Themed section

Towards New Perspectives on

Ethics in Islam

Casuistry, Contingency, and Ambiguity

Guest editor

Feriel Bouhafa

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Towards New Perspectives on Ethics in Islam: Casuistry, Contingency, and Ambiguity*

FERIEL BOUHAFI (University of Cambridge)

An investigation into ethics and, more specifically, norm construction within any society lends itself to navigating complex zones related to epistemology, ontology, psychology, sociology, law, theology, and politics. The complexity of the study of ethics can be captured from the branching of different approaches to erect moral theories in the modern context, which ranges from realism, naturalism, cognitivism, emotivism, consequentialism, deontology, virtue ethics, among others.¹ These wide-ranging approaches reflect the intricacy in the actual process of norm construction, which is not easily perceptible and, as skeptics would have it, remains somewhat elusive.² After all, the reflection on what is right and wrong, its origins, and how to attain it in a given context puts the human intellectual capacity to the test. Deciphering the footsteps of this process is a daunting task. The question becomes even more complex in a religious context which, as Antanoccio (2005: 31) notes, “posits a paradigmatic moment when moral truth is apprehended (e.g., when the moral law is revealed to the community, or the sacred manifests itself in the natural order), this is only the beginning of moral knowledge, not the end.” On this account, one could say moral truth is never a settled enterprise as it revolves around the contingent character of human reality and needs to be gauged through human experiences while safeguarding, somehow, a coherent normative identity as well as the eternal claim to truth. A reality Muslim jurists, who played a crucial role in shaping normative ethics in their society, admitted in light of the finite nature of the revealed material in comparison to the infinite nature of human actions, as articulated by the eleventh century jurist Jūwaynī.³ Looking at the Islamic context, such challenges to decipher ethics permeated some discussions across the different areas of knowledge

* I would like to thank Ayman SHIHADÉH, Felicitas OPWIS, and Johannes STEPHAN for their helpful comments.

1 For an overview of the different moral theories in ethics, see SKORUPSKI 2010 and LOVIN 2005: 5.

2 Here one can note that, in fact, in the modern context, moral realism lost its strong arguments by considering the fallible character of human understanding. “Given these assumptions, much twentieth-century moral theory was inhospitable to moral realism, and thus to religion as well. The traditional realist claim that there are moral facts (or “correct answers to moral questions”) discoverable by human reason was thought to violate the fact-value distinction, which defines “facts” as morally neutral. The perceived failure of moral realism spurred the growth of antirealism in ethics.” ANTONACCIO 2005: 28.

3 On the infinite character of scriptures and infinite character of human actions, see Juwayni’s (1999: II, 743-44) discussion on the validity of legal analogy (*qiyās*). See DAYEH 2019: 134, OPWIS 2010: 1-8.

production in the domain of law, theology, philosophy, Sufism, hadith, Quran, and *adab* in its broader sense.⁴ Unfortunately, such a broad-ranging outlook remains masked by a persisting view confining Islamic morality to literalism.⁵ As a matter of fact, early attempts to study ethics remained limited to either underpinning the deontological character of Islam, which grounds morality in religious duties or evading it by identifying pockets of rationality linked to some theological discourse that appealed to modern rational sensibilities like the Mu'tazilite school of theology.⁶ Consequently, Islamic ethics as a defined field of study, like Quranic studies, legal studies, and theological studies, to just name a few, remains at an embryonic stage, meaning that clear conceptual questions and methods of Islamic ethics await further articulation.⁷

Luckily, recent findings in the field of Islamic studies pave the ground for new readings of the discourse on norms, especially in the field of law and theology. Significant developments did not only challenge previous assumptions on the static and prescriptive nature of the moral discourse in Islam but also managed to unpack the epistemological and ontological perspectives in the discourse of theologians-cum-jurists to open new avenues to decipher the dialectical, casuistic, and dynamic nature of legal discourse underlining its probable epistemology as the basis to warrant the diversity of opinions in law. Instead of dismissing law as the principal articulation of norm construction, new perspectives have shown that, like other fields of knowledge production, the legal discourse operated under the same episteme which valued ambiguity and diversity of opinions.⁸ This perspective advanced

- 4 *Adab* is not limited to social etiquette but encompasses as well a philosophical sense to a habitus. See MOOSA 2005. Also, as MCGINNIS (2019: 77) points out, "Islamic ethics can be, and indeed is, as diverse as the spectrum of ethical systems or the various interpretations of Islam itself." In an earlier attempt to define Muslim ethics, DONALDSON (1963: x) also admitted its expansive reach: "Muslim ethical literature, therefore, covers an exceedingly wide field. The general moral character of the pre-Islamic Arabs, the outstanding ethical teachings of the Qur'an itself, the portrayal of the Prophet as an example for the personal conduct of his followers, the theological efforts to limit the doctrine of determinism so as to provide for moral responsibility, the wholesome influence of Greek thought in the Muslim world, the ready acceptance of the attempted Neo-Platonic reconciliation between religion and philosophy, the Stoics' illuminating conception of a universal law of nature, the valuable contributions that were made by Christians ascetics and mystics, and the individual struggles of the Muslim mystics, or Sufis, to master the inner life of man in relation to the will of his creator, all these subjections belong to the ethics of Islam."
- 5 Here I refer to the impact of orientalist discourse, which tended to define Islam as legalistic. For a detailed discussion of this view, see section two in this piece.
- 6 The emphasis on the deontological character of the sacred of Islamic law and its lack of rationalism was mostly underlined in early orientalism such as Weber, Hugronje, Goldziher, among others. See JOHANSEN 1999: 43-72. The view that traces 'rational objectivity' in the Mu'tazilite moral theory can be found in HOURANI 1971 and 1985.
- 7 For some early studies on ethics in Islam one can mention ISUTZU 2002 and DRAZ 2008 FAKHRY 1991, HOURANI 1985, RAHMAN 1983, 1984 and DONALDSON 1963. Obviously the field of ethics in recent years is thriving with the important contributions of SHIHADDEH 2006 and 2016 and VASALOU 2008 and 2016, and REINHART 1983 and 1995. Still, I would like to note that ethics in the Western context of the study of Islam has not been conceived of as a sub-discipline like Quranic studies, Hadith studies, Islamic law, and Islamic theology and philosophy.
- 8 Here one can note Shahab AHMED's (2016: 503) rejection of the emphasis of Islamic law or the fiqh-jurisprudence as the articulation of what is Islamic for its failure to account for the non-prescriptive visions of Islam such as Sufism. In this vein, he notes: "The story of the Qāḍī of Hamadān tells us that

