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JOURNAL OF ISLAMIC ETHICS 5 (2021) 250–277

JI ETHICS أخلاق ÉTHIQUE

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Decolonial Translation: Destabilizing Coloniality in Secular Translations of Islamic Law

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Abstract

Contemporary Islamic legal studies—both inside and outside the Muslim world—commonly relies upon a secular distortion of law. In this article, I use translation as a metonym for secular transformations and, accordingly, I will demonstrate how secular ideology translates the Islamic tradition. A secular translation converts the Islamic tradition into "religion" (the non-secular) and Islamic law into "sharia"—a term intended to represent the English mispronunciation of the Arabic word شريعة (*sharīʿah*). I explore the differences between historical Islamic terms and secular terms in order to demonstrate that coloniality generates religion and religious law; in turn, these two notions convert شريعة (*sharīʿah*) into "sharia" in both Arabic and non-Arabic languages. Consequently, the notion of "sharia" is part of a colonial system of meaning.

Keywords

Islamic law – comparative law – secular law – decolonial theory – critical theory

* For their feedback on this article, I thank Rhiannon Graybill, Baudouin Dupret, Lahcen Daïf, Nader Hakim, Ralf Michaels, and Yaacov Yadgar.

ترجمة لإنهاء الكلونيالية: زعزعزة الكلونيالية في الترجمات العلمانية للفقه الإسلامي

لينا سلايمة

كلية أكسفورد للدراسات العالمية والإقليمية، جامعة أكسفورد، أكسفورد، المملكة المتحدة؛ معهد ماكس بلانك للقانون الدولي المقارن والخاص، هامبرغ، ألمانيا

الخلاصة

غالبًا ما تعتمد الدراسات الفقهية الإسلامية المعاصرة—داخل العالم الإسلامي وخارجه—على تشويه علمانيّ للفقه وللقانون. في هذا المقال، أستخدم الترجمة كاستعارة للتغير العلماني، وبالتالي سوف أوضح كيف تترجِمُ الأيديولوجية العلمانية الدين الإسلامي. فالترجمة العلمانية تحول الدين الإسلامي إلى religion (الغير علمانية) والفقه الإسلامي إلى sharia وهذا المصطلح مع اللفظ الإنجليزي الخاطئ لكلمة الشريعة مقصود في حد ذاته. كما سأبين الاختلافات بين المصطلحات التاريخية الإسلامية والمصطلحات العلمانية كي أثبت أن الكلونيالية (coloniality) انتجت مفهومي religion و religious law الذين يُحَوِّلَان الشريعة إلى sharia، سواء باللغة العربية أو غير العربية، ولذلك فإن مفهوم sharia هو جزء من نظام مفاهيم كولنيالية.

الكلمات المفتاحية

فقه – قانون مقارن – قانون علماني – نظرية إنهاء الكلونيالية – نظرية نقدية

Introduction

The recent establishment of this journal is part of a broader "turn to ethics" in Islamic studies that reveals significant dynamics about how scholars conceptualize Islamic law. That is, there are aspects of the contemporary study of Islamic ethics that result from undercurrents in contemporary Islamic legal studies. I propose that contemporary Islamic legal studies—both inside and outside the Muslim world—often relies upon and reinforces a secular

distortion of law, generally, and Islamic law, specifically.[1] Correspondingly, these secular depictions of Islamic law shape the form and substance of Islamic ethics. I use translation as a metonym for exploring secular transmutations of the Islamic tradition and Islamic law.[2] In doing so, I draw upon Talal Asad's observation that secularism translates the Islamic tradition and thereby transforms it.[3] Accordingly, a secular translation converts the Islamic tradition into a "religion" with "sharia and ethics."[4]

This article elucidates the broad, secular forces—discursive and conceptual—that contribute to certain contemporary translations of the historical Islamic tradition. Part 1 discusses non-translations and partial translations of terms in Islamic studies in order to explain the necessity of terminological and conceptual translations. The consequence (intended or not) of not translating is often exotification and misunderstanding. In order to clarify further the consequences of non-translation, Part 2 examines the many meanings of شريعة (*sharīʿah*) and "sharia."[5] I distinguish between the proper transliteration of شريعة as *sharīʿah* and the Anglicized term "sharia" because the meanings of these two terms is not the same.[6] Terms and concepts are not only

1 Secularism, despite its local and historical variations, is an ideology and array of practices that began in the European Enlightenment and may be analysed for general patterns. See, for instance, (Calhoun, Juergensmeyer, and VanAntwerpen 2011). See also (Salaymeh 2020).

2 A tradition is a changing and pluralist assortment of ideas and practices engaged by groups over time. While I refer to "the Islamic tradition," it should not be understood as homogenous or singular. I base my definition of tradition primarily on (Bevir 2000). See also (Krygier 1986). "Tradition" is not the opposite of modernity, although I recognize that "tradition" has been used in the discourse of the "modernity myth" (Mignolo 2009).

3 In his recent book, *Secular Translations*, Asad commented, "Every translation from one natural language to another—or even within one language—is, in ways both trivial and profound, also a transformation" (Asad 2018, 6).

4 Notably, a similar—though not identical—observation may be made about Jewish legal studies. I will address the specifics of secular translations of the Jewish tradition, particularly "Hebrew law" (*mishpat ʿivrī* and the anglicized "halacha"), in a forthcoming piece.

5 Throughout this article, I use Arabic script for Arabic words. In the Western academy, the dominant transliteration system from Arabic script into Latin characters problematically intertwines representations of orthography and pronunciation. Given that the technology is now available to publish Arabic script in line with Latin characters, I oppose transliteration of Arabic bibliographic references or of textual citations. Transliteration should only be used for pronouns or when absolutely necessary for accessibility. Since this piece is not intended for a specialized audience of Islamic studies scholars, I have provided transliterations for the sake of the general reader who cannot read Arabic. However, I prioritize Arabic script for Arabic terms throughout this piece. Contemporary readers of Arabic are often expected to be able to read Latin characters; I intend for readers of English to have an analogous experience of Arabic script intruding in Latin text.

6 I distinguished between the meaning of these two terms in (Salaymeh 2014b).

historically and discursively contingent, they are also relational.[7] Thus, Part 3 situates شريعة (*sharīʿah*) within one of its many premodern Islamic discursive contexts.[8] In turn, Part 4 situates "sharia" in its primary discursive context (secularism) by indicating how the term refracts a notion of religion. Religion is a manifestation of coloniality, a universalizing mode of thought intertwined with colonialism.[9] Hence, "sharia" is part of a colonial system of meaning. In order to avoid colonial translations, Part 5 explains that decolonial translation is a mechanism for highlighting subtle dynamics of language. A decolonial translation illuminates that "sharia" reflects secular ideas about law. Appropriately, Part 6 proposes that "law" is an important element in a decolonial translation of the Islamic tradition. Notably, whether scholars use the term "sharia" or "Islamic law," many of them impose secular ideas about law in Islamic studies, which results in an expansion of the category of "ethics" and a contraction of the category of "law." Recent, increased attention to Islamic ethics should be situated within the larger context of secularism's reshaping of law through the imposition of the notion of religion. The contemporary expansion of Islamic ethics is embedded commonly in secular logics, rather than the Islamic tradition.

