The Mālikī *Schoool and Contemporary Morocco*

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The April 2011 edition of *al-Ghunya*, the journal of *al-Rābiṭa al-Muḥammadiyya li'l-ʿUlamāʾ* in Morocco, was dedicated to the theme of *taqrīb* in the Islamic sciences. *Taqrīb* is essentially a question of pedagogy, and in this case, the specific question is how to teach the Muslim public of Morocco the teachings of the religious scholars? As in any science, the dilemma is that the beginner is incapable of absorbing the higher truths without first beginning with foundational premises which, although they are often presented by the teacher as categorical rules to beginners, are more often rules of thumb rather than actual rules. As teachers of secular subjects, we are regularly confronted with the problem that teaching always requires us to oversimplify our subjects if we have any hope of reaching the average student. This reality is not limited to those of us working in the humanities; that most exacting of natural sciences, physics, is taught to beginning students as though Newtonian physics were universally true, even though we know – as a result of 20th century developments in quantum physics – that Newtonian physics are not, in fact, universally true. Yet, we defer introducing students of physics to the breakthroughs of 20th century physics because Newtonian physics still retains its validity for many of the ordinary problems that physics solves.

This pedagogical problem is especially acute in the public teaching of a religion, like that of Islam, which provides the basic law of society. For good or for ill, the basic norms governing human behavior in Muslim majority countries like Morocco are drawn from Islam, and in most cases, these norms are derived, generally, speaking from legal interpretations of Islam provided by Muslim jurists over the course of several centuries of legal and moral deliberation. The role

of Islam in providing the basic social glue of Muslim societies is an objective social fact that transcends whether individuals in Muslim majority societies are uniquely religious, especially as compared to individuals in non-Muslim majority societies. The centrality of Islamic teachings to the reproduction of social life in Muslim societies is perhaps no better evidenced than in the Turkish experience where even Kamal Attaturk, after hoping to more or less excise all traces of religious instruction from Turkish life, was forced to backtrack and reintroduce religious schools in the Turkish Republic, if only to prevent a radical decentering of religious discourse which threatened to unleash centrifugal social forces that threatened social stability.

The same thought seems to have been at the forefront of present Moroccan king's thinking when, in response to a series of terrorist bombings that took place in the early part of the last decade, he announced a wide series of reforms that sought to reorganize the Moroccan religious establishment in a way that would support the stability of the Kingdom by providing an alternative religious discourse to the one propagated by Salafism, particularly, jihadi-style Salafism. The state's religious-political program is expressly referenced in the very issue of the *Ghunya* devoted to pedagogy, with its opening article revealingly called "*Imārat al-Muʾminīn wa Dawruhā fī Ḥifẓ al-Khuṣūṣiyya al-Dīniyya biʾl-Maghrib*." Islam, of course, is a universal religion; Muslims are found everywhere in the world, even, as is the case in my country, north of the Arctic circle where they are presently fasting for up to 21 hours! So what does the Moroccan particularity – perhaps even exceptionalism – that is being promoted by the Moroccan state entail? Well, it is clearly related to the claim that the Moroccan monarchy continues to be a valid expression of the caliphate, as evidenced by the official status of the monarch as *amīr al-muʾminīn*, and that the Moroccan state, perhaps unlike other Muslim states, as an Islamic

dominion – *imārat al-muʾminīn*, not simply a popular dominion, e.g., al-shaʿb al-maghribī, as one might expect were Morocco to be, in nominal terms, a republic such as one finds in the official rhetoric of another Arab Muslim country like Egypt.

As an Islamic dominion, Morocco and its people, according to the official religious discourse propagated by the religious establishment, are characterized by a three-part religious commitment: in theology, Moroccans uphold the Ashʿarī creed (*ʿaqīda*); in law (*fiqh*), they follow the teachings of the Mālikī madhhab; and in conduct (*sulūk*), they embody the teachings of the sober, law-respecting Sufism of the great Sunnī Sufi orders. One of the primary functions of the government is to preserve the religious heritage of the Moroccan people in this particular configuration. This religious configuration, in turn, is believed to provide a solid foundation for national unity, cohesion and progress.

This religious vision is contrasted, quite consciously although not explicitly, to the evangelical Salafism that has become widespread in the Muslim world in the twentieth and twenty first centuries, particularly following the success of the Wahhabi movement in the Arabian peninsula in establishing a state at a time when the vast majority of the Muslim world was laboring under direct colonization following the collapse of the Ottoman Empire, and the fortuity that this state sat upon the bulk of the world's petroleum reserves.