by Bauer is helpful to reflect on Islamic ethics without singling out one approach or discipline as the sole expression of ethics.⁹ While obviously, ambiguity should not be taken literally to mean hesitance in an adjudication that, as any legal process requires the stability of proofs, it should instead be construed concerning the epistemology of the process of norm construction and its procedures.¹⁰ Such outlook invites us to develop new approaches to capture ethics not simply as a definite value of Islam, but rather as a process that reflects the concerns of scholars in their quest to deal with ethics and to find solutions when tackling meta-ethics, normative ethics, and practical questions in their own society, as well as their limitations. In this sense, ethics could be perceived as a challenge, quandary, aspiration, or path for Muslim scholars to define and govern their society, relate to the divine, and attain worldly and other-worldly gains. Like any human effort, this quandary, despite the religious context, is subject to construction, reflection, ideals, trials, limitations, and failures. Such expression can be discerned in the various fields of knowledge production in the Islamic tradition, a perspective we hope to furnish in this special issue.

Considering the promising developments in Islamic studies today, one could argue that we are now at a critical juncture, where a leap towards erecting a serious basis to the question of ethics in Islam is possible. This was precisely the international conference's aim in Cambridge in July 2019 supported by the Faculty of Divinity, Center of Research in the Arts, Social Sciences and Humanities (CRASSH), Arts and Humanities Research Council, and Center for Islamic studies at Cambridge.¹¹ Taking casuistry, contingency, and ambiguity as the general framework to discuss ethics in the Islamic tradition, the conference invited scholars to bring in new readings to the question engaging different disciplines: law, philosophy, theology, Hadith, Sufism, Quran, and *Adab*. The fruit borne from this conference is to be found in this special issue.

In what follows, I would like to briefly flesh out some of the early presumptions that constrained the study of ethics then highlight the recent development in the broader field of Islamic studies, which opens new avenues for further reflection on ethical thought. After outlining the general framework of the conference, I shall finally provide a brief sketch of the different contributions to this issue.

Brief overview of the study of Ethics

As I have already noted, the study of ethics in the Islamic tradition was impaired by presumptions on the prescriptive nature of Islam. Deeming Islamic law as a moral code, Orientalists did not only levy the charge of Islam's fusion of morality and law but also curbed

the human and historical conversation about and conceptualization of law in societies of Muslims is much broader in scope than we have become accustomed to think. That conversation, that hermeneutical engagement is expressed not solely in *fiqh* discourses, but in the discourses of philosophy and Sufism, and in the fiction of poetry and prose." While he has a point, he seems to remain in a dichotomy between what is literal and non-literal. If Islamic law adopts a formal nature, it does not mean that it is literal.

⁹ BAUER 2013.

¹⁰ On Islamic court evidence see JOHANSEN 2002 and BOUHAFI 2018.

¹¹ I would like to also thank Baber JOHANSEN, Sophia VASALOU, Ahmed AL-RAHIM, Jeannie MILLER, and Ali ZAHERINEZHAD for their participation at this event.

any ethical reflection in the religious discourse on ethics.¹² This verdict impinged on the approaches to ethics in the field of law, theology, and philosophy.¹³ Let me briefly sketch out some of the early views on ethics in Islam and then highlight some of the new promising developments in the field today.

Early orientalist scholarship characterized Islamic law as deontology.¹⁴ Thus Islamic morality was associated with definite moral standards, which stipulate the correct conduct. This system of duties articulated in *fiqh*, associated with marriage, divorce, heritage, almsgiving, and liturgical deeds, was deemed in Weberian parlance as lacking procedural rationality or, more precisely, procedurally irrational. Putting an emphasis on the encyclopedic casuistry of *fiqh*, orientalist like Schacht adopted the Weberian perspective to underscore *fiqh*'s detachment from practical concerns.¹⁵ For Schacht, the alienation of legal practice from the social and political life is linked to the tradition-bound feature of Islamic law, which established a moral ideal rather than a rational system. In a similar vein, Brunschvig and Gibb have deduced that the prescriptive nature of Qur'anic injunctions inhibited Muslims from developing any ethical reflection and did not allow for a change in social norms.¹⁶ Such a conclusion was also endorsed through the narrative of the closing gate of *ijtihād* in Islamic law, also deemed by Schacht as indicative of an ankylose and the immutable character of the law.¹⁷ Consequently, Islamic law as the main normative system deemed out of touch with the contingencies of reality and therefore ethically at fault.¹⁸ As a matter of fact, such a perspective on the law has led the German philosopher Leo Strauss to condemn both Islam and Judaism for their primitive idea of law as a total regimen of human life, which, he assumes, inhibited Arabic philosophers from developing a natural law theory.¹⁹ In contrast, he applauded the Christian theology of Aquinas for living up to the Aristotelian legacy to develop a robust natural law theory through rational theology, unlike Maimonides and Averroes, who seemed to fail on that front.²⁰ By the same token, Brunschvig (1979: 9) underlined that:

