until codification was implemented.

2. The Establishment of an Official Religious Institution (the Dār al-Iftāʾ)

After the discovery of oil in the 1930s, Saudi Arabia experienced economic prosperity that ignited the process of institutionalization and modernization. The institutional development of the state led to substantial changes in the country's economic, legal, political, religious, and social structures. During the 1950s, a series of administrative and institutional reforms were implemented, and this reform process also influenced the traditional structure of the religious establishment.[43] The institutionalization process of the *ʿulamāʾ* began with the official designation of Shaykh Muḥammad ibn Ibrāhīm Āl al-Shaykh as the State Grand Muftī on December 18, 1952. One year later, the Dār al-Iftāʾ was established under the authority of the Grand Muftī.[44] This was a significant development because the preceding centuries (1745-1953) of the establishment of interdependence between the *ʿulamāʾ* and the *umarāʾ* were given formal recognition.

Despite the fact that the institutionalization of the *ʿulamāʾ* undoubtedly rendered them more dependent on the Saudi government, the *ʿulamāʾ* nevertheless evolved into an institution that became an official authority within the state power structure. While the *ʿulamāʾ* previously were acting in a more independent way and might be an equal foci power compared to the *umarāʾ*, the establishment of the Dār al-Iftāʾ transformed the *ʿulamāʾ* into a state-controlled institution. In portraying the relationship between the Saudi government and the *ʿulamāʾ*, Yakar observes that "The Saudi

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[43] Vassiliev, *The History of Saudi Arabia*, 395-430.

[44] Emine Enise Yakar, *Islamic Law and Society: The Practice of Iftāʾ and Religious Institutions* (New York: Routledge, 2022), 26-28.

Government reinforced its control over the political sphere by incorporating the *'ulamā'* into the government institutions".[45] Despite the Saudi government's attempts to formally restrict the political influence of the *'ulamā'*, their active participation and role in state affairs continued throughout the 1950s to the 1970s. In the power struggle between King Saud and Crown Prince Faysal, for instance, the *'ulamā'* issued an Islamic legal opinion that provided legitimacy to the enthronement of Crown Prince Faysal upon the grounds of the legal principle of general public interest (*maṣlaḥah 'āmmah*).[46] Amid the political conflicts generated by the struggle between King Faysal and the Liberal Princes, the political and financial crises ignited by the Yemenī revolution and the wave of labor strikes throughout the 1960s, the *'ulamā'* provided crucial support to the Saudi state by issuing *fatwā*s that legitimized and reinforced its authority.[47]

Within the triangle of the Saudi government, the Dār al-Iftā' and Saudi society, the Dār al-Iftā' emerged as a legitimating power in considering the religious nature of the state, so the privilege status of the previous *'ulamā'* from the Āl al-Shaykh family and their associated religious power likely transferred to the official *'ulamā'* who functioned within the Dār al-Iftā'. Two years after the death of Grand Mufti Shaykh Muḥammad ibn Ibrāhīm in 1969, a royal decree was

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[45]   Yakar, *Islamic Law and Society*, 27.

[46]   Mordechai Abir, "The Consolidation of the Ruling Class and the New Elites in Saudi Arabia", *Middle Eastern Studies* 23/2 (1987), 160; Alexei Vassiliev, *King Faisal of Saudi Arabia: Personality, Faith and Times* (London: Saqi Publications, 2015), 10-52; Yakar, *Islamic Law and Society*, 27-28; Serdar Kurnaz, "The Search for Originality within Established Boundaries – Rereading Najm al-Dīn al-Ṭūfī (d. 716/1316) on Public Interest (*maṣlaḥa*) and the Purpose of the Law", *Religions* 14/12 (2023), 1522-1540.

[47]   Saʿd al-Sharīf, "al-Umarāʾ al-aḥrār wa-tajribat al-niḍāl al-waṭanī (al-Qism al-thānī)", *al-Ḥijāz* (Accessed December 13, 2025); Abir, "The Consolidation", 155-162; Nabil Mouline, "Enforcing and Reinforcing the State's Islam: The Functioning of the Committee of Senior Scholars", *Saudi Arabia in Transition: Insights on Social, Political, Economic and Religious Change*, ed. Bernard Haykel - Thomas Hegghammer - Stephane Lacroix (Cambridge: Cambridge University Press 2015), 54.

issued to reconfigure the Dār al-Iftāʾ.[48] Two new agencies, the Hayʾat Kibār al-ʿUlamāʾ (Broad Senior of *Ulamāʾ*, henceforth: BSU) and the al-Lajnah al-Dāʾimah li-l-Buḥūth al-ʿIlmiyyah wa-l-Iftāʾ (Permanent Committee for Scientific Research and Legal Opinion; henceforth: CRLO), were formed and incorporated into the structure of the Dār al-Iftāʾ.[49] The aim of this reconfiguration was likely to provide a more hierarchical mode of operation within the structure of the institution because the two agencies do not work independently from each other; rather, they work in a cooperative manner. Nonetheless, the institutionalization process of the Dār al-Iftāʾ was completed with the reintroduction of the office of the Grand Muftī in 1993. The office of Grand Muftī had been suspended for almost two decades after the death of Shaykh Muḥammad ibn Ibrāhīm in 1969. After the reconstruction of the office of Grand Muftī, Ibn Bāz was designated Grand Muftī and served as the permanent chairman of both the BSU and the CRLO until his death in 1999. The reestablishment of the office means the recentralization of the official practice of *iftāʾ* conducted by both the CRLO and the BSU because the two agencies were placed under the authority of the office of the Grand Muftī. After the death of Ibn Bāz, Shaykh ʿAbd al-ʿAzīz ibn ʿAbd Allāh Āl al-Shaykh was appointed Grand Muftī, and he is still in this position.[50]

The mode of operation within the structure of the Dār al-Iftāʾ was determined by Royal Decree A/137. The BSU is established as the highest religious authority that promulgates ultimate legal decisions related to Islamic legal issues and as the advisory body that provides assistance to the king on matters of common law issues.[51] The CRLO is an influential body that provides appropriate research materials for discussions and debates conducted by the BSU. Additionally, the CRLO

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[48]   The configuration of the Dār al-Iftāʾ was one of King Fayṣal's reform policies, which were identified in his "Ten Point Reform Program", but it could not be put into practice because of Grand Muftī Shaykh Muḥammad ibn Ibrāhīm's charismatic personality and broad institutional power. King Fayṣal did not to desire to intervene in the existing religious establishment with the intend of obtaining the support of the *ʿulamāʾ* to initiate and actualise a range of innovations and reforms. Yakar, *Islamic Law and Society*, 28-29.

[49]   Royal Decree A/137 (1971).

[50]   Yakar, *Islamic Law and Society*, 31-45.

[51]   Royal Decree, A/137 (1971), Article 3.

conducts the practice of *iftāʾ* related to micro level issues (e.g., everyday religious questions). If the issue directed to the CRLO is beyond its field of competence, a research report is prepared by the CRLO's members and submitted to the BSU with the intent of issuing an Islamic legal decision (*qarār*).[52] Almost all decisions concluded by the BSU could be traced back to research prepared by the CRLO. After the reestablishment of the office of the Grand Muftī, the Dār al-Iftāʾ has been presided over by the Grand Muftī. As the president of the Dār al-Iftāʾ, the Grand Muftī assumes the responsibility of opening and chairing sessions held within the institution. Additionally, if a clear majority is not constituted in the process of issuing a *fatwá* or a *qarār*, the vote of the Grand Muftī has a decisive authority.[53]

The office of Grand Muftī, the BSU and the CRLO constitute the Dār al-Iftāʾ, which is the highest official authority in issuing a *fatwá* or a *qarār*. These three agencies, although having different roles and duties, function in a cooperative and hierarchical manner in issuing a *fatwá*. Article 45 states:

> The Holy Qurʾān and the Sunnah (Traditions) of God's Messenger shall be the source for *fatwá*s (religious advisory rulings). The Law shall specify hierarchical organization for the composition of the Council of the Senior ʿUlamāʾ, the Research Administration, and the Office of the Muftī, together with their function.[54]

Even if the incorporation of the *ʿulamāʾ* into the state administrative structure gives the impression that the influence of the *ʿulamāʾ* has diminished in legal and political areas, the *ʿulamāʾ* obtained official authority through the institutionalization process. Al-Atawneh observes:

> … via [the *ʿulamāʾ*s] incorporation, the *ʿulamāʾ* increased their influence over official policies and governmental circles. In other words, by holding official positions, the *ʿulamāʾ* became players from within the power structure. Had they remained external to the [Saudi] government, their influence would have diminished.[55]

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[52]   Royal Decree, A/137 (1971), Article 4, 6.
[53]   Yakar, *Islamic Law and Society*, 53-55.
[54]   Royal Decree A/90 (1992), Article 45.
[55]   Al-Atawneh, "Is Saudi Arabia a Theocracy?", 729.

The Dār al-Iftāʾ, the official hub of the *ʿulamāʾ*, is the highest interpretative mechanism of Islamic legal sources; thus, it continued to exercise an influential role in all legal and religious areas before the codification.

Given that the legal system of Saudi Arabia was grounded in Islamic law, the Dār al-Iftāʾ unquestionably emerged as the main authoritative institution in the legislative area. Article 55 specifies:

> The king shall rule the nation according to the Sharīʿah. He shall also supervise the implementation of the Sharīʿah, the general policy of the State, and the defense and protection of the country.[56]

Despite the fact that Article 55 designated the king as the main authority in applying Islamic law, it alluded implicitly to the interpretative authority of the Dār al-Iftāʾ in making legal regulations because it was responsible for deciding whether any issue raised by either the king or the Saudi government was fully compatible with Islamic law. If the orders did not comply with Islamic law, they were mainly categorized under the scope of religious heterodoxy (*bidʿah*) that needed to be prohibited.[57] Additionally, before the codification, the Dār al-Iftāʾ emerged as the legitimating authority of Saudi government policies. Article 7 states:

> Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunnah of the Prophet (PBUH), which are the ultimate source of reference for this Law and the other laws of the State.[58]

The legitimacy of the Saudi government was unequivocally grounded in its compliance with the principles of the main sources of Islamic law. At this juncture, the Dār al-Iftāʾ provided religious legitimacy to government policies. For instance, in response to major political crises –including the violent seizure of the Kaʿbah in 1979, the deployment of American troops in Saudi Arabia during the First Gulf War in 1990, the Arab-Israeli peace process of 1993-1995, and the public demonstrations of 2011– the Dār al-Iftāʾ provided legal

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[56] Royal Decree A/90 (1992), Article 55.
[57] Sümeyra Yakar, "The Consideration of Bidʿa Concept According to Saudi and Iranian Scholars", *Mazahib Jurnal Pemikiran Hukum Islam* 19/2 (2020), 234-239.
[58] Royal Decree A/90 (1992), Article 7.

legitimacy to the Saudi government by endorsing its political policies through *fatāwá*.[59] The *fatāwá* therefore had two main functions in Saudi society. In the first instance, they were used as a legitimating mechanism with the intent of providing a green light to Saudi government policies. In the second instance, they were applied as a legislative source in issuing regulatory rulings in the absence of authoritative regulations and laws.

In the legal system of Saudi Arabia, both religious and governmental authorities played active roles in the legislative process during the precodification period. The Saudi government, which included the king and his representatives, was the visible actor in the legislative process, while the Dār al-Iftāʾ appeared to play an invisible role because of its prelegislative function. In reference to the authority of the Saudi government in the legislative process, Article 67 states the following:

> The Regulatory authority shall be concerned with making regulations and bylaws in order to attain welfare and avoid harm in the State affairs in accordance with the general principles of the Sharīʿah. Its powers shall be exercised according to provisions of this law and the Law of the Council of Ministers and the Law of the Shūrá Council.[60]

In applying to the principle of public interest (*maṣlaḥah*), the Saudi government was authorized to enact legal regulations through royal decrees. Article 70 specifies, "Regulations, international agreements, treaties and concessions shall be approved and amended by Royal Decrees".[61] It appears that the legislative authority was formally vested in the Saudi government, but the Dār al-Iftāʾ emerged as the main institution in reviewing whether the relevant legal regulation was compatible with the general principles of Islamic law. In alluding to the role of the prelegislative mechanism of the Dār al-Iftāʾ, Royal Decree A/137 specifies the following:

> [The BSU] express[es] legal opinions based on the Sharīʿah regarding matters submitted it to by the king (*walī al-amr*) and

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59   Emine Enise Yakar, "The Influential Role", 46, 52.
60   Royal Decree A/90 (1992), Article 67.
61   Royal Decree A/90 (1992), Article 70.

recommend[s] legal advice on religious matters [in order] to facilitate the king's decisions.[62]

Recommendations and legal opinions generally manifested in the form of *fatāwá* or *qarār* issued by the Dār al-Iftāʾ. It was therefore possible to state that *fatāwá* assumed a legitimating role in the process of legislation. Both the Dār al-Iftāʾ and the Saudi government were therefore designated as legislative authorities in making legal regulations.

The legislation procedure in Saudi Arabia sometimes proceeded intermittently through a two-tiered institutional mechanism, combining executive regulation by the Saudi government with sharīʿah-based validation by the Dār al-Iftāʾ. Royal decrees and *fatāwá* therefore came into play as two constituent components in the legislative process. The first was grounded in the authority of the Saudi government, whereas the second was allocated to the Dār al-Iftāʾ thanks to its authority in the jurisprudence of Islamic law. Nonetheless, the two components, although the role of *fatwá* lost its visibility in the legislative process, complement each other. Examining the transformation of *fatāwá* into legal regulations through royal decrees might more explicitly reveals the substantial role of *fatāwá* in the legislative process of the Saudi legal system before the codification period.

3. Complementary Role of *Fatāwá* in the Precodified Legal System

Since its establishment, the Dār al-Iftāʾ has played an active role in the legislative process on contentious matter encompassing criminal law, ethics, health, family, and ritual practices. Some regulatory laws were formulated through the cooperative and complementary efforts of both the Dār al-Iftāʾ and the Saudi government. In considering the cooperative mode of the operation, royal decrees explicitly reflected the influence of the Saudi government, while *fatāwá* clearly revealed the role of the Dār al-Iftāʾ. The former provided the state authority to *fatāwá*, and the latter furnished it with religious legitimacy.

Within the scope of Islamic law, a *fatwá* does not normally have any binding authority; it provides only a legal opinion or a ruling

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[62]   Royal Decree A/137 (1971), Article 7.

regarding the issue directed by a questioner. In comparison with a court decision (*ḥukm*), which is binding on the attendant parties, a *fatwá* is deprived of coercive authority because of its nonbinding character.[63] Nonetheless, a *fatwá* could be transformed into a binding regulation through a royal decree issued by the Saudi government. The transformation of a *fatwá* into a binding regulation, namely, a royal decree, could be pursued in two different ways. In the first instance, a previously existent *fatwá* could be furnished with legal authority through a royal decree issued by the Saudi government when there was a need for a legal regulation in society. In the second instance, when no authoritative *fatwá* existed, the Saudi government sought a new *fatwá* from the Dār al-Iftāʾ to provide the religio-legal basis for the proposed regulation.[64] However, it is worth noting that this cooperation was functional before the codification period, since issues regarding the codes were solved after the codification.

In the context of ethical and moral issues, ritual practices, and issues regarding women, the existent *fatāwá* generally became binding regulations through royal decrees. In evaluating issues related to the participation of women in social and working life, the Dār al-Iftāʾ issued many *fatāwá* upon the ground of the legal principle of blocking illegitimate means (*sadd al-dharāʾiʿ*).[65] For example, the *fatāwá* that restricted intermingling between men and women was transformed into a legal regulation by Royal Decree 80/1631.[66] The legal reasoning behind the *fatāwá* rests explicitly on the assumption that the intermingling of unrelated men and women results in seduction and temptation in any society.[67] It was therefore prohibited for men and

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[63] There is difference between court decisions (*aḥkām*) and Islamic responsa (*fatāwá*). Muhammad Khalid Masud - Brinkley Messick - David S. Powers, "Muftis, Fatwas, and Islamic Legal Interpretation", *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud et al. (Cambridge, MA: Harvard University Press, 1996), 1-32; Yakar, *Islamic Jurisprudence*, 249-256.

[64] Al-Atawneh, "Is Saudi Arabia a Theocracy?", 730.

[65] Kamali, *Principles of Islamic Jurisprudence*, 397-409.

[66] Royal Decree 80/1631(1980).

[67] Abdullah Bin Baz, "Danger of Women Joining Men in Their Workplace", *English Translations of Majmoo' al-Fatawa of Ibn Bāzz* (Alifta, 2001), 1/418-427; "Fatwa No. 20397", *Fatwas of the Permanent Committee*, 24/398-399. (Accessed December 30, 2025). There are also examples of cases where the reasoning behind

women to coexist in many places, including hospitals, schools, universities, libraries and public transportation. Another issued *fatwá* regarding women driving a car became binding through a Royal Decree issued by the Saudi Ministry of Interior.[68] The prohibition was grounded upon the legal principle of blocking illegitimate means because its justification was to protect women from dangerous situations that might ensue from being alone in the company of an unrelated man (*khalwah*) while they drive. This regulation, however, was repealed by virtue of codification regarding Saudi Arabia's Vision 2030, which emphasizes women's participation in the workforce as the central requirement of a flourishing economy and a sustainable future. Nonetheless, the Dār al-Iftāʾ issued another *fatwá* that permitted women's driving.[69] Another relevant example could be the transformation of the *fatwá* regarding ethical behavior during the month of Ramadan into a legally binding regulation. During the fasting time in the month of Ramadan, the *fatwá* restrained the service of food to foreigners and prohibited dining in public. This *fatwá* became a legal regulation through the Royal Decree 4/174277.[70] Presumably acting pursuant to this royal decree, the Saudi Ministry of Interior continues to issue recurring annual circulars notifying non-Muslim residents in the Kingdom to respect the sanctity of the holy month of Ramadan. These circulars reiterate the observance of public fasting protocols –specifically abstaining from eating or drinking in public during daylight hours– out of consideration for the religious sentiments of the Kingdom's Muslim population.[71]

By the 1975s, the lack of codified and standardized criminal procedures had become a notable problematic issue within the Saudi legal system. Saudi judges (*qāḍī*s) demonstrated reluctance in

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fatwas can also, at times, represent a political stance. Reyhan Erdoğdu Başaran, "Does Being Rafidi Mean Shi`ite?: The Representation of the Kızılbaş Belief in the Sixteenth Century Ottoman Records", *Trabzon İlahiyat Dergisi* 6/1 (2019), 11-35.

[68] Yakar, *Islamic Jurisprudence*, 60-70.

[69] Wafa Alhajri, *Women's Perspective on Social Change in Saudi Arabia* (Indianapolis: Indiana University, Ph.D. Dissertation, 2020), 150.

[70] Al-Atawneh, "Is Saudi Arabia a Theocracy?", 730.

[71] Saudi Press Agency (SPA), "Wizārat al-Dākhiliyyah tadʿū l-muqīmīn min ghayr al-muslimīn bi-l-Mamlakah ilá ʿadam al-mujāharah bi-l-akl fī nahār Ramaḍān". Accessed December 18, 2025.

applying criminal penalties, especially prescribed punishments (*ḥudūd*), because of their severe nature. Consequently, some amendments were ordered regarding both judicial authority and legal procedures, regulating the implementation of these punishments. In the course of remediating the *sharīʿah* courts and criminal legal process, the Dar al-Ifta' issued a *fatwá* addressing the scope of judicial authority in cases of brigandage crime (*ḥirābah*), which was classified as one of the prescribed punishments.[72] This *fatwá* was subsequently transformed into a binding legal regulation through Royal Decree No. 8/1849, issued on 5 June 1982.[73] The legal procedure of the prescribed punishments was specified in the *fatwá,* which established the court as an authority in identifying the classification of the offense and then prescribing the corresponding punishment in accordance with the gravity of crimes. It also endorsed the king's authority in determining the final decision regarding the application of punishment. Under this procedure, the *sharīʿah* court initially issued its judgment, after which cases including severe penalties –particularly execution and corporal punishments– were submitted to the king as the ultimate authority, who either confirmed the punishment or returned the case to the court to review or reconsider.[74]

In the realm of health, an amendment regarding the law of fertilization, utero-fetal, and infertility treatment units was issued through Royal Decree No. M/76 in 2004. In the Royal Decree, Article 3 states, "In carrying out their activities, Fertilization, Utero-Fetal and Infertility Treatment Units shall abide by the *fatwá* issued by the Council of Senior Scholars in the Kingdom".[75] In consolidating the authority and influence of the Dār al-Iftāʾ, all the fertility treatment centers were obliged to pursue and obey the relevant *fatāwá* issued either previously or subsequently. All the relevant *fatāwá* were to be compiled by the Supervisory Committee and distributed to every fertilization, utero-fetal, and infertility unit in the country. These

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[72]   The *ḥadd* crimes are known as the crimes whose penalties were already established in the Qurʾān and the Sunnah. Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005), 38-66.

[73]   Royal Decree No. 8/1849 (1982).

[74]   Royal Decree No. 85 (1981).

[75]   Royal Decree No. M/76 (2004), Article 3.

compiled *fatāwá* were to be provided to all employees who operate in these units, and each unit was required to maintain a dedicated file including the relevant *fatāwá*. In entrenching the binding aspect of these *fatāwá*, Article 3 also specifies that "All workers in the Fertilization, Utero-Fetal and Infertility Treatment Units shall read, understand, and abide by the *fatwá*s issued by the Council of Senior Scholars in the Kingdom."[76] The Royal Decree No. M/76 constituted a substantial legal regulation that conferred binding authority on relevant *fatāwá* issued by the Dār al-Iftāʾ not only retroactively but also prospectively. In this regard, the *fatwá* regarding oocyte cryopreservation, issued in 2019,[77] fell within the scope of prospective incorporation into a Royal Decree.

The *fatwá* was a product of coordinated institutional deliberation of the CRLO, the BSU, and the Islamic Medical Consultative Committee. Following a review of the research prepared by the CRLO and the report presented by the Islamic Medical Consultative Council, the BSU grounded its reasoning primarily in the protection of lineage, one of the highest objectives of Islamic law (*maqāṣid al-sharīʿah*), and the legal principle of blocking illegitimate means. The *fatwá* confined permissibility strictly to the retrieval, preservation, and future use of oocytes, ovarian tissue, and whole ovaries from cancer patients receiving gonadotoxic treatments.[78] It further revealed that the preservation of cryopreserved oocytes, sperm, or embryos for reproductive purposes after the completion of cancer treatment is illicit. For the preserved samples, two unequivocal rulings were articulated. In the first instance, the implantation of such samples into a uterus other than that of their original owner is categorically prohibited on the basis of the legal principle of blocking illegitimate means, as such implantation would lead to the mixing of lineages. In the second instance, the preserved samples must be exterminated in cases of treatment failure or impossibility, on the grounds of lineage protection.[79]

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[76]   Royal Decree No. M/76 (2004).
[77]   Cryopreservation means the retrieval, freezing, and storage of gametes and zygotes for future fertilization or implantation.
[78]   The Board of Senior ʿUlamāʾ, Decision No. 245 (2019).
[79]   The Board of Senior ʿUlamāʾ, Decision No. 245 (2019).