The relative success of Salafism, however, was also aided by modernist and reformist criticisms of the religious establishments in most Muslim-majority countries that began in earnest in the last quarter of the 19th century in areas of the Muslim world that were either already under the direct control of colonial powers, such as India or Islamic central Asia, or

threatened with colonial control or would soon become colonial possessions, such as Egypt and other provinces of the Ottoman Empire. Reformers such as the Egyptian Rifāʿa Rāfiʿ al-Ṭahṭāwī and the Tunisian Khayr al-Dīn al-Tūnisī made tentative calls for a reinvigoration of Islamic law so that it would go beyond the narrow teachings of the legal schools and could serve as a basis for modern governance. Quickly, however, these calls for reform ballooned into more or less radical critiques of traditional Sunnism directed against its scholastic tradition of theology, law and Sufism. Muḥammad ʿAbduh, but especially his student, Rashīd Riḍā, launched acerbic attacks on the scholarly establishment, even accusing them of contributing to the weakness of Muslim states and their inability to resist European imperialism effectively by fanatically clinging to historical teachings that, in his view and the view of the critics, were not only irrelevant in the best case, but were also destructive and debilitating in many others. They added to their critique that the various historical doctrines to which the ʿulamāʾ remained so fervently committed were not even foundational elements of Islam, themselves being the mere products of historical human interpretation of Islam, and so could be discarded in appropriate circumstances in favor of returning to the original sources of Islam, the Quran and the Sunna, just as the early Muslim community, the Salaf, did. Religious reformers thus helped pave the way for modern Salafism by simultaneously delegitimizing the historical religious establishments in the Muslim world – indeed, Rashid Rida stated his preference for Kamal Attaturk's secular nationalism over traditionalist authoritarianism – and encouraging Muslims to seek out a more adaptive version of Islam by returning to the original sources directly. While Nahḍa-era writes in the Mashriq urged legal reform in order to facilitate creative adaptation to modernity, Wahhabi-inspired Salafism took a dogmatic view that claimed that Muslims not only

were permitted to derive their understanding of Islam directly from its original sources, but in fact that they were obliged to do so, and that following the legal schools – *taqlīd* – was itself an unlawful innovation, *bidʿa*, and that *kalām* – scholastic theology – was at best a *bidʿa* if not worse. Accordingly, for the Wahhābi-Salafism which gradually became more and more powerful, especially in the wake of the explosion in the price of oil in the last quarter of the 20th century, the Sunnī tradition was largely to be abandoned, not for an adaptive modernity, but rather in favor of a very narrow and dogmatic textualism that was highly intolerant, not only of non-Muslims, but also of traditionalist Sunnī Muslims, to say nothing of their bigotry toward what was perceived to be heterodox Islam, particularly, Shīʿism in all its forms. If the desideratum of the early 19th and 20th century religious reformers was to affect a reconciliation between Islam and post-Enlightenment Europe, the goal of the Wahhabi-Salafis was the atavistic desire to reproduce, to the extent possible, the literal way of life of the earliest Muslim community. In many ways, the so-called Islamic State is the logical epitome of these 20th century theological developments in Wahhābī-Salafism.

Morocco, too, had its own prominent internal critic of establishment religion in the person of Muḥammad b. al-Ḥasan al-Hajwī, author of *al-Fikr al-Sāmī fī Tārīkh al-Fiqh al-Islāmī*. His critique of the Mālikī establishment at the turn of the 20th century echoed many of the criticism of Mashriqi reformers such as ʿAbduh and Riḍā. As far as I know, however, his critique of *taqlīd* in law went beyond that of the Mashriqi critique that much of historical Islamic law was obsolete to include the trenchant observation that fiqh, as it had become elaborated in the Sunni law schools in the later medieval period and early modernity, had become a closed intellectual project, a discipline that was focused almost entirely on itself and not on public

teaching. As a result, it had become inaccessible to Muslims except for those fortunate few who could devote lengthy years of learning in order to gain access to its teachings. Thus, he says in *al-Fikr al-Sāmī* in his criticism of *taqlīd* that the jurists, through the ever-increasing complexity of legal language, had effectively created a high-wall that kept out the masses from the orchard of the law, making it a preserve of the elite. Accordingly, while works such as *Mukhtaṣar Khalīl* and its commentaries were crucial for the work of muftis and judges, they were thoroughly ineffective in teaching ordinary Muslims how to live their lives in accordance with the law. Al-Ḥajwī, too, therefore identified pedagogy as a problem deserving at least as much attention as the actual content of historical Islamic law, regardless of debates over the degree to which its particular teachings were or were not obsolete.

When the problem of religion is understood as a particular instance of the general problem of public instruction, we can begin to see more clearly the appeal of Wahhābī-Salafism in the modern era. Pedagogically, it is consistent with some of the most important structural features of modernity insofar as it is responsive to the notion of consumer sovereignty. In market economies, the most powerful experience of sovereignty – and perhaps the only meaningful exercise of sovereignty the average person experiences and one almost certainly more powerful than voting – is the decision to consume one particular brand or refrain from consuming another. In the field of religion, Salafism is akin to consumerism in the market because it too recognizes the sovereignty of the believer. Just as the market recognizes no judge superior to the tastes and preferences of the consumer, so too in Salafism, there is no judge superior to the individual predilections of the believer who is told that he is capable of reading the relevant texts on his own. The reader chooses which texts to read, and there is no

authority superior to the individual worshipper's understanding of the particular text he or she chooses as his or her object of desire. Paradoxically, Salafism provides the same kind of instant gratification – albeit of a different order – that a consumer can obtain from a trip to the mall accompanied by an unexpected impulse purchase of a new and delightful gadget, piece of clothing or home decoration. Salafism, I would argue, is therefore deeply consistent with modern consumerism, and its elevation of consumer sovereignty to the ultimate judge of morality and aesthetics. But just as the market economy has proven to be extremely disruptive of economic stability, so too Salafi approaches have proven to be deeply destabilizing, politically and religiously, to the communities in which they spread.

