The Politics of Law Enforcement: Lessons from Islam

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1. Kuran's theory of the institutional trap: a discussion

We first present a short summary of Timur Kuran's theory of the "institutional trap" inherited from the classical Islamic system. We then stress the need to define the Islamic institutions at play in the narrow sense that Kuran has himself proposed. The next stage consists of formulating the enforcement problem and confronting the questions that arise from the weak enforcement of Islamic rulings. Finally, we examine the role of politics in Kuran's analysis and conclude that his attention has been restricted to the political consequences of well established Islamic institutions.

1.1 The theory in a nutshell

Kuran's theory of the institutional trap is based on the idea that Muslim countries have inherited a particular set of institutions derived from classical Islam (see, in particular, Kuran, 2004a, 2004b, 2011). More precisely, a direct consequence of the historical context in which Islam was born is that the Quran contains rules prescribing the rightful behaviour to follow in a number of civil matters, and in these matters that it addresses explicitly, the Quran carries an especially strong authority. Kuran focuses attention on a number of central institutions of the classical Islamic system which took shape over the religion's first three centuries. These institutions, he argues, had the effect of blocking critical institutional changes. These institutions are: the Islamic law of commercial partnerships, which limited enterprise continuity and inter-generational persistence; the Islamic inheritance system, which encouraged wealth fragmentation and restrained capital accumulation by creating incentives for keeping partnerships small; the waqf system, which inhibited resource pooling and stifled the development of a genuine civil society; and Islam's traditional aversion to the concept of legal personhood, which hampered the emergence of private corporate organisations. Critical among these institutions is the inheritance system, which inhibited the development of

Islamic contract law. Meanwhile in Western Europe people found it relatively easy to modify inheritance practices in response to changing needs, because the Bible does not prescribe rules for transferring wealth across generations.

As a result of the influence of Islam, a whole series of organisational changes that proved essential for the development of a modern economy did not therefore take place in the Middle East. The fact that from the late eighteenth century onwards, the region's indigenous Christians and Jews came increasingly to dominate the most lucrative economic sectors bears witness to the adverse role of Islamic institutions. Unlike the Muslim majority, who had to do business under Islamic law, members of these minorities were free to choose an alternative legal system (Kuran 2004c, Goffman 2002, p. 73). Consequently, at the start of the twentieth century, almost all large commercial enterprises in the Middle East were owned by either foreigners or local religious minorities (Kuran 2004b, pp. 72 and pp. 84-7).

The example of Turkey is particularly interesting because the Islamic law was abrogated when the Young Turks seized power from the Ottomans and accelerated the country's move along the Westernising secular path (see Chapter 9). The implication is that the lingering effect of Islamic institutions that emerged during the religion's first three centuries rather than Islamic law itself is the real obstacle to modern economic growth. Institutions that were adapted to economic conditions prevailing at the time of their emergence thus proved to be a barrier in later times, when Western societies had undergone basic transformations (Kuran 2004b). From the perspective of modern growth, the main problem with Islamic economic institutions is that they retarded the development of impersonal, as opposed to personal, exchange relationships. The ensuing limitations were largely irrelevant in the middle ages. But they became binding during the early modern period once opportunities for large-scale trade through impersonal relationships emerged.

On the question of why inefficient institutions have persisted for so long, thus generating an institutional path dependence in the Middle East, Kuran (2011) answers that a key characteristic is that they formed systems of mutually reinforcing interrelated elements, in a way suggested by Avner Greif (2006, p. 35) and Samuel Bowles (2004, pp. 90-1). Thus, owing to the presence of important externalities, the reform of any single institution was likely to fail unless other institutions were also transformed. The vicious circle in question was difficult to break especially because the underlying Islamic institutions weakened civil society. As we shall see shortly, a weak civil society further limits the ability to make institutional innovations.

1.2 The enforcement problem

One important question cannot be eluded when Kuran's thesis of the institutional trap is considered. It concerns enforcement. Often neglected in the literature, the enforcement problem has been recently emphasised by Mahoney and Thelen (2010) in their attempt to build a sociological theory of institutional change. There are *two possible forms of under-enforcement of Islamic rulings. Either the prescriptions are simply ignored, or they are circumvented or tampered with.* While in the former instance violation of the rules is presumably costless, this is probably not true in the latter because the necessary subterfuges – surreptitious modifications, lengthy negotiations and casuistry, legal fictions, exploitation of ambiguities, and corruption of rule enforcers– entail both costs and risks for the violators. The fundamental distinction is that in the latter situation incentives exist to behave in ways that alter the substantive effects of the formal rule, but without directly violating it. In other words, the actual, informal rule contradicts the spirit, but not the letter, of the formal one, thus reflecting a process of what Helmke and Levistky (2004) call accommodation between the two rules. This happens when the salience or effectiveness of the formal rule is strong enough to impede an outright modification or open violation of the rule, so that the need exists for a reconciliation between conflicting dimensions within the existing formal institutional arrangement.