Despite the fact that the application of *fatāwā* is restricted only to cancer patients whose therapeutic courses may result in infertility, the decision represents a substantial advancement in the regulation of assisted reproductive techniques in Saudi Arabia. The limitation of permissibility to only cancer patients precludes any extension of the ruling to others who include patients receiving gonadotoxic medications for nononcological conditions, individuals suffering from infertility because of congenital factors, or indeed those seeking cryopreservation for so-called social reasons, namely, to mitigate the natural, age-related decline in fertility. In considering the evolving status of women in Saudi Arabia, an expansion of the scope of *fatwá* to additional categories of patients is, as Muaygil states, legally conceivable in the context of Saudi Arabia's transformative development strategy, Vision 2030, which explicitly seeks to enhance the status and rights of women.[80]

Certain legal regulations were produced by reciprocal cooperation and efforts between the Dār al-Iftāʾ and the Saudi government. In consideration of the inseparability of religion and law in Saudi Arabia, this cooperation evidenced consistency in the establishment of legal regulations. In particular, the consistency between royal decrees and *fatāwā* prevented potential discrepancies within the Saudi legal system during the precodification period. In the absence of legally binding statutory sources, the Saudi government appears to have sought to avoid legal dualism or normative conflict by ensuring uniformity and stability by means of transforming some *fatāwā* into royal decrees. Despite the fact that the role of the Dār al-Iftāʾ was obscured in the process of legislation, it conferred religio-legal legitimacy upon regulatory measures, either through its issued *fatāwá* or by issuing *fatāwá*. In considering Dār al-Iftāʾ's recognized status as the official religious authority among Saudi governmental institutions during that period, it functioned as a guardian against the enactment of legal regulations perceived as non-Islamic.

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[80] Ruaim Muaygil, "Motherhood, Fairness, and Flourishing: Widening Reproductive Choices in Saudi Arabia", *Cambridge Quarterly Healthcare Ethics* 32/2 (2023), 276-277.

Conclusion

Within the framework of the doctrine of *siyāsah sharʿiyyah*, an Islamic government is regarded as necessary for the implementation of Islamic law, the protection of religious values, and maintaining justice in the community. Consequently, governance and religion constituted inseparable components of the Saudi polity before the codification period. A defining characteristic of the Saudi legal system was the unification of religion and law, a feature that was sometimes explicitly and sometimes implicitly reflected in the legislative process. In considering the doctrine of *siyāsah sharʿiyyah*, authority was both historically and legally structured around the two principal actors (the *ʿulamāʾ* (religious scholars) and the *umarāʾ* (the Saudi ruling family). From the establishment of the Saudi state until the 1950s, these two loci of authority mutually shaped legal and political governance. Following the discovery of oil, the Saudi state experienced economic prosperity, which in turn catalyzed the process of institutionalization and modernization in the country. In this context, the Saudi government consolidated its position as the dominant representative of the *umarāʾ*, while the Dār al-Iftāʾ emerged as an official religious institution through which the *ʿulamāʾ* were formally organized and integrated into the state structure.

Despite the fact that the institutionalization of the *ʿulamāʾ* in the structure of the Dār al-Iftāʾ incrementally curtailed their autonomy and transformed them into an increasingly state-dependent institution, the official *ʿulamāʾ* functioning in this institution exercised considerable influence in the area of legislation prior to the codification period. In considering the religious foundations of the Saudi legal system, the Dār al-Iftāʾ, the highest religious authority in the state, exerted an obscure but operative authority in the legislative process. The transformation of *fatāwá* into binding legal regulations through royal decrees clearly attests to the substantive role of the Dār al-Iftāʾ in Saudi legislation. Certain royal decrees related to social and legal regulations can be traced directly back to the *fatāwá* issued by the Dār al-Iftāʾ.

The transformation of *fatāwá* into royal decrees was pursued in two different ways. In the first instance, the existent *fatāwá* could be directly transformed into legal regulations through royal decrees. This approach was most commonly employed in the context of legal regulations concerning social, ethical, and ritual issues. In the second

instance, the Saudi government could formally request the issuance of a *fatwá* from the Dār al-Iftāʾ with the intent of making a legal regulation. This second way was generally pursued in the formulation of royal decrees addressing controversial issues that required explicit religious legitimization.

Although the Saudi legislative process was characterized by a degree of opacity and that the Dār al-Iftāʾ was not formally designated as a regulatory (legislative) authority in the Basic Law of Governance, the derivation of some royal decrees from the *fatāwá* uncontrovertibly evinced the Dār al-Iftāʾ's de facto legislative authority. Given the central role of religion in both Saudi legislation and society, the Dār al-Iftāʾ and its *fatāwá* functioned, prior to the codification period, as both an active prelegislative mechanism and a legitimating authority within the Saudi legal system.

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AVICENNA ON COMPOSITIVE IMAGINATION
IN THE CONTEXT OF ACTIVE PERCEPTION DEBATES

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Abstract

The history of philosophy reflects the tensions between the claim that the human mind is the mere perceiver of objective reality in the external world and the claim that the human mind is the founder of objective reality in the external world. Is the object perceived without any processing? Or is perception formed in the mind through certain processes? In classical philosophical psychology, including Avicenna's, the internal senses are referred to as the faculties that enable the relation between the purely rational and the purely material in the perception and movements of both celestial and human souls. The discussions about the imagination that occurred in this period are important not only because of the questions they raised but also because they highlighted areas of tension among fragmentation, difference, and individuality in the sensory realm and among

simplicity, commonality, and generality in the rational realm. This article analyses how Avicenna's scheme of internal senses, and particularly compositive imagination, influenced his position on active perception. To this end, first, the scheme of internal senses, which originated with Avicenna, is considered. Second, Avicenna's redefinition of the functions of compositive imagination, especially with respect to active perception, is analyzed.

Key Words: Avicenna, internal senses, compositive imagination (*mutakhayyilah*), active perception

Introduction

The history of philosophy reflects tensions between the claim that the human mind is the mere perceiver of objective reality in the external world and the claim that the human mind is the founder of objective reality in the external world. On the one hand, things have a reality independent of subjective and individual human experience. On the other hand, things are susceptible to the experiences of different subjects in different ways, even though it cannot be sharply argued that the subjective human experience of things constitutes the truth of things in reality. In this case, subjectivity and individuality emerge more in a singular human experience. In the context of the abovementioned tension, the intellect is understood as the ground of objectivity and commonality both when it is defined as the mere perceiver of external reality independent of human beings and when it is defined as the founder of external reality. On the other hand, other faculties between external senses and intellect, especially retentive imagination (*khayāl*) and compositive imagination (*mutakhayyilah*), stand out as the grounds of subjectivity, individuality, and difference.

The philosophical debates on imagination are important in that they highlight areas of tension between fragmentation, difference, and individuality in the sensory and bodily realms and simplicity, commonality, and generality in the intellectual realm. In such discussions, imagination is foregrounded as a faculty that perceives, preserves, reproduces, and draws associations with diversity as a concept. Therefore, whereas the senses appear passive in the process of acquiring knowledge, the imagination appears to assume an active role. Throughout the history of philosophy, but especially after Kant,

some of the problems discussed in the context of imaginational activity are as follows: the imagination's acquisition of diversity from sensory data; the imagination's processing of such diversity; the imagination's reproduction of the representation obtained after such diversity is processed; the imagination's retention of diversity and the perceiver's synthesis of such diversity under a rule and general concept; the fact that the imagination's synthesis at a specific time and place is not valid at all times and places, and that this allows the subject to recreate the object in each perception and thus enables subjectivity.[1] Therefore, one of the main problems related to imagination seems to be related to the objectivity and subjectivity of the relation to reality. With respect to the perception of external objects, are they perceived without any processing? Or is perception an active process that occurs because of certain operations in our mind?

One of the points emphasized in contemporary debates on perception is that perception of the external world does not simply result from external things causally affecting the senses. In the perceptual process, where the role of the perceiver is quite important, first, the set of beliefs and knowledge prior to any individual perceptual experience plays a role, and second, the psychological and physiological information processing systems that are naturally possessed by a particular species play a role. However, this emphasis

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[1]   In his work examining the long history of imagination in the premodern, modern, and postmodern periods, Richard Kearney states that throughout the history of Western thought, the human ability to imagine things has been understood in two ways: "1) as a *representational* which reproduces images of some preexisting reality, or 2) as a *creative* faculty which produces images which often lay claim to an original status in their own right". Richard Kearney, *The Wake of Imagination* (London: Routledge, 2003), 15. Avicenna's distinction between retentive imagination and compositive imagination allows us to view him as an important figure in this historical process, both in terms of the two meanings of imagination indicated here and in terms of premodern discussions on imagination. For the transformations that imagination underwent during the historical period with which Avicenna was associated, it may be useful to refer not only to the work by Kearney (Kearney, *The Wake of Imagination*, 1-33, 37-152) but also to the following works. Amy Kind (ed.), *The Routledge Handbook of Philosophy of Imagination* (London - New York: Routledge, 2016), 15-26; Eva T. H. Brann, *The World of the Imagination - Sum and Substance* (Lanham: Rowman & Littlefield, 2017), 9-28, 31-67.

on the role of the perceiver is not strong enough to eliminate the role of external objects in active perception. Therefore, activity in perception appears to be a two-way process that includes the following: 1. activity related to the nature of the things through which knowledge is gained (the formation of internal representations of external objects as images, types, or ideas); and 2. activity related to the processing of sensory information through the interpretation and organization of sensory data.[2] In other words, the perceiver is active in both the process of initially accessing information and the process of processing that information.

Although it is very difficult to define active perception, the following definition seems reasonable: "Active perception can be understood in a broad sense as the inclusion of any account that takes perception to be the result of the soul's own agency, with or without the reception of sensory stimuli, regardless of whether such stimuli are causally relevant in the explanation of perception". This definition provides a sufficient basis for tracing the early historical discussions of active perception, contrary to the general idea that associates active perception particularly with the post-Cartesian and post-Kantian periods.[3]

The question of whether external objects or the mental activity of the perceiver is more important in the perception of sensory content has been debated throughout the history of philosophy. General descriptions of ancient theories of perception indicate that Aristotle defended a passive theory of perception, whereas Plato, the Platonists, and the Neoplatonists defended an active theory of perception. According to the Aristotelian model, the perceiver takes form from an external object or the object of perception. According to Aristotle, who believed that we perceive the world objectively, preserving the phenomenal properties of the external world requires that the objects of perception affect our sensory faculties. The less interference there is with sensory data coming from outside, the more accurate a picture we obtain of the world around us. The Platonic model, which identifies

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[2]   Jose Filipe Silva - Mikko Yrjönsuuri, "Introduction: The World as a Stereogram", *Active Perception in the History of Philosophy: From Plato to Modern Philosophy*, ed. José Filipe Silva - Mikko Yrjönsuuri (Cham: Springer, 2014), 1-4.

[3]   Silva - Yrjönsuuri, "Introduction: The World as a Stereogram", 3.

perception as unreliable and deceptive and does not view the objects of perception as variable, unreal, or suitable objects of knowledge, emphasizes the active role of the perceiver and claims that some of our knowledge or mental abilities go beyond what can be attained through perception. The Platonic model does not separate perception and reasoning as two different cognitive functions; it identifies perception as being closely connected to the rational abilities of the soul and even considers perception to be a type of reasoning. In this framework, perception is a process that has a completely material aspect but results from the rational faculty of the soul.[4] Neoplatonic commentators, who made some changes to Aristotle's theory, attributed sensation to the sense organs and retained Aristotle's assumption that external objects are sensed; however, like Plato and his followers, they emphasized the role of the rational soul in perception and identified perception with rational perceptual judgments. According to Aristotle, the active cause of perception is the object, and the perceiver is a passive recipient of the object, whereas according to the Neoplatonists, the passive activity caused by the external object is limited to the sense organs, and the object cannot be the primary active cause of the act of perception. According to the Neoplatonists, the active cause of perception must be the rational soul, which reflects "common concepts" on the effects that occur in the sense organs. The critical point regarding the similarities and differences between Aristotle and the Neoplatonists emerges here: Aristotle does not reject the perceptual judgments made by the rational soul, but he does not identify such judgments with perception. Neoplatonic commentators, on the other hand, do not deny irrational sensations, but they see them as related to the sensory organism.[5] In other words, Aristotle and the Neoplatonists differ in terms of the

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[4]   Paulina Remes, "Plato: Interaction Between the External Body and the Perceiver in the *Timaeus*", *Active Perception in the History of Philosophy: From Plato to Modern Philosophy*, ed. José Filipe Silva - Mikko Yrjönsuuri (Cham: Springer, 2014), 9-11; Klaus Corcilius, "Activity, Passivity, and Perceptual Discrimination in Aristotle", *Active Perception in the History of Philosophy: From Plato to Modern Philosophy*, ed. José Filipe Silva - Mikko Yrjönsuuri (Cham: Springer, 2014), 31-33, 51.

[5]   Miira Tuominen, "On Activity and Passivity in Perception: Aristotle, Philoponus, and Pseudo-Simplicius", *Active Perception in the History of Philosophy: From Plato to Modern Philosophy*, ed. José Filipe Silva - Mikko Yrjönsuuri (Cham: Springer, 2014), 55-58, 75-76.

question expressed as the problem of the content of sensory experience, which is also discussed in contemporary theories of perception and can be expressed as follows: Is perception related to the irrational perception of sensory objects or to rational judgments? The view that the rational soul is not a passive recipient of sensory stimuli but the agent of its own actions and the active cause of perception was also defended by Augustine and later influenced the philosophy of the Middle Ages. According to this view, perception is the result of the activity of the rational soul.[6] Although comments on the details of the views of Plato, Aristotle, Plotinus, or other Neoplatonic commentators on active perception point to differences from this general description, the general framework is as presented above.

An important work by Jari Kaukua, which falls within the scope of this study in terms of examining the activity of the soul in perception and will be evaluated in the second part, is also noteworthy.[7] Kaukua argues that while active perception that emerges through the faculties such as common sense and estimation may exist in Avicenna, it is not a mode of active perception that would remove Avicenna from the Peripatetic ground and bring him closer to Neoplatonic tendencies. In his article, Kaukua does not deny the role of the compositive imagination in the active perception process but focuses on the role of common sense and estimation in the active perception process. However, a closer reading of the compositive imagination, which is extremely functional in both the process of abstraction that occurs from the bottom up and the process of emanation that occurs from the top down, reveals that Avicenna did not compromise on Neoplatonic grounds as much as he did on Aristotelian and Peripatetic grounds.

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[6]   José Filipe Silva, "Augustine on Active Perception", *Active Perception in the History of Philosophy: From Plato to Modern Philosophy*, ed. José Filipe Silva - Mikko Yrjönsuuri (Cham: Springer, 2014), 79; José Filipe Silva, "Medieval Theories of Active Perception: An Overview", *Active Perception in the History of Philosophy: From Plato to Modern Philosophy*, ed. José Filipe Silva - Mikko Yrjönsuuri (Cham: Springer, 2014), 143.

[7]   Jari Kaukua, "Avicenna on the Soul's Activity in Perception", *Active Perception in the History of Philosophy: From Plato to Modern Philosophy*, ed. José Filipe Silva - Mikko Yrjönsuuri (Cham: Springer, 2014), 99-116.

Within the framework outlined here, against the backdrop of the debate on abstraction and emanation, this article aims to show that discussions on active perception in Avicenna can be traced through the compositive imagination (*mutakhayyilah*), which functions in both the abstraction and emanation processes. By focusing on the role of the compositive imagination in the active perception process, this article aims to show that Avicenna's position on perception emerged not only on an Aristotelian but also on a Neoplatonic basis. To this end, first, Avicenna's system of internal senses and some of his transformations are presented. Second, Avicenna's new framework for compositive imagination (*mutakhayyilah*) and its functions, especially in terms of active perception, are analyzed.[8]

1. Internal Senses in Avicenna: Between External Senses and Intellect

In general, two fields, sensible and intelligible, constitute the basis of human sensory and rational knowledge. The intelligible, on the one hand, is the domain of universal, general, and abstract essence. The sensible, on the other hand, is the domain in which quiddities materialize and individuate and become individuals existing in a certain time and space outside. Therefore, in contrast to intelligible things, sensible things, in which differentiation is realized through the conjunction of quiddity to matter and its various accidents, correspond to particularity and difference. The description here has some implications for metaphysics, perception, and movement, especially in view of the sharp distinction between the pure intellectual and pure material realms in classical philosophy. The relationship between God as a pure intellect and an immaterial being at the top of the classical emanation schema and the material realm is established through

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[8] One of the debates in contemporary literature concerning Avicenna is the almost classic debate over whether Avicenna's epistemology is abstractionist or emanationist. This debate, which began with Étienne Gilson, has since involved scholars such as Fazlur Rahman, Herbert Davidson, Deborah Black, Olga Lizzini, Cristina D'Ancona, Dimitri Gutas, Dag Nikolaus Hasse, Jon McGinnis, Tommaso Alpina, Richard Taylor, Jari Kaukua, and Stephen R. Ogden. Which of the abstractionist or emanationist approaches is correct, and how this debate should be elaborated, is beyond the scope of this article.

discrete intellects and souls, which are themselves immaterial. These intellects and souls are defined as the mediators that establish a relationship with a material domain in which time, space, individuals, matter, and accidents of matter are concerned. Human perception and movement are also compatible with the framework drawn here, in terms of the fact that human beings have intellectual and sensory aspects. This is because the corporeal human body has perceptions and movements, acts and actions that are related to time, space, and the individual.

The classical explanation related to the intellect's management of a world undergoing generation and corruption is also used in relation to the human intellect's management of the body, which is the owner of the movements undergoing generation and corruption, and the soul is brought into play as the means by which the intellect manages the body. In the perception and movements of both celestial and human souls, the internal senses are referred to as the faculties that provide the relationship between the purely intellectual and the purely material. The theory of the internal senses is a theory that finds its origin in Aristotle's view but is often corrected and developed with Platonic concepts.[9] At the center of the theory of the internal senses is *phantasia*, which is central to all human cognition.[10] The relation of compositive imagination with the external senses and intellect has also been a problem of concern to philosophers. The compositive imagination has sometimes served as an intermediary faculty between the external senses and intellect, and at other times, it has tried to free itself from being used by the external senses and the intellect. In this respect, as an internal sense conditioned to two horses drawn in opposite directions, compositive imagination is a necessary part of the activity of knowing, positioned between sensation and intellection.[11]

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[9]   E. Ruth Harvey, *The Inward Wits: Psychological Theory in the Middle Ages and the Renaissance* (London: The Warburg Institute University of London, 1975), 32.

[10]   Gerard Watson, *Phantasia in Classical Thought* (Galway: Galway University Press, 1988), 27.

[11]   Harvey, *The Inward Wits: Psychological Theory in the Middle Ages and the Renaissance*, 49; Alfred L. Ivry, "The Triangulating the Imagination: Avicenna, Maimonides, and Averroes", *Intellect and Imagination in Medieval Philosophy*, ed. Maria Cândida Pacheco - José Francisco Meirinhos (Turnhout: Brepols, 2006), 667-676.

The relationship among the internal senses, especially between the compositive imagination and the intellect, has followed an contradictory course throughout the history of philosophy.[12]

Avicenna was influenced by both Aristotle and Neoplatonism in the relationship between the external senses and the intellect and proposed a scheme in which the relationship between these two areas is provided by the compositive imagination and other internal senses.[13] The theory of the internal senses reached its most comprehensive and detailed version through Avicenna's modifications. As a philosopher who proposed "one of the most complex and sophisticated accounts" of the internal senses in medieval philosophy,[14] Avicenna finalized the theory that would become established as the theory of the internal senses and remain in circulation for a long time. Avicenna relates to the previous debates on phantasia through texts such as his commentary on Aristotle's *De Anima*, which was attributed to Isḥāq ibn Ḥunayn; Alexander's *De Anima* and *De Intellectu*; the *Uthūlūjiyā*, which was erroneously attributed to Aristotle; and the ideas of Plotinus

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[12] For more comprehensive analyses of the historical development of internal senses, see Murray W. Bundy, *The Theory of Imagination in Classical and Mediaeval Thought* (Illinois: The University of Illinois, 1927), 69-73, 122-123, 131-132; Harry A. Wolfson, "The Internal Senses in Latin, Arabic, and Hebrew Philosophical Texts", *The Harvard Theological Review* 28/2 (1935), 69-73; Watson, *Phantasia in Classical Thought*, 1-13, 15-38, 100-103; Michael V. Wedin, *Mind and Imagination in Aristotle* (New Haven - London: Yale University Press, 1988), 82-83; Simon Kemp - Garth J. O. Fletcher, "The Medieval Theory of the Inner Senses", *The American Journal of Psychology* 106/4 (Winter 1993), 559-560; Katherine H. Tachau, "Approaching Medieval Scholars' Treatment of Cognition", *Intellect and Imagination in Medieval Philosophy*, ed. Maria Cândida Pacheco - José Francisco Meirinhos (Turnhout: Brepols, 2006), 16-20.

[13] Harvey, *The Inward Wits: Psychological Theory in the Middle Ages and the Renaissance*, 61; Deborah L. Black, "Imagination and Estimation: Arabic Paradigms and Western Transformations", *Topoi* 19 (2000), 59-62; Ahmed R. D. Alwishah, *Avicenna's Philosophy of Mind: Self-Awareness and Intentionality* (Los Angeles: University of California, Ph.D. Dissertation, 2006), 96; Cristina D'Ancona, "Degrees of Abstraction in Avicenna: How to Combine Aristotle's *De Anima* and the *Enneads*", *Theories of Perception in Medieval and Early Modern Philosophy*, ed. Simo Knuuttila - Pekka Kärkkäinen (Dordrecht: Springer, 2008), 50-58.