1 Non-Translations and Partial Translations in Islamic Studies

Non-translations and partial translations, particularly from Arabic, abound in Islamic studies.[10] First, there is an unjustified failure to translate Arabic words that often reflects a lack of technical knowledge, problematic disciplinary habits, or scholarly negligence. Terms that should be translated from Arabic, and habitually are not, include "judge" (قاضي *qāḍī*), "legal decree or legal opinion" (فتوى *fatwá*), "legal school" (مذهب *madhhab*), "legal reasoning" (اجتهاد *ijtihād*), and "trust" (وقف *waqf*). A particularly politicized non-translation is "jihadi," which often has the prejudicial connotation of "Muslim terrorist" and, in many

7 Claude Lévi-Strauss bemoaned that conventional historical linguistics erred in "consider[ing] the terms, and not the relations between the terms" (Lévi-Strauss 1963, 46).

8 Modernity is a periodization category that refers to a block of time, often dated as beginning in the sixteenth century; modernity is a descriptive concept that does not imply a status or a level of development. The claim that the modern era began in a particular region of Europe and then spread to other parts of the world is a colonial presumption.

9 Whereas colonialism is the socio-political domination of a territory, coloniality is a mode of thought that legitimizes colonialism (and neo-colonialism) while espousing universalism (De Lissovoy and Fregoso Bailón 2019; Quintana 2009).

10 I have written about the problematic implications of non-translations extensively (Salaymeh 2011, 2013, 2014a, 2014b); the discussion included here is a brief summary.

cases, could be equally well translated as "resistance fighter" or "militant" (Salaymeh 2014b). In addition to exotification, non-translation is a barrier to understanding. There is relatively more unpredictability in how a scholar conceptualizes a term that is not translated as compared to an endogenous term. Indeed, non-translation may conceal a scholar's incomplete or erroneous comprehension of a term. Likewise, many untranslated Arabic terms are adapted into Western languages and often incorrectly pluralized (e.g., in English, qadis, fatwas, waqfs, and jihadis). Specialist readers should know the Arabic plurals of these terms and non-specialist readers should be provided translations.[11] Case in point, students often complain that texts in English about the Islamic tradition are incomprehensible because of the repeated and excessive use of Arabic terms.

Second, there are partial translations that often reflect sloppiness, excessive literalism, unwarranted disciplinary norms, or propagandizing. Examples of partial translations include "shariah court" or "qadi court." (Notably, these partial translations are more prevalent in English than, for example, in French.) Instead of these partial translations, scholars should use technical terms for differentiating between types of courts, such as "Islamic court," "court of equity," or "Ottoman court." In addition to exotifying, partial translations of Arabic terms often reflect fundamental misunderstandings of how specific concepts or institutions functioned in Islamic history. Many partial translations have no equivalents in Arabic; for example, there is no Arabic term equivalent to "sharia law" (sic), which has the inane meaning of "divine law law" and is often a propaganda term in both academic and popular discourses (Salaymeh 2011). Furthermore, the combination of non-translations and partial translations frames a closed discursive space for specialists who converse with each other. This specialist discourse precludes open and accessible scholarship and conceals conceptual misunderstandings among scholars. Translation makes scholarship more comprehensible to both specialists and non-specialists.

The implications of not translating are predominantly negative: exotification, miscomprehension, miscommunication, and inaccessibility. Yet, many scholars in Islamic studies (claim to) find it so challenging to convey "original" meanings that they do not translate. However, non-translations habitually misrepresent the fluidity of source languages by implying stasis in the meaning of an untranslated term. I demonstrate this point in Part 2's delineation of the multiple meanings of شريعة (*sharīʿah*). Moreover, translation is so ubiquitous that it often occurs even when a term is not translated. That is, scholars engage in a form of translation even when they do not translate terms. For instance, a scholar writing today in Arabic about Islamic law translates from

11 On the importance of translation for cross-disciplinary research, see (Salaymeh 2013).

source texts to contemporary academic discourse. This is because, as Theo Hermans proposed, translation is the inevitable "companion and instrument of cross-temporal, cross-lingual and cross-cultural interpretation" (Hermans 2003, 382). Additionally, some scholars mistakenly assume that certain Arabic terms have become so common in Western languages as not to necessitate translation. Nevertheless, when a scholar uses an untranslated Arabic term, the meaning that is expressed is whatever is ascribed to the term within the reception (or target) language, rather than the source language. I illustrate this point in Part 3, which discusses the meaning of "sharia." Most untranslated Arabic terms in Western languages have prejudicial and inaccurate meanings both in public and academic discourse, such that they cannot be recuperated and using them compromises scholarship (Salaymeh 2014a). Non-translations and partial translations are frequently mistranslations because they convey meanings dominant in the target language, rather than the source language. By not translating, scholars relinquish meaning to the dominant discourse; by translating and defining terms, scholars can guide meaning.

Most importantly, not translating insinuates that a term is incomprehensible in the target language and in the target culture. Scholars who do not translate an Arabic term communicate an explanation and an interpretation of the term as "untranslatable." The notion of untranslatability is commonly motivated by or generative of xenophobia. Not translating a term implies that it is sacred and that it has essential characteristics that make it uniquely "untranslatable" (Reinhardt and Habib 2015). Yet most terms (and the concepts they signify) are neither sacred nor definable in essentialist ways (Salaymeh 2016a). In general, terms have multiple meanings that change over time and vary according to context. Consequently, there are multiple potential translations for terms. Based on her extensive engagement with the notion of untranslatability, Barbara Cassin advocated that "untranslatable" terms necessitate continuous translation, as well as explanation and interpretation (Cassin 2013, 2018). Indeed, producing rigorous scholarship entails (at least) two forms of translation: semantic (from a particular language, such as Arabic) and contextual (from a particular socio-historical context). Translations are more precise and more effective than non-translations or partial translations.

Stronger scholarly bilingualism—for instance, being able to speak and write about Islamic law in a non-Arabic language without using Arabic terms—is necessary for improving the accessibility, reliability, and accuracy of Islamic legal studies scholarship.[12] As Cassin observed, "We must know, or approach, at least two languages to understand the 'language' that we speak" (Cassin 2018,

12 I wrote both an Arabic and an English version of this article; I also thoroughly edited, revised, and expanded upon a French translation of an earlier version of this article. The

132). This type of scholarly bilingualism (or multilingualism) can be developed through comparative studies, such as comparative law. The first two languages that every scholar of Islamic legal studies today should study are those of Islamic law and secular law. Most interpretations of Islamic source texts in contemporary academic discourse (in Arabic or any other language) conflate the languages of Islamic law and secular law. This article attempts to disentangle these two discursive traditions through a translation that integrates explanation and interpretation. Hence, I propose that translating the Islamic tradition from its source languages and socio-historical contexts involves precise translations, rigorous explanations, and critical interpretations. In this article, I provide a precise translation of دين (*dīn*) based on a critical interpretation of "religion" and a rigorous explanation of "law." Semantic and contextual translations reveal that multiple terms in Arabic should be translated as "Islamic law" and "Islamic tradition."