Sunnī societies may be especially vulnerable to the commercialization of religious sensibilities, i.e., Salafism, because in important ways, traditional Sunnism, of which Mālikism is an exemplar, is also textual, and in principal at least, if not in practice, is open to the participation of all through the notion of ijtihad based on a body of sacred texts. Traditional Sunnism, however, was never limited to a textual tradition: it also included a commitment to a rationalist theology, which in its orthodox forms were the Ashʿarīs and the Māturīdīs, but one in which Muʿtazilī views too – for all but the most fanatically orthodox Sunnīs – made important contributions to how traditionalists understood revelation, law and politics. We see this, for example, in the consistent rejection of anthropomorphism by orthodox traditionalists and their anathematizing of figures such as Ibn Taymiyya on accusations, whether fair or not, that he attributed a body to God. Accordingly, even the Ashʿarites accepted rational *taʾwīl* in order to avoid what they believed to be rationally indefensible claims about God. But not only did orthodox Sunnism qualify its theological doctrines by using rational doctrines as tools of

interpreting scriptural language, but in law, the three principle schools of law – the Mālikīs, the Ḥanafīs and the Shāfiʿīs – devoted monumental efforts in developing a rational understanding of the law that was autonomous from the revealed sources, even claiming that without a proper grounding in the reason of the law, one would be prone to misconstrue revelation. Accordingly, while they understood the rules of the shariʿa to be eternal and divine, they understood revelation itself to be clues or indicants – *adilla* – of the rules, not the rules themselves. The rules – at least the detailed rules of the law beyond those that were deemed to be a necessary part of religion – could only be discovered through the active use of practical reason – *istidlāl* – that demanded rigorous study and training before a person could engage in it with any hope of success. That is why even a staunch Shāfiʿī like the 13th century Ibn al-Ṣalaḥ al-Shahrazūrī could hold that it was impermissible for a Muslim to do taqlid of the companions or contradict the position of the Shāfiʿī school based on a valid ḥadīth even though the companions were of indisputable religious merit or that al-Shāfiʿī reportedly had said that his doctrine requires abandoning opinion if a valid hadith contradicted it. Traditionalist Sunnī Islam can therefore be described as a craft -- *ṣināʿa* – and as such, is far-removed from the spirit of consumer sovereignty that dominates culture and politics in today's world.

Even as we criticize the substance of Wahhābī Salafism for its desire to recreate an impossible past, we must recognize why it is attractive and ask whether the kind of religious project articulated by the Moroccan state is even possible in today's world. What is clear is that if the Moroccan state wishes to replicate the kind of theo-political order that prevailed prior to colonialism, one in which society was jointly governed through an alliance between political and religious elites, and the great mass of society was simply expected to obey their respective

decisions, than such a project will almost certainly end up in failure. Whether we like it or not, societies today are democratic, even if their politics is not. This has radical consequences for all dimensions of life, including, religion, to say nothing of politics. Nevertheless, it might be possible to articulate a new traditionalist synthesis that attempts to effect a reconciliation between the fundamentally consumerist and egalitarian culture of modernity with the traditional teachings of theology, law and morality, but this requires the development of a pedagogy – *taqrīb* – that can successfully inculcate the values of traditionalism in a way that does not require the great masses of people to spend years of specialized education. In other words, the challenge is how to universalize, from a sociological perspective, the virtues of Kalam, fiqh and Sufism in a way that they can be responsive to the consumer-based egalitarianism of modernity while at the same time giving individuals a foundation which allows them, and gives them the desire, to pursue and perfect these virtues over a lifetime.

Clearly, an intermediate body of texts needs to be created that not only allow individual Muslims to perform their roles as Muslims, by which I mean knowledge of how to perform basic rituals, including, memorization of sacred texts, etc., knowledge of fundamental rules of Islam, whether in terms of prohibitions or affirmative commands, knowledge of what they need to believe, etc., but also that would allow them to think about their roles and ultimately to internalize them such that they become part of their nature and not simply something that is performed when needed.

In thinking about what a properly modern religious pedagogy would entail, one must first understand why pre-modern pedagogy cannot serve as a useful model. The modern world, with its complexity and integration, requires participation of citizens to a degree much greater

than anything imaginable in the pre-modern world, in which the state existed, for the most part, on the margins of social life, appearing only episodically to collect taxes, put down rebellions or to punish especially dangerous criminals (who were often treated as rebels in any event). The success of a modern state, therefore, is conditional upon its ability to incorporate its population into systems of cooperation. This in turn requires a vast increase in the capabilities of the populace themselves so that they may undertake the new roles required of them. The new capabilities required in modern citizens, however, are not simply increased technical skills, although that is certainly required, but also a greater degree of public-spiritedness, insofar as so many modern cooperative schemes would not be feasible without the voluntary participation of critical masses of the citizenry in those projects.