[14] Deborah L. Black, "Estimation (*Wahm*) in Avicenna: The Logical and Psychological Dimensions", *Dialogue: Canadian Philosophical Review* 32/2 (1993), 219.

set forth in *the Enneads* and Themistius' commentary on *De Anima*.[15] Thus, Aristotle, who attributed the functions of the faculties to the heart and to the animal soul, was the philosopher with the greatest influence on the Avicennian theory of the internal senses, which was also strongly influenced by Neo-Platonic thought, especially in the context of phantasia. Avicenna's theory of internal senses was also influenced by Galen, who attributed the functions of the faculties to the brain and to the rational soul.[16]

In the Avicennian scheme, the five internal senses are as follows: 1. common sense (*al-ḥiss al-mushtarak*), 2. retentive imagination *(al-khayāl, al-muṣawwirah)*, 3. compositive imagination and cogitation (*al-mutakhayyilah* and *al-mufakkirah*), 4. estimation (*al-wahm*), and 5. memory (*al-dhākirah*). *Common sense* is defined as the faculty situated in the anterior ventricle of the brain, which receives all the forms impressed in the five senses. *The retentive imagination*, on the other hand, is the faculty situated at the end of the anterior ventricle of the brain and preserves the forms obtained by common sense from the five external senses even after the disappearance of sensible things. Avicenna says that after retentive imagination, there is another faculty, which in the animal soul is called *compositive imagination* and in the human soul is called *cogitation*. This faculty is in a worm-like structure in the central ventricle of the brain. The function of this faculty is to combine and separate some things in the imagination. *Estimation* is the faculty situated at the end of the middle ventricle of the brain, which perceives the meanings that are present in sensible things but

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[15]   Herbert A. Davidson, *Alfarabi, Avicenna, and Averroes, on Intellect: Their Cosmologies, Theories of the Active Intellect and Theories of Human Intellect* (New York: Oxford University Press, 1992), 8-9; Richard M. Frank, "Some Fragments of Isḥâq's Translation of the *de Anima*", *Cahiers de Byrsa* 8 (1958-1959), 231-237; Alfred L. Ivry, "The Arabic Text of Aristotle's *de Anima* and its Translator", *Oriens* 36 (2001), 60-61; Alwishah, *Avicenna's Philosophy of Mind*, 14; D'Ancona, "Degrees of Abstraction in Avicenna", 47-50.

[16]   Harvey, *The Inward Wits: Psychological Theory in the Middle Ages and the Renaissance*, 21; Robert E. Hall, "Intellect, Soul and Body in Ibn Sīnā: Systematic Synthesis and Development of the Aristotelian, Neoplatonic and Galenic Theories", *Interpreting Avicenna: Science and Philosophy in Medieval Islam*, ed. Jon McGinnis (Leiden: Brill, 2004), 72, 80; Tachau, "Approaching Medieval Scholars' Treatment of Cognition", 26.

are not sensible in essence. This faculty is similar to the faculty that combines and separates imagined things. *Memory*, on the other hand, is the faculty situated in the last ventricle of the brain and preserves the meanings that are present in sensible things but are not themselves sensible.[17]

The two criteria Avicenna uses to clarify the differences among the internal senses suggest a very important point in the context of the abovementioned debates on active perception. The first criterion is the distinction that some internal senses have only *perception,* and some internal senses have *action along with perception.* The second criterion is the distinction that some internal senses are only *receptive,* whereas some internal senses are also *retentive.* Accordingly, in the Avicennian scheme of internal senses, the *retentive imagination* and the *memory* are faculties that are only retentive and non-acting. On the other hand, compositive imagination, cogitation, and estimation play an active role, as they are faculties that are both perceiving and

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[17] Abū ʿAlī al-Ḥusayn ibn ʿAbd Allāh ibn ʿAlī Ibn Sīnā, *Avicenna's De Anima (Arabic Text): Being the Psychological Part of Kitāb al-Shifāʾ*, ed. Fazlur Rahman (London: Oxford University Press, 1959), 43-45. For more comprehensive analyses of faculty psychology and internal senses in Avicenna, see Dimitri Gutas, "Intellect Without Limits: The Absence of Mysticism in Avicenna", *Intellect and Imagination in Medieval Philosophy*, ed. Maria Cândida Pacheco - José Francisco Meirinhos (Turnhout: Brepols, 2006), 355-359; Dimitri Gutas, "Imagination and Transcendental Knowledge in Avicenna", *Arabic Theology, Arabic Philosophy – From the Many to the One: Essays in Celebration of Richard M. Frank*, ed. James E. Montgomery (Leuven: Peeters Publishers, 2006), 337-354; Black, "Estimation (*Wahm*) in Avicenna", 219-258; Black, "Imagination and Estimation: Arabic Paradigms and Western Transformations", 59-75; Peter E. Pormann, "Avicenna on Medical Practice, Epistemology, and the Physiology of the Inner Senses", *Interpreting Avicenna: Critical Essays*, ed. Peter Adamson (Cambridge: Cambridge University Press, 2013), 91-108. Mehmet Zahit Tiryaki, *İbn Sînâ Felsefesinde Mütehayyile/Müfekkire ve Vehim* (İstanbul: Marmara University Social Sciences Institute, Ph.D. Dissertation, 2015); Mehmet Zahit Tiryaki, "Tahayyül Kavramında İbn Sînâcı Dönüşümler", *Kavram Geliştirme – Sosyal Bilimlerde Yeni İmkanlar*, ed. Kübra Bilgin Tiryaki - Lütfi Sunar (Ankara: Nobel, 2016), 199-252; Nursema Kocakaplan, *Fârâbî ve İbn Sînâ'da Tahayyül* (İstanbul: Klasik Yayınları, 2024), 69-103.

operating.[18]

2. Compositive Imagination and Active Perception: Between Abstraction and Emanation

The relationship between the compositive imagination and active perception in Avicenna can be understood in the context of the relationship between abstraction and emanation, one of the most important debates in contemporary Avicenna studies. Contemporary debates on Avicenna's theory of knowledge have taken shape around certain positions.[19] One side of the debate is represented by Étienne Gilson, who, referring to *l'Augustinisme avicennisant*, reduces abstraction in Avicenna to emanation.[20] Scholars such as Fazlur Rahman, Herbert Davidson, Deborah Black, Olga Lizzini, and Cristina D'Ancona have adopted Gilson's position and defended the priority of emanation over abstraction in Avicenna. According to those who defend this approach, Avicenna's epistemology is rationalist because he argues that the rational soul acquires intelligible forms through emanation from an external source.[21] In contrast, Dimitri Gutas argues that Avicenna uses emanation not as a solution to an epistemological problem but as a solution to an ontological problem and that the

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[18]   Abū ʿAlī al-Ḥusayn ibn ʿAbd Allāh ibn ʿAlī Ibn Sīnā, *Kitāb al-Najāh fī l-ḥikmah al-manṭiqiyyah wa-l-ṭabīʿiyyah wa-l-ilāhiyyah*, ed. Mājid Fakhrī (Beirut: Dār al-Āfāq al-Jadīdah, 1985), 200-201; Ibn Sīnā, *ʿUyūn al-ḥikmah*, ed. Muḥammad Jabr - Muwaffaq Fawzī Jabr (Damascus: Dār al-Yanābīʿ, 1996), 78-79.

[19]   For a general description of the debates and positions on this issue, see Tommaso Alpina, *Subject, Definition, Activity: Framing Avicenna's Science of the Soul* (Berlin: De Gruyter, 2021), 131-138; İsmail Kurun, "Avicenna's Intuitionist Rationalism", *History of Philosophy Quarterly* 38/4 (October 2021), 317-320.

[20]   Étienne Gilson, "Les sources gréco-arabes de l'augustinisme avicennisant", *Archives d'Histoire Doctrinale et Littéraire du Moyen Age* 4 (1929-1930), 1-107.

[21]   Fazlur Rahman, *Prophecy in Islam: Philosophy and Orthodoxy* (London: Allen and Unwin, 1958), 15; Herbert A. Davidson, "Alfarabi and Avicenna on the Active Intellect", *Viator* 3/1 (January 1972), 109-178; Davidson, *Alfarabi, Avicenna and Averroes, on Intellect*, 74-126; Deborah L. Black, "Avicenna on the Ontological and Epistemic Status of Fictional Beings", *Documenti e studi sulla tradizione filosofica medievale* 8 (1997), 445; Olga Lizzini, "L'âme chez Avicenne: quelques remarques autour de son statut épistémologique et de son fondement métaphysique", *Documenti e studi sulla tradizione filosofica medievale* 21 (2010), 241; D'Ancona, "Degrees of Abstraction in Avicenna", 47-71.

rational soul acquires intelligible forms only through abstraction.[22] Scholars such as Dag Nikolaus Hasse, Jon McGinnis, Tommaso Alpina, and Richard Taylor have adopted the abstractionist interpretation, albeit with some important modifications. According to this interpretation, although abstraction is not the only epistemological method used by Avicenna, its use provides a strong empirical foundation for Avicenna's philosophy.[23] Recently, Stephen R. Ogden interpreted Avicenna's abstraction and emanation in a holistic manner.[24]

In the introduction to this article, it was noted that in contemporary perception debates, perception of the external world does not simply result from external things causally affecting the senses; the role of the perceiver in the perceptual process is quite significant, and therefore, perception occurs in a two-way manner. Also noted were the different positions presented within this problematic framework in the period

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[22]   Dimitri Gutas, "Intuition and Thinking: The Evolving Structure of Avicenna's Epistemology", *Aspects of Avicenna*, ed. Robert Wisnovsky (Princeton: Markus Wiener Publishers, 2001), 1-38; Dimitri Gutas, "Avicenna: The Metaphysics of the Rational Soul", *The Muslim World* 102/3-4 (October 2012), 417-425; Dimitri Gutas, *Avicenna and the Aristotelian Tradition: Introduction to Reading Avicenna's Philosophical Works* (Leiden: Brill, 2014), 179-201, 288-296. For a critical assessment of Gutas's commentary, see Jari Kaukua, "Avicenna's Outsourced Rationalism", *Journal of the History of Philosophy* 58/2 (April 2020), 215-240.

[23]   Dag N. Hasse, *Avicenna's De Anima in the Latin West: The Formation of a Peripatetic Philosophy of the Soul 1160–1300* (London: The Warburg Institute, 2000), 186; Dag N. Hasse, "Avicenna on Abstraction", *Aspects of Avicenna*, ed. Robert Wisnovsky (Princeton: Markus Wiener Publishers, 2001), 63; Jon McGinnis, "Making Abstraction Less Abstract: The Logical, Psychological, and Metaphysical Dimensions of Avicenna's Theory of Abstraction", *Proceedings of the American Catholic Philosophical Association* 80 (2006), 169-183; Tommaso Alpina, "Intellectual Knowledge, Active Intellect and Intellectual Memory in Avicenna's *Kitāb al-Nafs* and Its Aristotelian Background", *Documenti e studi sulla tradizione filosofica medievale* 25 (2014), 131-183; Alpina, *Subject, Definition, Activity: Framing Avicenna's Science of the Soul*, 130-138; Richard C. Taylor, "Avicenna and the Issue of the Intellectual Abstraction of Intelligibles", *Philosophy of Mind in the Early and High Middle Ages*, ed. Margaret Cameron (London - New York: Routledge), 2019, 56-82.

[24]   Stephen R. Ogden, "Avicenna's Emanated Abstraction", *Philosopher's Imprint* 20/10 (April 2020), 1-26.

of the history of philosophy prior to Avicenna. Accordingly, general descriptions of ancient theories of perception indicate that Aristotle defended a passive theory of perception, whereas Plato and the Neoplatonists defended an active theory of perception. Therefore, preserving the phenomenal properties of the external world and the effect of the objects of perception on our sensory abilities was important for Aristotle. For Plato, who argued that part of our knowledge or mental abilities goes beyond what can be attained through perception, and for the Neoplatonists, who attributed sensation to the sense organs as Aristotle did but linked perception to rational judgments as Plato did, what was important in perception was the activity of the rational soul. Avicenna's discussions on abstraction and emanation gain importance in the context of these historical debates on perception. Avicenna, like the Neoplatonists, combines Platonic and Aristotelian aspects. On the one hand, he emphasizes the perception of external objects by the sense organs through a process of abstraction that occurs from the bottom up; on the other hand, he emphasizes the activity of the rational soul in the perception of external objects through a process of emanation that occurs from the top down. Therefore, in Avicenna, perception emerges fully at the end of a process in which, as opposed to the passive perception of external objects by the sensory organs, it is first the intellect and, ultimately, the rational soul that actively perceives external objects. This point requires an analysis of the process by which perception is imbued with an active dimension in Avicenna.

Jari Kaukua offers an interpretation that evaluates the roles of the internal senses in active perception in Avicenna. Kaukua argues that "when it comes to the question of his theory of perception, or more precisely, whether the soul plays an significant active role in bringing perception about, he seems to have been a rather orthodox Aristotelian" and "seems to have settled firmly on the Peripatetic ground, quite distinct from the sort of Neoplatonic tendencies in the theory of perception which are evident in Augustine and the tradition founded upon him". According to Kaukua, despite his theory of internal senses, Avicenna adopted "the view that perception is by and large a passive affair, and even though it involves a process of gradual abstraction of forms from matter, this takes place more or less as a rection by the soul to the necessary data provided by the external

object of perception". Thus, Kaukua suggests that the idea of the soul as an active principle in perception can be found in Avicenna in at least two senses, and he interprets this as an extension of Avicenna's Aristotelian teaching. First, we should note that active perception is present in Avicenna in the sense that the act of perception introduces something that is not initially present in the extramental object of perception. The second and more powerful sense of active perception in Avicenna stems from his idea that the perceiving soul structures the object of perception in a way that problematizes the concept of representation on the basis of a simple isomorphism between the object of perception and the extramental entity corresponding to it. In the remainder of his work, Kaukua examines the problem of active perception in Avicenna through common sense and the imagination.[25]

In Kaukua's work, there are two claims regarding the problem of active perception in Avicenna, one of which can be criticized and the other expanded upon. The first claim in Kaukua's work is that Avicenna was an orthodox Aristotelian. However, Avicenna presents not only an Aristotelian but also a Neoplatonic framework by reducing the passivity of perception at every stage of the abstraction process that occurs from the bottom up and emphasizing the active role of the rational soul over perceptions in the process of emanation that occurs from the top down. Here, the Neoplatonic principle, which Avicenna frequently emphasizes, that lower functions cannot cause higher functions, which also forms the basis for the claim that objects can affect the sense organs but not the judgment of the rational soul, supports the Neoplatonic aspect of Avicenna. This frames Avicenna as a philosopher of the medieval tradition that views the rational soul as the active cause of perception, not as a passive recipient of sensory stimuli, and that relates perception to intellect and rational judgment at an advanced level of perception or cognition, even if not at the level of sensation.[26]

The second claim in Kaukua's work is that, according to Avicenna, activity in perception occurs through common sense and estimation.

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[25] Jari Kaukua, "Avicenna on the Soul's Activity in Perception", 99-100, 114-115.

[26] For the process of moving from sensation to perception or cognition in Avicenna, see Mehmet Zahit Tiryaki, "Duyumsama, Soyutlama ve Duyulur Nitelikler: İbn Sînâ Nitelce Temsilcisi ya da Dışsalcısı Olabilir mi?", *Felsefe Arkivi* 62 (2025), 64-71.

In fact, the criteria used by Avicenna to distinguish between the internal senses and emphasized by Kaukua[27] provide a framework for determining which faculties are responsible for activity in perception. Avicenna's first criterion is the distinction between the internal senses in which there is only perception and the internal senses in which there is both perception and action. The second criterion is the distinction between the internal senses that are only receptive and the internal senses that are retentive. According to Avicenna's scheme of internal senses, common sense, retentive imagination, and memory are faculties that do not perform any operations. In contrast, the compositive imagination and cogitation play active roles in that they both perceive and perform operations.[28] Kaukua's emphasis on the activity of common sense is based on the claim that temporal continuity, which does not exist in the external world, emerges in common sense. Kaukua characterizes this as the "trivial sense in which common sense could be called an active faculty of perception... However, Avicenna does not recognize any genuine activity" in common sense. Kaukua bases the role of estimation in the active perception process on the fact that the meanings perceived through estimation are not objective, fixed, or perceived in the same way by everyone, and that perception through estimation obtains meanings subjectively and actively. Kaukua focuses on the role of common sense and estimation in the active perception process. Nevertheless, he emphasizes that the system of internal senses, to which Avicenna attributes different functions, is not grounded in an atomistic theory of perception and that the functioning of a faculty is dependent on the functioning of the entire system; therefore, the retentive imagination and the compositive imagination also come into play in the active

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[27]   Kaukua, "Avicenna on the Soul's Activity in Perception", 100-101.
[28]   Ibn Sīnā, *Kitāb al-Najāh*, 200-201; Ibn Sīnā, *ʿUyūn al-ḥikmah*, 78-79.

perception process.[29] Thus, in Avicenna, the problem of active perception or the activity of perception appears to be a problem that can be interpreted in a more comprehensive framework in relation to the internal senses, primarily the compositive imagination's control over data received from the external senses.

In Avicenna's psychology, the compositive imagination, which is included in the system as a faculty that is different from the retentive imagination, is the most active and dynamic faculty in the scheme of internal senses in terms of its unification and separation function with respect to the sensory material derived from common sense and retentive imagination, which precede it in the scheme of internal senses. Like the other internal senses, Avicenna uses compositive imagination to establish the relationship between the body and the senses as the sources of difference and diversity and the soul and intellect as the sources of commonality and sameness. In addition, Avicenna activates compositive imagination in the context of perception through both abstraction and emanation.

Avicenna first analyzes the role of the compositive imagination in the process of abstraction from the senses to the intellect and then its role in the process of emanation from the intellect to the senses. Thus, on the one hand, Avicenna emphasizes the role of compositive imagination in the process of abstraction from the sensory to the intellectual. On the other hand, he brings compositive imagination into play, from the intellectual to the sensory. In any case, a controversial issue that is difficult to resolve in terms of the Avicennian system emerges here: Does Avicenna constantly emphasize the process of abstraction through the operation of the compositive imagination on forms for all modes of thought? Or does he accept a thought that is realized through the specific function of the compositive imagination independent of the process of abstraction?

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[29]   Kaukua, "Avicenna on the Soul's Activity in Perception", 102, 107-109. For an emphasis on the activity of the compositive imagination in Avicenna, see also Zhenyu Cai, "Mad Man, Sleeper and Fire: Avicenna on the Perception of the External", *Arabic Sciences and Philosophy* 35/1 (March 2025), 57-58, 61-62. The faculty referred to as active sense in the 14th century, whose function is described as dematerializing and spiritualizing the perceptible, seems to correspond largely to the compositive imagination in Avicenna. See Silva, "Medieval Theories of Active Perception", 143.

In the abstraction stage, which starts from the senses and proceeds through retentive imagination and estimation to the intellect, the compositive imagination, as the most critical faculty between the senses and the intellect, performs the functions of unification and separation on the sensory forms transferred from the previous internal senses.[30] At this point, the compositive imagination plays the role of transforming sensory data into general concepts and making them suitable for the intellect's perception.

One of the important changes Avicenna made was that he distinguished between two different internal senses, namely, *retentive imagination* and *compositive imagination*. Therefore, these two faculties are the faculties in which Avicenna's intervention in the scheme of internal senses is most clearly observed. In some of his early works, Avicenna used retentive imagination and compositive imagination interchangeably.[31] However, whether the faculty referred to is retentive imagination or compositive imagination can be deduced from the context and function of the faculty. In particular, the fact that the faculty associated with the debates with respect to its functions and its relationship with the intellect is compositive imagination makes it easier for us to make a choice in such cases. After all, retentive imagination is one of the preservative faculties that has no function beyond preserving the sensible forms obtained via common sense.

Avicenna notes the primarily terminological distinction between retentive imagination and compositive imagination.[32] Elsewhere, he takes this terminological difference one step further: "The difference between the [compositive] imagination and the retentive imagination is that the retentive imagination has only what is taken from the senses,

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[30]   Abū ʿAlī al-Ḥusayn ibn ʿAbd Allāh ibn ʿAlī Ibn Sīnā, *al-Mabdaʾ wa-l-maʿād*, ed. ʿAbd Allāh Nūrānī (Tahrān: Muʾassasah-ʾi Muṭalaʿāt-i Islāmī Dānishgāh-i Māk Gīl, 1984), 102-103; Ibn Sīnā., *Kitāb al-Hidāyah*, ed. Muḥammad ʿAbduh (Cairo: Maktabat al-Qāhirah al-Ḥadīthah, 1974), 212-213; Ibn Sīnā, *Avicenna's De Anima*, 59; Ibn Sīnā, *Kitāb al-Najāh*, 208; Ibn Sīnā, *ʿUyūn al-ḥikmah*, 80-81; Ibn Sīnā, *al-Ishārāt wa-l-tanbīhāt*, ed. ʿAlī Riḍā Najafzādah. Tehran: Anjuman-i Āthār wa-Mafākhir-i Farhangī, 2005), 245; Ibn Sīnā, *al-Taʿlīqāt*, ed. Ḥusayn Mūsawiyān (Tehran: Muʾassasah-ʾi Pizūhishī-yi Ḥikmah wa-l-Falsafa-ʾi Īrān, 2013), 202-203.

[31]   Ibn Sīnā, *al-Mabdaʾ wa-l-maʿād*, 116-120. See also Dimitri Gutas, "Intellect Without Limits: The Absence of Mysticism in Avicenna", 358, footnote 19.