Non-translations and partial translations in Islamic studies simultaneously reflect secular ideology and illustrate the power of coloniality. Underlying the notion of "untranslatability" ascribed to many Arabic terms is secular ideology. The terms that are depicted as "untranslatable" (in both scholarly and popular discourse) are usually those that secular ideology renders untranslatable. Previously, I demonstrated that the notions of "origins" and "borrowing," while frequently used in Islamic studies, reflect both an evolutionary misunderstanding of historical change and a colonial racialization of Muslims (Salaymeh 2016a, ch. 1 & 3; forthcoming-b). Likewise, the usage of "classical" for periodizing Islamic history essentializes the Islamic tradition, while perpetuating a problematic presumption of post-classical decline (Salaymeh 2016a, ch. 5). Decolonial methods—not a scholar's identity or intentions—are necessary for scholarship to escape coloniality (Salaymeh forthcoming-b). In this article, I illustrate that the Islamic tradition is simultaneously translatable and being mistranslated in ways that manifest coloniality. I draw upon and develop the practice of decolonial translation in order to contribute to my ongoing scholarly project of decolonizing Islamic studies.

2 The Multiple Meanings of شريعة (*sharīʿah*) and the Coloniality of sharia

In order to demonstrate that the Islamic tradition is translatable, but being mistranslated by coloniality, it is necessary to focus on a key term and concept.

process of thinking and writing about this topic in three languages sharpened and distinguished the ideas presented in each version.

Within a broader discourse in which the basic vocabulary of Islamic studies commonly is not translated, one term stands out for its excessive obfuscation: شريعة (*sharīʿah*). In Arabic, شريعة (*sharīʿah*) has multiple historical and contemporary meanings, varying across time, place, and genre.

The prevalence of the term شريعة (*sharīʿah*) in contemporary discourse might lead some to assume that the term has always been central within the Islamic tradition. However, شريعة (*sharīʿah*) appears in the Qur'ān only once (شَرِيعَةٍ in Q 45:18) and late antique exegetes provide terse explanations of the term.[13] Ibn ʿAbbās (d. ca. 68/687–8) described شريعة (*sharīʿah*) as سنة ومنهاج (normative praxis and practice) (ابن عباس 1412، 529). Zayd ibn ʿAlī (d. 122/740) defined شريعة (*sharīʿah*) as طريقة (path). Muqātil ibn Sulaymān (d. 150/767) explicated, in his commentary to Q 21:1, شريعة الإسلام (*sharīʿat al-islām*) as ملة واحدة (one group). The related term شرعة appears only once (شِرْعَةً in Q 5:48). Ibn ʿAbbās glossed شرعة as منهاج وفرائض وسنناً (practice, obligations, and normative praxis) (ابن عباس 1412، 125). Mujāhid ibn Jabr (d. ca. 102/720), Zayd bin ʿAlī, Muqātil ibn Sulaymān, and Sufyān al-Thawrī (d. 161/778) defined شرعة as سنة (normative praxis).[14] The (past-tense) verbal form of شرع appears twice (شَرَعَ Q 42:13 and شَرَعُوا Q 42:21). Ibn ʿAbbās defined it as اختار (chose) (ابن عباس 1412، 512–513). Zayd ibn ʿAlī defined the verb as ظهر (showed) and ابتدعوا (created), while Muqātil ibn Sulaymān defined it as سن (enacted). ʿAbd al-Razzāq al-Ṣanʿānī (d. 211/827) elaborated شَرَعَ لَكُم مِّنَ ٱلدِّينِ (Q 42:13) as الحلال والحرام (permitted and forbidden). These late antique exegetical discussions of شريعة (*sharīʿah*) appear translatable as practice, normative praxis, and law. (Notably, the concept of law in these exegetical texts corresponds to *droit* or *jus*, rather than *loi* or *lex*.) Moreover, this brief synopsis of exegetical materials suggests that شريعة (*sharīʿah*) and related terms were not crucial within late antique Qur'ānic discourse. Based on extensive analysis of premodern Islamic texts, Wilfred Cantwell Smith argued that late antique and medieval Muslim thinkers "were not concerned" with شريعة (*sharīʿah*) (W.C. Smith 1965, 585). A thorough genealogy of the term شريعة (*sharīʿah*) needs to be written; yet, even

13 I relied upon the exegetical reports of Ibn ʿAbbās (d. 68/ 687), Mujāhid ibn Jabr (d. 104/ 722), Zayd bin ʿAlī (d. 122/740), Muqātil ibn Sulaymān (d. 150/767), Sufyān al-Thawrī (d. 161/778), and ʿAbd al-Razzāq al-Ṣanʿānī (d. 211/826). I discussed why I use the term "late antique" and why I concentrate on texts of this period in (Salaymeh 2016a, introduction). With the exception of Ibn ʿAbbās, I used the online database of exegetical sources available at (مؤسسة آل البيت الملكية للفكر).

14 Sufyān al-Thawrī also defined the term as سبيلا (path).

without such a study, we may conclude that شريعة (*sharīʿah*) became a more predominant term or concept in the Islamic tradition over time.

In the Islamic tradition more broadly, شريعة (*sharīʿah*) is used in varying ways, ranging from the specific meaning of "divine law" to the broad meaning of "the Islamic tradition." Both contemporary and historical scholars in the Muslim world define شريعة (*sharīʿah*) as encompassing particular legal doctrines, broad legal principles, and a juristic method (القطان 2001، 50–61؛ زيدان 2001، 14). Most Muslim jurists distinguish explicitly between the abstract concept of divine law (شريعة (*sharīʿah*)) and human interpretations (فقه *fiqh*) of divine law (القطان 2001، 62–65). In the Islamic tradition, شريعة (*sharīʿah*) is neither norms nor positive law because it encompasses principles and methods for approaching divine knowledge (زيدان 2001، 65؛ القطان 2001، 14). Delineating the multiple meanings of شريعة (*sharīʿah*) is challenging, in part, because many contemporary Muslims have modified the meaning of historical terms. For instance, contemporary Muslims may use شريعة (*sharīʿah*) to refer to divine legal rulings in scriptural sources and the orthodox juristic science for deriving law. Simply put, the term شريعة (*sharīʿah*) does not have a stable or singular definition; consequently, its non-translation elides its multi-vocal meanings in the Islamic tradition. Notably, "Islamic law" is only one of many potential and distinct translations of شريعة (*sharīʿah*).