Pre-modern education did not conceive of the public as autonomous learners of the law; rather, they were petitioners who received knowledge from the learned via the process of *taqlīd* whereby the unlearned solicited, and were obliged to follow, the views of the learned. There was no question of how to teach the general public the tools of reasoning for themselves, because this was considered to be impossible, either because most people lacked sufficient intellectual skills to reason for themselves, or because it was impractical to teach everyone the skills necessary to think in an ethically responsible way for themselves. At the same time, the simplicity of pre-modern life made it feasible for such a system to work: given the slow rate of social change prior to the industrial revolution, it was not inconceivable that the norms of the law could be diffused broadly within particular societies, particularly, urban societies, even if only a relatively small percentage of that population was formally educated and genuinely understood how to reason within the law. The impossibility of mass legal education in the pre-

modern era was also mitigated by the widespread involvement of the public in tariqa Sufism, which no doubt also served as another informal structure for diffusing legal and ethical norms in society.

The situation was different, however, with theology. At least from theoretical perspective, every individual was required to have independent knowledge regarding the truth of Islam and its creed. Accordingly, *taqlīd* with respect to dogma, while required in subsidiary matters such as law, was not considered valid with respect to theological truth, *uṣūl al-dīn*. The requirement that belief be based on individual knowledge and not *taqlīd* even became a matter of some political controversy during the Saljuk period, when the issue became infamous as *masʾalat takfīr al-ʿawāmm*. Because it was difficult to maintain that the ordinary people had a rational conception of faith, the theologians were accused of declaring the great majority of Muslims to be, in fact, non-believers and dooming them to Hell in the next life, a point exploited by their enemies before the Saljuq sultan. Despite the practical problems posed by the doctrine, however, theologians did not abandon it, and indeed it is confirmed by al-Sanūsī in his creedal works. It is reported that al-Sanūsī, in response to critics who raised the issue of *takfīr al-ʿawāmm*, responded by stating that it was the responsibility of the ʿulamāʾ to teach the public, not to change truths in light of what appeared to be unpromising social conditions. Others, however, proposed different methods of public teaching of theology, most notably, Ibn Rushd, and to a lesser extent, al-Ghazālī, each of whom argued against the pubic dissemination of dialectical theology, albeit for different reasons. For Ibn Rushd, the best source for teaching theology was revelation itself: he believed that the plain sense of revelation communicated perfectly to the general public theological truths that were appropriate to their capabilities, and

that attempts by the theologians to make their understanding of theology more sophisticated inevitably undermined the faith of the common person, either by sowing doubts of confusion, or creating needless controversy. Al-Ghazālī, too, took a dim view of Kalam, confining it to a kind of medicine that should be used only in cases of persons experiencing real religious doubt; otherwise, he seemed to believe that public teaching of the Ashʿarī creed, devoid of proofs, was sufficient.

In the modern age, however, the chief concern is law, and how it should be taught to the public. There is very little dispute today that Muslim publics must know a lot more about Islamic law than their ancestors did. This is often reflected in demands of the Muslim public to understand the basis of various historical rules of Islamic law in the texts of revelation before they are willing to recognize their continued applicability. One unfortunate consequence of this demand, however, is the realization that there is more than one way of deriving rules from revelation, and that there seems to be very little in the historical fiqh which seems to be, from an intellectual perspective at least, necessary. The discovery of the contingency of the rules of fiqh creates other kinds of problems, whether in a loss of a willingness to adhere to the rules, once it is discovered that the rules themselves are not inevitable, or an increase in fanaticism, as people argue over which of the various historical opinions that had been expressed on a subject is the "correct" one which everyone should follow.

These are all problems that any renewed Mālikī pedagogy would need to address. In this respect, however, I believe the Mālikī tradition may be able to draw on resources that make it more amenable to public teaching than either the Ḥanafī or Shāfiʿī madhhabs. The Mālikī madhhab as it developed in North Africa and Andalus was largely insulated from