[32]   Ibn Sīnā, *Avicenna's De Anima*, 165.

whereas the compositive imagination combines, separates, and creates the forms of what has not been perceived and what has never been perceived. Examples, such as the flying human being, the individual or person who is half human and half tree [are like this]".[33]

Avicenna reemphasizes the difference between retentive imagination and compositive imagination elsewhere. Accordingly, the retentive imagination is the faculty that receives or preserves sensible forms. The compositive imagination, on the other hand, acts on what is stored in the retentive imagination. The operation of this faculty is to combine and separate and imagine the forms in the retentive imagination as forms that are different from the forms that come from the senses, such as a flying person or an emerald mountain. However, the retentive imagination receives only what the senses obtain.[34] Robert E. Hall states that Avicenna uses only the term retentive imagination and its derivatives in Burhan III.5 and speaks of retentive imagination in a limited technical sense. This meaning is also used in IV.10, where retentive imagination refers to passive retentive imagination or the representational faculty. Here, too, the retentive imagination is portrayed as the faculty that preserves the sense data unified by common sense, as in *al-Shifāʾ: al-Nafs*, and that other faculties find these unified forms within it when necessary. The faculty Avicenna refers to as compositive imagination and cogitation, on the other hand, is included in the scheme as a higher, active faculty capable of dividing, recombining, using forms, and thus imagining in the modern sense.[35]

As Deborah Black also stated, the two functions of the compositive imagination, both to imagine the form coming from the senses and to imagine forms that did not previously exist by making combinations, are important in several respects. First, the multiplication realized in the internal senses through the distinction between retentive imagination and compositive imagination is a correction of what

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[33]   Ibn Sīnā, *al-Mabdaʾ wa-l-maʿād*, 93-94.
[34]   Abū ʿAlī al-Ḥusayn ibn ʿAbd Allāh ibn ʿAlī Ibn Sīnā, *al-Qānūn fī l-ṭibb*, ed. Idwār al-Qashsh (Beirut: Muʾassasat ʿIzz al-Dīn, 1993), 96.
[35]   Robert E. Hall, "A Decisive Example of the Influence of Psychological Doctrine in Islamic Science and Culture: Some Relationships Between Ibn Sīnā's Psychology, Other Branches of His Thought, and Islamic Teachings", *Journal for the History of Arabic Science* 3 (1979), 63-64.

constitutes the basis of Aristotelian phantasia. For the problems Aristotle analyzed in *De Anima* III.3 in the context of phantasia, it was difficult to provide a holistic account of the Aristotelian concept. If a special faculty were designated for the perceptual function of receiving and preserving forms and meanings from the external world, and if that faculty were given further freedom to use these forms creatively, there would be no mechanism for guaranteeing the true character of the stored perceptions. Avicenna, on the other hand, was able to eliminate some of the tensions within the Aristotelian account by distributing the competing operations on the forms to different faculties.[36]

Another contribution of the distinction between retentive imagination and compositive imagination in Avicenna is a clearer distinction between sensation and retentive imagination and compositive imagination. This distinction is important with regard to the question of how it is possible for sense perception and phantasia, which share the same object, to have different functions. Avicenna attempts to resolve this issue, which is also debated in the Aristotelian tradition, by resorting to an intermediary faculty such as retentive imagination. This faculty is still causally related to sense perception because it preserves the abstracted object taken from the sensible object. However, through this faculty, we perceive the sensible object not as an object of perception but as an object ready for the use of more advanced faculties such as compositive imagination and cogitation. Consequently, Avicenna attributes some of the sensible or perceptible functions to the retentive imagination and some functions to the compositive imagination. In Aristotle, phantasia has three functions: 1. interpreting perceived things, 2. representing the object as a certain kind of thing, and 3. combining and separating perceptible form. Avicenna, on the other hand, accepts these three functions that Aristotle attributes to phantasia but attributes them to two different faculties. More precisely, according to Avicenna, interpreting perceived things and representing the object as a certain type of thing

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[36]   Deborah Black, "Rational Imagination: Avicenna on the Cogitative Power", *Philosophical Psychology in Arabic Thought and the Latin Aristotelianism of the 13th Century*, ed. Luis Xavier López-Farjeat - Jörg Alejandro Tellkamp (Paris: Vrin, 2013), 63-65.

belong to the retentive imagination, whereas combining and separating perceptible forms belong to the compositive imagination.[37]

According to Avicenna, form exists in the faculties of retentive imagination and compositive imagination in a more abstract manner than in the external senses. This is because the retentive imagination retains the form of matter in such a way that it does not need the existence of the form's matter. Even if the matter disappears from the reach of the senses, the existence of the form in the retentive imagination remains constant. Thus, the mere existence of form rather than matter in the retentive imagination completely severs the relationship between retentive imagination and matter. However, the retentive imagination does not abstract the form from material attachments. The form in the retentive imagination is, according to the sensible form, a kind of quality and condition.[38] The abstraction of the forms from their matter is not yet fully realized in the retentive imagination and compositive imagination. Although matter has disappeared and a certain amount of abstraction has taken place in retentive imagination and compositive imagination, complete abstraction has not yet been realized because of the accidents of matter. However, Avicenna points out that the unification and separation that the compositive imagination makes between the forms is not based on a judgment about external forms or the existence or nonexistence of something.[39]

It seems that Avicenna's main contribution is not only in the addition of this or that faculty but also in his systematic separation of the different functions previously attributed to a single faculty and in attributing a special faculty to each function. Avicenna first eliminated this terminological ambiguity with the distinction between retentive imagination and compositive imagination. Second, Avicenna positioned the retentive imagination below and related it more to the senses, whereas he positioned the compositive imagination above the retentive imagination. In this way, Avicenna was able to attribute the

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[37] Alwishah, *Avicenna's Philosophy of Mind*, 99-100. For analysis of the second function, see also Martha Craven Nussbaum, *Aristotle's* De Motu Animalium: *Text with Translation, Commentary, and Interpretive Essays* (Princeton, NJ: Princeton University Press, 1978), 257, note 52.

[38] Ibn Sīnā, *Avicenna's De Anima*, 59-60.

[39] Ibn Sīnā, *Avicenna's De Anima*, 165-166.

function that the compositive imagination performs in the context of inferential reasoning to the cogitation and to construct the compositive imagination as a faculty through which the functions of the human mind other than abstraction are realized.

Another important emphasis in Avicenna's scheme of internal senses is the distinction between the compositive imagination and cogitation and the relationship of these two faculties to the intellect. As notes, Avicenna considered the compositive imagination and cogitation as faculties that fulfill the same function and thought that the difference between them arose from the fact that the compositive imagination is a function of the animal soul, whereas cogitation is a function of the human soul. Therefore, for Avicenna, in terms of its function in the process of abstraction, analyzing the compositive imagination means analyzing cogitation. In almost all his texts, Avicenna analyses cogitation together with compositive imagination and believes that it is responsible for combining and separating things stored in the retentive imagination. In fact, the two faculties perform the same operation, but where the rational soul is involved in the function of combining and separating, the faculty takes the name of cogitation.[40] In *al-Qānūn*, just like in his other texts, Avicenna also moves from the association of compositive imagination and cogitation. However, immediately after his definition, he states that there is a difference between these two faculties and begins to explain the distinction between the retentive imagination and the compositive imagination.[41]

Avicenna's emphasis on the function of combining and separating both compositive imagination and cogitation is also compatible with the general Avicennian approach in which human thought occurs in a dual stage. At the stage of knowledge pertaining to the soul (*nafsānī*), there is a unification from sensory and fragmentary knowledge to simple and holistic knowledge through abstraction. In the stage of intellectual knowledge, on the other hand, there is separation from

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[40] Ibn Sīnā, *Avicenna's De Anima*, 45; Ibn Sīnā, *al-Mabdaʾ wa-l-maʿād*, 93-94; Ibn Sīnā, "Risālah fī l-nafs wa-baqāʾihā wa-maʿādihā", *Aḥwāl al-nafs*, ed. Aḥmad Fuʾād al-Ahwānī (Cairo: Dār Iḥyāʾ al-Kutub al-ʿArabiyyah, 1952), 62; Ibn Sīnā, *Kitāb al-Hidāyah*, 214; Ibn Sīnā, *Kitāb al-Najāh*, 201-202; Ibn Sīnā, *al-Ishārāt wa-l-tanbīhāt*, 245; Ibn Sīnā, *ʿUyūn al-ḥikmah*, 78.

[41] Ibn Sīnā, *al-Qānūn fī l-ṭibb*, 96.

rational and holistic knowledge to composite and fragmentary knowledge through emanation. Cogitation performs the function of unification in the abstraction process that develops from the soul to the intellect and the function of differentiation in the process of emanation that develops from the intellect to the soul.[42] However, in this process, which is realized through the relationship between simple intellectual knowledge and the composite and fragmented sensual knowledge obtained through cogitation, Avicenna aims to explain how multiplicity is achieved through forms on the one hand and to preserve the simplicity and integrity of the intellect and intelligibility on the other hand.[43]

In Avicenna's texts, cogitation is given less attention than compositive imagination. Avicenna's emphasis on compositive imagination rather than cogitation first appears to indicate that the primary faculty responsible for unification and separation is compositive imagination. However, Avicenna makes another distinction that complicates this understanding. In *al-Mubāḥathāt*, Avicenna states, "If by cogitation is meant the seeking faculty, it belongs to the rational soul. It is the dispositional intellect (*ʿaql bi-l-malakah*), especially when it aims at perfection and does not exceed the *al-malakah*. If by cogitation is meant that which is presenting moving forms, it is the compositive imagination in the sense that it moves under the direction of the intellectual faculty".[44]

In the Avicennian system, the compositive imagination, along with the other internal senses, plays an important role in the emanation process that continues from the One to the lowest material being. This role emerges in the process of the external realization of existence at the end of the processes of individualization (*tashakhkhuṣ*), specialization (*takhaṣṣuṣ*), determination (*taʿayyun*), and multiplication (*takaththur*). Despite this framework, which at first appears ontological, this description has an epistemological dimension, since coming into existence in the Neoplatonist and Avicennian systems is a process of intellection (*taʿaqqul*). This

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[42] Davidson, *Alfarabi, Avicenna, and Averroes, on Intellect*, 96-97.
[43] Black, "Rational Imagination: Avicenna on the Cogitative Power", 73-75.
[44] Abū ʿAlī al-Ḥusayn ibn ʿAbd Allāh ibn ʿAlī Ibn Sīnā, *al-Mubāḥathāt*, ed. Muḥsin Bīdārfar (Qom: Intishārāt-i Bīdār, 1371/1992), 111.

dimension leads us to another aspect of the Avicennian theory of knowledge, specifically, a different kind of knowledge that emerges in the revelation received by the prophet, the inspiration of the saint, or the dream of the dreamer. Therefore, a complete analysis of the compositive imagination in Avicenna requires consideration of the functions of this faculty in the process of abstraction as well as its role in the process of emanation from the intellectual realm to the sensory realm. In this context, compositive imagination is also used to explain issues such as prophecy, revelation, vision, and dreams. Just as the compositive imagination has the function of abstracting the forms it receives at the sensory level and transforming them into intellectual concepts, it also has the function of translating the immaterial and incorporeal intelligible meanings they receive from the divine realm into material forms.

Gutas discusses the function of the compositive imagination in acquiring knowledge about the supreme realm in Avicenna, arguing that this knowledge is obtained through either the acquisition of intelligible universal concepts from the active intellect or the acquisition of particular forms concerning particular events from the souls of the celestial spheres. According to Gutas, in *al-Mabdaʾ wa-l-maʿād*, Avicenna is clear about the faculty that receives from the active intellect is the rational faculty; however, he is not equally clear in his definition of the faculty that receives from the souls of the celestial spheres, and this raises some problems. This issue stems from Avicenna's statement that the faculty that receives the second type of knowledge is estimation and the compositive imagination. In his view, the opinion expressed in some contemporary interpretations of Avicenna that the compositive imagination can interact with the active intellect is incorrect. Gutas finds a reasonable solution within Avicenna's framework by relating the faculty that receives particular knowledge from the heavenly souls to the practical intellect rather than the theoretical intellect. In conclusion, it is not the animal soul and its faculties that are connected to the supreme realm, but ultimately the intellect. The animal soul and its faculties, such as estimation and compositive imagination, serve only the practical intellect and thus the intellect in this sense. However, Gutas does not deny that the compositive imagination can assist the theoretical intellect during its interaction with the active intellect. In both cases, the compositive

imagination transforms this knowledge into perceptible and visible forms, but when the content of the knowledge is the divine message of revelation, it is transmitted to humans as a sacred text. Knowledge about particular events, on the other hand, reveals itself in dreams or in the waking state of people with a strong compositive imagination in the form of hints and the like.[45]

As stated in the description of contemporary interpretations of Avicenna's epistemology at the beginning of this section, Gutas does not view emanation as a method of acquiring knowledge that is different from abstraction or an alternative to abstraction. It is also clear that Gutas interprets Avicenna's theory of knowledge in a more empirical and rational manner. From the perspective of the focus of this present article, it is important to emphasize that Gutas does not completely negate the role of the compositive imagination in the process of emanation but rather claims that this role is also mediated by reason. In addition, in regard to emanation, what Gutas rejects and criticizes is not the role of the compositive imagination in the normal process of acquiring knowledge but rather its role in acquiring knowledge about the sublime realm. Considering the compositive imagination only in relation to mystical and spiritual knowledge would lead to overlooking its epistemological aspects and its relevance to the problem of active perception, which is the subject of this article. Therefore, even with a different interpretation, the compositive imagination plays an epistemic role in the process of emanation, in addition to its function in the process of abstraction. However, as seen in Kaukua's interpretation, interpreting Avicenna as an orthodox Aristotelian in regard to the compositive imagination and the problem of active perception would mean disregarding the Platonic and Neoplatonic aspects of Avicenna, making it difficult to fully reveal the ways in which Avicenna's view of perception differs from Aristotle's.

When we look at the functions of the compositive imagination related to emanation and active perception in Avicenna, we encounter the following picture: Avicenna thinks that individualization (*tashakhkhuṣ*), specialization (*takhaṣṣuṣ*), determination (*taʿayyun*), and multiplication (*takaththur*) cannot occur in intelligible meanings

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[45]   Gutas, "Imagination and Transcendental Knowledge in Avicenna", 337-354.

that have absoluteness, generality, or commonality. The specialization of species and human individuals cannot occur intelligibly. According to Avicenna, intelligible meaning is essentially one, or, in other words, indivisible meaning.[46] In Avicenna, being intelligible is something that cannot be combined with individualization, specialization, or multiplication.[47] After stating that individualization, specialization, or multiplication cannot occur in intelligible things, Avicenna claims that there must be something specializing in particular things that will specialize them. The intelligible aspect of a thing must be universal. The compositive imagination does not interfere with the intelligibility of the absolute intellect. Each particular thing must also be specialized by something specializing. This specialization is necessary for the emergence of something that is actually present, with the exception of unique species that consist only of a single individual.[48] The specializing thing (*mukhaṣṣiṣ*), which is needed for the actual existence of individuals, is the thing through which the existence of a thing gains determination (*taʿayyun*) and is distinguished from its counterpart. In this case, the specializing thing is included in the existence of a thing. The thing that individualizes a thing (*mutashakhkhaṣ*), on the other hand, is included in its actual existence as an individual (*taqwīm*) and its formation (*takwīn*).[49] After Avicenna proves the existence of something that individuates and specializes things, he examines the things that will ensure individuation. Among the things listed by Avicenna are matter,[50] body or corporeality,[51] exterior existence with one of its individuals,[52] position, time, and space.[53] Avicenna adds to these, in different contexts, his views that infinite motions, essence, or causes other than essence play a role in the individualization, specialization, and multiplication of things.[54]

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[46]   Ibn Sīnā, *al-Taʿlīqāt*, 409-410.

[47]   Ibn Sīnā, *al-Taʿlīqāt*, 409.

[48]   Ibn Sīnā, *al-Taʿlīqāt*, 374. The examples of this kind of species that Avicenna does not mention here are the celestial intellects and the souls.

[49]   Ibn Sīnā, *al-Taʿlīqāt*, 303.

[50]   Ibn Sīnā, *al-Taʿlīqāt*, 144, 184, 409, 430.

[51]   Ibn Sīnā, *al-Taʿlīqāt*, 143.

[52]   Ibn Sīnā, *al-Taʿlīqāt*, 162.

[53]   Ibn Sīnā, *al-Taʿlīqāt*, 233-234, 275-276, 300-301, 304, 433-434.

[54]   Ibn Sīnā, *al-Taʿlīqāt*, 371-372.

Notably, the compositive imagination is not involved in the intelligibility of the pure intellect in the Avicennian system, and the intelligibility of a thing must be universal. Therefore, compositive imagination does not involve the intellect's object (*maʿqūlahū*).[55] When an intelligible multiplies, it is no longer intelligible but imaginable. In this case, it becomes specialized with the compositive imagination.[56] This situation also shows that specialization and the absence of compositive imagination are combined in the intelligible plane. Therefore, if the intelligible is not specialized, it cannot be imagined at the same time, and if something is imagined, it is specialized and no longer intelligible. Avicenna also explains that in a place where the intelligible does not provide specialization, a particular specializer that specializes matter would be either imagined or perceived. Accordingly, it is appropriate for this specialized or individualized matter to be present in the nature of universal matter. In this case, the intelligible of this individual does not specialize its existence. In terms of being the nature of matter, it is possible that the nature of matter is not another matter but rather a specialized matter. In this case, there must be a particular specializer that is imagined or perceived for it.[57] Thus, the most important functions of the compositive imagination in the Avicennian system, which emerges in the process of emanation from top to bottom rather than from bottom to top, as in abstraction, have been identified. In Avicenna, there is individuality and singularity at the level of compositive imagination. However, at the level of intellect, there is no individuality and singularity but rather commonality and universality. Therefore, this singularity and individuality came to exist gradually through compositive imagination and other faculties in the process of descent from the intellect to the sensible. Although singularity and individuality exist precisely in conditions such as matter, body, corporeality, external existence, position, time, and space, the compositive imagination performs a preparatory function for the conditions of existence for singularity and individuality. The specific characteristics of the individual objects to which we are related to cannot exist or be

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[55] Ibn Sīnā, *al-Taʿlīqāt*, 374.
[56] Ibn Sīnā, *al-Taʿlīqāt*, 409-410.
[57] Ibn Sīnā, *al-Taʿlīqāt*, 370-371.

explained only at the intellectual level and on the basis of essence. The peculiar properties of the object that allow us to say "this object" by pointing to them gain prominence through separation, differentiation, individuation, and concretization, which are realized through compositive imagination and other faculties. The counterpart of this situation in Avicenna's epistemology first leads to the claim that knowledge is realized not only through abstraction but also through emanation from the active intellect. Therefore, in the Avicennian system, the realization of this kind of knowledge in normal human beings is examined, as is the realization of this kind of knowledge in people such as prophets and saints through means of knowledge such as prophethood, revelation, inspiration, and dreams.

Conclusion

This article examines the role of the compositive imagination in the context of active perception, specifically in the psychology of Avicenna. To this end, first, the problematic and historical framework related to active perception is presented in the introduction. This framework is established to relate and position Avicenna both within the active perception debates as a philosophical problem and historically within the philosophical tradition preceding him, alongside the debates of philosophers such as Plato, Aristotle, and Plotinus. The history of philosophy chronicles a range of perspectives in the debate over whether the external object or the mental activity of the perceiver is more important in the perception of perceptual content. In ancient times, these perspectives were roughly classified in terms of Aristotle's passive perception theory and Plato's, the Platonists', and the Neoplatonists' active perception theory. Discussions about active perception, on the other hand, mostly involved faculties that realize the mental activity of the perceiver, primarily phantasia or compositive imagination, which Avicenna referred to as internal senses.

Second, this article mainly addresses Avicennian internal senses. In a cosmology where there is a sharp distinction between the sensible and intelligible worlds and an epistemology where the universal-particular distinction is quite significant, internal senses play an important role in the perceptual process that occurs through abstraction from the material to the immaterial or through emanation from the immaterial to the material.

Third, the article examines the function of the compositive imagination as an extremely important faculty in Avicenna's internal senses scheme in the context of active perception. According to Avicenna, in regard to the process of abstraction, the perception of external objects cannot be fully realized without the operations performed by the internal senses, primarily the compositive imagination. Avicenna appears to adopt a position closer to the active perception theory defended by the Platonists and Neoplatonists than to Aristotle's passive perception theory, emphasizing the role of internal senses in perception and, ultimately, the judgment and influence of the rational soul on perceptual activity. The effects coming from higher cognitive faculties, such as the rational soul and, beyond that, from the active intellect, can be associated with the dimension of Avicenna's theory related to emanation. In the process of emanation, which has dimensions related to perception and epistemology as well as movement and cosmology, Avicenna argues that the abstract and universal intellect cannot perceive particulars and cannot bring about movement. Avicenna proposes a framework that requires individualization, which he generally refers to with concepts such as *tashakhkhuṣ, takhaṣṣuṣ, ta'ayyun,* and *takaththur.* In such a framework, the relationship between the fields in question is established through corporeal faculties such as the compositive imagination. In conclusion, from Avicenna's perspective, activity in perception emerges both in the processes carried out by the compositive imagination on data received from the external senses and in the process of individualizing the emanation received from the heavenly intellects and the spheres.

In conclusion, perception of the external world does not simply result from external things causally affecting the senses, and the role of the perceiver in the perceptual process is quite significant. However, this emphasis on the role of the perceiver is not strong enough to eliminate the role of external objects in active perception. Therefore, perception occurs in a two-way process. By emphasizing both the role of external objects in the perceptual process and the role of the compositive imagination and other internal senses in the active perception process, Avicenna presents a framework that cannot be characterized solely as Aristotelian or Neoplatonic. In this way, he

occupies an important place in contemporary perception debates with respect to this dual perception process.

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HEN KAI PAN: THE INFLUENCE OF SPINOZA ON GERMAN ROMANTICISM AT THE INTERSECTION OF THEOLOGY AND PHILOSOPHY

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Abstract

Spinoza was not merely one of the 18th century's pioneering thinkers who influenced German thought. He also played a pivotal role in shaping post-Kantian German philosophy in the 19th century. Having first entered the German intellectual scene through the pantheism debate at the intersection of theology and philosophy, Spinoza later spurred considerable upheaval in the intellectual climate. Over time, Spinoza's work has been continually reinterpreted. After the initial pantheism debate, he was reimagined as a serene monist sage who links everything to God-Nature. The early Romantics, in turn, portrayed him as a Protestant revolutionary figure who advocated for religious tolerance against established religious dogmas. Finally, Schelling presented a new synthesis by reconciling the seemingly incompatible ideas of anti-naturalist Kantian-Fichtean conceptions of freedom with naturalistic Spinozism. This study focuses on the particular influence of

Spinoza on German Romanticism, rather than on Spinoza's own ideas or on the question of whether the German philosophers correctly appropriated Spinoza's ideas. This article proposes that the shifting Romantic receptions of Spinoza can be systematically understood as conceptual responses to three interlocking crises in late-eighteenth-century German thought –namely, the theological crisis of faith and reason, the philosophical crisis of the mechanistic paradigm, and the political crisis of authority and emancipation– illuminated through the heuristic function of the Spinozist motto *hen kai pan*. By showing the historical transformation of Spinoza at the intersection of theology, philosophy, and politics, this article offers a systematic review of German Romanticism.

Key Words: Pantheism debate, Naturalism, Rationalism, faith, German Romanticism, Spinoza

1. Many Faces of Spinoza in German Romanticism

There is a general tendency to consider German Romanticism in terms of either literary theory or the literary transformation of Kant and Fichte's philosophy. However, the influence of Spinoza on early Romantic thinkers cannot be overlooked. This paper will examine the influence of Spinoza in early German Romanticism, and the dimensions of this influence will be reviewed under the following four general headings:

1. The pantheism debate addressing the inconsistency between Spinozist, rationalist, holistic metaphysics and thoughts on freedom and religion (Lessing, Jacobi, Reinhold, Fichte);
2. The Spinozism perspective proposing the development of a new holistic, organic naturalist ontology without resorting to Cartesian dualism or reductionist materialism (Herder, Schelling, Goethe);
3. The Spinozism perspective supporting all forms of religious tolerance and challenging institutional religious structures (Novalis, Schlegel, and Schleiermacher); and
4. The Spinozism perspective proposing a holistic epistemology that resists attempts to reduce reason to the capacity of understanding (Goethe, Hölderlin, Schelling).