In contrast to the Arabic discursive tradition, many contemporary articulations of شريعة (*sharīʿah*) are secular translations, as manifested by the Anglicized term "sharia." The Anglicized term "sharia" has two prevalent contemporary meanings: Islamic norms and Islamic legal code (or codified divine law). In public discourse, there are significant Islamophobic implications for constructing sharia as codified law (Salaymeh 2014b). In academic conversations, the dominance of sharia frequently results in confusion and miscommunication. By way of example, Buskens and Dupret insist that شريعة (*sharīʿah*) means "Islamic norms" because they claim that colonial administrators and scholars invented the concept of "Muslim law" (Buskens and Dupret 2012). However, colonial administrators and colonial scholars invented a type of Islamic legal code that conformed to their notion of religious law. These colonial actors did not invent the conceptual category of Islamic law, as I will elaborate below; instead, they invented sharia, the colonial transmutation of شريعة (*sharīʿah*). In addition, there is a distinction between "Muslim law" (that is, any law generated by Muslims) and "Islamic law" (that is, law generated with and for the Islamic tradition) (Salaymeh 2014a). By conflating the Islamic language of law and the secular language of law, many scholars misidentify sharia as the *only* contemporary form of شريعة (*sharīʿah*). For example, Nathan Brown asserts:

> What happened, especially over the past century, is not that the shariʿa was abandoned but that it was redefined. In its old form, as a set of practices and institutions, it was maintained but rendered progressively less relevant to social life. In its current form, as a set of rules, it is sometimes not implemented, but it forces itself onto the political agenda throughout the region.
>
> BROWN 1997, 373

Brown's observations are applicable to the notion of sharia, but not شريعة (*sharīʿah*), which continues to be understood and implemented in plural ways throughout the Muslim world. Despite colonial interventions, Islamic law encompasses more than codified positive law. Knowingly or unknowingly, the Islamic tradition is being misrepresented as sharia and ethics (or norms). More specifically, the meaning of "sharia" is the equivalent of placing Islamic vocabulary in a secular sentence (Salaymeh forthcoming-a).

The meanings of شريعة (*sharīʿah*) and "sharia" are interconnected. On the one hand, شريعة (*sharīʿah*) does not mean only Islamic law; on the other hand, "sharia" is not simply a transliteration of شريعة (*sharīʿah*). Yet, there is a conceptual gap between these two terms that is greater than the space between an Arabic term and a Romanized Arabic term. To understand the divergence between these two terms, it is necessary to explore their dissimilar discursive contexts. Part 3 will delineate some of the multiple Arabic terms that correspond to the conceptual category of "law" in the beginning of Islamic history.

3 A Discursive Context of شريعة (*sharīʿah*): Tradition

It is not sufficient to analyze a historical term without investigating relations between the term and other terms. We can only translate, explain, and interpret شريعة (*sharīʿah*) in relation to other terms. I will focus on late antique Qurʾānic exegesis, one of many discursive contexts of شريعة (*sharīʿah*) within the Islamic tradition. One reason why شريعة (*sharīʿah*) has so many meanings in the Islamic tradition is that it is closely related to the term دين (*dīn*), which appears in the Qurʾān more than 70 times. Most instances of the term دين (*dīn*) in the Qurʾān are specified as designating Islam.[15] In some cases, دين (*dīn*) indicates the Jewish tradition (146 ،58 ،1412 ابن عباس), or Arabian monotheistic tradition

15 دين is specified as Islam by Ibn ʿAbbās for Q 2:132, 2:193, 2:217, 3:19, 3:83, 4:46, 9:11, 9:12, 9:33,10:104, 12:40, 30:32, 42:13, 109:6, and 110:2; by Mujāhid ibn Jabr for Q 42:13; by Muqātil ibn Sulaymān for Q 2:132, 2:217, 4:46, 4:146, 4:171, 5:57, 5:77, 6:70, 6:159, 6:161, 7:51, 8:72, 9:29,

(655 ،161 ،ابن عباس 1412), or Abrahamic peoples (655 ،1412 ،ابن عباس). The phrase يوم الدين (day of *dīn*) is frequently glossed as يوم الحساب (day of accounting).[16] In some instances, exegetes referred to يوم الدين as يوم القضاء (day of judgement).[17] The term دين (*dīn*) is sometimes glossed as توحيد (unity of God).[18] Muqātil ibn Sulaymān suggested that Q 5:3 (ٱلْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ/today, I completed your *dīn*) denotes the end of legal rules.[19] Q 12:76 mentions دين الملك (*dīn* of the king), which several late antique exegetes (including Muqātil ibn Sulaymān, Sufyān al-Thawrī, and ʿAbd al-Razzāq al-Ṣanʿānī) interpreted as قضاء (judging) or حكم (ruling) (155 ،1412 ،ابن عباس). Discussing the punishment of lashing, Q 24:2 comments on دين الله (*dīn* of God), which Ibn ʿAbbās glossed as حكم (ruling) (367 ،1412 ،ابن عباس), Muqātil ibn Sulaymān defined as امر (command), and ʿAbd al-Razzāq al-Ṣanʿānī referred to as حدود (punishments). This brief and simplified overview of the term دين (*dīn*) in late antique Qurʾānic exegesis indicates that the term is closely related to law.

Several medieval scholars confirm multiple semantic means of دين (*dīn*) that also correspond to law. al-Rāzī (d. 311/923; Iran) discussed دين (*dīn*) as obedience (to divine law), custom, and retribution (409–404 ،2015 ،الرازي). Ibn Fāris al-Qazwīnī (d. 395/1004) explicated دين (*dīn*) as custom and obedience (342:2 ،1984 ،ابن فارس). al-Rāghib al-Iṣfahānī (d. 502/1108) emphasized that دين (*dīn*) is total obedience to divine law (شريعة) (253:1 ،1970 ،الراغب الاصفهانى). al-Sharīf Jurjānī (d. 816/1413) asserted that obedience to divine law (شريعة) is known as دين (*dīn*) (174 ،2003 ،الشريف جرجاني). In addition, early modern translations of the Qurʾān indicate that Western readers of the text understood دين (*dīn*) as law. Remarkably, as Brent Nongbri observed, دين (*dīn*) was translated as *lex* in the twelfth-century Latin translation of the Qurʾān by Robert of Ketton and as *loi* in the seventeenth-century French translation by André du Ryer. (I contend that دين (*dīn*) was mistranslated as *lex* and *loi* instead of *jus* and

9:33, 10:104, 16:52, 22:78, 24:55, 30:32, 30:43, and 48:28; by Sufyān al-Thawrī for Q 2:256, and 3:83; by ʿAbd al-Razzāq al-Ṣanʿānī for Q 3:83.

16 يوم الدين is glossed as يوم الحساب by Ibn ʿAbbās for Q 1:4, 26:82, 37:20, 56:56, 70:26, 74:46, 82:9, 82:15, 82:17, 82:18, 83:11, 95:7, and 107:1; by Mujāhid ibn Jabr for Q 51:12, 82:9; by Zayd bin ʿAlī for Q 1:4, 51:12, and 82:17; by Muqātil ibn Sulaymān for Q 1:4, 26:82, 37:20, 51:12, 56:56, 70:26, 74:46, 82:15, 82:18, and 83:11.

17 يوم الدين is glossed as يوم القضاء by Ibn ʿAbbās for Q 1:4, 51:6, 82:9, 82:15, 83:11.

18 دين is glossed as توحيد by Ibn ʿAbbās for Q 4:146, 7:29, 8:49, 9:29, 39:2, 39:11, 40:14, 40:65, 48:28, and 98:5; by Muqātil ibn Sulaymān for Q 3:19, 29:65, 30:30, 31:32, 39:2, 39:3, 39:11, 40:14, and 40:65.