competition with other schools of law. One virtue of its relative isolation meant that it could develop without fear of criticism that it was insufficiently faithful to divine revelation. By contrast, because the Ḥanafīs and the Shāfiʿīs lived in close quarters, much of their intellectual energy was invested in mutual attacks and recriminations as well as defenses of the validity of their respective doctrines, with the result that their doctrines are often much more textual in presentation than found in comparable Mālikī sources. Because there was no need to continue to develop textual defenses of the Mālikī tradition against non-Mālikīs, Mālikī jurists could devote greater resources to investigating the rational basis of the law at the more abstract level of legal causes (*ʿilal*) and principles (*qawāʿid*). This relatively greater emphasis on non-textual means of reasoning helps simplify the structure of legal reasoning, renders it more amenable to universal reason, and to that extent, makes superficial appeals to textual arguments less persuasive to those reared in a Mālikī culture than either a Ḥanafī or a Shāfiʿī one. Second, and perhaps much more important, the Mālikī tradition itself represents, in contrast to both Ḥanafīs and Shāfiʿīs, what can be viewed as almost a counter-textual tradition. While the Mālikīs obviously took revelation to be the foundation of the sharīʿa (Mālik, was, after all, an imam in hadith as well as fiqh), the Malikis had a much more skeptical view of solitary *ḥadīth* than did either the Ḥanafīs or the Shāfiʿīs, relying instead, as is well-known, on the practice of the community in Madina, even when that practice seemed to conflict with the clear teachings of authentic hadith. Their relative skepticism regarding the legal force of individually-transmitted hadiths was a result of Mālik's decision to give relatively greater weight to what one might call common sense reasoning over the formal reasoning of specialists. The Maliki call to prayer is an excellent example in this regard: unlike the other Sunni schools, the Malikis say "Allah

Akbar" only twice at the beginning of the call, while all other Sunni schools say it four times. Malik affirmed this practice despite the fact that he was not in possession of a hadith that supported it. Likewise, in the iqama – the immediate call to the prayer, the Malikis say most of the phrases only once while the rest of the Sunni schools say them twice. In both cases, Malik, when asked about these practices, explained in the Muwatta, that his only authority for this was that which he found the people doing, and that the scholars of Madina had never taught otherwise. The same can be said about the distinctive Maliki practice of *sadl* during prayer – holding one's arms to the side instead of folding them across the waist. This too was a practice for which Malik did not rely on a hadith but rather the practice of the Madinese community. In both cases, however, there were individual narrations of valid hadith that supported the contrary positions, but Malik preferred the practices of Madina.

This common-sense approach to religious interpretation also is manifested in the well-known Maliki reasoning techniques of blocking the means (*sadd al-dharīʿa*), unrestricted benefits analysis (*al-maṣāliḥ al-mursala*) and juristic preference (*istiḥsān*). Each one of these reasoning techniques emphasizes context over text, and calls on the legal interpreter to draw his attention to the particular social context in which an event is taking place before determining the appropriate legal rule. So important is contextual reasoning to the Maliki method of legal interpretation that Mālik was reported to have said "juristic preference is nine-tenths of legal knowledge (*al-istiḥsān tisʿat aʿshār al-ʿilm*)." And even though the doctrine of blocking the means is sometimes associated with a kind of Mālikī puritanism compared to the more formalistic Ḥanafī and Shāfiʿī schools and their willingness to look the other way at *ḥiyal*, the Mālikīs also apply the same principle in reverse in certain situations, calling it *fatḥ al-*

dharāʾiʿ. Despite the difference in labels given to these various circumstantial forms of reasoning, they are all united in a commitment to the notion that the common reason of Muslims is capable of substantially grasping what God intends for us in His revelation, and accordingly, we are capable of applying it judiciously in a fashion that balances faithfulness to divine will with human well-being in this world.

What I am calling the Maliki common sense approach to revelation manifests itself clearly in the many remedial rules that the Malikis provide women within marriage relative to the other schools of law. For example, the Malikis apply a considerably shorter time limit in the case of a husband's disappearance relative to the Hanafis and the Shafiʿis, who instead of considering the wife's interest in resuming her life, give greater weight to the continuity of the marriage using the formal principle of *istiṣḥāb*. Likewise, in the case of a marital dispute, the Malikis give the arbitrators the power to divorce the fighting couple even in circumstances where the husband had not delegated to them the power of divorce. Finally, and again unlike the Ḥanafīs and the Shāfiʿis, the Malikis grant a woman a divorce on the grounds of *īlāʾ* even where the husband did not swear an oath, if his decision to suspend marital relations with his wife was motivated by spite or otherwise to punish her. It is no surprise therefore that when Hanafi regions of the Muslim world in the Mashriq wished to reform their family law rules they looked to the Maliki school for their new rules.

My point here is not to disparage the other Sunni schools of law or to proclaim the superiority of the Maliki school in all respects. For example, the Ḥanafis are superior to the Malikis when it comes to recognition of the equal status of non-Muslims in terms of civil rights than the Malikis; rather, my point is that as a general rule, Maliki legal reasoning is generally

much more concerned with the empirical context in which rules are to be applied, and in applying the rules in a fashion that is consistent with what can plausibly be understood to be the human interests at stake in the rule, over abstract formal principles, such as *istiṣḥāb*. Indeed, their willingness to assume a basic identity between what they understood to be the legitimate human interests in divine rules with God's will, more than anything else, served to raise the ire of Ibn Ḥazm, who doggedly strove to create a system of law that excluded every possible element of human interests in the formulation of the law on the grounds that introduction of such elements into legal reasoning would transform the shariʿa into arbitrary system of man-made law rather than divine law.