Under these four headings, I seek to demonstrate that some of the basic characteristics of Romanticism are consistently grounded in an alternative reading of Spinoza. In this way, the multifaceted influence of Spinoza on German Romanticism will be brought to light. It must be emphasized that this article does not consider Spinoza's philosophical positions, nor does it seek to evaluate whether German thinkers accurately interpreted his thought. Instead, it proposes a reconstruction of nineteenth-century philosophical history by examining the role of debates on Spinoza in the development of German Romanticism, particularly within the intersecting domains of theology, philosophy, and politics. In this article, I argue that these three distinct yet interrelated domains converge at a Spinozian intersection. Spinoza first appeared in German thought in the context of the pantheism controversy, a controversy that must first be understood as a theological issue. However, the pantheism controversy also arose in other major philosophical debates, such as those surrounding proper philosophical method, the relationship between nature and reason, the critique of rationalism or naturalism, and the problem of epistemological holism. These debates constitute the philosophical dimension of the controversy. Moreover, beginning with Jacobi, the Spinoza debate also became part of an ongoing political agenda. The fact that the young Romantic generation chose Spinozism in opposition to the established institutional theology indicates that the question of Spinoza was not merely theological or philosophical but also political. While the literature includes numerous studies on the relationship between Spinoza and German romanticism,[1] to date, there has been no comprehensive, systematic

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[1]   See Frederick C. Beiser, *German Idealism: The Struggle Against Subjectivism 1781-1801* (Cambridge: Harvard University Press, 2002); Yitzhak Y. Melamed - Eckart Förster (ed.), *Spinoza and German Idealism* (Cambridge: Cambridge University Press, 2012); Enver Erman Rutli - Arslan Topakkaya, *Kant'tan Hegel'e Alman İdealizmi* (Ankara: Fol Kitap, 2021); María Jimena Solé, "Spinoza in German Idealism: Rethinking Reception and Creation in Philosophy", *Comparative and Continental Philosophy* 13/1 (2021), 21-33; Musa Kazım Arıcan, "Panteizm ve Panenteizm Tartışmaları Arasında Spinoza", *Beytulhikme: An International Journal of Philosophy* 3/1 (2013), 17-32. (Although this study is the closest to my own topic, it focuses solely on the debate over pantheism and does not engage with the context of German Idealism at all).

review of this issue. Förster and Melamed gave the first detailed account of the unique influence of Spinoza on German Idealism; however, that seminal book compiles various dimensions of Spinoza's reception without providing any systematic account of these diverse conceptions. In his books *The Romantic Imperative* and *The Fate of Reason*, Frederick Beiser provided a skillfully written history of the development of German Romanticism, in which he clarified Spinoza's place in that evolution. However, those works do not provide a clear description of the systematic transformation of Spinoza's reception over time. Finally, a recent book, *Spinoza in Germany*, particularly focuses on the reception of Spinoza in the German context; however, that study addresses the reception of only Spinoza's political philosophy.[2]

When evaluating the influences that shaped German Romanticism, Isaiah Berlin cites the French Revolution, Fichte's philosophy, and the Goethean *Sturm und Drang* movement.[3] Rüdiger Safranski describes German Romanticism as an esthetical overcoming of the dualism between nature and freedom.[4] Similarly, Walter Benjamin interprets Romanticism as a literary transformation of Fichte's idea of freedom.[5] Similarly, Luc-Marion and Labarthe consider German Romanticism as a literary transformation of Fichte's concept of the Absolute Self. Nicolai Hartmann also regards Romanticists as poets more than philosophers.[6] Although these observations are valid, one of the crucial elements is always missing: Spinoza.[7]

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[2]   Jason Maurice Yonover - Kristin Gjesdal (eds.), *Spinoza in Germany: Political and Religious Thought Across the Long Nineteenth Century* (Oxford: Oxford University Press, 2024).

[3]   Isaiah Berlin, *The Roots of Romanticism*, ed. Henry Hardy (Princeton: Princeton University Press), 1999.

[4]   Rüdiger Safranski, *Romanticism: A German Affair*, trans. Robert E. Goodwin (Chicago: Northwestern University Press, 2015).

[5]   Walter Benjamin, *Der Begriff der Kunstkritik in der deutschen Romantik* (Frankfurt: Suhrkamp, 2008).

[6]   Nicolai Hartmann, *Die Philosophie des Deutschen Idealismus. I. Teil: Fichte, Schelling und die Romantik. II. Teil: Hegel* (Berlin: Walter de Gruyter, 1960), 160-240.

[7]   Frederick C. Beiser, *The Romantic Imperative: The Concept of Early German Romanticism* (Cambridge: Harvard University Press, 2006), 77. "By the late 1790s

The influence of Spinoza on German Romanticism has been documented in the literature from various perspectives. The framework I propose here –a rereading of nineteenth-century German Romanticism through the manifold ways in which Spinoza was received– reveals how Spinoza was transformed in accordance with the intellectual needs of the era. Spinoza was initially labeled a rationalist atheist during the pantheism controversy. He was then reinterpreted by Herder and Goethe as a philosopher of organic unity. Finally, Novalis and Schleiermacher rendered him as a saint of a new religious sensibility and a political figure. This transformation of Spinoza illustrates the gradual shift from Kant's more mechanical system toward Hegel's organic system. Reconstructing German Romanticism through Spinoza thus shows how Romanticism appropriated its intellectual past to realize a new theological, political, and philosophical transformation in accordance with the demands of the era. The aim, therefore, is not to produce another study *on* Spinoza but to illuminate the dynamic transformation of German Romanticism *through* Spinoza. This reading offers a distinctive and comprehensive perspective that is largely absent in the existing scholarship on German Romanticism.

Since this article examines the influence of Spinoza on German Romanticism at the intersection of philosophy, theology, and politics, it understands Romanticism as a response to three interlocking crises that shaped late eighteenth-century German thought: (1) the theological crisis of the Enlightenment concerning faith and reason, revolving around the debate between Spinozism and Fichte's conception of freedom; (2) the philosophical crisis of mechanistic conceptions of nature, centered on the Newtonian-Kantian model in contrast to Herder's and Goethe's organic and holistic understanding of nature; and (3) the political and cultural crisis of authority and emancipation in the post-Revolutionary German states. Each response is accompanied by a new figure of Spinoza, revealing that his reception

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Schelling, Schlegel, Hölderlin, and Novalis had come to admire Spinoza, whose realism, they believed, should be the complement to the idealism of Kant and Fichte. This Spinozistic dimension of romantic aesthetics has often been overlooked; but it is explicit in no more central text than Schlegel's Athenäumsfragmente, where Schlegel not only defends Spinoza, but also regards a mystical feeling for his one and all as an essential element of aesthetics".

was continually shaped and transformed by the dynamic intellectual movement of German Romanticism. In what follows, I present four distinct receptions of Spinoza, each of which emerges as a conceptual response to these interlocking crises.

German Romanticism can be described as a tense, vivid, and grand paradigm formed by attempts to reconcile Fichte's uncompromising idea of freedom with Spinoza's idea of the peaceful, holistic God-nature. This daunting description renders German Romanticism nearly impossible to frame, since it attempts to bring together two great ideas that are intrinsically inconsistent. Perhaps for this reason, Romanticism can be perceived as grotesque, fragmentary, and ironic. The chaos and richness of Romanticism are derived from the courage to conceive of Fichte and Spinoza, freedom and nature, and the infinite and the finite within the same whole, or at least the willingness to view these irreconcilable dualities through the principle of *hen kai pan* (one and all). Throughout the paper, the Spinozist motto *hen kai pan* (*eins und alles*) functions as a heuristic device that illuminates how different Romantic figures reimagined the unity of God, nature, and human freedom. This unity correlates with how the motto *hen kai pan* is appropriated in various ways in accordance with theological, scientific, and political concerns. The subsequent section of the article explores the historical background of this conceptualization along the axes of the four dimensions mentioned above.

2. Was Spinoza an Atheist?: Spinoza's Impressive Introduction into the German Thought

In 1785, the publication of a short pamphlet titled *Uber die Lehre des Spinoza in Briefen an den Herrn Moses Mendelssohn* sparked one of the most heated debates in the history of German philosophy. The discussion centered on the relationship between reason and faith, and was summarized by the following question: "Is Spinozism atheism?" In those years, the contradiction between reason and faith emerged as the central problem organizing all other issues in German thought. The tension between reason and faith was also the focal point of the sociopolitical struggles between the past and modernity and between the Enlightenment and religious belief. Spinoza was at the heart of this conflict. German thought was preparing to confront its own identity by

considering the question of what we should *do with Spinoza?*[8] The fate of reason and the Enlightenment was conditional upon this debate.

Moses Mendelssohn, the great thinker of the Jewish Enlightenment who was regarded in his time as the "Socrates of Germany", sought to prove the immortality of the soul through rational arguments in his work *Phädon oder über die Unsterblichkeit der Seele* (Phaedo or On the Immortality of the Soul).[9] He quickly gained popularity because he had written an ideal book for rational psychology in the modern era.[10] He went on to attempt to demonstrate that the existence of God could be proven through pure reason. In his book *Jerusalem*, he advocated for religious tolerance and sought to theorize a faith based on both reason and a liberal social order. For Mendelssohn, the immortality of the soul and the existence of God could be proven through reason. He asserted that there was no tension between reason and religion; the only task was to spread reason throughout society and its values.

Mendelssohn's contributions to Enlightenment thought aligned him with the great writer Lessing, who was the central representative of the Enlightenment in Germany.[11] Philosophers such as Nicolai, Mendelssohn, and Lessing organized a team known as the Berliner Enlightenment.

However, in 1785, this powerful rise of Enlightenment thought was starkly challenged by Jacobi's brief pamphlet *Briefe über die Lehre des Spinoza.* Strong competition began between Enlightenment rationalists and anti-Enlightenment fideists. Goethe would later portray this debate, which profoundly shocked the German imagination, as

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[8] Willi Goetschel, *Spinoza's Modernity: Mendelssohn, Lessing, and Heine* (Wisconsin: University of Wisconsin Press, 2004).

[9] Mosses Mendelssohn, *Phädon, or on the Immortality of the Soul,* trans. Patricia Noble (New York: Peter Lang, 2006).

[10] For a brief summary of his works, see Daniel Dahlstrom, "Moses Mendelssohn", *The Stanford Encyclopedia of Philosophy* (Accessed December 26, 2025).

[11] According to Lukacs, "the only figure in whom the spirit of the German Enlightenment is purely embodied is Lessing". Georg Lukacs, *Goethe and His Age,* trans. Robert Anchor (London: The Merlin Press, 1968), 20. For more detail see Toshimasa Yasukata, *Lessing's Philosophy of Religion and the German Enlightenment* (New York: Oxford University Press, 2003), 117-139.

"an explosion", whereas Hegel likened it to "a thunderbolt out of the blue".[12]

The essence of the impact of Jacobi's *On the Doctrine of Spinoza* can be summarized as follows: Jacobi had planned to write a book about Lessing after the death of that great thinker. When he shared his intention with a mutual friend, Jacobi asserted, "Lessing was a Spinozist (*Lessing sei ein Spinozist gewesen*)".[13] Why was this so significant? According to Jacobi, Spinozism was a declaration of distancing oneself from orthodox piety. In a conversation with Lessing in July 1783 in Berlin, Lessing revealed his views to Jacobi, admitting that he had severed all ties with ordinary belief. Jacobi publicly disclosed this confession from Lessing: "The orthodox concepts of the Divinity are no longer for me; I cannot stomach them. Ἓν καὶ Πᾶν! I know of nothing else…"[14] Several people also testified that Lessing often emphatically referred to the motto *hen kai pan* as the sum-concept of his theology and philosophy.[15]

For German Enlightenment thinkers, there was no longer a relevant path to the Protestant faith; Lessing and his friends had found a belief that was compatible with the mechanical science and rationalist philosophy of their time: *Spinozist pantheism*. If Spinoza proposed a religion that was in harmony with reason and science, what could possibly be wrong with that? Although Jacobi acknowledged that there could be no other possible consistent rational philosophy than Spinoza's, he identified three possible pitfalls of that line of thought: *deism, fatalism, and nihilism*.[16]

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[12]   Frederick C. Beiser, "The Enlightenment and Idealism", *The Cambridge Companion to German Idealism*, ed. Karl Ameriks (Cambridge: Cambridge University Press, 2017) 21-43, 26.

[13]   Friedrich Heinrich Jacobi, *The Main Philosophical Writings and the Novel Allwill*, trans. George di Giovanni (Montreal: McGill-Queen's University Press, 1995), 171-251.

[14]   "Die orthodoxen Begriffe von der Gottheit sind nicht mehr für mich; ich kann sie nicht geniessen. Ἓν καὶ Πᾶν! Ich weiss nichts anders". Jacobi, *The Main Philosophical Writings*, 187. Friedrich Heinrich Jacobi, *Über die Lehre des Spinoza in Briefen an den Herrn Moses Mendelssohn* (Hamburg: Felix Meiner Verlag, 2004), 4.

[15]   Jacobi, *The Main Philosophical Writings*, 199.

[16]   Jacobi, *The Main Philosophical Writings*, 187.

According to Jacobi's reading, Spinoza's doctrine views all reality as contained within a single substance, Nature or God; therefore, it rejects the notion of a God separate from nature. It equates the finite with the infinite, merging the eternal divine being and mortal beings into an all-encompassing (*pan*) single substance (*hen*), thus culminating in pantheism. In this naturalistic, immanent pantheistic doctrine, there is no God separate from nature who has free will or creates something *ex nihilo*. Consequently, Spinozism can be considered atheistic.[17] Moreover, the essence of Spinozist rationalism lies in the principle of sufficient reason.[18] If everything that exists has a reason, then everything can be explained by an infinite chain of causality. Consequently, human actions also lack a voluntary source. This doctrine leaves no room for human freedom. Reason can only follow unchangeable causes. Therefore, Spinozism is fatalism. Even worse, if neither God nor humans have the power to change anything within this vast network of causality, this rationalist system ultimately leads individuals to hopelessness, despair, and nihilism.[19]

What Jacobi was telling Germany is this: The Enlightenment thinkers promise us a free and hopeful future by replacing faith with reason and science. However, the doctrine they admire is that of Spinoza. Moreover, the destinations to which Spinozism leads us are not freedom and hope but rather godlessness, desperate fatalism, and hopelessness. The principle of sufficient reason in the rationalist system attempts to explain everything in an eternally deterministic manner, causing the ground of our existence to slip away beneath us. For this reason, he added the following motto to the cover of his book: δος μοι που στω ("Tell me where to stand!"). According to Jacobi, the all-encompassing network of causes in the Spinozist rationalist system does not offer any means by which to hold onto life. In the conscribed Spinozian system, there is no possibility of proceeding from the finite to the infinite, from the conditional to the unconditional. Thus, what is the alternative? The *salto mortale*, the leap of faith. For Jacobi,

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17   Jacobi, *The Main Philosophical Writings*, 233.

18   Michael Della Rocca, "Rationalism, Idealism, Monism, and Beyond", *Spinoza and German Idealism*, ed. Eckart Förster - Yitzhak Melamed (Cambridge: Cambridge University Press, 2012), 8.

19   Jacobi, *The Main Philosophical Writings*, 234.

rationalist-discursive reason is incapable of providing any ground for either the world or its own existence.[20] The only escape route out of this rationalist system that reduces everything to a single substance like the dark of night, where no individual being is indiscernible, is faith – a leap beyond reason. Faith does not need to be proven by reason; rather, it is the foundation of all reason. The pathway to liberation out of the quagmire of atheism, fatalism, and nihilism embraced by Spinozist Enlightenment thinkers was to, once again, cling to belief.[21]

When this dispute, known as the *Panteismusstreit* (pantheism controversy), reached a climax, German thinkers were divided into two factions: the fideists (Hamann, Jacobi) on one side, and the rationalists on the other (Wolff, Mendelssohn, Lessing). This conflict between reason and faith brought a new philosopher to the forefront: Immanuel Kant. In his 1786 book *Briefe über die Kantische Philophie*, which was a compilation of his newspaper articles, Karl Leonard Reinhold asserted that Kant had already provided an answer to this issue, thereby offering a resolution to the problem. Reinhold's assertions rendered Kant Germany's most renowned philosopher.[22]

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[20] "My dear Mendelssohn, we are all born in the faith, and we must remain in the faith, just as we are all born in society, and must remain in society. *Totum parte prius esse necesse est* (has its ground within itself)"; Jacobi, *The Main Philosophical Writings*, 230.

[21] As Frank puts it "Jacobi was taken to be an irrationalist. I will argue, however, that his project was intended to rescue reason from rationalism. Quite uncommonly Jacobi defended that the ground of reason is belief or faith, by considering Hume's idea that the ground of causality is a kind of habit or expectation, thus is a kind of belief (Galuben)". For more details see Paul Franks, "All or Nothing: Systematicity and Nihilism in Jacobi, Reinhold and Maimon", *The Cambridge Companion to German Idealism*, ed. Karl Ameriks (Cambridge: Cambridge University Press, 2017), 128-154; Terry Pinkard, *German Philosophy 1760-1860: The Legacy of Idealism* (New York: Cambridge University Press, 2002), 91. Jacobi defend himself as follows: "far from wanting to injure the dignity of reason, the only purpose of the new doctrine was the restoration of reason in its full measure". Jacobi, *The Main Philosophical Writings*, 537-590, 541.

[22] The lectures Reinhold gave at the University of Jena on Kant's philosophy made Jena the center of post-Kantian philosophy. His lectures in Jena attracted enormous interest. Almost all of the famous figures in the romantic circle were part of his lectures including Novalis, Hölderlin, and Hegel's close friend Niethammer; moreover, "the entire student body of six hundred students attended his last

Reinhold summarized the pantheism controversy as follows: "while some claim the impossibility of proving God's existence from reason, others claim its indispensability".[23] Whereas the fideists accused the rationalists of placing too much belief in reason, the rationalists, in turn, accused the fideists of believing in reason too little. The two camps basically accused each other of not comprehending the genuine nature of reason.[24]

According to Reinhold, Immanuel Kant had formulated the appropriate response to this controversy. Kant argued that it is impossible to prove the existence of God through pure reason and that the fideists were thus correct in this regard. However, he went on to argue that faith in God is not merely a matter of personal feeling and must be grounded in reason; thus, according to Kant, the rationalists were also correct. Kant contended that while God cannot be proven through theoretical reason, He must necessarily be accepted as a postulate of practical reason.[25] Therefore, Kant did not advocate for either reason or faith alone but instead defended the idea of the faith of reason (*Vernuftsglaube*). Kant's book, which satisfied both the heart and the mind while dispelling doubts, was the *Kritik der Reinen Vernunft*. According to Reinhold, that work served as *das Evangelium der reinen Vernunft* (the Gospel of Pure Reason) and effectively addressed contemporary skepticism.[26]

With these claims, Reinhold placed both himself and Kant's philosophy at the center of intellectual debate in Germany. From this period onward, Reinhold reinterpreted Kant's philosophy and

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lectures and presented him with a gold medal". Dieter Heinrich, *Betweeen Kant and Hegel: Lectures on German Idealism*, ed. David S. Pacini (Cambridge: Harvard University Press, 2003), 123.

[23] K. L. Reinhold, *Letters on the Kantian Philosophy*, trans. James Hebbeler, ed. Karl Ameriks (Cambridge: Cambridge University Press, 2006), 12.

[24] Frederick C. Beiser, *The Fate of Reason: German Philosophy from Kant to Fichte* (Cambridge: Harvard University Press, 1987), 233.

[25] "Now, it was a duty for us to further the highest good; … which, since it has [its] place only under the condition of the existence of God, links the presupposition of God inseparably with duty; i.e., *it is morally necessary to assume the existence of God*." Immanuel Kant, *Critique of Practical Reason,* trans. Werner S. Pluhar (Indianapolis: Hackett Publishing Company, 2002), 136.

[26] Reinhold, *Letters on the Kantian Philosophy*, 49.

transformed the University of Jena into a hub for Kantian philosophy. Ultimately, Reinhold identified some gaps in Kant's philosophy and later developed a theory of representation.[27] However, Reinhold's interpretation of Kant was subject to critiques from Schulze and Maimon, and Fichte emerged on the scene to defend Kant once again. Fichte attempted to salvage Reinhold's philosophy of representation by introducing the idea of a self-positing of 'I' (or absolute 'I') that makes all representations possible but can never itself be represented.[28] Fichte developed this concept of the self-positing absolute 'I' as the foundation for the possibility of all scientific knowledge.[29]

Indeed, what prompted Fichte to develop his theory of absolute subjectivity was, in essence, the pantheism controversy, which centered on Spinoza. According to Fichte, the only way to defend the Kantian idea of freedom was through a deep understanding of the free activity of the 'I'. Whereas Spinozist naturalism posits only one substance, namely, nature, Fichte asserted that the only substance is the subject. In fact, Jacobi would go so far as to describe Fichte's philosophy as an inverted Spinozism and to even accuse him of atheism.

In reaction to the pantheism debate, Fichte raised the banner of rebellion with his philosophy of freedom against Spinoza, whom he regarded as the pinnacle philosopher of rationalist fatalistic dogmatism.[30] He invited all of humanity to choose a camp between

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[27] K. L. Reinhold, *Essay on a New Theory of the Human Capacity for Representation*, trans. Tim Mehigan - Barry Empson (New York: De Gruyter, 2011). For details see Vehbi Metin Demir, "Fundamental Epistemoloji: Reinhold'un Sistem Felsefesi", *Kutadgu Bilig Felsefe-Bilim Araştırmaları Dergisi*, 29 (2016), 163-185.

[28] Elise Frketich, "The First Principle of Philosophy in Fichte's 1794 Aenesidemus Review", *Fichte-Studien* 49/1 (2021), 59-76.

[29] J. G. Fichte, "Review of Aenesidemus", trans. George di Giovanni - H. S. Harris, *Between Kant and Hegel: Texts in Development of Post-Kantian Philosophy*, ed. George di Giovanni (Cambridge: Hackett Publishing Company, 2000), 136-158.