In the absence of a notion of natural law and in the negation of ethical and rational values that impose themselves upon God, or which God imposes on Himself, or which may be inherent in Him, the revealed or inspired datum, a divine phenomenon, is a priori exempt from the demands of rationality which rightly manifest themselves with regard to human law.²¹

¹² This view of law which links morality to law was antagonistic to the positivist Austinian view of the law. On this point, see HALLAQ 2009: 252-254.

¹³ JOHANSEN 1999: 45-72.

¹⁴ Ibid.

¹⁵ JOHANSEN 1999: 50-53.

¹⁶ See also SCHACHT 1964: 200 and GIBB 1962: 111.

¹⁷ SCHACHT 1977: 11, JACKSON 1996: 76.

¹⁸ For a critique of the thesis of the closing of the Gate of *Ijtihād*, see HALLAQ 1984 and JACKSON 1996.

¹⁹ STRAUSS 1995: 73 and 1953: 158.

²⁰ STRAUSS 1953: 164.

²¹ For a similar position, see also CHEHATA 1973: 17 and ARNALDEZ 2002: 11.

While the question of natural law is something debatable, considering the nebulous character of the concept of natural law itself, which has a volatile genealogy, the characterization of Islamic law as irrational and unyielding for any ethical reflection does not stand scrutiny.²² This characterization will be contested in this special issue, looking at how jurists contemplated the relationship between law and ethics in norm construction.

In an attempt to counter this early narrative, some scholars like Hourani admitted that although jurists made no room for a “rational method to follow except the method of analogy with what is commanded,” theology offered a better alternative where a rational discourse on ethics seems to have crystallized.²³ Specifically, he underpinned the role of the Mu‘tazilites’ theologians in delineating the role of intuition to produce ethical knowledge independently from the revelation against the subjectivist view of the Ash‘arites who held that moral values could only be determined by the revelation. Despite its valuable contribution in portraying moral theories in Islamic theology, this approach still adopted jarring characterizations, pitting the rational approach of Mu‘tazilites against the literal approach of Ash‘arites. One of the main problems with this characterization is that it viewed the Mu‘tazilites as the last vestige to salvage Islam and instead condemned Islamic history with failure after the triumph of Ash‘arites.²⁴ This lends itself to an absurd view, which singles out a historical moment when Muslims missed their chance.²⁵ Furthermore, this view does no justice to the complexity of ethical theories in Islam and the ontological and epistemological distinction different theologians and philosophers make, which escape this restrictive spectrum of objective vs. subjective. A number of the contributions in this issue will showcase the shortcomings of such a perspective on the Ash‘arite ethical discourse.

22 See on the amorphous definition of natural law GOYARD-FABRE 2003. For a conception of natural justice in Ibn Rushd’s thought, see BOUHAFI 2016.

23 HOURANI notes (1985: 62): “This was because the shari‘a, or scripture regarded as a code of law, gave no unifying ethical principle to explain what is common to fasting, almsgiving, dealing just weight, etc., other than the fact of being commanded by God. Consequently, a Muslim seeking guidance for an Islamic life on issues where the commands are not explicit or appear to conflict would find no rational method to follow except the method of analogy with what is commanded, and this is exactly that *qiyās*, which was recommended by the opponents of *ra’y*.” See OPWIS’s piece in this series which showcases how Muslim scholars imbued the *‘illa* or *ratio legis* with ethical considerations.

24 In his article “Divine justice and human reason in Mu‘tazilite ethical theology,” HOURANI (1985: 81) says: “Despite its great intellectual strength, the Mu‘tazilite theory of ethics was defeated in the public forum of history, at any rate in the Sunnite countries, which eventually comprised the majority of Muslims in the world. The defeat occurred by suppression, not so much in their earlier crisis when the caliph Mutawakkil (847-861) turned against them, but more decisively through decrees of the caliph Qādir in 1017 and 1041.”

25 Leveling criticism against this type of verdict, LEAMAN (2008: 85) notes that: “The development of broadly Ash‘arite theories still continues today, something which commentators sometimes see as a victory for an anti-rationalism which has retarded Islam’s development. This, however, is an entirely misleading view. For one thing, even the critics of *Kalām* defended their arguments rationally. Even today those who advocate a return to the *salaf*, to the ancestors, argue for this. They argue against alternative views, and defend their approach to the understanding of the Quran, in such a way as to make it difficult straightforwardly to identify one side of the debate as “rationalist” and the other as “traditionalist” or “fundamentalist.” It might even be argued that it is those who are not normally seen as rationalists who are in fact the most concerned with reason, since they are prepared to be critical of reason and argue (but note the term here, argue) that we should acknowledge its severe limitations...”