From the perspective of Imām Mālik, the issue was not an epistemological one but rather one having to do with human psychology, and what kind of obligations human beings can be reasonably accepted to bear. In short, if God did not intend to burden us with difficult obligations, as the Quran makes clear in numerous verses, e.g., *yurīdu allāhu bikum al-yusra wa lā yurīdu bi-kum al-ʿusr*, and *wa mā jaʿala ʿalaykum fī'l-dīn min ḥaraj*, and *wa law shāʾ allāh la-aʿnatakum*, then the particular rules of revelation must be interpreted with that principle in mind. Accordingly, when Imām Mālik was asked about a particular transaction that had become common among the people but which appeared to violate the rules of *ribā faḍl*, Mālik nonetheless permitted the transaction, saying "the people must have what makes their lives better and anything for which they find no reasonable alternative or choice, I hope there is permission for them in that, God willing, and I see no problem in it (*lā budda li'l-nās mimmā yuṣliḥuhum wa'l-shayʾ alladhī lā yajidūna ʿanhu ghina wa lā budda fa-arjū an yakūna lahum fī dhālika saʿa in shāʾa allahu wa lā arā bihi baʾsan*)." For Mālik, the rules of the Sharīʿa had to be

interpreted in a way that made the community's adherence reasonably likely; that was, it seems to me, a crucial part of his methodology that later jurists, beginning with Imām Shāfiʿī, may God be pleased with him, ignored when questions of epistemological fidelity to revelation slowly began to trump Mālik's more human-centric interpretation of the Sharīʿa.

It is unsurprising, then, that while many Shāfiʿī jurists, such al-Ghazālī, al-Juwaynī and al-ʿIzz b. ʿAbd al-Salām, played important roles in articulating the theory of the universal ends of Islamic law (*al-maqāṣid al-kulliyya*), it was only the great Andalusian Mālikī jurist Abū Isḥāq al-Shāṭibī that was able to synthesize a fully-developed theory of Islamic jurisprudence grounded in a teleology of universal human goods. But, again, unlike his Shāfiʿī predecessors, whose principal concern was epistemological, Shāṭibī revived Mālik's focus on how the individual perceived the law, both positively and negatively. Dr. Idris Hamādī's recent article in the April 2011 of al-Ghunya, *al-Mujtamaʿ fī Ẓill al-Maqāṣid al-Sharʿiyya*, makes the interesting and, in my opinion, wholly-accurate observation that al-Shāṭibī's analysis of the Sharʿia relies as much on psychology as it does the traditional tools of interpretation commonly found in usul al-fiqh. Many people misunderstand al-Shāṭibī insofar as his though has often been deployed by some modernists to justify controversial positions that appear to justify abandoning well-established Islamic positions in favor of a more liberal Sharīʿa. But this misunderstands al-Shāṭibī's use of maqāṣid, for in his understanding, the highest goal of the Sharīʿa is to create a law-abiding subject, meaning, someone who obeys the law for the right reasons, i.e., he understands why the law expects him to behave in certain ways, and when he acts, he strives to make his subjective ends consistent with the ends of divine law. At times, this might lead to a relaxation of the rules, while in other circumstances, it might lead to a stricter approach.

Al-Shāṭibī's approach to *takhayyur* and *ikhtilāf* help clarify the point. He opposed *takhayyur* not because he was a fanatic Mālikī who believed it was sinful, for example, to follow the doctrines of other schools, but because he worried that the doctrine of *takhayyur* enabled individuals to give free reign to their subjective desire rather than to discipline those desires by subjecting them to norms derived from revelation. To him, it didn't really matter whether one followed Mālik's doctrine or that of Abū Ḥanīfa; what was crucial was that one act according to a principle derived from revelation and not simply one's own desire, such that one followed the law consciously, and not haphazardly (*ittifāqan*). His approach to this question differs radically from that of his fellow Mālikī, Shihāb al-Dīn al-Qarāfī, who, like his Shāfiʿī teacher al-ʿIzz b. ʿAbd al-Salām, permitted *takhayyur* and even *talfīq*, at least so long as consensus was not contravened. For al-Qarāfī and Ibn ʿAbd al-Salām, the law exists in the manner of a fence that places boundaries on our desires, but we are essentially free to pursue our desires in whatever manner we wish so long as we stay within the broad perimeters defined by consensus. For Shāṭibī, this approach to legal difference is invalid because, first, it essentially treats *ikhtilāf* as an independent proof of permissibility (*ibāḥa*), a position that no scholar of usul al-fiqh has advocated. Second, it is essentially licentious insofar as it frees the servant from the obligation of conforming his subjective purposes to the purposes of the law, and thus undermines what he deems to be the highest goal of revelation, namely, transforming human beings into agents who internalize the norms of the law.

The problem of internalization of the norms of the Sharīʿa is an important one, not only for Shāṭibī, but also for us as well when we think about what it means to be a committed follower of the Shariʿa in the modern world. When legal subjects internalize the law, they are

motivated to follow it for reasons internal to themselves: they do not need the *wāziʿ* of coercion or the threat of coercion to follow the law, but for that to be a realistic goal, the demands of the law must be in conformity with their reasonable needs: it must neither be too demanding, in which case, it would be impossible for people to abide by it voluntarily, nor must it be too easy, for otherwise, it would fail in producing subjects who can learn, first to control, and second, to redirect their desires so as to conform with the goals of the divine law.