Thus, in rural areas of Muslim West Africa, but also in Asian countries such as Afghanistan, such precise injunctions of Islam as the inheritance rules were not, and are still not, followed: the prevailing rules and practices reflect a blending of local customs with Islamic principles; and in sensitive matters such as inheritance, patriarchal customs trump Islamic prescriptions.

The second possibility of rule under-enforcement is by far the most important. In Islam, innovations are permissible provided that they are backed by an appropriate fatwa issued by a prestigious enough scholar. In fact, since the early times of Islam jurists were able to develop tricks ("hiyal") which, in the manner indicated by Helmke and Levistky, allow Muslims to conform to the letter of Islamic law while accommodating the demands of business life, for example. Moreover, the jurists "appear to have been swayed not only by custom and business necessity, but also by other legal systems" (Berkey, 2010, p. 41).

Examples of rule adjustment or manipulation are so abundant that the following account cannot be exhaustive. We begin our illustration with two examples that do not actually

concern prescriptions strictly derived from the Islamic law: the lack of legal status given to written evidence, and prescriptions regarding interest rates.

- Ghislaine Lydon (2009a, 2009b) has claimed that a basic flaw in Islamic legal systems lay in their failure to invest paperwork with legal personality. Paradoxically, while Quranic verses placed great emphasis on the importance of writing and documenting credit transactions, written documents such as debt contracts and even fatwas had no value in and of themselves, and could not therefore be used as legal evidence in a court of law. Such *lack of faith in paper* stemmed from the belief that documents can easily be tampered with or simply forged, whereas oral testimonies given under an oath by witnesses are quite reliable. The rejection of written evidence in court, so the argument runs, constituted a serious obstacle to the modern development of Muslim economies because it inhibited the growth of "paper companies", such as joint-stock companies or corporations as well as the development of complex and large-scale enterprise in commerce, industry, and the key sector of banking.

The main problem with Lydon's thesis is its alleged general applicability. Detailed historical evidence nonetheless shows that the legal status of documents and written pieces of evidence has not been low at all times and places in the Middle East. In Egypt, for example, during the late Mamluk period, deeds regarding loans, credit, partnerships, deposits, and transactions for goods of various kinds were regularly recorded in court registers, implying that merchants could afford guarantees and did not have to simply depend on the other party's good faith. Moreover, the court documents issued in one city were recognised in the other cities so that a person in Cairo, for instance, could record a sale for a house he owned in Damascus, Jerusalem, or Jedda (Hanna, 1998, pp. 50-1, 67-9).

In Ottoman Turkey, written documents could influence the judge's decisions. Using evidence from the courts of Galata and central Istanbul in the seventeenth century, Kuran and Lustig (2012) show that Ottoman subjects could register agreements in court in order to have a record in writing as insurance against misunderstandings. Moreover, the probability of winning a case in court was "massively" increased when the plaintiff had a written contract while, when only the defendant presented a document, the chances of the plaintiff winning the case was almost nil (pp. 652-3). In spite of this advantage, written contracts and settlements remained rather few, however. This may not be so surprising inasmuch as people continued to operate in a world characterised by highly personalised relationships where inter-personal trust was important and not easily called into doubt by the requirement of written statements. In the words of Kuran and Lustig: "Perhaps the most important reason for the low rate of

documentation observed in our registers is not the cost of documentation but that in the seventeenth century the Ottoman economy had not yet begun the transition from personal to impersonal exchange" (p. 654).

This structural explanation, according to the authors of the study, is more convincing than the fact that in Islamic jurisprudence documents per se lacked evidentiary value in the absence of corroboration by witnesses to their preparation. Witnesses could indeed be hired to provide the necessary services. As one might expect, the practice of hiring witnesses was commonest among non-Muslims who had to produce Muslim witnesses for their contracts to carry weight against a Muslim (pp. 653-4). The main lesson to draw from the available evidence is therefore that Islam itself does not hinder written contracts and testimonies although it raises the cost of using them. By the same token, recourse to documentary evidence, with the necessary witnesses, was comparatively large among the victims of institutionalised judicial biases, such as non-Muslims when facing Muslims, and ordinary people, whether Muslims or not, when facing state agents.