19 "لم ينزل بعدها حلال ولا حرام، ولا حكم، ولا حد، ولا فريضة، غير آيتين من آخر سورة النساء" و "شرائع دينكم أمر الحلال والحرام."

droit.) Nongbri also observed that Alexander Ross maintained the translation of the term as law in his English translation of Ryer's translation (Nongbri 2015, 41). It is unclear precisely when the term دين (*dīn*) came to be mistranslated as religion, as is the norm in contemporary translations.

Another term that merits attention is فقه (*fiqh*), which appears approximately twenty times in the Qur'ān and means "understanding." فقه (*fiqh*) is used in a Prophetic tradition-report stating that "when God bestows benevolence on someone, he makes him *understand* the دين (*dīn*)" (ابن أبي شيبة 1989، 7:325–326). Several tradition-reports identify legal interpretations (فقه *fiqh*) as the greatest form of worship (الخطيب البغدادي 1996، 1:97–104). Notably, these three terms—شريعة (*sharīʿah*), دين (*dīn*), and فقه (*fiqh*)—do not refer only to the Islamic tradition, since these terms are used in Arabic and Judeo-Arabic to describe Jewish divine law, the Jewish tradition, and Jewish law (Salaymeh 2015, 154). At this point, I want to offer some tentative translations, explanations, and interpretations of these terms and their relations. I propose that دين (*dīn*) was understood in late antiquity as a tradition.[20] Muslim jurists viewed law as the outcome of juristic interpretations (فقه *fiqh*) of divine law (شريعة *sharīʿah*) specifically and the tradition (دين *dīn*) generally. Clarifying the distinctions between divine law (شريعة *sharīʿah*) and human understandings of divine law (فقه *fiqh*) facilitates recognizing the category of Islamic law. Undoubtedly, conceptualizations and practices of Islamic law shift depending on time and place (Salaymeh 2016a). To clarify why شريعة (*sharīʿah*) is misconstrued as sharia necessitates that we examine the shift between historical Islamic and contemporary secular contexts in which these terms are used. The relation of terms changed in the modern era with the introduction of "religion."

4 A Discursive Context of sharia: Religion

In this section, I will elaborate why the meaning of sharia is equivalent to "religious law" and why this is a secular translation of the concept of Islamic law (not merely of شريعة (*sharīʿah*)). I have previously illustrated how secularism converts traditions into religions (Salaymeh and Lavi forthcoming). Continuing that insight, I propose that secularism converts legal traditions into religious law. Since the primary meaning of sharia is "religious law," defining sharia necessitates defining "religion."

20 On tradition, see fn 2.

There are intense scholarly debates about the meaning and historicity of "religion." Jonathan Z. Smith famously observed, "'Religion' is not a native term; it is a term created by scholars for their intellectual purposes and therefore is theirs to define" (J.Z. Smith 2004, 281). Many scholars argued that the notion of religion cannot be defined sufficiently abstractly to include all the premodern or modern traditions that are portrayed as religions (Tweed 2005; Masuzawa 2007). While there is some scholarly consensus on the temporal (modern) and geographic (Western) beginnings of secularism/religion, scholars disagree on the implications for using religion as an analytical category. Differences in scholarly perspectives on the historicity and generality of religion reflect dissimilar understandings both of religion, specifically, and of analytical categories, generally. Some scholars misconstrue the rejection of the category of religion as the rejection of abstract or transhistorical categories (i.e., nominalism). However, the genealogical critique of religion is not based on nominalism, but rather historicism, critiques of secularism, and decolonial theory, as I will elaborate. Religion (الغير علمانية) is not transhistorical, or universal, or neutral.

First, historicism and comparative studies clarify the difference between concepts, practices, or institutions that were invented in the modern era (such as secularism and its corollary religion) and concepts, practices, or institutions that were transformed in the modern era (such as law). Historical studies indicate that there was no concept of "non-religious" or "religious" prior to modernity (Nongbri 2015, 45). Accordingly, many scholars concluded that translating premodern terms as "religion" is misleading (Nongbri 2015, 45; Barton and Boyarin 2016). As many scholars have observed, the notion of religion developed during and after the Protestant Christian Reformation (Martin 2017, ch. 1; Baruch Rein 2007). From historical and comparative perspectives, the category of religion is distinct from the category of law because, as I will elaborate in the next section, law is a transhistorical and transcultural analytical category.[21] In contrast, the notion of "religion" is both modern and Eurocentric (Salaymeh 2020).

21 Mark Bevir explained, "trans-historical categories are just particular and contingent creations that [historians] define at a sufficiently abstract level to embrace admittedly differing beliefs … we might define 'the state' sufficiently abstractly to discuss the beliefs Plato and Marx held about 'the state' without implying that they understood such a concept in an essentially similar manner to one another" (Bevir 2004, 112). Likewise, Aníbal Quijano noted, "states are an old phenomenon. However, what is currently called the 'modern' nation-state is a very specific experience" (Quijano 2008, 205).

There is significant historical evidence demonstrating the anachronism of projecting religion and the secular on premodern history. At the beginning of the Islamic movement, people who became Muslim usually did so by accepting Islamic political authority, manifested in the paying of taxes. Specifically, paying the charity tax to the Islamic state was a common and important expression of Muslim identity in late antiquity and beyond (Salaymeh 2016b). New Muslims often joined the late antique Islamic movement as groups, rather than as individuals; in so doing, they committed public acts that likely had little to do with faith or belief. In the late antique Islamic world, the notion of "religion" would have been incomprehensible. As previously illustrated, the Arabic term دين (*dīn*) is not "religion," despite its habitual mistranslation in this way. Instead, there is no concept of either secularism (العلمانية) or religion (الغير علمانية) in the premodern Islamic tradition.

Second, critiques of secularism illuminate that secular ideology primarily defines religion (Asad 1993; Scott and Hirschkind 2006; Dubuisson 2007). Much recent scholarship has emphasized that the notion of religion was invented when secularism emerged in early modern Western Europe (W.C. Smith 1991; Fitzgerald 2007a; Cavanaugh 2009; Harrison 2017). (In contrast, secularism did not invent the concept of law.) Timothy Fitzgerald proposed, "what counts as 'religion' and what counts as 'the secular' are mutually delimiting and defining concepts, the distinction between them continually shifting depending on the context" (Fitzgerald 2007b, 15). Although there is no consensus on its precise meaning and it should not be essentialized, religion was and continues to be constituted in dialogical relationship to secularism. For the sake of clarity and coherence, I define "religion" as "non-secular" (الغير علمانية).[22]

More specifically, secular state law secularizes traditions by regulating them in three dimensions that are simultaneously related and conflicting. In previous scholarship, my co-author and I proposed a secularization triangle for explaining how secular state law constructs religions in three angles: religiosity (عقيدة غير علمانية) is defined as a matter of private belief (إيمان خاص), individual right (حق فردي), and autonomous choice (إختيار شخصي); religious law (قانون غير علماني) is defined as a divinely ordained legal code (مدونة قانونية سماوية); religious group (جماعة غير علمانية) is defined as public threat (تهديد عام) (Salaymeh and Lavi forthcoming). This secularization triangle illuminates that the secular construction of religious law corresponds to sharia. Thus, sharia is defined not by