Similarly, a common perception held that although Muslim philosophers engaged with Greek ethical works, they remained constrained within the authority of Islamic law and could not proffer a substantial rational account of ethics beyond some adoption of aspect of Greek aretaic theory couched in Islamic terminology.²⁶ So philosophers' engagement with ethics was considered meager compared to other fields and was restricted to the discourse on the refinement of character and purification of the soul drawing on galenic medical writings.²⁷ While there is some truth to this conclusion, it still needs revision. Ethics permeates various philosophical inquiry such as metaphysics through the view of good and evil in the universe, which can be captured in Ibn Sīnā's conception of God as the ultimate good (*al-khayr al-mahd*) that emanates to the universe, and his attempt to resolve the problem of evil. Also, one can note discussions of moral epistemology and precisely the issues of universal ethical judgments perfusing a number of logical treatises, as well as the discussions on moral psychology and the role of the different faculties in ethics and its function in generating virtue in the writings of Fārābī (d. 950), Ibn Sīnā (d.1037), and Ibn Rushd (d.1198) among others. Finally, political philosophy also focuses on the ethical end of Happiness or Eudaimonism in the city, especially in Fārābī and Ibn Rushd, and to this one could add the role of ethics in poetics as discerned in Ibn Rushd's commentary to Aristotle's poetics.²⁸ More importantly, this engagement with ethics cannot be perceived only from the perspective of Greek reception, for philosophers were clearly not alienated from the discourse of their community. Elaboration of this broad outlook requires another study, but it shall suffice here to say that given that philosophers took the study of philosophy seriously, it is rather odd to assume that their interest in ethics does not reflect their immediate vision of their own society or community and the universe around them. Such assumption can be discerned in Fakhry's statement when he distinguishes philosophers from jurist and theologians, asserting that

The philosophers, whether Neo-Platonists, like Farabi (d.950), Aristotelians like Ibn Rushd (d.1198), or platonists like Razi (d. ca 925) fall into a different category altogether. Although they do not ignore or deliberately disavow the authority of the Koran, their primary allegiance is to the canons of philosophical evidence, as bequeathed by Greek philosophy. Their ethical discussions are sometimes embellished by Koranic quotations, in the manner of other Muslim authors, but it is primarily the dictates of syllogistic reasoning that determine the conclusions they arrive at. (FAKHRY 1991: 2)

Here philosophers seem to be depicted in terms of allegiance to the Quran or Greek books. Two presumptions loom behind this statement: first, it assumes that the Quran has a static understanding of ethics that is already worked out, and philosophers use it to embellish their views. Second, it presupposes that when the philosophers draw from the Greek discourse, they do not engage with their normative context. What precludes us from thinking that

²⁶ This is not to deny that the Muslim philosophers' discourse draws on Greek ethical discussion. Plato's *Republic*, Aristotle's *Nicomachean Ethics*, and Galen's treatises (*On the Affections and Errors of the Soul* and *On Ethics*) all had an import on the ethical discourse in philosophy. MCGINNIS 2019: 83.

²⁷ RENAN 1882: 159.

²⁸ See BOUHAFI in this special issue and MCGINNIS 2019. On the role of ethics in Ibn Rushd's conception of Poetics see VILCHEZ 2017: 329.

philosophers sought to theorize about ethics in their own context through a productive engagement with different writings of Plato, Aristotle, Galen, and some of the Neoplatonist writings? In fact, one could argue that philosophers must have seen themselves as active members in their society and tried to shape a conception of ethics both in their vision of their community and the universe. This can be seen in Fārābī's attempts to explain the place of *fiqh* in practical philosophy following the Aristotelian division of science (BOUHAFI 2019b, ZGHAL 1998: 187-188, ARFA-MENSIA 2017). Furthermore, considering the philosophers' interest in how to order both the universe and human communities as seen again in Fārābī's philosophy both in the perfect state (*Ārā' ahl al-madīna*), and the political regimes (*al-siyāsa al-madaniyya*) reflects such correlation between the eternal and the contingent, something that also captivated the attention of Miskawayh (d. 1030), Rāzī (d. 925), Tawhīdī (d. 1023), and other figures. After all the task of ordering knowledge, the universe and society occupied most philosophers as well as the rest of Muslim intelligentsia, including belle-Letterist and theologians alike. In their contribution to this task, philosophers subscribed to the Greek philosophical discourse but still theorized about their intellectual environment to mark their own stamp.

In recent years, however, the fields of Islamic law, theology, and philosophy have witnessed significant epistemological shifts. A complete overview of these developments is beyond this introduction's scope, but I shall limit myself to furnish a few examples. Taking the case of Islamic jurisprudence, one could underline the important contribution of Baber Johansen and Wael Hallaq, among many others, in disclosing the discursive and dynamic character of jurisprudence through unpacking its probable epistemology, which allowed for dissent in legal opinions. Seeking to capture this character of Islamic law, Johansen used the notion of contingency to define Islamic legal doctrine:

The more the jurists underline the contingency of their own doctrines and decisions, the more the elevated rank of the indisputable knowledge (*ilm yaqīn*) conveyed by the revealed texts becomes apparent. What lies beyond [the first field] are the *fiqh* norms based on assumptions (*al-fiqhiyyāt al-zanniyya*) for no categorical proof (*dalīl qaṭʿī*) is available [for them]. The *fiqh* norms constitute a [licit] object of *ijtihād*. In these norms, according to our judgment, there is no specific correct solution and no sin is committed by the *mujtahid*, as long as he perfects his effort of norm production through individual legal reasoning and as long as he is qualified [for *ijtihād*]. (JOHANSEN 2013: 41-42)