Al-Ṣhāṭibī's model of the Sharīʿa which gives substantial weight to human psychology is crucial for us in the modern world because it offers a middle path between the absolute sovereignty of the subject that dominates contemporary market democracies, in which religion, if it survives at all, inevitably takes a Salafi complexion (in this context, one should note the spread of Pentecostal Christianity at the expense of mainline Christianity), and a conception of divine law that obliterates human subjectivity in its entirety, as found, for example, in the thought of Ibn Ḥazm al-Ẓāhirī and contemporary Salafism. The Shāṭibī model of maqāṣid, therefore, represents a reconciliation between the human will and the divine will at the level of daily practice so that the public good can be achieved while at the same time protecting meaningful space for individual freedom.

While many Muslim modernists have been attracted to Shāṭibī's theory of the maqāṣid in order to argue for changes to historical legal doctrines, they have only rarely done so in connection with his larger concern of producing a law-abiding subject that pursues the common good along with his own private good. Yet, producing the law-abiding subject committed to the pursuit of the public good must be a central goal of any modernist project for the reasons I mentioned earlier in this talk: successful modern states depend on large-scale cooperation, and

this can only take place either through a high-degree of coercion, such as that practiced by the totalitarian societies of the former Soviet bloc, or through some kind of voluntary compliance with the law. But to achieve the latter, citizens must be able to identify the law with their own ends and aspirations such that obedience to the law becomes easy for them and a matter of habit. Al-Shāṭibī provides us a means for us to think about Islamic law in a way that promotes this ideal, not only in his psychology of the legal subject, but also in terms of the law's rhetoric. Because the law must serve the crucial function of enabling ethical human action, it must be accessible to the *average* human being. Accordingly, he was extremely critical of the tradition of *uṣūl al-fiqh* as it had developed over the centuries at the hands, largely, of Shāfiʿī theologians who imported numerous and complex questions of hermeneutics and theology into legal methodology. Instead, he insists that *uṣūl al-fiqh* must be reformed so that it includes only issues that are of practical relevance, i.e., theoretical issues that are relevant to how a jurist develops, articulates and communicates the law to the public. Therefore, it is not sufficient that the substance of the law be in conformity with the psychological disposition of the average person, it must also be articulated in a fashion that it is rationally accessible to the average person. Without adopting a rhetoric of the law that makes it accessible to the average person, it is impossible for the average person to internalize the norms of the law and achieve the law's greatest purpose – the creation of law-respecting subjects.

The Mālikī school, therefore, was certainly the pioneer in applying the method of maqāṣid to solving the legal problems of the Muslim community, and for that reason, it is not an exaggeration to say that to a great extent, the Mālikī madhhab has never had more influence among Muslims than it enjoys today. At the same time, however, my discussion of al-Shāṭibī's

theory of the maqāṣid demonstrates that Maliki maqasidi theories was understood as a way of mediating between the particular good of individuals and the universal goods sought by the law. If they are incorporated into a political system that shows no respect for the particular good of individuals, then the substantive rules themselves will not produce the desired effect. Accordingly, it is crucial, along with legal, moral and theological reform, that the public institutions of Muslim states reflect the impartiality and integrity that Islamic law demands of public servants who are entrusted with protecting the public good. If public servants use their offices to pursue their particular interests, the results will be disastrous, and even threaten the foundations of Islam itself. Again, al-Shāṭibī comments on this possibility, saying:

> "The proof that the pursuit of public goods is, from the perspective of the revealed law, devoid of any private ends is that those who undertake these tasks are, at first glance, prohibited from pursuing their own interests through their positions (*mamnūʿūn min istijlāb al-ḥuẓūẓ li-anfusihim bi-mā qāmū bihi min dhālika*). Therefore, it is not permissible that a governor should take a wage from those whom he rules on account of his government over them, nor a judge to take, from either the losing party or the prevailing party, a wage for his verdict, nor a judge for his ruling, nor a mufti for his fatwa . . . nor in any other public matters (*al-umūr al-ʿāmma*) that are similar to these in which the people have a general interest (*li'l-nās fīhi maṣlaḥa ʿāmma*). For this reason, bribes and gifts which are offered in exchange for public office are forbidden because pursuit of private ends here results in a harm to the public good which undermines the wisdom of the Shariʿa in establishing these offices (*istijlāb al-maṣlaḥa hunā muʾaddin ilā mafsada ʿāmma tuḍādd ḥikmat al-sharīʿa fī naṣb hādhi al-wilāyāt*) Justice and good order are established in this fashion among all mankind, and when offices function contrary to this, injustice takes place and the foundations of Islam are destroyed (*wa ʿalā khilāfihi yajrī al-jawru fī'l aḥkām wa hadm qawāʿid al-islām*)."