[30] "If we go beyond the I am, we necessarily arrive at Spinosizm and that there are only two completely consistent systems: the critical which recognize this boundary, and the Spinozistic, which oversteps it (Ich bemerke noch, dass man, wenn man das Ich bin überschreitet, nothwendig auf den Spinozismus kommen muss! … und dass es nur zwei völlig consequente Systeme giebt; das *kritische*,

either Spinozist naturalism or Kantian freedom: "The dispute between the idealist and the dogmatist is, in reality, whether the independence of the thing should be sacrificed to the independence of the self or to that of the thing. What is it, then, that motivates a reasonable man to declare his preference for one over the other?"[31]

Fichte transformed the entire landscape of philosophy into a battleground for a final confrontation. In one camp of this battle were the realists, who began with things, represented by Spinoza, who insisted on the necessity of unifying all things within a single substance. In the other camp were critical thinkers who began with the subject, led by Fichte, who grounded everything in the freedom of the subject.[32] By the dawn of 1795, Spinozism had been doubly condemned. In the previous decade, Jacobi had accused it of embracing an atheistic nihilism, ten years after Fichte had condemned it as the pinnacle of mechanistic dogmatic systems that opposed freedom.[33]

This early configuration of Spinoza can be understood as a conceptual response to the theological crisis of the Enlightenment. For Jacobi, Reinhold, and Fichte, the specter of Spinozism condensed anxieties about the collapse of personal theism, the threat of fatalistic determinism, and the loss of moral agency under the rule of sufficient reason. In this context, *hen kai pan* signifies neither a divine nor organic unity but a mechanistic absorption of individuality into an

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welches diese Grenze anerkennt, und das *spinozische*, welches sie überspringt)". J. G. Fichte, *The Science of Knowledge with First and Second Introductions*, trans. Peter Heath - John Lachs (New York: Cambridge University Press, 1991), 102.

[31] Fichte, *The Science of Knowledge,* 14.

[32] "In the critical system, a thing is what is posited in the self; in the dogmatic, it is that wherein the self is itself posited: critical philosophy is thus immanent, since it posits everything in the self; dogmatism is transcendent, since it goes on beyond the self. So far as dogmatism can be consistent, Spinozism is its most logical outcome (Im kritischen Systeme ist das Ding das im Ich gesetzte; im dogmatischen dasjenige, worin das Ich selbst gesetzt ist: der Kriticism ist darum immanent, weil er alles in das Ich setzt; der Dogmatism transcendent, weil er noch über das Ich hinausgeht. Insofern der Dogmatism consequent seyn kann, ist der Spinozism das consequenteste Product desselben)". Fichte, *The Science of Knowledge*, 117.

[33] Frederick Neuhouser, *Fichte's Theory of Subjectivity* (New York: Cambridge University Press, 1990), 56.

unbroken causal nexus. The negative reception of Spinoza during this period thus reflects a deeper struggle to preserve freedom, religious meaning, and moral responsibility within the emerging landscape of modern rationality.

In 1795, a younger generation enthusiastically followed Fichte's lectures in Jena. Figures such as Schlegel, Novalis, Schelling, Hölderlin, Tieck, and Hoffmann attended these classes. This young generation sought a new synthesis between naturalist Spinozism and Fichtean freedom, laying the metaphysical foundations of German Romanticism through the synthesis of Fichte and Spinoza. Fichte's students, shaken by the Jacobi earthquake, were preparing to create a new Spinoza that Fichte had never imagined.

3. A God-Intoxicated Man: The Creation of a New Spinozism that Teaches the Essence of Religion

In the "Athenaeum Fragments", Schlegel identifies three foundational elements that contributed to the emergence of German Romanticism: "Fichte's philosophy, the French Revolution, and Goethe".[34] This genealogy, articulated as a first-hand narrative, inadvertently led prominent thinkers such as Isaiah Berlin and Walter Benjamin to perceive Romanticism primarily as a reconfiguration of Fichte's ideas. However, the figure of Goethe cited here is not the classical Goethe but rather the innovative genius associated with the *Sturm und Drang* movement. Ultimately, the true cornerstone of German Romanticism lies in this movement, which was established by key figures such as Hamann, Jacobi, and Herder and further popularized by Goethe and Schiller. This nuanced understanding highlights the significant influence of *Sturm und Drang* on the Romantic tradition, necessitating a reevaluation of its foundational inspirations.

The *Sturm und Drang* movement, in response to the rationalism of the Enlightenment, emphasized individual belief and personal experience. It envisioned the universe not as God's geometric design

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[34]   "The French Revolution, Fichte's philosophy and Goethe's Meister are the greatest tendencies of the age". Fredrick Schlegel, "Athenaeum Fragments (1798)", *Classic and Romantic German Aesthetics*, ed. J. M. Bernstein (Cambridge: Cambridge University Press, 2003), 251.

but as His poetry.[35] In this context, the task of thought was defined as to feel this poetry, aesthetically appreciate it, and convey the aesthetic sensibility of the universe (*expressivism*). This can be seen as "a kind of mystical vitalism which perceives in nature and history the voice of God".[36] Hamann's theories in his work *Aesthetica in Nuce* also later influenced Jacobi's critique of Spinoza.[37]

Although Hamann was a precursor of the *Sturm und Drang* movement, it was Herder –one of Kant's favorite students and an extraordinary figure in German philosophy– who played the central role in shaping the theoretical foundations of German romanticism. Over time, Herder distanced himself from Kant's precritical rationalism and came under the influence of Hamann. In his 1770 work *Abhandlung über den Ursprung der Sprache* (Treatise on the Origin of Language), Herder rejected the Cartesian rationalist tradition's dualism between nature and reason and began to develop a form of naturalism that integrated human thought into natural life by viewing language, thought, and nature as a continuum.[38]

In *Ideen*, Herder subsequently synthesized his naturalist views with an original philosophy of history, establishing a continuity between nature and thought, which would later be characterized as "Herderian naturalist vitalism". In 1787, with the publication of *Gott. Einige Gespräche* provided a new interpretation of Spinoza's work, immediately following Jacobi's discussions on pantheism and portraying Spinoza as the one who discovered the true essence of the Christian faith. According to Herder, Spinozism was not opposed to morality and religion; rather, it revealed their foundations. He argued that Spinozism was not synonymous with fatalism or atheism but offered the only philosophy that could uphold the concepts of God

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[35] For the details see Isaiah Berlin, *The Magus of the North: J. G. Hamann and the Origins of Modern Irrationalism*, ed. Henry Hardy (London: John Murray Publication, 1994).

[36] Berlin, *The Roots of Romanticism*, 49.

[37] Kenneth Haynes, "Aesthetica in Nuce (1762)", *Hamann: Writings on Philosophy and Language*, ed. Kenneth Haynes (Cambridge: Cambridge University Press, 2007), 60-96.

[38] Johann Gottfried von Herder, *Philosophical Writings*, ed. Michael N. Forster (Cambridge: Cambridge University Press, 2004).

and freedom.[39] This highly unconventional book presented an approach that turned prevalent readings of Spinoza and Protestant theology upside down.

Since the 1770s, Herder had already been engaging with Spinoza by incorporating the themes of Spinozist monism, immanent causality, and naturalism into his works.[40] However, with the publication of *Gott. Einige Gespräche* in 1787, Herder dared to rescue Spinoza from Jacobi's interpretation and opened a path to resynthesizing Spinoza with the Christian faith. He wrote, "Spinoza was neither an atheist nor a pantheist; for me, there has always been a third, profound connection in him".[41] According to Herder, Spinoza was indeed correct: there is only one substance, God is not separate from the world but immanent in nature, and there is an immanent causality in everything. However, the way to defend Spinoza's system from the accusations of atheism and pantheism was to infuse it with life. Instead of the rationalist mechanism, Herder chose a dynamic living interpretation of Spinoza. With a subtle touch, he transformed the nature of the entire Spinozist system: instead of mechanical causality, he introduced the concept of organic force (*organische Kräfte*). "I know of no concept like that of organic force. With it, I believe I have given Spinoza's system a more beautiful coherence".[42]

For Herder, God is not separate from the universe, but this does not negate God's role as creator. Herder asserts that God is the creative, active essence of the universe; He is the substance that expresses itself in every living being. The universe is not a machine governed by lifeless, mechanical laws without will, but a living, evolving whole that expresses itself in every living being. "In all the worlds, God manifests

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[39] Beiser, *The Fate of Reason*, 159.

[40] Beth Lord, *Kant and Spinozism: Transcendental Idealism and Immanence from Jacobi to Deleuze* (London: Palgrave Macmillan, 2011), 57.

[41] "Gnug indessen, daß Spinoza weder ein Atheist noch Pantheist ist; ein dritter harter Knoten in ihm bleibt mir noch übrig". Johann Gottfried von Herder*, Gott: einige Gespräche über Spinoza's System; nebst Shaftesburi's Naturhymnus* (Gotha: Ettinger, 1800), 98; Johann Gottfried von Herder, *God: Some Conversations*, trans. Frederick H. Burkhardt (New York: Bobbs-Merrill 1940), 113.

[42] "Ich wüßte keins als *organische Kräfte*. Dadurch, dünkt mich, bekäme Spinoza's System selbst eine schönere Einheit". Herder, *God: Some Conversations*, 102; Herder*, Gott: einige Gespräche über Spinoza's System*, 75.

Himself [through] *organically* interacting *forces*".[43] Herder sought to align his views with the Christian faith by referencing Paul's statement, "In Him we live, move, and have our being; we are His offspring",[44] thereby demonstrating the compatibility of his ideas with Christian belief. If the entire universe is the expression of God, the examination of nature and living beings could be seen as a way of knowing God, and modern empirical science, philosophy, and theology would thereby be synthesized in a unity.[45]

Herder thus exonerated Spinoza from the accusation of nihilistic atheism. Moreover, Herder provided a compatible and revitalizing relationship between Protestant theology and modern science. Herder reimagined Spinoza's substance as an active force, integrating it with a teleology that evolves and develops, unfolding in history (eventually becoming *Geist*). He replaced Spinoza's dual-attribute theory of mind and matter with the idea of infinitely evolving forces and expression.[46]

Herder's neo-Spinozism became a significant source of inspiration for the Romantic generation. Initially, this new interpretation of Spinoza had a profound impact on Goethe, who was a friend of Jacobi. Subsequently, it influenced the entire young Romantic generation, including figures such as Schelling, Hegel, Schleiermacher, Hölderlin, Novalis, and Schlegel. It can even be argued that Kant, while writing his third critique in 1790, was influenced by Herder's naturalism and, consequently, the new Spinozist claims.[47] Herder's interpretation of Spinoza marked one of the most critical moments in the history of the

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[43]   "In allen Welten offenbart sich die Gottheit *organisch*, d.i. durchwirkende *Kräfte*". Herder, *God: Some Conversations*, 109; Herder, *Gott: einige Gespräche über Spinoza's System*, 62.

[44]   "For in him we live and move and exist. As some of your own poets have said, 'We are his offspring'". *The Holy Bible* (Tennessee: Holman Bible Publishers, 2017), Acts. 17:28.

[45]   Lord, *Kant and Spinozism*, 61.

[46]   Michael Forster, "Johann Gottfried von Herder", *The Stanford Encyclopedia of Philosophy* (Accessed December 26, 2025).

[47]   See John H. Zammito, *The Genesis of Kant's Critique of Judgment* (Chicago: University of Chicago Press, 1992), particularly chapter 2.

reception of Spinoza within German thought.[48]

At the heart of Goethe's deep engagement with Spinoza lay his friendship with Herder. It was through Herder's influence that Goethe came to appreciate and integrate Spinozist ideas into his own worldview, further establishing Spinoza's enduring impact on German Romanticism and philosophy. Goethe's first engagement with Spinoza likely began with the *Tractatus Theologico-Politicus* in Strassburg in 1771.[49] In fact, during that period, the only book written in Latin Goethe read was Spinoza's.[50] Goethe was deeply influenced by Herder's new Spinozist interpretation and, in a letter to his friend Jacobi, outlined how Jacobi misinterpreted Spinoza's most subtle ideas.[51] Although it is not easy to determine to what extent Goethe was influenced by Spinoza, in his autobiographical work, *Dictung und Wahrheit*, he stated that he was profoundly influenced by Spinoza.

This mind, which had worked upon me thus decisively, and which was destined to affect so deeply my whole mode of thinking, was Spinoza. After looking through the world in vain, to find a means of development for my strange nature, I at last fell upon the *Ethics* of this philosopher. Of what I read out of the work, and of what I read into it, I can give no account. Enough that I found in it a sedative for my passions, and that a free, wide view over the sensible and moral world, seemed to open before me…. The all-composing calmness of Spinoza was in striking contrast with my all-disturbing activity; his mathematical method was the direct opposite of my poetic humour and my way of writing, and that very precision which was thought ill-

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[48] Bell also considers Herder to be a turning point in the history of Spinoza's reception in German thought. See David Bell, *Spinoza in Germany from 1670 to the Age of Goethe* (England: Institute of Germanic Studies, 1984).

[49] Michael N. Forster, "Herder and Spinoza", *Spinoza and German Idealism*, ed. Echart Förster - Yitzhak Y. Melamed (Cambridge: Cambridge University Press, 2012), 60.

[50] "It was a frequent joke of Herder at my expense, that I had learned all my Latin from Spinoza, for he had noticed that this was the only Latin work I have ever read…" J. W. von Goethe, *Goethe's Travel in Italy* (London: George Bell and Sons, 1885), 87.

[51] Eckart Förster, "Goethe's Spinozism", *Spinoza and German Idealism*, ed. Eckart Förster - Yitzhak Melamed (Cambridge: Cambridge University Press, 2012), 86.

adapted to moral subjects, made me his enthusiastic disciple, his most decided worshipper.[52]

In contrast to the passionate emotions of *Sturm und Drang*, what Goethe derived from Spinoza was a tranquil pantheistic monism. Unlike Herder, Goethe's interpretation of Spinozist God-Nature was one of peacefulness and harmony. His philosophy of nature, particularly evident in his optical and botanical studies, was grounded in a serene Spinozist understanding of nature.[53] Goethe, who identified himself as "a polytheist poet and artist, as well as a pantheist natural researcher",[54] sought to grasp a divine unity in his natural studies. According to Spinoza, *perfection* was God, and all mortal beings existed within that perfect whole.[55] Therefore, observing and contemplating (*Betrachtung*) the structures and transformations of plants would ultimately lead us to Nature-God as the perfect unity.[56] Heine stated, "Goethe was the Spinoza of poetry. All of Goethe's poems are suffused by the same spirit which stirs us in Spinoza's writings. There is no doubt that Goethe paid tribute without reservation to the doctrine of Spinoza".[57] Heine further claimed that this pantheism led Goethe to pacifism; he wrote, "No, God does not manifest Himself equally in all things as Wolfgang Goethe believed, an opinion which made of him an indifferentist occupied only with the

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[52] Johan Wolfgang von Goethe, *The Autobiography of Goethe: Truth and Poetry: From My Own Life*, trans. John Oxenford (London: George Bell and Sons, 1897), 547.

[53] A more detailed study on the influence of Spinoza on Goethe's botanical works see Michail Vlasopoulos, "Spinoza's God in Goethe's Leaf: The Spinozist Foundation of Goethean Morphology", *Arc: The Journal of the School of Religious Studies McGill University* 44 (2016), 91-118.

[54] "als Dichter und Kunstler ich bin Polytheist, Pantheist hingegen als naturforscher". Letter to Jacobi (January 6, 1813). Jacobi, *The Main Philosophical Writings*, 11.

[55] "By reality and perfection, I understand the same thing". Bedenict de Spinoza, *Ethics Proved in Geometrical Order*, trans. Michael Silverthorne - Matthew J. Kisner (Cambridge: Cambridge University Press, 2018), 124.

[56] "Alle beschränkte Existenzen sind im Unendlichen". J. W. von Goethe, *Naturwissenschaftliche Schriften I* (München: Verlag C. H. Beck, 2002), 7.

[57] Heinrich Heine, *On the History of Religion and Philosophy in Germany*, trans. Howard Pollack-Milgate, ed. Terry Pinkard (New York: Cambridge University Press, 2007), 99.

toys of art, anatomy, the theory of colors, botany, and observations of clouds, instead of with the loftiest concerns of mankind".[58]

Goethe extracted three key elements from Spinoza's God-Nature doctrine. First, in the study of nature, it was essential to examine nature as a unified whole that encompasses all beings and their metamorphoses. Natural science should not be limited to mere observation or causal relationships but should ascend to the third kind of knowledge (*scientia intuitiva*), which grasps the whole.[59] Thus, the aim of research was to reach the universal by examining the particular. Second, Goethe moved away from viewing artistic creativity as the unrestrained expression of subjective emotions and instead developed the image of the creative genius expressed through nature itself. The poet would increasingly be seen as a medium capturing and expressing the unity of nature (the tranquil perfection of God). Third, both the natural researcher and the poet, through the observation, study, and articulation of nature, would come to better understand God and love Him more. Goethe's natural science and poetic sensibility ultimately took on a Spinozist but humanized form of *amor intellectualis Dei* (intellectual love of God).[60] To know nature intellectually was the way to understand, love, and attain happiness with God.[61] In his letter to Jacobi on June 9, 1785, he wrote the following:

> Forgive me for being so reserved when it comes to speaking about the divine being, which I only know within the realm of *rebus singularibus* (particular things). No one could be more passionate than Spinoza in the close and profound study of the divine being...

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[58] Heinrich Heine, *The Romantic School and Other Essays*, ed. Jost Hermand - Robert C. Holub (New York: Continuum Press,1986), 35.

[59] Spinoza, *Ethics Proved in Geometrical Order*, 171.

[60] Lukacs, *Goethe and His Age*, 54.

[61] "In the course of this biography, we have circumstantially exhibited the child, the boy, the youth, seeking by different ways to approach to the Suprasensible first, looking with strong inclination to a religion of nature; then, clinging with love to a positive one; and, finally, concentrating himself in the trial of his own powers, and joyfully giving himself up to the general faith". Goethe, *The Autobiography of Goethe*, 677.

> Here, in the mountains and their foothills, among *herbis et lapidus* (plants and stones), I seek the divine.[62]

As a poet and natural philosopher, Goethe adopted from Spinoza the idea of attaining happiness through knowing and loving nature-God. Throughout his life, he remained faithful to the Spinozist motto of *hen kai pan* (one and all), and his poem "Eins und Alles" (One and All), written in 1821 during his mature period, proves that loyalty.

Herder's and Goethe's neo-Spinozism responded to a different set of philosophical pressures – above all, the crisis of the mechanistic nature that marked the late Enlightenment. By reconceiving Spinoza's substance through the lens of organic force, development, and metamorphosis, they transformed *hen kai pan* from a sign of causal determinism into a principle of living immanence. Spinoza thus served as a resource for articulating a nonreductive naturalism capable of reconciling empirical science with a revitalized sense of divine presence within nature. Herder's and Goethe's syntheses demonstrate how Spinoza could be reappropriated not as a threat to freedom or religion but as the architect of a new ontology of life.

Apart from Goethe, the profound influence of Herder's neo-Spinozist interpretation is evident in Schleiermacher. The most striking convergence of theology and Spinozism in German Romanticism coalesces in the work of Schleiermacher, who is regarded as the founder of modern theology, particularly in his book *Über Religion* (On Religion). Written in 1799, that work represents the nexus between the neo-Spinozist interpretation of German Romanticism and theology.

According to Schleiermacher, religion is neither a matter of reason and ethics (Kant-Fichte) nor a question of a dogmatic metaphysical system (Wolff-Mendelssohn); rather, it is about the individual's feeling of the infinite (*Gefühl*). "The essence of religion lies not in thought and action, but in feeling and intuition".[63] Religion is the experience of the whole in the feeling of the individual (*hen kai pan*). He asserts that

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[62]   Horst Lange, "Goethe and Spinoza: A Reconsideration", *Goethe YearBook 18*, ed. Daniel Purdy (Woodbridge: Boydell & Brewer 2011), 20.

[63]   "Ihr Wesen ist weder Denken noch Handeln, sondern Anschauung und Gefühl". F. Schleiermacher, *On Religion: Speeches to its Cultured Despisers*, trans. John Oman (Cambridge: Cambridge University Press, 2006), 42.

"true religion is sense and taste for the Infinite".[64] We find the most explicit expressions of the new Spinozistic theology in the following sentences.

> Offer with me reverently a tribute to the manes of the holy, rejected Spinoza. The high World-Spirit pervaded him; the Infinite was his beginning and his end; the Universe was his only and his everlasting love. In holy innocence and in deep humility, he beheld himself mirrored in the eternal world, and perceived how he also was its most worthy mirror. He was full of religion, full of the Holy Spirit. Wherefore, he stands there alone and unequalled; master in his art, yet without disciples and without citizenship, sublime above the profane tribe.[65]

At this point, it becomes evident that the atheist Spinoza transformed into a new devout Spinoza. He was no longer seen as a dangerous atheist but began to be referred to as a "God-intoxicated man" (*Der Gottbetrunkene Mensch*).[66] Clearly, this new form of religion left no room for dogma, clergy, or religious institutions. According to Schleiermacher, everyone can experience the infinite in different ways, and throughout history, that experience has indeed been subject to a wide range of expression. The idea of connecting with God through personal feeling was a form of reformism that rejected all established authority and called on individuals to find God within themselves. This was precisely why people felt fear when it came to Spinoza: the interpretation of Spinoza that promoted religious tolerance represented an extreme form of liberalism, reminding us that in German Romanticism, Spinoza was not just a matter of theology but also an issue of rebellion.

4. Spinozist Pantheism as a Form of Rebellion

Unfortunately, it is true –we must admit it– that pantheism has not rarely turned people into indifferentists. They thought if everything is

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[64] "Religion ist Sinn und Geschmack fürs Unendliche". Schleiermacher, *On Religion,* 39.

[65] Schleiermacher, *On Religion,* 41.

[66] "Der Gottbetrunkene Mensch". Richard Samuel - Hans-Joachim Mähl - Gerhard Schulz (ed.), *Novalis Schriften: Die Werke Friedrich von Hardenbergs* (Stuttgart: Kohlhammer Verlag, 1960), 562, 651.