The jurists' admission of the fallibility of their hermeneutical enterprise and the impossibility to reach the divine intent with certainty is what allowed for the multiplicity of opinions in the legal discourse. In so doing, this view discloses a dialectical and persuasive nature to the process of norm construction. The jurists took such a process to ensure its stability to avoid arbitrariness, especially considering its individual character as the jurist's law. Overall, in debunking Schacht's claim that the religious law of Islam developed as an expression of a religious ideal and not in connection with practice, scholars have shown the dialectical correlation between theory and practice. Such endeavor was fulfilled by Hallaq's revisionist work of Schacht's narrative of the emergence and development of Islamic law, which shows

both a synchronic and diachronic development.²⁹ Hallaq highlights how Islamic law is a discursive tradition, which draws from an argumentative repertoire and developed an institutional basis through mechanisms of legal change. In so doing, he showcases, unlike Schacht's conclusion, how the activity of *ijtihād* never ceased to exist. In this vein, Jackson's managed to demonstrate how legal change does not necessarily entail alteration of the existing body of legal tradition but rather interpretive techniques and the erection of exceptions to existing rules, a process he called "legal scaffolding" (SYED 2017: 9; JACKSON 1996: 96-102).³⁰ The discussion of legal change in Opwis' study also reveals how jurists thought of ethical outcomes through the conception of objectives of the law. In so doing, OPWIS (2011) underlines that in the absence of regulatory mechanisms like a constitutional court, legal change in Islamic law is brought about by changes in the interpretation and derivation of law. The main procedural means to generate legal change focused on *maṣlaḥa* where Individual jurists were the agents of legal change.

A nuanced approach gained ground in the study of the ethical, theological, and philosophical discourse with the contribution of a number of scholars such as Shihadeh, Vasalou, and, more recently, Farahat. We witness a serious engagement with ethicist discourse, which draws on certain moral theories to depict Islamic ethical discourse from the perspective of realist, deontological theory, as well as divine command theory, consequentialist or emotivist theory. This approach helps unpack essential distinctions that are made by theologian-cum-jurists. In his piece, "Alchemy of domination," Jackson has pointed out how Ash'arites adopted an emotivist position, which underlines the role of the appetitive self into the scope of ethical judgment.³¹ Such perspective, he infers, led the jurists to stretch the domain of the revelation, arguing that it covered all moral questions (JACKSON 1999: 187). SHIHADÉH's (2006: 51) analysis of Rāzī's ethics shows how Ash'arite disagreement with the Mu'tazilite realist view of the value of good and bad rests on their contention that moral language stems from agent-relative, linked to pleasure and pain and perfection and imperfection of the individual. Such emotivist position developed by Ghazālī draws on moral psychology which rests on "inclinations (*mayl*), that consist of estimation (*wahm*) and imagination (*khayāl*), and stem from the natural disposition (*tab'*) rather than reason" (SHIHADÉH 2006: 55, 59). Along with this emotivist tendency, Ash'arites' ethical theory adopted a consequentialist view, which emerged with Ghazālī and crystalized with Rāzī to identify goodness and badness with benefit and harm (SHIHADÉH 2006: 57). Similarly, Vasalou's study of Ibn Taymiyya adduces a nuanced overview of the theory of ethics in Ash'arism through tracing the role of reason and the impact of Avicennian moral psychology in Ash'arite relativist theory (VASALOU 2016: 9). More recently, FARAHAT (2019: 60) demonstrates how the limit of human reason to attain universal ethics is premised on the rational basis of the Ash'arites' theistic ethics and not irrationalism. In so doing, he ascribes to Ash'arites a skeptical stance: "by emphasizing the inevitable contingency of any individual normative judgment by contrast to factual observations, which can be uniform if they satisfy certain conditions of objectivity. This

²⁹ HALLAQ 1997 and 2005.

³⁰ JACKSON 1996: 77-78.

³¹ Here one should recognise that HOURANI (1976: 69) was the first to attribute an emotivist view to Ghazālī. See also SHIHADÉH 2016 where he also shows how emotivism has roots in classical Ash'arism.

fundamental disagreement sets the stage for the different conceptions of divine revelation” (FARAHAT 2019: 65).³²

This shows that the undue emphasis on rationalism and scripturalism unmasked important philosophical disagreement on theology, metaphysics, and epistemology among theologian-cum-jurists. These studies, among others, have revitalized the field of ethics and opened the door for further interest in the proliferation of other works. Here I would like to draw attention to my approach to ethical discourse in Fārābī and Ibn Rushd, which also unravel how philosophers theorized about shari‘a through assessing its moral ontology and epistemology. For example, I shall note my scrutiny of Ibn Rushd’s adoption of Aristotle’s written and unwritten law as a corrective notion to rectify the laxity and harshness of the law. Herein, I showcase how the Andalusian jurist gave this Aristotelian embryonic notion a more concrete theoretical and practical basis in the court and legal theory of Islamic law. By rooting Ibn Rushd’s conception in his Islamic legal epistemology, I depart from the previous assumptions which alienated a philosopher and jurist such as Ibn Rushd from his normative context (BOUHAFI 2019a).

At any rate, with these significant developments in the field, the Cambridge conference “Casuistry, Contingency and Ambiguity: New Approaches to the Study of Ethics in the Islamic Tradition” was timely to revisit some core questions and reflect further on these recent evolutions. Few words are in order to explain the rationale behind the choice of such a framework, which acknowledges the import of these three notions: casuistry, contingency, and ambiguity.

Casuistry, contingency, and ambiguity

The conference adopted casuistry, contingency, and ambiguity as a general framework to further reflect on the recent developments in the study of ethical discourse in Islam and bring these perspectives to bear on the different disciplines within the Islamic tradition. To this end, the contribution of scholars such as Johansen and Bauer in redefining the complexity of the articulation of the normative discourse in Islam and Jonsin and Toulmin’s rehabilitation of casuistry offered an auspicious theoretical framework.