22 The circularity of this non-essentialist definition of religion is intentional; the term "non-secular" recognizes the role of secularism in defining religion while highlighting the anachronism of applying the term prior to the emergence of secularism.

the Islamic tradition, but by secularism.[23] Secular ideology converts the Islamic tradition (دين *dīn*) into a religion with sharia (religious laws) and ethics.[24]

Third, the category of "religion" is a tool of colonial power that was disseminated largely through colonialism (Peterson and Walhof 2002; Fitzgerald 2007b; Nongbri 2015, 154). As many scholars have documented, the administration of religious courts and the codification of religious law were mechanisms of colonial control (Kugle 2001; Powers 1989). Whereas prior to colonialism Islamic courts functioned as state courts, during and after formal colonialism, Islamic courts became "religious courts" that were differentiated from civil courts (Moosa 2009). For our purposes, the key issue is that the category of religion was part of a colonial strategy of controlling colonized peoples. By way of example, John Bowen noted, "When tasked to advise the Dutch government on its efforts to suppress resistance in Aceh, the Islamicist Christiaan Snouck Hurgronje (1857–1936) recommended that Islam's legal and political dimensions be suppressed but that its spiritual dimensions be allowed" (Bowen 2018, 134). Not only did colonial figures introduce a distinction between law and religion, they promoted spirituality, or ethics, as a permissible alternative to Islamic law for colonized subjects. Discussing the coloniality of Western knowledge production, decolonial theorist Walter Mignolo warned, "Problems arise when a concept belonging to *one* civilization is taken as a point of reference for similar concepts in *all*" (Mignolo and Walsh 2018, 170). This is evident in the case of religion, a modern, Western concept that is not a category of analysis for all societies. The imposition of religion on the premodern Islamic tradition is a form of coloniality.

5 Coloniality and Decolonial Translation

As the above analyses confirm, شريعة (*sharīʿah*) and sharia are part of dissimilar discursive traditions. On the one hand, شريعة (*sharīʿah*) should be translated distinctly based on its fluctuating usages and Islamic law is only one of its many potential translations. On the other hand, the primary meaning of sharia is religious law, a term that reinforces colonial systems of meaning. Therefore, the use of the term sharia is an act of conformity to—rather than resistance against—coloniality. Ramón Grosfoguel explained that "the success of the

23 Case in point, some contemporary militant Muslim groups and Salafi groups conceptualize Islamic law in ways that conform to secular ideology (Salaymeh forthcoming-a).

24 In addition, I contend that the paired notion of "sharia and ethics" is a secular translation that responds to the Habermasian and Rawlsian demand that religious groups should translate their language into secular, public reason (Sikka 2016).

modern/colonial world-system consists in making subjects [who] are socially located in the oppressed side of the colonial difference, to think epistemically like the ones on the dominant positions" (Grosfoguel 2011, 6). In other words, scholars in the global South can unconsciously adopt ways of thinking that contribute to and reinforce coloniality. Coloniality clarifies why scholars—including scholars in the global South—view the Islamic tradition through the obfuscating lens of secularism. Indeed, we might interpret some of ʿAbd al-Raḥmān Ṭaha's scholarship as arguing against such secular translations. Ṭaha advocated for a "rooting translation" (ترجمة تأصيلية) that facilitates intellectual expansion and innovation, instead of imitation and stasis.[25] He emphasized the importance of a translation rooted in (i.e., based on deep knowledge of) the Islamic tradition. Like Ṭaha's rooting translation, a decolonial translation is a tool for disrupting the epistemic hegemony of coloniality.

One source of coloniality's epistemic hegemony is "the myth of modernity," which alleges that European civilization is superior because it developed enlightened progress; this modernity myth ignores contemporaneous and intertwined Western colonialism (Dussel 1993, 75; Mignolo 2009, 277; Mendieta 2009, 235). I propose that "the myth of modernity" is based on a coloniality trinity alleging that (a) secularism is the rational and superior alternative to religion, (b) the state is a secular nation with complete territorial sovereignty, and (c) the law is univocal state law. In other words, secularism is an ideology that colonizes (a) traditions by rendering them religions, (b) states by rendering them nation-states, and (c) law by rendering it positive law. Coloniality transforms the plurality and diversity of Islamic law into religious law (i.e., sharia). The "coloniality trinity" can be dismantled through decolonial translations. Joshua Price suggested, "In the hands of an astute translator, a [decolonial] translation can offer just this kind of counter-narrative that deconstructs colonial systems of meaning" (Price 2015, 67). A decolonial translation can replace the universality of the coloniality trinity with pluriversality.[26] Accordingly, a decolonial translation destabilizes the coloniality trinity's claim to universalism by recognizing pluriversal options to each pillar of the coloniality trinity:

25 الترجمة "هي طريقة يتحقق بها الارتياض في الفكر والاتساع في العقل، وما لم نحصل بغيتنا من هذا الارتياض الفكري والاتساع العقلي فيما ننقل عن الغير، فإن ضرر المنقول على التفلسف يكون أكثر من نفعه، وأقل مظاهر هذا الضرر الجمود عليه، والشاهد على ذلك ما نحن فيه من حال التخبط الفكري والضيق العقلي" (طه 1995، 467).

26 Bernd Reiter explained, "The call for decolonialization … thus points to the need to move beyond the critique of colonialism and toward the active construction of the pluriverse through the systematic elaboration of different ontologies and corresponding epistemologies" (Reiter 2018, 5).

(a) multiple traditions; (b) multiple types of states or non-state forms of governance; (c) multiple expressions of law.

By insisting on pluriversality, decolonial translations destabilize the epistemic hegemony of the coloniality trinity. Mignolo emphasized, "Decoloniality focuses on changing the terms of the conversation. Dewesternization, instead, disputes the content of the conversation and leaves the terms intact" (Mignolo and Walsh 2018, 130). Put differently, a dewesternized conversation is substantively equivalent to a colonial conversation because it disputes the Eurocentrism, rather than the coloniality, of the conversation. Likewise, non-translations or partial translations of Arabic terms are forms of dewesternization because they dispute the Eurocentrism of the conversation, rather than disputing the very terms of the conversation. In comparison, a decolonial conversation changes the terms by defining them in opposition to the coloniality trinity. By way of example, coloniality sets the terms of conversation within its trinity: secularism, state, law. Dewesternization (i.e., anti-Eurocentrism) emphasizes religion (sharia, norms, ethics), state, law. Although the dewesternized conversation contains Arabic terms, those terms conform to, rather than dispute, the content of the colonial conversation. In contrast, decoloniality destabilizes the coloniality trinity by redefining and changing the terms: Islamic tradition, Islamic law, coloniality, secular ideology, secular state, and secular law. Indeed, a decolonial conversation may offer entirely different terms and concepts: indigenous, colonizer, epistemicide, etc. In a decolonial conversation, there are pluriversal alternatives to secular law and its symbiotic other, religious law.[27] A decolonial translation (1) identifies and disputes coloniality's role in setting the terms of (scholarly) conversations, (2) changes the meaning of the terms in the coloniality trinity, and (3) shifts conversations outside the coloniality trinity.[28] Put differently, a decolonial translation emphasizes what Cassin describes as "the multiple in relation," meaning a translation that promotes plural understanding (Cassin 2013). An important decolonial alternative to "sharia" is a multidimensional and plural concept of Islamic law.