God, it does not matter what we concern ourselves with. But herein lies the fallacy; everything is not God, but God is everything… God manifests Himself in things to a greater or lesser degree; He exists in this continual manifestation; God is to be found in movement, in action, in time; His sacred breath wafts through the pages of history, and history is the real book of God… Friedrich Schiller sensed this.[67]

In contrast to Goethe's serene Spinoza, by the late 18th century, Spinoza had been transformed into a figure of rebellion, a rule-breaking, libertarian icon for those who defied the established order. In the interpretation of the *Frühromantik* generation, including Schlegel, Novalis, and Hölderlin, the new Spinoza emerged as a spokesperson for cultural revolution. "For the restless radicals and reformers, Spinoza embodied the very spirit of insurrection".[68] Parts of the *Tractatus Theologico-Politicus*–which criticized holy scripture, the separation of church and state, the idea of religious tolerance, and the notion of freedom of expression– encouraged the radical ideas of the young romantics of this tumultuous era. Behind the passionate artistic theories of the Romantics lay political ideals, with the ultimate aim being the advancement of humanity. The ideals of freedom and progress could be realized only in a free *poetical state* (both individual and universal).[69] For this reason, the romantics' interest in Spinoza was not merely epistemological but also deeply political. Their affinity for pantheism led them to invent a form of Lutheranism that elided the Bible, that is, a free milieu in which all believers could attain divinity without being bound to an authority. For this reason, despite constant persecution, the flame of religious radicalism in Germany never died out, and clandestine editions of *Ethics* and the *Tractatus* were never out of circulation.[70] As a radical romantic, Heinrich Heine wrote, "If there were to be a political revolution in [Germany], freedom would be spoken of everywhere, and its language would be biblical".[71] The path of science and freedom forged by Kant and Fichte had to be expressed in a new religious language, and Spinoza, *the God-intoxicated*

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[67] Heine, *The Romantic School and Other Essays*, 35.

[68] Beiser, *The Fate of Reason*, 52.

[69] "Der poetische Staat ist der wahrhafte volkommene Staat". Novalis, *Briefe und Werke, Dritter Band: Die Fragmente* (Berlin: Verlag Lambert Schneider, 1943), 84.

[70] Beiser, *The Romantic Imperative*, 176.

[71] Heine, *On the History of Religion and Philosophy in Germany*, 68.

philosopher, provided the conceptual foundations for such a language. When vitality, love, and freedom were added to Spinoza, who synthesized science with reason and reason with religion, the political ideal was then complete, and the *new myth of reason*[72] needed for revolution could begin to facilitate the work of establishing a new religion. Since the Romantics reinterpreted Spinoza through the lens of Kant and Fichte's notion of freedom, which led them to understand his system as one of organic vitality along the lines of Herder, and read him in light of Schleiermacher's new Lutheran theology, they then elevated Spinoza as a new saint of liberation – who called for tolerance, emancipation, and personal, direct communion with God in opposition to established religious authorities.

After expressing his democratic ideals in his 1796 book *Versuch über den Begriff des Republikanismus*, in his *Athenaeum Fragments*, which is considered to be the manifesto of Romanticism, Schlegel declared that there is no need for institutional authorities. Neither the state nor the church is necessary for teaching people about God; religion is about individual feeling, which can manifest and be expressed in countless ways. He wrote, "It is very one-sided and presumptuous to say that there should be only one mediator. For the perfect Christian, whom in this respect the peerless Spinoza comes closest to, everything must be a mediator".[73] According to Schlegel, if philosophy is to seek to capture the unconditional, it must not advocate Fichte's idea of a free, unconditional self in opposition to Spinoza but rather find the signs that will lead to the absolute within nature and history. For Schlegel, irony is precisely this unity of the finite and the unconditional. It is not Fichte's demonstrative, systematic philosophy but poetry and irony that bring us closest to comprehending the absolute. The most ideal mediator leading us to

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[72] Daniel Fidel Ferrer, *Oldest Systematic Program of German Idealism: Translation and Notes* (Verden: Kuhn von Verden Verlag, 2021), 23.

[73] "Es ist sehr einseitig und anmaßend, daß es grade nur Einen Mittler geben soll. Für den vollkommnen Christen, dem sich in dieser Rücksicht der einzige Spinosa am meisten nähern dürfte, müßte wohl alles Mittler sein". Schlegel, *Anthenaeum Fragments*, 252.

God is the mediation embodied in the artist.[74] Schlegel writes, "where philosophy ends, poetry must begin".[75] In another fragment, he writes, The philosopher's prayer is theory, the pure vision of divinity... Spinoza is the ideal of this. The poet's religious state is more passionate and communicative. Its origin is enthusiasm, and in the end, mythology remains".[76] According to Schlegel, the mission of philosophy is to poeticize Spinoza.

Indeed I barely comprehend how one can be a poet, without admiring Spinoza, loving him, and becoming entirely his. In the invention of details your own imagination is rich enough… In Spinoza however, you will find the beginning and end of all imagination, the general basis on which all individual creation rests; and especially the separation of original, the eternal aspect of imagination from the individual and typical must be very welcome to you. Seize the community and observe. You are granted a penetrating glance into the innermost workshop of poetry. And as with his imagination, so is it also with Spinoza's affectivity.[77]

Like Schlegel, for Novalis, through fantasy and poetry, religion should be reinterpreted as the poetry of Nature, the eternal unfolding of the Spirit. "Together with Novalis, Schlegel planned to write a new bible (an absolute book) for their new aesthetic religion".[78] Expressing poetically, through the power of fantasy, a singularity that embodies

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[74] Philippe Lacaue Labarthe - Jean Luc Nancy, *The Literary Absolute: The Theory of Literature in German Romanticism*, trans. Philip Barnard - Cheryl Lester (New York: State University of New York Press, 1988), 117.

[75] "Wo die Philosophie aufhört, muß die Poesie anfangen". F. Schlegel, *Philosophical Fragments*, trans. Peter Firchow (Minneapolis - London: University of Minnesota Press, 1991), 98.

[76] "Die Andacht der Philosophen ist Theorie, reine Anschauung des Göttlichen, … Spinosa ist das Ideal dafür. Der religiöse Zustand des Poeten ist leidenschaftlicher und mitteilender. Das Ursprüngliche ist Enthusiasmus, am Ende bleibt Mythologie". Lacaue-Labarthe - Nancy, *The Literary Absolute*, 128.

[77] Friedrich Schlegel, *Gespräch Über Die Poesie* (Stuttgart: J. B. Metzlersche Verlagsbuchhandlung, 1968), 317; Friedrich Schlegel, *Dialogue on Poetry and Literary Aphorism*, trans. Ernst Behler - Roman Struc (University Park: Pennsylvania State University Press, 1968), 85.

[78] Asko Nivala, "Friedrich Schlegel's Early Romantic Notion of Religion in Relation to Two Presuppositions of the Enlightenment", *Approaching Religion* 1/2 (2011), 38.

the absolute in everything and everywhere and uniting Fichte's creative imagination with Spinoza's realist monism formed the essence of their poetic metaphysics. The path to synthesizing the self and nature, the ideal and the real, freedom and wholeness, lay in art grounded in fantasy and poetry.[79] As Schlegel put it, "Just as Fichte's *Wissenschaftslehre* is the universal schema of infinity for all sciences, as well as Spinoza is the foundation and support for all individual styles of mysticism".[80] As it can be understood, Romantic poetry "was truly revolutionary: it demanded that we transform not only literature and criticism but all the arts and sciences.[81] Schlegel also frequently repeated the new Spinozist motto, *Ein und Alles* (One and All). In 1799, he wrote, "The idea of the universe and its harmony is, for me, the One and All (*das Eins und Alles*)".[82]

The new mythology or poetry should emerge from the creative depths of the spirit, expressing the eternal unity of nature or God from a singular perspective. According to the romantic ideal, poetry should capture the infinite within the finite, the divine within the singular. Thus, what was needed for a new order was a kind of poetic Spinozism.

Novalis also viewed an updated Spinozism as the ideal of thought concerning the ideal of freedom. He did not hesitate to write, "True philosophy is entirely realistic idealism – thus, Spinozism". What is Novalis's "realistic idealism"? It is a kind of pantheism. In this pantheism, everything can serve as a mediator for the divine and can be "an organ of divinity" (*Organ der Gottheit*); thus, everything can be elevated to divinity through the artist's free creative imagination. "I do not take pantheism in the usual sense; by this, I mean that everything can be an organ of divinity through my elevating them to this level".[83] This idea precisely explains the fundamental program and the classic definition of Romanticism:

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[79] Beiser, *German Idealism: The Struggle against Subjectivism,* 441.

[80] "auch Spinosa auf ähnliche Weise der allgemeine Grund und Halt für jede individuelle Art von Mystizismus". Schlegel, *Gespräch Über Die Poesie*, 321.

[81] Beiser, *The Romantic Imperative,* 8.

[82] Lacaue-Labarthe - Nancy, *The Literary Absolute*, 130.

[83] "Ich Pantheism nicht im gewöhnlichen Sinn nehme, sondern darunter die Idee verstehe, daß alles Organ der Gottheit, Mittler seyn könne, indem ich es dazu erhebe". Novalis, *Briefe und Werke*, 73.

The world must be made Romantic. In that way, one can find the original meaning (Sinn) again. To make Romantic is nothing but a qualitative raising to a higher power… By endowing the commonplace with a higher meaning, the ordinary with mysterious respect, the known with the dignity of the unknown, the finite with the appearance of the infinite, I am making it Romantic.[84]

With this succinct definition, Novalis summarizes the union of Fichte and Spinoza, a kind of marriage born out of an impossible love – namely, realistic idealism. "Nothing less than marriage would do because, in their view, each had captured but one half of the truth. Just like ideal wedding partners, Fichte and Spinoza were perfect complements in an indissoluble whole".[85] The Romantic plan was this: Spinoza provided the idea of *hen kai pan* (realism), and poetry was to liberate it (idealism). "Poetry is the hero of philosophy … Philosophy is the theory of poetry. It shows us what poetry is, that it is one and all (Eins und Alles)".[86] Novalis embraces Fichte's idealist project, which injects the activity of the self into everything, thereby granting freedom to the world; however, he reverses Fichte's confident, self-certain march toward the world. The new Spinozist Romanticism ascends from the world to freedom, turning things –such as *Sophia*, the blue flower, etc.– into a focal point, a center where a living unity manifests itself. Thus, everything, from mineralogy to mythology, regains a new meaning through these poetic lenses. The poet, through the idea of *Bildung* (self-cultivation), will be a guiding pioneer in liberating the entire world from its conditional bonds and making it an instrument of universality and divinity. Thus, with the motto of *hen kai pan*, the Spinozist poet guides the construction of a new order based on

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[84] "Die Welt muss romantisiert werden. So findet man den ur[sprünglichen] Sinn wieder. Romantisieren ist nichts anderes als eine qualit[ative] Potenzierung. [...] Indem ich dem Gemeinen einen hohen Sinn, dem Gewöhnlichen ein geheimnisvolles Ansehn, dem Bekannten die Würde des Unbekannten, dem Endlichen einen unendlichen Schein gebe, so romantisiere ich es". Novalis, *Philosophical Writings*, trans. Margaret Mahony Stoljar (New York: State University of New York Press, 1997), 60.

[85] Beiser, *The Romantic Imperative,* 131.

[86] "Die Poesie ist der Held der Philosophie. … Die Philosophie ist die Theorie der Poesie. Sie zeigt uns was Poesie sei, dass sie eins und alles ist". Novalis, *Philosophical Writings*, 79.

freedom in Germany. If a new order is to be established, it will come through a free and creative Spinozism.

For Novalis and Schlegel, *hen kai pan* expresses a serene and intellectual unity of the individual and the divine but the experiential immediacy of the divine within the self and the world – a unity that makes institutional mediation unnecessary. Their appropriation of Spinoza thus becomes a tool for reimagining religion and culture as inwardness, creativity, and freedom while simultaneously grounding new forms of ethical and social critique (*die Bildung*). Here, the Spinozist unity of "One and All" is mobilized to envision both a liberated religious sensibility and an alternative cultural order.

5. Nature is the Absolute: Schelling's Spinozist Synthesis

Schelling, who is referred to the "Prince of Romantics",[87] brings an end to all these fragmentary, poetic considerations with his project of building a philosophical system that synthesizes Fichte and Spinoza. Deeply influenced by Fichte's philosophy, in a letter to Hegel in 1795, he declared, "Meanwhile, I have become a Spinozist".[88] From that date until the 1800s, he embarked on an intensive effort to develop a new philosophy of nature that combines Fichtean free idealism with Spinozist naturalism.[89] He strived to complete his project with successive new books. In his 1797 work, *Ideas for a Philosophy of Nature*, he formulated this synthesis program with the following statement: "Nature must be visible Spirit, and Spirit must be invisible Nature".[90] He sought to design a new system that combined the Kantian idea of the autonomy of reason with Spinoza's concept of nature, demonstrating "the absolute unity of the Reason within us and the Nature outside of us".[91] Two years later, in his 1799 book *First Outline of a System of the Philosophy of Nature*, he attempted to replace

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[87] Pinkard, *German Philosophy 1760-1860*, 172.

[88] "Ich bin inzwischen Spinozist geworden!" 4 Feb.1795. Johannes Hoffmeister (ed.), *Briefe von und an Hegel* (Hamburg: Felix Meiner, 1952), 22.

[89] Alexandre Guilherme, "Schelling's *Naturphilosophie* Project: Towards a Spinozian Conception of Nature", *South African Journal of Philosophy* 29/4 (2010), 373-390.

[90] F. W. J. Schelling, *Ideas for a Philosophy of Nature: as Introduction to the Study of this Science,* trans. E. E. Harris - P. Heath (Cambridge: Cambridge University Press, 1988) 42.

[91] Schelling, *Ideas for a Philosophy of Nature*, 42.

Fichte's notion of the absolute self with nature. Like Spinoza, he viewed nature as absolute creative activity, the active force within every natural product. Nature is not merely an aggregate of substances; rather, it is an activity, a principle, and according to Schelling, Nature, as the inexhaustible activity upon which everything visible in nature relies, is unconditional.

Therefore, we assert: every individual (in Nature) is only a form of being itself; *being itself* however absolute activity. For, if being itself is to activity, then the individual being cannot be an absolute *negation* of activity. Nevertheless, we must think the natural product itself under the predicate of being. However, viewed from a higher standpoint, this being itself is nothing other *than a continually operative natural activity* (*Tätigkeit*) that is extinguished in its product.[92]

Nature, as a continuous principle of activity, is unconditional. Inorganic objects, on the other hand, are conditional entities, representing moments where activity pauses. Nature is an ever-dynamic totality that cannot be confined to any single natural being; it is not a thing (*ein Ding*) but rather an unconditioned, free activity that does not become a thing (*un-be-dingt*).[93] It is evident that Schelling embraced a romantic neo-Spinozist interpretation by reinterpreting Spinoza's pantheistic naturalism through the lens of transcendental philosophy and Herderian vitalism. By 1800, in his *System des transcendentalen Idealismus*, he had completed the project of explaining Spinoza and Fichte in a single system by showing that behind Fichte's idea of the I, there was absolute nature, in which cognitive capacities such as sensation, reason and will gradually emerged. In this way, he provided a genetic explanation of the formation process behind Fichte's unconditioned 'I'. This system of unity, which is based on the unity of self and nature, subject and object, can be reached only through intellectual intuition.[94] There was no

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[92] F. W. J. Schelling, *First Outline of a System of the Philosophy of Nature,* trans. Keith R. Peterson (Albany: State University of New York Press, 2004), 14.

[93] Andrew Bowie, *Schelling and Modern European Philosophy: An Introduction* (New York: Routledge, 1993), 20.

[94] F. W. J. Schelling, *System of Transcendental Identity*, trans. Peter Heath (Charlottsville: University Press of Virginia, 2001), particularly chapter 6.

sharp difference between subject and nature, as Fichte puts it, but only differences in degrees.[95]

In 1809, Schelling intensively revisited the discussion of pantheism and Spinoza in his essay *über das Wesen der menschlichen Freiheit*, in which he sought to show how (Spinozian) pantheism could be synthesized with (Fichte's) freedom. According to him, the problem arose from a misunderstanding of pantheism. For Schelling, pantheism had been misunderstood in two ways: either the singular existence of things was denied by saying that there is nothing but God or that God is nothing but the sum of things and God is dissolved in singular things.[96] Both of these conceptions of pantheism are erroneous; even Spinoza, who thought within the Cartesian rationalist tradition, could not grasp the essence of pantheism and produced fatalism instead of pantheism.[97] According to Schelling, the problem with Spinoza was not in his pantheistic belief but in his abstract, dead mechanical thought. Thus, Schelling's new project reinterpreted pantheism by including and transcending Spinoza.

What, then, does one understand by Spinozism?... Then the mechanistic way of thinking, which reached the summit of its infamy in French atheism, had captured almost all minds; in Germany as well one began to take this manner of seeing and explaining for the genuine and sole philosophy … One wanted to declare these consequences, and since the German mind could only take hold of the mechanistic philosophy from its (supposedly) highest expression, the terrible truth was declared in this way: all philosophy –absolutely all– that is purely rational is or becomes Spinozism! Everyone now was warned about the abyss; it was laid bare before all; the only remedy which still seemed possible was lead back to the heart, to inner feeling and belief… And here then, once and for all, our definite opinion about Spinozism! … Spinoza therefore must be a fatalist for a completely different reason, one independent of pantheism.[98]

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[95]   F. W. J. Schelling, *Presentation of My System of Philosophy*, trans. Michael Vater, *The Philosophical Forum* 32/4 (2001), 342.

[96]   F. W. J. Schelling, *Philosophical Investigations into the Essence of Human Freedom*, trans. Jeff Love - Johannes Schmidt (Albany: State University of New York Press, 2006), 12.

[97]   Schelling, *Philosophical Investigations*, 20.

[98]   Schelling, *Philosophical Investigations*, 19-20.

Thus, Schelling rekindled the debate that had divided Germany twenty years ago. According to Schelling, Spinozism had to be reinterpreted in terms of concepts such as organism, life, freedom, and love. Instead of Spinozian mechanism, he had to substitute a dynamic conception of nature. Just as an organism is an independent and free being, as a being (Dasein) even though it is in nature in terms of the ground of its formation, in the same way all beings are in such a relationship with God. All beings are both in the whole and singular. If one grasps the pantheist idea of identity from an organismic perspective instead of an abstract and mechanical perspective, this organic conception of pantheism could allow one to synthesize the dynamic singular (beings)-universal (God-Nature) relationship or personal freedom and its dependence on God. Eventually, on the basis of his romantic new interpretation of Spinoza, Schelling produced a very unusual solution to the problem of evil and freedom. Schelling, like all other romantics, adopted Spinoza's pantheism by embellishing it with romantic motifs such as individuality, vitality, action, creativity, genius expression, and historical development.

By addressing all three crises simultaneously, Schelling's mature engagement with Spinoza synthesized the preceding appropriations. His reconfiguration of Spinoza aimed to reconcile freedom with natural necessity, to overcome the mechanistic-static model of substance through an ontology of dynamic productivity and to provide a philosophical foundation for a renewed cultural and religious unity in the post-revolutionary age. For Schelling, *hen kai pan* becomes the metaphysical key to a system in which nature and spirit are two expressions of a single living absolute.

Conclusion

Throughout the turbulent history of German Romanticism, Spinoza initially appeared as an atheist but gradually transformed into a figure akin to a "God-intoxicated man". He was first viewed as the ideal representative of rigid, mechanical, rationalist thought and was accused by Jacobi of being a paragon of modern fatalism and nihilism. However, through the interpretations of Herder, Goethe, and Schleiermacher, Spinoza evolved into a distinctly different figure – a thinker infused with spirituality and faith, revealing the infinity of God within all individuals. Schlegel and Novalis took this new image of a

devout and free-spirited Spinoza, one that eliminated intermediaries, and reinterpreted it. The idea of elevating all singular beings to the realm of divinity through imagination was established as the mission of Romantic poetry, with Spinoza chosen as its pioneer. Finally, Schelling synthesized the concept of freedom from critical philosophy with Spinozist naturalism, producing the ultimate outcomes of this entire process. In the literature, German Romanticism is typically examined either as a literary movement or as the literary transformation of Kantian-Fichtean Idealism. Although Spinoza's influence is often acknowledged, it has rarely been explored in depth. This article provides a comprehensive and systematic account of Spinoza's impact and transformation within German Romanticism. By reconstructing these transformations as historically situated strategies for negotiating the intertwined theological, philosophical, and political tensions of the period, the article demonstrates that the Romantic reinventions of Spinoza form a coherent pattern rather than a mere plurality of isolated interpretations, thereby revealing the systematic character of his German reception. It demonstrates how the early modern rationalist philosopher Spinoza was reinterpreted through multiple "faces" within Romantic thought, resulting in a rich and multifaceted reception.

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BOOK REVIEWS

Religious Pluralism and Political Stability: Obligations in Agreement,
by David Golemboski

Sümeyye Sakarya

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*Dār al-Islām Revisited: Territoriality in Contemporary Islamic Legal
Discourse on Muslims in the West* by Sarah Albrecht

Mehmet Fatih Tiftik

Religious Pluralism and Political Stability: Obligations in Agreement, by David Golemboski, Routledge, 2023, 224 pp., £130.00 (hardback), ISBN: 9781032185439
.

David Golemboski's *Religious Pluralism and Political Stability: Obligations in Agreement* investigates conflicts between citizens' religious and political-legal obligations in contemporary pluralistic societies by analyzing the relevant literature and court cases from the perspective of political liberalism. Because such conflicts generate an unstable political system, which is unsustainable, this question is highly important. In this sense, political "stability" becomes the central focus of the book, which renders it a significant source in political theory scholarship. As Golemboski also states, although political stability has been extensively discussed in political theory, it has often been treated as less significant than other political goods such as equality, justice, and fairness.

The book consists of two parts. While the first part (Chapters 1, 2, and 3) provides a theoretical background by discussing political liberalism and stability, the second part (Chapters 4, 5, and 6) applies this theoretical background to various cases. In Chapter 1, Golemboski offers "stability" as the *primary* good and political "goal" (p. 23) that needs to be constituted in the context of pluralism. As there are numerous conceptions of stability in the political theory literature, he specifies and endorses the conception of justificatory stability. The conception he proposes in the book, i.e., justificatory stability, bases a political system's stability on its capacity to gain the consent of the public it rules over. Golemboski compares his conception with two other forms of stability from the literature. The first is brute force stability, in which stability is founded on the threat of punishment. The

second is the modus vivendi version, which establishes stability in terms of pragmatic compromise among competing factors. He argues that justificatory stability ensures a more self-sustaining, resilient, and reliable political system than these two. Unlike them, it is conditioned on the approval of the governed. Therefore, since the political system will be justified in the eyes of the people, they will endorse it by themselves and avoid cheating on their political duties. After establishing justificatory stability as the normative ideal in Chapter 1, Chapter 2 identifies the necessary conditions for its realization, which are derived mainly from Hobbes. Golemboski initially lists "three main principles of political liberalism", which are liberty, distributive equality, and justificatory neutrality, as the necessary components. The liberty principle means a presumption in favor of liberty and "establishes freedom as the normative baseline condition and places coercive acts or institutions under a burden of justification" (p. 64). Distributive equality requires the political system to distribute the benefits and burdens equally in a society. Finally, justificatory neutrality means that "the governing political principles must be justifiable on grounds that are neutral with respect to the truth value of competing comprehensive doctrines" (p. 73). After these three norms, he adds the formal principle of the rule of law as the fourth condition and sketches them under the title of "Hobbesian" political liberalism. Based on the conceptual discussions in these two chapters, Golemboski institutes the main argument of the book: justificatory stability can be satisfactorily realized "only by means of political liberalism" in the context of pluralism (p. 51). Subsequent chapters expand and consolidate this argument. For instance, Chapter 3 responds to the potential objection that these abstract, rational principles are insufficient to make citizens justify and obey the political system, particularly when they are at the expense of their moral and religious obligations. Golemboski states that if political and religious loyalties are harmonized and mutually support each other through active deliberative exchange and encouragement of various moral communities, then this objection will be in vain, as citizens will develop a commitment to the system. As in the last chapter of the first theoretical part, Chapter 3 also proposes a theory to harmonize loyalties.