Let me start by delineating the relevance of the term casuistry to Islamic discourse. As I have noted earlier, the characterization of Islamic jurisprudence, *fiqh*, as casuistic, can be traced back to the Weberian understanding of Islamic law. Also endorsed by Schacht, this characterization carried negative connotations underlining the lack of deductive links within the process of law finding and the priority given to circumstances over universal principles.³³ More importantly, this casuistic process was deemed to develop in isolation from the social

32 FARAHAT (2019: 223) captures this point in the following statement: “The charges of traditionalism, voluntarism, or arbitrariness that are commonly levelled against Islamic divine-command theories often neglect some important aspects of it. The first important aspect that we sought to highlight is epistemological skepticism, regarding both our ability to know moral values and our ability to understand God’s designs. The second related aspect is a sharp metaphysical divide that places God far beyond our worldly experiences. The third is an understanding of divine speech as an eternal attribute, and not an action, and of divine commands as transcendent attributes of normative potential. Finally, we saw that the practical norms generated by this system did not simply follow from God’s words (whichever way we may wish to define “God’s words”), but were built through collective scholarly deliberation.”

33 For a perceptive summary of Schacht’s understanding of casuistry in Islamic law, see JOHANSEN 1995.

practice. As JOHANSEN (1995) adduced, the problem is not so much in the casuistic view of Islamic law, and it is rather in how casuistry has been construed. The casuistic aspect of Islamic law is embedded in the nature of the work of the jurist whose task is to decide whether new instances of laws can be regulated on the basis of the general rule or excluded from it (DAYEH 2019: 134). JOHANSEN (1995: 135-136) defined it as follows: “it is a method that acknowledges that the validity of legal concepts is confined to certain boundaries and that one has to determine whether or not the individual case falls within these boundaries. Cases are discussed in order to show the boundaries of the legal concept’s validity and the resistance of the subject matter to its inclusion within the concept.” In this perceptive view, Johansen captures the roots of Islamic law’s casuistic nature and argues how casuistry is linked to the jurists’ attempt to answer practical problems, which debunks Schacht’s conclusion. The issue with casuistry, albeit, is not limited to Islamic law but lies in the actual misconceptions of casuistry, which has deeper historical roots. At the beginning of the 19th century, the charge of particularism and casuistry was targeted at Jewish ethics, as articulated in August ROHLING’s *Der Talmud-Jude* (1872). Going back even further to the 17th century, casuistry was also put under attack in Pascal’s *Provincial Letters* (1656-7) and vigorously castigated Jesuits’ abuse of casuistic reasoning in confessions. This genealogy might warrant the negative overtones embedded in the definition of casuistry in *the Oxford English dictionary*, which defines it as: “that part of ethics which resolves cases of conscience, applying the general rules of religion and morality to particular instances in which circumstances alter cases or in which there appears to be a conflict of duties” (TOULMIN and JONSIN 1998: 11) or in Webster’s *New World Dictionary* (1996) which equates casuistry with “subtle, but false reasoning, especially about moral issues; sophistry” (GINZBURG and BIASIROI 2019: xi). On this account, JONSIN and TOULMIN (1988: 12-13) show how casuistry, deemed as the morality of cases, continued to be disreputed by modern moral philosophers, and an emphasis was placed on the necessity of universal principles to build moral judgments. The assault on casuistry today is questioned, as attested in Toulmin and Jonsin’s attempt to rehabilitate casuistry for a theory of ethics that is more in tune with the reality of moral practice. Rooting our practical taxonomy in human reality especially in relation to behavior and norms, they urged scholars to take advantage of the likenesses and differences in our realities as a basis to grasp moral questions (JONSIN and TOULMIN 1988: 14). Also, the recent volume *Historical approach to casuistry* displays a similar attitude through calling for the endorsement of casuistry as a process “to mediate the intricate relationship between norms and exceptions” (GINZBURG and BIASIROI 2019: xi). As a matter of fact, this volume incorporated two essays addressing casuistry in Islamic law: “Many Roads to Justice: A Case of Adultery in Sixteenth-Century Cairo” by Caterina BORI, and “Islamic Casuistry and Galenic Medicine: Hashish, Coffee, and the Emergence of the Jurist-Physician” by Islam DAYEH, which showcase how casuistry was rooted in the social and historical environment of Islamic legal discourse and disclose the multilayered framework of legal argumentation. These contributions confirm some of Johansen’s conclusions and obviously would fit neatly in the perspective we hope to bring up here in tackling the normative discourse in Islam.

Be that as it may, this rehabilitation of casuistry could foster a departure from the locus on moral certitude as the only basis for moral philosophy. This outlook has historical precedence in Aristotelian thought:

Aristotle, for instance, questioned whether moral understanding lends itself to scientific systematization at all. Far from being based on general abstract principles that can at one and the same time be universal, invariable, and known, with certainty (he argued), ethics deals with a multitude of particular concrete situations, which are themselves so variable that they resist all attempts to generalize about them in universal terms. (JONSIN and TOULMIN 1988: 19)