27 Mignolo advised, "From the moment you realize that what seems to be reality, objectivity, and truth is nothing but a dominant or hegemonic option, you are already stepping out and inhabiting the decolonial or other liberating options" (Mignolo and Walsh 2018, 224).

28 Mignolo asserted, "Decoloniality of knowledge demands changing the terms of the conversations and making visible the tricks and the designs of the puppeteer: it aims at altering the principles and assumptions of knowledge creation, transformation, and dissemination. Dewesternization, by contrast, disputes the content of the conversation. It aims to change the puppets and the content of their conversation, not the terms. It disputes the place of the puppeteer not to replace it but to coexist next to the existing puppeteer" (Mignolo 2018, 144–145).

6 Decolonial Translations: Islamic Law and Secular Law

As previously noted, some scholars of Islamic law insist that شريعة (*sharīʿah*) should not be translated as "Islamic law" because it encompasses (secular) law and ethics (or norms).[29] Other scholars allege that not translating شريعة (*sharīʿah*) as Islamic law is an act of resistance against the hegemony of modern, Western law. In both cases, these scholars mistakenly equate شريعة (*sharīʿah*) and "sharia" because they misinterpret Islamic law as "religious law." As the discursive analyses above indicate, "Islamic law" is a conceptual category that overlaps with, but is distinct from, شريعة (*sharīʿah*). Complementing the aforementioned precise translation of دين (*dīn*) and critical interpretation of "religion," this section provides a rigorous explanation of "law." Rejecting the category of "law" is often a negation of the possibility that the adjective "Islamic" could modify law sufficiently—as in the cases of canon law or Roman law—and this negation usually rests on essentialist, or narrow, or incorrect understandings of law. Notably, the established critique that Western disciplinary categories in the human sciences are neither transhistorical nor transcultural (Chakrabarty 2008) does not apply to law because the study of law preceded the modern human sciences (Valverde 2014).

There is no consensus on the meaning of law and there is no objective, neutral, or empirical definition of law. Brian Tamanaha explained, "law involves multiple social-historical phenomena that have taken on different forms and functions in different times and places and therefore cannot be captured by a singular definition of law" (Tamanaha 2017, 38).[30] Similarly, William Twining asserted, "to assume that law, or even state law, has a common nature or core involves reductionist and essentialist tendencies" (Twining 2009, 66). Many legal theorists have advised against attempting to define law.[31] Instead, many scholars advocate using a "folk definition" of law, which means deferring to how a particular group or society designates law.[32] One might add that when people demarcate laws, they often use legal language, such as engaging with

29 By way of example, Wael Hallaq insisted that شريعة (*sharīʿah*) is "misnamed 'law' in Western sources" (Hallaq 2019, 14). See also (Dupret 2014).

30 Likewise, Michaels clarified, "Law is a social construct; therefore, the definition of what law is depends on the criteria used, and these criteria can easily be different in different disciplines" (Michaels 2005, 1238).

31 Tamanaha summarized that "The debate over what law is has never been resolved because different folk concepts circulate and theorists hold contrary intuitions about what is fundamental to law" (Tamanaha 2017, 42). See also (Twining 2010, 497).

32 Tamanaha asserted, "Law in the first instance is a folk concept because law *is* what people see as 'law'" (Tamanaha 2017, 48).

legal sources or legal reasoning. From the perspective of philosophy of law (or legal theory), it is a given that there are different types of law, including both state law and non-state law.[33]

Some scholars have cautioned that an over-inclusive conceptualization of law would encompass so many norms as to render the category of law meaningless.[34] However, scholars should not police the boundaries of the category of "law" because differentiating between laws and norms is a socio-political, rather than analytical, process. Groups within societies compete to draw an ambiguous and shifting line between laws and norms. Throughout Islamic history, jurists, scholars, and lay Muslims competed over where and how to distinguish between law and norms. Simon Roberts warned that some societies may not want their normative orders to be characterized as law.[35] Roberts' point is valid and can be addressed by deferring to how social (or historical) actors identify their legal/normative orders.[36] In our contemporary moment, the modern nation-state holds the most concentrated power to draw the line between laws and norms; not coincidentally, most modern nation-states do not accept non-state law as law (Michaels 2005, 1249–50). From the perspective of decoloniality, as Boaventura de Sousa observed, "the uncoupling of law from the nation-state is a necessary, not a sufficient condition for the recuperation of the emancipatory potential of law" (Santos 2012, 68). Decolonial comparative law challenges the legal univocality of the modern nation-state by insisting on decolonial meanings of law, rather than accepting the state's depiction of non-state law as "norms."

Some scholars may object that "law" is an English term and that it cannot be translated to other languages, such as Arabic.[37] It would be nominalist (and incorrect) to look for one term in Arabic that is equivalent to "law" and to claim that the absence of a comprehensive term is evidence that law did/does not exist in the Islamic tradition. As Tamanaha explicated,

33 Tamanaha insisted, "more than one form of law has been collectively recognized historically and today" (Tamanaha 2017, 54). Likewise, Twining explained, "a conception of law that is confined to state law (and maybe a few close analogies) leaves out far too much" (Twining 2009, 66). See also (Michaels 2005, 1225; 2015, 44).

34 Roberts expressed a concern for "losing all sense of what it [law] is" (Roberts 2005, 24).

35 Roberts asked, "Will all the normative orders that the legal pluralists wish to embrace necessarily be comfortable with their rescue as 'legal' orders?" (Roberts 2005, 12).

36 Roberts advised against dictating to societies that they have laws (Roberts 1998, 105).

37 It should be emphasized that law should not be translated exclusively as قانون *qānūn* in Arabic because multiple Arabic terms mean law.

> this is the classic problem of translation among languages, which has been grappled with and overcome (to greater and lesser degrees of success, and with regular misunderstandings) throughout the history of human cross-language interaction. The problems entailed by translation are not a barrier to a conventionalist approach [i.e., law is what people identify as law]. There will be approximations and misfits, but that just means that care must be used, not that it cannot be done.
>
> TAMANAHA 2001, 169

Tamanaha's observation that the concept of law should be translated is in line with the work of legal translators. Susan Šarčević, a specialist in legal translation, observed, "Like comparativists, translators need to use methods of comparative law in their search for potential equivalents and to test their adequacy by comparative conceptual analysis" (Šarčević 2012, 188). Likewise, Cassin's work, in the *Dictionary of Untranslatables: a Philosophical Lexicon*, confirms that "law" is translatable (Cassin 2014, 550; 2004). Law is translatable so long as the source society defines the phenomenon analogously to law in the target language.