Maintaining the critical *style* of the first part, where he engages with potential criticism, Golemboski designs the second part of the book as a response to "the fact that, in the messy reality of actual political life, public justification will always be to some degree incomplete" (p. 120). He responds by using case studies, mostly court decisions. Chapter 4 focuses on conflicts stemming from religious pluralism and strategies to address them. Golemboski starts from the inevitability of conflicts in the context of pluralism and scrutinizes how they emerge and impact citizens and justificatory stability. He lists several alternative solutions and concludes that they are not generalizable despite being useful for specific cases. Chapter 5 examines the limits and effectiveness of selective exemptions from the law in response to conflicting obligations. Instead of entirely rejecting or accepting "exemptions", Golemboski proposes a balanced system to protect stability, which reflects accommodation for nonreligious moral and religious beliefs. Finally, Chapter 6 explores the implications of justificatory neutrality for religious establishment. His main argument is that since the official endorsement of religious belief violates justificatory neutrality, it results in the exclusion of particular citizens and destabilization. Therefore, except for the specific cases that he lists, Golemboski defends avoidance by the government in such matters. As this brief account of the chapters also suggests, the second part offers the observation of balance and contextuality as a solution for practice rather than a definitive or universal rule or process.

While his proposal of contextuality as a solution is one of the main strengths of the book, as it makes the claims more feasible, it also poses a vital challenge to the book's fundamental argument. In this regard, it makes the first part redundant by evincing the non-procedural, unexpected, and conflictual nature of politics and human relations. In the first part, Golemboski describes an imagined world of justificatory stability where he maps out concepts and procedures such as types, conditions, boundaries of interest(s), justification, reason, equality, liberty, belief, and modus vivendi. Here, he treats modus vivendi as distinct from justificatory stability. This procedural and conceptual meticulousness also occasionally appears in the second part. However, as he also mentions, using the examples of racism and Black Lives Matter, stability is not *always* politically good or desired. Politics mostly considers disagreement and conflict rather than procedures and

stability, which are shaped by those disagreements and conflicts. Nevertheless, by pursuing the liberal tradition that he promotes, Golemboski reduces politics to procedures. This reductionism becomes apparent, especially in his case studies, which focus almost exclusively on "laws". Although his practical solutions are robust and persuasive, as he considers the dynamic and antagonistic nature of politics, his theoretical discussions limit their cogency due to this reductionism. He offers those "practical" solutions as immediate responses to specific cases in which the nature of the antagonism and other dynamics of the case are obvious. Therefore, he presents a realistic approach that makes solutions robust and persuasive for their specific cases. However, since his liberal theoretical approach does not recognize the central role of conflict in politics, he cannot propose a theoretical explanation or justification for those solutions. In other words, his reduction of politics to procedures (i.e., laws) prevents him from making those solutions theoretically cogent as well as developing them into analytical tools that can be mobilized for similar cases.

The second issue considers the scope of the book. Although its title and the iterated context of "plurality" imply a discussion at a global level, the book is theoretically and practically confined to the West, especially the U.S. context. Theoretically, not only the scholarship he refers to but also his conceptualizations are Western (and sometimes even Eurocentric). For instance, when he discusses whether "the Catholic example is generalizable to other religious traditions" (p. 106) in terms of its gradual reconciliation with political liberalism, he identifies three factors: institutional differentiation between religious and political institutions, practical experience of life under liberal institutions, and developments in political theology within religious doctrine toward liberal values. He argues that these factors "suggest a potentially generalizable set of conditions that may facilitate a similar transformation in other religious doctrines toward harmony with political liberalism" (p. 108). This claim exemplifies the conventional Eurocentric and orientalist readings of the Rest regarding the expectation of linear historical progress following the European experience. In this regard, it assumes that all faiths or traditions have the same exact nature as Christianity, which has "institutions" such as the church and a "religious doctrine" that are ontologically different,

and therefore can be separated from politics. Practically, the case studies he reviews are from the U.S.

Overall, despite occasional reductionist and Eurocentric ideas stemming from its implicit claim of universality, the book offers a comprehensive and convincing analysis of political-religious conflicts in the U.S. In this sense, as a substantial contribution to the relevant scholarship, it provides an important source for those interested in the intersections of religion, politics, law, and political theory.

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Dār al-Islām Revisited: Territoriality in Contemporary Islamic Legal Discourse on Muslims in the West, by Sarah Albrecht. Leiden: Brill, 2018. 476 pp. ISBN 978-90-04-36454-7.

Following the wave of decolonization in the 20th century, the world witnessed a profound demographic and cultural shift: millions of formerly colonized people, regardless of religious affiliation but largely of Muslim origin, relocated to the so-called West. Initially stemming from colonial entanglements, these movements soon gained momentum with increasing globalization, destabilization in their home countries, and new economic opportunities offered by migration. This postcolonial migration to non-Muslim countries, an unprecedented phenomenon in Islamic history and distinct from earlier localized experiences of encounters with non-Muslim rule, such as those in Andalusia and Sicily, posed new psychological and ontological challenges. Faced with the "Other," both Muslim migrants and host societies developed strategies to manage estrangement and alienation. Religion, as one of the most powerful systems of meaning, provided a symbolic and legal vocabulary to interpret these transformations. Classical concepts such as *dār al-Islām* (territory/abode of Islam) - *dār al-ḥarb* (territory/abode of war) distinction re-emerged, not merely as doctrinal categories but as dynamic tools for identity construction. Territoriality, once a formal legal device, was increasingly adapted to articulate new forms of belonging, alienation, and aspiration.

Sarah Albrecht, who holds a doctorate in Islamic Studies and serves as a research director for theology and interreligious dialogue at the Protestant Academy in Berlin, bases this book on her PhD dissertation. In *Dār al-Islām Revisited: Territoriality in Contemporary Islamic Legal Discourse on Muslims in the West,* she demonstrates how well-

established legal notions are reappropriated in diverse ways to help Muslims make sense of their place in a global order marked by both dislocation and opportunity. She further evinces how conceptions of territoriality shape feelings and practices of identity and belonging. She explains how the classical concepts are mobilized to justify Muslim residence in Western countries and to influence the interpretation and application of Sharīʿah, including the legitimization of *fiqh al-aqalliyyāt* (Islamic jurisprudence for Muslim minorities).

This book is structured into three major parts comprising ten chapters, each arranged to build a cumulative argument moving through historical development, contemporary interpretations, and their implications. In the Introduction, Albrecht lays the groundwork for the book (pp. 1-36). She first addresses the question of how the *dār* categorization is treated in Western academia. According to her, Western scholarship often relies on a dichotomous framework of "us" versus "them", a perspective influenced by thinkers such as Samuel Huntington and reinforced by anti-Muslim figures, such as Gregory M. Davis. These anachronistic portrayals of Islamic legal concepts, she argues, are not limited to populist rhetoric but also appear in the works of well-known scholars of Islamic law, including Bernard Lewis and Tilman Nagel. By contrast, the historical sections of her study reveal that the debates have been far more complex and nuanced than this dualist understanding of Islamic legal concepts (p. 424). She investigates these rich debates around the flexibility of Islamic legal discourse on territoriality. Her focus on the *dār al-Islām - dār al-ḥarb* categorization is motivated by the perspective that reconceptualizing geo-religious territories plays a crucial role in contemporary discussions of issues, such as *fiqh al-aqalliyyāt*, Islamic multiculturalism, and jihadist movements. To this end, she begins with a historical perspective to identify the continuities and changes shaping contemporary discourse on territoriality.

The central question of the book is "where—or rather what—is *dār al-Islām* in today's world?" (p. 14). To answer this question, Albrecht analyzes the ways in which contemporary Muslim jurists and intellectuals employ traditional territorial concepts, such as *dār al-Islām* and *dār al-ḥarb*, to interpret current geopolitical realities. The book examines whether these categories still hold authority and whether their definitions and implications are fixed or open to change.

Albrecht also investigates the criteria used to determine whether a territory qualifies as "Islamic" –including ruling power, political and legal systems, the religious affiliation of the population, and freedom of religious practice– and shows how different actors rely on these criteria in making their arguments. Finally, she considers the implications of these territorial concepts for the interpretation of Sharīʿah and law in Western contexts, particularly regarding questions of religious authority and identity at both global and local levels.

A key aspect of the study's conceptual framework is the adoption of a "spatial perspective" on Islamic legal discourse. Albrecht draws on the concept of "imaginative territories", inspired by Edward Said's notion of "imaginative geographies" (p. 27), to emphasize the intangible and discursive elements of territorial concepts and the ways in which they shape both authority and identity. She conceives of territoriality as encompassing not only the defined status of territories at a given moment but also the ongoing process of territory-making. This includes "discursive mapping" and "rhetorical boundaries", namely, the processes of forming, locating, and mapping identities (p. 30). The introduction concludes by previewing the study's central contribution: a fourfold typology of contemporary interpretations of territoriality, which is examined in detail in Part II.

While the concept of "imaginative territories" is a useful tool for linking postcolonial theory with Islamic legal studies, it also risks reducing juristic reasoning to metaphorical geography and overlooking the material and institutional contexts in which these discourses operate. Discourse analysis is indeed a common and productive approach for studying the ways in which postcolonial communities negotiate past and present, yet in this case, the very focus on discursive production carries the risk of underemphasizing the technical legal reasoning and religious scholarship that also shape these categories.

The first part, titled "Territoriality in Islamic Legal Discourse: A Historical Outline", provides the historical and conceptual background for the book. Chapter 2, "Formation and Development of Territorial Concepts in the Pre-Modern Period", examines the classical origins and development of categories such as *dār al-Islām*, *dār al-ḥarb*, and *dār al-ʿahd* (territory of treaty) (pp. 43-87). Albrecht shows that although the division of the world into *dār al-Islām* and *dār al-ḥarb* emerged in

the earliest centuries of Islam, their definitions were immediately subject to substantial disagreement among jurists. She highlights the doctrinal elasticity of these concepts, even in the premodern period, stresses their lack of explicit Qurʾānic grounding, and identifies the areas of contestation later revisited by contemporary thinkers.

The book emphasizes the role of Ḥanafī scholars such as Abū Yūsuf and al-Shaybānī in systematizing territoriality, particularly around the criteria for determining whether a territory was Islamic, such as the application of Islamic law and the provision of security. Other schools approached the matter differently: the Shāfiʿīs emphasized security and freedom of religious practice, whereas Mālikī and Ḥanbalī jurists often prioritized Muslim rule. Although the book's primary aim is not to reconstruct the concepts and rulings of classical *fiqh*, it nonetheless provides a thorough and accessible outline of it. It also clarifies misconceptions –for example, the assumption that *dār al-ʿahd* was a distinct classical category– and offers critical insights, including the argument that *dār al-ḥiyād* (territory of neutrality) is a modern construct coined by Majid Khadduri but later presented by al-Zuḥaylī as classical (pp. 60-61).

Chapter 3, "Debates on Territoriality in the Modern Period" (pp. 87-119), traces modern interpretations of territorial categories from the colonial period to contemporary times. During the colonial era, the *dār* classification became a tool either to legitimize or to refute calls for *jihād* and *hijrah* (emigration) in response to foreign occupation, illustrating how legal concepts functioned as instruments of both compliance and resistance. Figures including Shāh ʿAbd al-ʿAzīz and Sayyid Aḥmad Bārelwī in British India and ʿAbd al-Qādir al-Jazāʾirī in North Africa reinterpreted these categories in light of colonial domination. Later, scholars, including Muḥammad Abū Zahrah and Wahbah al-Zuḥaylī, framed *ʿahd* as a binding treaty compatible with international law. By the late twentieth century, thinkers, including Fayṣal Mawlawī and Rāshid al-Ghannūshī, argued that territorial categories are subject to readaptation since they originate in *ijtihād*, thereby paving the way for *fiqh al-aqalliyyāt*. However, Albrecht critically observes that the introduction of new criteria, such as demography, has sometimes led to the marginalization of classical notions such as *amān* (safe-conduct, protection) and *ʿiṣmah* (inviolability, legal immunity).

The core of Part II, "The Contemporary Islamic Legal Discourse on Territoriality", is Albrecht's fourfold typology, which ranges from scholars who strictly reaffirm the binaries between Islamic and non-Islamic territories to those who reject them altogether and propose alternatives. Chapter 4, "Dār al-Islām versus Dār al-Kufr: Reinventing Traditional Binaries" (pp. 125-165), examines the first type: scholars and activists, including jihadist propagandists, who continue to view the world as divided into two antagonistic blocs. They classify the West as *dār al-kufr* (territory of unbelief) or *dār al-ḥarb* and are generally skeptical of Muslim residence in non-Muslim majority countries. However, Albrecht also notes that even some extreme voices occasionally adopt a softer position, invoking an intermediate "third domain" or "composite territory", echoing earlier notions associated with Ibn Taymiyyah.

Proponents of this view include traditionalists such as Saʿīd Ramaḍān al-Būṭī; Saudi Wahhabi scholars such as Ibn Bāz and Ibn ʿUthaymīn; and jihadist ideologues such as ʿAzzām, al-ʿAwlaqī, and al-Jarbūʿ. These figures perpetuate a strict dichotomy and often consider *hijrah* (emigration) to an Islamic state obligatory under certain circumstances. They also continue to apply traditional legal standards in defining territorial boundaries while dismissing the importance of *dār al-ʿahd*, which is recognized by the following group but criticized by this group.

Chapter 5, "Dār al-Islām and the West: A Contractual Relationship" (pp. 165-218), presents the mainstream perspective among minority *fiqh* proponents such as Yūsuf al-Qaraḍāwī, Fayṣal Mawlawī, ʿAbd Allāh Ibn Bayyah, and the European Council for Fatwa and Research (ECFR). They classify Western countries as *dār al-ʿahd* on the basis of international agreements, thereby legitimizing Muslim residence and grounding the need for *fiqh al-aqalliyyāt*. In doing so, they reinterpret the nature of *ʿahd* more expansively than in the classical tradition.

This approach adapts traditional concepts by considering treaties as permanently valid and by incorporating demography as a key criterion for defining *dār al-Islām*. It replaces the older binary with a tripartite model that includes a "territory of contract" or simply a "non-Islamic territory". Nevertheless, the distinction between *dār al-Islām* and what lies outside of it remains intact: as al-Qaraḍāwī notes, *ghayr dār al-*

Islām is still not as plausible a category and thus requires special treatment. These scholars frequently link their classification of Western countries as *dār al-ʿahd* to modern international agreements, such as those regulating the United Nations or NATO. Although they acknowledge that such terms are not prescribed by the Qurʾān or Sunnah, they consider them adaptable constructs rooted in legal tradition. Moreover, their approach often involves *talfīq* (combining doctrines) or *takhayyur* (juristic selection) guided more by pragmatism than by strict adherence to *uṣūl al-fiqh*.

The third type in Albrecht's typology is presented in Chapter 6, "Dār al-Islām Relocated: How 'Islamic' is the West?" (pp. 218-282). This chapter examines the views of scholars such as Ṭāhā Jābir al-ʿAlwānī and Jāsir ʿAwdah, who fundamentally redefine *dār al-Islām* by placing greater emphasis on the "security" criterion, which has long been part of tradition. They argue that Western countries can be considered part of *dār al-Islām* if they uphold the higher objectives of Islamic law (*maqāṣid al-sharīʿah*), such as security, freedom, and justice. These scholars generally reject the notion that the *dār* categories are rooted in primary Islamic sources, treating them instead as historical constructs. This approach often reflects their lived experiences as Muslims in Western societies. While they dismiss the applicability of the traditional *dār al-Islām/dār al-ḥarb* dichotomy, they do not entirely abandon the concept of *dār* itself. Much of the discourse is advanced through the International Institute of Islamic Thought (IIIT) and initiatives such as the Shariah Index Project, which bring together networks of Western Muslim scholars.

The fourth and final type in Albrecht's typology is presented in Chapter 7, "Rethinking Territoriality beyond Dār al-Islām: Alternative Calls for Overcoming Geo-Religious Boundaries" (pp. 282-310). This chapter highlights figures such as Tariq Ramadan, Ṭāriq Ūbrū, and Ārif ʿAlī al-Nāyiḍ, who advocated for the dissolution of traditional geo-religious distinctions. Ramadan proposes *dār al-shahādah* (abode of testimony) as a unified world in which Muslims "bear witness" to their faith irrespective of political or demographic conditions. Al-Nāyiḍ suggests reinterpreting *dār al-Islām* as an "interior abode of peace" or a spiritual state, while Ūbrū calls for a new "geotheology" that detaches Islamic norms from geo-religious boundaries and anchors them instead in the framework of the nation-state. These intellectuals, many

of whom were academically trained in Europe or Canada, represent a younger generation and often aim for a "radical reform" of Islamic law and ethics, shifting from a legalistic to an ethics-based paradigm.

By clarifying diverse positions within contemporary discourse, the fourfold typology represents one of the book's main contributions. Although this categorization carries the risk of oversimplifying the agreements among scholars, it provides a useful framework for capturing the spectrum of views ranging from fundamentalist to reformist orientations on any classical Islamic concept. One possible limitation here is that many of the figures examined in the book can be said to have produced pragmatic and momentary statements shaped by the circumstances of their time. Addressing this issue might require longitudinal studies that trace continuity and change in these debates over time.

Part III, titled "Why Territoriality Matters?", explains why and how contemporary Islamic legal conceptualizations of territoriality matter, emphasizing their profound implications for Muslim life in the West. Chapter 8, "Territoriality, Residence, and Legal Interpretation in the West" (pp. 317-391), explores debates on the legitimacy of Muslim residence in Western countries, the validity of non-Muslim laws, and the disputes surrounding *fiqh al-aqalliyyāt*. Albrecht demonstrates that the permissibility of permanent residence in non-Muslim lands has long been a foundational issue, fueling reconceptualization of the traditional *dār* binary. Scholars who hold a strict dualistic view regard residence as undesirable, yet they often acknowledge its practical necessity or its value for *daʿwah* (mission). By contrast, those who classify the West as *dār al-ʿahd* or *dār al-Islām* universally affirm the legitimacy of residence.

The chapter also considers the binding nature of non-Muslim legal systems for Muslims residing in host countries. Approaches vary: some scholars call for unconditional adherence (among those who view the West as *dār al-Islām*), others argue for conditional acceptance based on contractual relationships (as in the *dār al-ʿahd* framework), while others reject their legitimacy altogether or even advocate violation (as seen in interpretations of the West as *dār al-ḥarb*).

Importantly, Albrecht demonstrates that the legitimization of minority *fiqh* rests on territorial classifications. Proponents such as al-Qaraḍāwī and the ECFR justify a specialized interpretation of Islamic

norms for Muslims as a distinct minority by maintaining the distinction between *dār al-Islām* and "what lies outside of it". By contrast, figures such as al-ʿAlwānī, who regard the West as potentially part of *dār al-Islām*, advocate for minority *fiqh* as a broader framework for Islamic legal reform applicable everywhere, not only for minorities. Despite these theoretical divergences, Albrecht observes that in practice, *fatwā*s often blur these carefully drawn territorial lines.

Chapter 9, "Territoriality, Authority, and Identity" (pp. 391-423), examines how reinterpretations of *dār al-Islām* directly shape questions of religious authority and Muslim identity in a globalized world. For figures such as al-Qaraḍāwī, "territorial othering" legitimizes their authority and sustains institutions such as territorially bound, specialized *fiqh* councils. By contrast, other thinkers seek to deconstruct the image of Muslims as "exiled" or "alienated", instead emphasizing an ethical and spiritual understanding of Islamic identity and belonging that transcends geographical boundaries. Ultimately, however, all positions on territoriality contribute to constructing Muslim identity in a globalized context, either through mechanisms of othering or through claims of citizenship and belonging.

The conclusion in Chapter 10 (pp. 423-431) summarizes the typology developed in the study and outlines how different groups classify Western countries. Albrecht emphasizes that the expanding discourse on territoriality is a direct response to globalization, increased Muslim migration to the West, and evolving international relations. In doing so, she highlights the adaptability and fluidity of Islamic legal concepts in response to contemporary challenges.

Building on Qasim Zaman's notion of adaptability in Islamic thought (p. 429), Albrecht demonstrates that Muslim legal discourse continues to evolve in response to changing historical and sociopolitical realities. The categorization she develops is not only analytically helpful but also shows that concepts once belonging exclusively to the classical juridical realm of the *ʿulamāʾ* are now increasingly shaped by media figures, activists, and other actors. This trend, which Albrecht describes as the "democratization of knowledge", illustrates the broader diffusion of Islamic legal discourse, whereby doctrinal concepts such as *dār al-Islām* enter the public sphere, which is open to negotiation, politicization, and popular reinterpretation. However, what these debates ultimately mean for the

discipline of *fiqh* itself remains an open question that requires further discussion.

Albrecht's work offers a conceptual framework for examining how classical legal categories acquire political and popular significance and are reappropriated as discursive tools, particularly in the Western minority context, while also touching on issues relevant to Muslim-majority societies, without relying on the emerging notion of "the Muslim world". A closer reading of premodern *fiqh* literature reveals that these classical classifications were originally embedded in legal reasoning and focused primarily on questions of jurisdiction and normative authority rather than on politics. Their modern politicization, by contrast, highlights the need for further anthropological and sociological approaches to Islamic law while still grounding such studies in premodern *fiqh* debates. In this context, the *dār* distinction remains a productive entry point for such investigations. Moreover, the book itself represents a significant contribution for scholars and researchers working on the intersections of Islamic law, political thought, and identity studies.

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