Such a view is also endorsed by Aristotle's commentator Ibn Rushd, who admits that considering the contingent nature of the subject matter of ethics, which is the voluntary actions, one cannot develop rigorous scrutiny to ethics akin to scientific investigation in theoretical philosophy. He specifically admits that contingency does not only affect the particulars in this science but also universals or principles.³⁴ Thus, Ibn Rushd concludes that one can only aspire to outline some principles and not produce an exacting scientific scrutiny. This feature of ethics resonates with an important analogy Ibn Rushd himself and other philosophers, such as Fārābī, often make, namely, to associate ethics or law to medicine (IBN RUSHD 2016: 81).³⁵ This analogy highlights an important dilemma which is how we can tally general principles with the particularity of specific decisions (JONSIN and TOULMIN 1988: 29). Ethical reflections cannot only focus on the general principles, which impose uniformity on ethical cases; rather, the question is how to also discern subtle distinctions between different particular cases. This view was articulated in Aristotle's conception of *phronesis* or practical reasoning and adopted in Arabic philosophy in relation to *fiqh* (BOUHAFI 2019b). Dealing with a multitude of particular cases, *fiqh* is tantamount to practical reasoning, which does not rely on theoretical principles through deduction but rather through delineating boundaries of similarity and differences between the original and particular cases. Borrowing Jonsin and Toulmin's perspective, *fiqh* reasoning is more rooted in the substantive and circumstantial ground than absolute deductive reasoning. This characteristic is the root of the misconceptions against *fiqh* by orientalist.

Luckily, as I alluded earlier, the rehabilitation of casuistry seems to gain ground in the study of Islamic norms linked to Johansen's attempt to redefine casuistry to challenge Schacht's reading but also through his conceptualization of Islamic law in relation to the notion of contingency, a feature that Bauer seems to associate to ambiguity. As I have also noted earlier, the concept of contingency was used by Johansen to first debunk the deontological charges against Islamic law and unravel the probabilistic epistemology of Islamic law embedded in legal philosophy as well as in the judiciary in the doctrine of proof

34 Ibn Rushd in his *Talkhīṣ al-aklāq* (the Middle Commentary on Aristotle's Nicomachean Ethics) states: "Then we must agree that everything said about these things, is only said by way of outline and not of scrutiny. I mean what pertains to most of it, as we said at the beginning of our discussion, is that scrutiny in all discussed matters must follow the subject matter and the subject matter here is contingent. That is because virtuous and beneficial voluntary matters have nothing fixed to one feature as it is the case for matter productive of health, for it has nothing that stands on one action. Since this is in the case in the principles of this science, I mean that it does not withstand scrutiny for it is changing, how much more will this be for the particulars, I mean that it would not be adequate for close scrutiny" (IBN RUSHD 2016: 81; translation mine).

35 This analogy has roots in Plato and Aristotle, for more see GERBIER 2003.

used by judges.³⁶ In his seminal work *Die Kultur der Ambiguität*, Thomas BAUER rooted this feature in a tolerance of ambiguity in the Islamic process of knowledge production in literature, the Quran's canonization, and the emergence of law schools and collection of Hadith report. Bauer borrows the concept "tolerance of ambiguity" from contemporary psychology to define human capacity to accept cases where multiplicity of truth claims is unresolved (BAUER 2013). On this account he argues that the diversity of opinions in constructing normative views seems to be a feature one can trace in different attitudes to knowledge in the Islamic context, such as for example the process of the canonization of the Quran, which accepted different readings. Still, Bauer does not ignore that historical events do not always allow for ambiguity but also alludes to attempts to disambiguate (GRIFFEL 2017: 18). Bauer links this tolerance of ambiguity to the importance of dissent or *ikhtilāf* as a positive outcome expressed in the prominent hadith reported by the prophet, professing that "dissent within my community is a blessing." In Islamic law, this attitude is also captured in the legal maxim which calls for averting the punishments in cases of uncertainty (*Idrā'ū l-ḥudūd bi-l-shubuhāt*). This maxim suggests that when in doubt, the legal penalties should be suspended (FIERRO 2008).

Be that as it may, the question remains how can we discern the boundaries of ambiguity of norms in a social-historical context? What prompts continuity or rupture? To put it in other terms: How is this prerogative of ambiguity maintained or lost? To our purpose, these fresh perspectives offer a productive framework to revisit certain hackneyed assumptions on Islamic norms. Still, JONSIN and TOULMIN's conception of casuistry reminds us of the deficiency of our language in penetrating certain complex modes rooted in practice to reflect on likeness and similarities of norms rather than uniform deduction. In fact, this special issue is a step toward discerning the complexity of the moral discourse in legal argumentation, the moral ontology and epistemology in philosophy and theology, as well as the argumentative ground of storytelling or hermeneutics.

Summary of contributions

Looking at philosophy and theology in the classical and post-classical period, AKASOY, GRIFFEL, SHIHADÉH, and ERLWEIN's articles as well as my own, disclose important nuances in the ethical reflections in theology and philosophy, which gestures towards overcoming strict jarring opposition between objectivism vs. subjectivism. My own piece investigates the moral ontology and epistemology in Fārābī, Ibn Sīnā, and Ibn Rushd, to showcase how, in contrast to Mu'tazilites, they rejected the intrinsic value of good and evil and rather adopted a complex distinction between cosmic good and evil and experienced moral good and bad. I also highlight the complexity of the philosophers' moral epistemology, in which, although they admit the probability of norms, still attach a dialectical conception to ethical reflection. Focusing on the post-Avicennian context, GRIFFEL studies Rāzī's (d. 1230) *al-Nafs wa-l-rūḥ wa-sharḥ quwāhumā* to unravel its hybrid character which combines practical philosophy and normative Islamic discourse a genre, he suggests, that resonates with Ghazālī's *Iḥyā'*. In so doing, Griffel concludes that unlike Rāzī's perception of the superiority of the theoretical philosophy over revelation, he seems to value the practical dimension of the Islamic