A specific example may elucidate these subtle dynamics. Orthodox Islamic legal texts delineate five categories of laws: obligatory, recommended, permitted, discouraged, and prohibited. Some contemporary scholars allege that these are ethical or normative, rather than legal, categories. In doing so, they rely upon a narrow, positivist understanding of law as differentiating between legal and illegal. Legal positivism distinguishes law from ethics based on the notion that only law is enforceable (typically, through a state mechanism).[38] However, the concept of law in the Islamic tradition is multivalent and not dependent on enforceability. Scholars with juridical objectives developed these five classifications. A modern, secular perspective views these five categories as exclusively ethical or as more ethical than legal.[39] Inadvertently, the recent scholarly turn to ethics reinforces the secular definition of law by transforming dimensions of Islamic law into Islamic ethics. In most cases, when scholars reject the category of "Islamic law," they project essentialized and inaccurate conceptualizations of law. Juxtaposing philosophy of law and

38 By way of example, the influential, modern legal philosopher, John Austin, separated legal and ethical authority (Rumble 1979, 151).

39 As Asifa Quraishi-Landes noted, "it is only because we approach the subject and the literature of *Sharīʿa* from a modern western perspective that we consistently look to categorize aspects of *fiqh* as 'law' or 'morality' or some combination of both" (Quraishi-Landes 2019, 186).

the premodern Islamic juristic tradition shows that colonization transformed parts of the Islamic legal tradition, but did not eradicate it.

As I outlined above, there are significant theoretical indications that law is translatable. Likewise, the Islamic texts summarized in Part 2 indicate that Muslims recognized a concept of law at the beginning of the Islamic movement. Hence, it may be helpful to provide a broad and flexible elaboration of law at this point. Law is a discourse and praxis in which historical precedents, exegesis, and legal opinions interact. Law is the product of interpretations of and interplays among legal texts, jurists, judges, bureaucrats, and other legal actors. Several groups and institutions generate law (legal polycentricity) and several legal traditions often operate within one political entity (legal pluralism). Political struggles, sociopolitical changes, and geographic conditions shape the form and the content of law. At any given historical moment and in any precise geographic location, law is the outcome of specific conditions and broad patterns.

Law is translatable in a decolonial conversation that nurtures epistemological alternatives to coloniality. Coloniality's epistemic hegemony and violence are manifest in the attribution of essentialism and stasis to traditions from the global South. Accordingly, it is crucial to recognize that decoloniality does not ascribe notions of essence or purity to any of its analytical categories. Neither the Islamic tradition nor secularism has essential features; nonetheless, at a macro level, both have logics or orientations that make them distinct from other traditions. The Islamic legal tradition is the multi-vocal outcome of Muslims who study and interpret Islamic scriptural sources in an attempt to comprehend the abstract concept of (Islamic) divine law; Islamic law is law produced with the objective of being part of the Islamic movement. In the Islamic legal tradition, tradition is the centripetal force and contingent conditions are centrifugal forces. The Islamic legal tradition is not static and it is not equivalent to Islamic orthodoxy. By comparison, "secular law" is a modern category that refers to a legal tradition based on secular ideology. The secular legal tradition is the outcome of secular actors studying and interpreting secular legal texts. Secular law is a discourse and a praxis generated by interpretations of secular texts by secular legal actors. Secular law is not static or homogenous; it varies depending on its specific temporal (within modernity) and geographic manifestations. In the secular legal tradition, the secular state is the centripetal force and contingent conditions are centrifugal forces. Nonetheless, "secular" and "Islamic" are not mutually exclusive categories, which is why a law can simultaneously be secular and Islamic. (I have previously identified the contemporary fusion of secularism and the Islamic tradition as secularislamization (Salaymeh forthcoming-a).)

7 Conclusion

I have proposed that the emergence of secularism and its corollary, religion, led to the conversion of شريعة (*sharīʿah*) into "sharia." A survey of late antique exegesis illustrated that the relations between دين (*dīn*), شريعة (*sharīʿah*), and فقه (*fiqh*) in the historical Islamic tradition diverge from the relations between religion (الغير علمانية), law (فقه، شريعة، قانون، حكم), and ethics (أخلاق) in contemporary discourse. The Arabic term دين (*dīn*) is translated habitually and incorrectly as "religion," but there is no term or concept for "religion" in premodern Islamic sources. The mistranslation of دين (*dīn*) as religion (instead of tradition or some other transhistorical term/concept) results in mistranslating multiple Arabic terms as "religious law" or "sharia." The notion of religion converted شريعة (*sharīʿah*) into its secular transmutation, sharia. The category of religion generates a colonial system of meaning that obfuscates the Islamic tradition.

Scholars writing about Islamic law today are constantly comparing Islamic law to secular law, whether implicitly or explicitly.[40] In doing so, they colonize the concept of Islamic law through the notion of sharia. A decolonial translation decolonizes *concepts* through the translation of *terms*. Decolonial translations can illuminate paths of resistance to the hegemony of the coloniality trinity (the secular state, its religion, and its secular law). A decolonial translation contributes to a decolonial discourse by highlighting translanguaging, what Mignolo and Freya Schiwy described as "a way of speaking, talking, and thinking in between languages.... a form of border thinking, opening new epistemic avenues beyond the complicity between national languages and cultures of scholarship established in the modern/colonial world-system" (Mignolo and Schiwy 2003, 23). One such colonial culture of scholarship is the recent expansion of Islamic ethics as a field of study: the burgeoning of the field of Islamic ethics is, at least partially, the result of the conversion of Islamic law into religious law (or sharia). A decolonial translation of the Islamic tradition recognizes Islamic law as distinct from secular law. In turn, this decolonial conversation about Islamic law contributes to decolonizing Islamic studies.

As noted, "sharia" appears to be an untranslated term, but it is actually a secular translation and conversion of شريعة (*sharīʿah*). This observation may be extended beyond this particular terminology to encapsulate some general, underlying forces in contemporary Islamic studies. Some recent scholarship in Islamic studies has sought, erroneously, to respond to colonial questions,

40 On the implicit comparison of Islamic law to other legal traditions and systems, see (Salaymeh 2016a, 2015).

such as "is Islam a religion?" or "why does Islam differ from other religions?" Although scholarly answers to these questions seem to point to the historical Islamic tradition—or, to be seeped in Islamic texts and perspectives—they nonetheless are secular translations. The questions and their answers may use Islamic terms, but the underlying concepts are secular. These colonial questions and answers encapsulate much of what motivates contemporary Islamic studies scholarship and, in turn, the spiraling futility of that scholarship. Until and unless scholars of Islamic studies recognize how they are converting Islamic concepts through secular translations, their work will primarily reveal how secularism distorts the Islamic tradition. The decolonial translation of شريعة (*sharīʿah*) is pluriversal; the term should be translated as Islamic law and other terms, depending on its precise meanings. From a decolonial perspective, the past is not recoverable, but historical traditions can be sources of resistance against coloniality. In order to resist coloniality, traditions must be understood in their own terms and translated into a decolonial language.

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