- Another institution that is sometimes viewed as specifically Islamic are the *prescriptions regarding interest rates***.** As emphasised by Maxime Rodinson and pointed out by Kuran himself, Islamic law does not prescribe a penalty for dealing in interest, and its main aim has been to curb excessive interest rates rather than prohibiting the practice altogether (Rodinson, 1966, p. 189). In fact, the claim that Islam categorically prohibits all interest, regardless of form, purpose, or magnitude, on the ground that it violates a sacred Islamic command, has encountered strong resistance from the earliest days of Islam, and no large Muslim community has avoided dealing in interest.[1] Muslims desiring interest-based transactions were aided by the jurists of Islam who devised stratagems allowing people to circumvent Islam's presumed interest ban without violating its letter (Kuran, 2004b, p. 73).[2]

[1] In Iran, for instance, around 1850 interest rates averaged 12.50 percent but could vary between 18-30 percent when money became scarce (Issawi, 1971). Under the Safavids, the ulama themselves developed various subterfuges to make commercial habits compatible with Islamic precepts, particularly in the matter of interest rates (Floor, 2000). In the Ottoman empire, interest was concealed behind the practice of double sales. Accompanying a statement according to which the principal of a loan ought to be exactly repaid at a fixed date in the future, the sale of a fictitious object took place that represented the interest of the loan.

[2] Revealingly, it is only with the present-day radicalisation of Islam that we observe an energetic campaign against conventional banking in countries formally committed to Islamization (Kuran, 2004a, p. 122). In these countries, indeed, Islamic banks have emerged through efforts aiming at differentiating the "Islamic way of life" from other lifestyles, particularly from those identified with the West. Muslim piety is thus increasingly regarded as involving the shunning of interest (Kuran, 2004a, p. 123).

For instance, interest was commonly buried within payment considered legitimate, such as commissions or salaries (Rodinson, 1966, pp. 179-200). In this respect, there is no difference between Islam and Christianity. Indeed, what the Catholic church condemned was usurious interest rather than interest as such. Moreover, in European territories under Christian rule, stratagems were used to condone interest practices arising from economic pressures (Koyama, 2010a, 2010b; Rubin, 2011).

- The ulama themselves may display amazing ingenuity in circumventing Islamic rulings. The *regulations affecting the waqf* (pious foundations) and inheritance under the Ottoman Empire were sometimes the object of such inventiveness on the part of high religious authorities. One particular problem arose from the absence of a concept for recognising human groups as legal entities, alongwith the Hanafi law of inheritance, according to which claimants to an estate are not confined to direct descendants and each legal heir has a canonical right to a fixed share of the deceased's property. By re-defining the monks of a monastery as a family, Ebu's Su'ud, chief mufti of the Ottoman Empire in the mid-sixteenth century, recognised their collectivity, thus enabling them to receive the property belonging to a deceased monk. Technically, the surviving monks were considered the deceased monk's offspring. However, Ebu's Su'ud ordered the monks to make waqfs in their own names, and not in the name of the monastery, since monastic waqfs were not permitted under Islamic law. Also, realising the pitfalls of this legal fiction used for the benefit of the monks of Mount Athos, he quickly issued a fatwa restricting similar claims from other monasteries (for other examples in the same vein, see Kuran, 2001).

- In Saudi Arabia, upon the request of King Abdul Aziz ulama close to him managed to find a proper scriptural justification for an innovation as fundamental as *photography*. As a solution, these ulama argued that photography brings together light and shadow, which are both divine creations. In this way, the objection that any pictorial art is idolatrous could be rebuffed (Nomani and Rahnema, 1994, p. 139). They had to stretch themselves to analogously justify the introduction of the wireless or the practice of interest into the kingdom (Feldman, 2008, p. 97; Owen, 2004, p. 51). In the light of the above evidence, the question arises as to why institutions partaking of the classical Islamic system are, or were, effectively enforced in some countries or areas and not in others? To stick to our Saudi Arabian example, it is striking that in certain places such as Jeddah, the capital, women brave the law regulating proper conduct for men and women by wearing their cloak (*the "abaya"*) rather loosely and mingling with men rather freely. By contrast, enforcement of the law is much more strict in

the conservative Nejd region to which the holy cities of Mecca and Medina belong (Economist, 31 January-5 February 2015, p. 27). Variations in the degree of enforcement of formal Islamic rulings are not only observable across space when circumstances spatially differ, but also over time as circumstances evolve. The Islamic prohibition of innovations ("bid'a") offers a particularly apt illustration. The systematic prohibition of all techniques and practices differing from those prevailing in the times of the Prophet was quickly abandoned, and the distinction, introduced in the Middle Ages, between what constitute "good" and "bad" innovations served as a convenient compromise enabling rulers and scholars to escape absurd situations (Rodinson, 1966, pp. 180-1). Nevertheless, the notion of harmful innovations persisted, and remained available to conservative ulama wishing to block useful changes.

- One of the best known examples is *the rejection of the printing press* in Ottoman Turkey on the ground that "neither the Prophet's words nor his language should be reproduced by mechanical means" (Goody, 2006, p. 236). For Davis Landes (1998), this refusal of *the printing press*, "which was seen as a potential instrument of sacrilege and heresy" was "Islam's greatest mistake", the major factor contributing to cutting Muslims off from the mainstream of knowledge (pp. 401-2). However, once it is reckoned that the severity of enforcement of an Islamic ruling is susceptible of variations, the question about which circumstances tend to favour a strict application of the Islamic principles and which have the opposite effect of encouraging lax enforcement or outright evasion cannot be eluded.