³⁶ For a discussion of the epistemology of the doctrine of evidence in Ibn Rushd, see BOUHAFI 2018.

normative discourse over practical philosophy. Moving to theological discussions of moral values, SHIHADÉH revisits the development of the debate between Mu'tazilites and Ash'arites focusing on Malāḥimī (d. 1141), Ghazālī (d. 1111), and Rāzī, to underscore how the Ash'arite discourse evolved through drawing on the Avicennian argumentative arsenal of moral psychology to challenge Mu'tazilites' realism. This discussion provides evidence that the ascription of irrationalism to Ash'arites' ethical discourse is flawed. Finally, ERLWEIN tackles Rāzī's *Tafsīr* on the obligation of thanking one's benefactor (*wujūb shukr al-mun'im*), focusing on the monotheistic implication of this premise to offer grounds on why God should be worshipped alone. In so doing, she reveals how such a theological issue has an ethical basis related to how humans come to know of the goodness of monotheism and the repugnancy of polytheism. Going beyond the philosophical or theological contribution to systematic ethics, Akasoy interrogates the question of ethics in the philosophical discourse from a narratological perspective to highlight the role of biographical narrative in shaping moral perceptions of the figure of Alexander the Great, depicted in the Quran as "the man with the two horns."

Taking Islamic jurisprudence as the discourse of norm construction, the different contributions in this special issue investigate the process of law finding and its procedure to discern the relationship between law and ethics. Building on JOHANSEN's finding on the psychological basis of *ijtihād*, BOU AKL shows how Ghazālī grounds his radical infallibilism in relation to *ijtihād* in the Ash'arite ethical relativist theory. Discussing the process and conditions of norm construction fulfilled by a *mujtahid*, he shows how Ghazālī underlined the presumptive character of law and the interpreter's license to error and also admitted how *ṭab'* comes to warrant ex post the *mujtahid*'s interpretation. Moving from the procedure to the actual task of norm construction, OPWIS' piece unravels how jurists imbued the *ratio legis*, *'illa*, with the ethical content of *maṣlaḥa* to showcase the link between law and ethics in the process of legal change. In tracing the development of the conception of analogy in legal theory among Ghazālī's predecessors, Baṣrī (d. 1044), Dabbūsī (d. 1039) and Juwaynī, she demonstrates how the emergence of the concept of *maṣlaḥa* later was only possible through conceptual shifts in the *ratio legis* from being a sign for the ruling to conveying the ethical content of the divine intention. Such correlation between law and ethics is also attested in the Shī'ī legal discourse. Interrogating the rational and moral basis of legal norms on postclassical Twelver Shī'ī legal theory, GLEAVE discloses how the Akhbaris, often perceived as literalist, draw on Mu'tazilite realist ontology and developed novel position on the rational basis of the law while still holding fast to the divine ground of the link between actions and consequences. Finally, FARAHAT moves to discuss the import of meta-ethical questions on specific practical matters, such as Islamic commerce. In so doing, Farahat unravels the diversity among different approaches on commercial gains between "anchoring moral value in this world, attributing moral goodness to salvation in the next world, and finding a balance between these two approaches." Under this prism, he reveals how the Ash'arite model proves to be more permissive than the Mu'tazilites.

In part three, this special issue brings valuable perspectives on ethics in a hermeneutical sense by engaging the Hadith, Qur'an, and *Adab*. Focusing on two hadiths on 'consult your heart and consult your-self,' al-KHATIB puts forward some ground for the heart's authority as a potential for individual moral knowledge. Engaging the different debates over these reports in legal and Sufi discussions, he discerns how the inward moral dimension was

examined to test its normative and spiritual validity to warrant personal *ijtihad*. Moving to Quranic hermeneutics, MOQBEL takes the concept of ambiguity or hermeneutics of polysemy as a theoretical basis to define Rāzī's exegetic theory. In so doing, he showcases how the ambiguity rooted in the Quranic periscope 12:52-53 opened the possibility for different moral discourses. On this account, he adduces how ambiguity serves to expand the scope of the Quran and its ethical potential. Also, taking the perspective of readership, but this time in the realm of *adab* text, KHANSA presents a compelling reading of the frame tales of *Alf Layla* to root its hermeneutical framework in the Arabo-Islamic context. In so doing, she suggests revisiting the frame tale as a device to locate a communal crisis on justice in rulership and tries to unfold how the stories come to salvage the breach of authority by providing different possibilities to adjudicate mercifully. Also advocating to ground *adab* in its Arabo-Islamic context, AL-SHAAR invites us to reconsider the secular view of *adab*. Focusing on al-Tawḥīdī the *Belles-letterist* from the Buyid court, AL-SHAAR contextualizes his writing in his intellectual environment and underlines the interdisciplinary character of his work, to show the complexity of his thought beyond the modern category of religion vs. philosophy. Interrogating his conception of ethics and the role of knowledge in informing action, she demonstrates how al-Tawḥīdī is firmly rooted in Islamic culture and offered original insights drawing from current philosophical discourses. Finally, tracing the import of the traditional conception of *adab* and its ethical function in 19th century reformist discourse, RYLE-HODGES showcases the role of *adab* in the modern context. Putting under scrutiny 'Abduh's discourse in his state newspaper, he discusses 'Abduh's articulation of the ethics of citizenship as a modern civic notion of *adab*.

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◀ fb482@cam.ac.uk ▶

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