The religious project currently being undertaken by the Moroccan government is certainly ambitious, worthy of our support, and our most sincere hopes for its success, but there is no guarantee of success. I will conclude by making some cautionary observations. Undertaking the maqasidi approach to the shariʿa is not an easy task for many reasons. One of the primary obstacles to a successful application of the maqasidi approach to legal reform is the psychology

of religious scholars themselves. Having spent numerous years studying very difficult and technical texts, they find it difficult to turn their backs to those texts, even in cases where a proper understanding of those texts requires them to abandon the rules set out in even the most venerable texts of the madhhab. The great Egyptian Mālikī scholar Shihāb al-Dīn al-Qarāfī was asked whether it was permissible for muftis to continue to give fatwas in accordance with the mashhur of the madhhab in cases which were based on custom and the relevant custom had changed, or whether the change in custom was irrelevant to the content of the fatwa in light of the fact that they are muqallids and therefore follow the views of Imām Mālik. He replied that in such a case, it would be contrary to consensus to continue to give legal opinions based on a rule that was itself contingent on a particular custom or social reality if that custom or social reality had meaningfully changed. If we take Imām Mālik's statement about *istiḥsān* constituting 90% of legal knowledge, then it is very hard to justify what appears to be a stubborn refusal on the part of many ʿulamāʾ to reconsider certain rulings that create substantial hardships for some individuals in the community, based on a rules developed in a radically different social environment, especially when the harm is borne by some of the most vulnerable members of the community. My only explanation for this reluctance to revise what seem to be obsolete rulings is the existence of a certain kind of group feeling among religious scholars which produces a sense of loyalty to the group that sometimes prevents them from taking seriously the genuine needs of the people, even though, as I have already mentioned, Mālik said that "the people must have that which makes their lives better."

Another obstacle in developing a maqasidi-based jurisprudence is that to apply this method effectively, the jurist needs to have a reasonably clear understanding of the social

circumstances in which the rule will be applied, and the reasonably likely consequences that will result from the proposed rule. The modern world is not only infinitely more complex than that of the pre-modern world when Muslim jurists first developed the rules of fiqh, it is also a rapidly changing one. Economists estimate that the change that occurs in one year now would have occurred over a space of one-hundred and fifty years in the period prior to the industrial revolution. It should not be surprising that tools developed to make law and govern pre-industrial societies are therefore ill-adapted for modern conditions. If Moroccan ʿulamāʾ wish to remain relevant to the development of the country, particularly if they wish to apply the maqaṣidī approach to the shariʿa, they have no choice but gain sufficient literacy in contemporary social sciences so that, at a minimum, they can engage critically and constructively with the experts whom they must rely on in order to provide moral and practical guidance appropriate for a modern society.

Finally, we must consider whether Morocco is prepared to make the kinds of investments in its people necessary to make this project successful. The maqāṣidī approach of the Maliki school, as developed first by Imam Malik and then given wholesale expression by al-Shāṭibī focuses on the legitimate needs of the people as a central principle for understanding the Shariʿa, but it is not a licentious doctrine, meaning, that it defers to whatever the people want. It gives recognition to the desires of a morally upright community. The people too have responsibilities to conform their desires with the goods that the Shariʿa endorses. This goal can only be achieved, however, if the people are sufficiently educated so that they can act as the responsible moral agents the Shariʿa requires them to be. Education in this sense is fundamentally moral, not the instrumental education favored by today's technocrats. I do not

want to be misunderstood in this respect: technocratic education is crucial, and indeed, my previous point should make clear that the successful application of maqāṣid al-shariʿa requires a relatively sophisticated technocratic understanding of society, but a purely technocratic approach to knowledge is incapable of providing a basis to prefer one choice over another. Only morality can provide us with the tools to decide how we are to use the freedom God has given us. If Moroccans wish for Islam to provide the moral compass for their society, then they have no choice but to increase substantially the level of both Islamic and technocratic education available to the average Moroccan citizen. The easiest place to accomplish this goal would be in national schools, presumably, in the context of civic education. Although Maqāṣid al-Shariʿa is obviously a theological enterprise, it is, in its essence, a theory of the public good, and how an individual can pursue his private ends consistently with the public good and divine will. As such, it should be taught in the context of civic education when students are taught their rights and duties as citizens, and in an Islamic state like Morocco, they also need to understand how their civic rights and responsibilities accord with their religion, at least at an abstract level, so that they do not perceive a contradiction between their status as citizens of Morocco and their role as Muslims.

To conclude, the Moroccan state is currently engaged in a religious-political project that is designed to assist Morocco develop economically and politically without sacrificing its religious heritage while at the same time inoculating society against the risks of jihadi-salafism. One of the tools in this strategy is the Mālikī school of law. I have tried to explain why the Mālikī school contains within it important public values which, if nourished, could help in making this project successful, but if it does succeed, it will not be because of some magical

properties found within the Maliki school; rather, it will be the result of intelligent use of the country's resources, continued investment in its people, moral courage on the part of the both the religious and the secular intelligentsia, and a good-faith commitment to pursue the public good at the expense of private interests. We certainly wish you the best of luck in your efforts.