That the question is highly pertinent can be illustrated through the printing press itself. Why, when they quickly adopted new military technologies, did Ottoman rulers wait almost three centuries to sanction printing? This is in stark contrast to Europe (not only Germany but also France, Italy, the Low Countries, Spain, England, and Switzerland) where printing spread relatively rapidly after the invention of the press in 1450, and this despite resistance by interest groups and temporary restrictions in some countries (Van Zanden, 2009, pp. 178-87). Cosgel, Miceli, and Rubin (2012) have recently proposed an explanation based on the legitimising relationships between rulers and their agents. According to them, the Ottomans regulated the printing press heavily to prevent the loss it would have caused to the ruler's net revenue by undermining the legitimacy provided by religious authorities. This is because accepting the press would have antagonised the Islamic clerics, whose support was essential to keeping the cost of tax collection to a minimum.

Mass printing would have altered the technology of transmitting knowledge, providing knowledge directly from books or from literate individuals not necessarily affiliated with

religious authorities. Hence the latter's opposition to the printing press. If this innovation had been introduced, the loss of support from these authorities could have damaged the ruler substantially. That is because they conferred legitimacy to him through their loyalty, which encouraged citizens to believe that the Ottoman sultan had the right to rule as well as the power to provide protection and other public goods and services (pp. 362-4). Why did the situation differ in Europe? In European states, the legitimising function of religious authorities was dented more than a century prior to the invention of the press. Accordingly, European rulers had little reason to stop the diffusion of the press. It is revealing that the Ottoman rulers eventually sanctioned printing in the Arabic script in the eighteenth century after alternative sources of legitimacy had emerged.

- An extreme example of the way a rigid interpretation and enforcement of Islam can be politically manipulated is provided by the history of *Mughal (Muslim) India*. Initiated by emperor Akbar (1556-1605), a wave of remarkable religious tolerance swept northern India. Unfortunately, it was abruptly ended when Aurangzeb (1658-1707) acceded to supreme power. The latter's cynical instrumentalization of a radical version of Islam (the Deobandi school) was most manifest in his manner of seizing supreme power against the wish of his father, emperor Shah Jahan, who was then seriously ill. His elder brother, Dara Shikoh, was the heir apparent, and known for his religious tolerance: he openly professed the tenets of Akbar, and wrote a book to reconcile the Hindu and Muslim doctrines where he went so far as calling the *Upanishads* the hidden book of the Quran. When prince Aurangzeb succeeded in defeating Dara Shikoh militarily after some deceptive manoeuvres involving an alliance with his other brother, Morad, some Islamic judges refused to legitimise what they rightly saw as an usurpation of the throne. Aurangzeb then decided to obtain the support of the most conservative ulama. In the words of Elphinstone: "No topic, therefore, could be selected more likely to make that prince [Dara Shikoh] unpopular than his infidelity, and in no light could the really religious Aurangzeb be so favourably opposed to him as in that of the champion of Islam. In this character he had also an advantage over [his other brother] Shuja, who was looked on with aversion by the orthodox Mahometans from his attachment to the Persian sect of the Shias" (Elphinstone, 1843, p. 380).

Aurangzeb was able to persuade jurist Abdul Wahab to issue the required fatwa. Wahab declared that Dara Shikoh was physically unfit to govern so that the throne was effectively vacant when Aurangzeb stepped in. In 1658, Shikoh was declared a heretic by a group of compliant ulama convened by Aurangzeb. The accusation, grounded in trivial

charges such as mixing with Hindu religious leaders and accommodating Sufi ideas of syncretism, carried the penalty of death.[3] In this manner, Aurangzeb succeeded not only in eliminating his most popular rival, but also in manipulating religion for establishing and consolidating his power. As a reward for his fatwa, Abdul Wahab was made the Chief Judge of the empire, a position that allowed him to acquire an unequalled reputation for corruption. As a matter of principle, the crimes against the state, which were in effect crimes against the emperor, could be punished according to his own pleasure, and these crimes were those that really concerned him (Sarkar, 1912, pp. 298-302; Eraly, 2007, pp. 260-1). By sitting at the top of the Mughal judicial organisation and by controlling the Chief Judge, the emperor was in control of the main lever of absolute power.

The lust for power of Aurangzeb and his cynical use of Islam have been aptly described by a British historian:

> He was so great a dissembler in other matters, that he has been supposed a hypocrite in religion.... His zeal was shown in prayers and reading the Koran, in pious discourses, in abstemiousness .... But neither religion nor morality stood in his way when they interfered with his ambition; and, though full of scruples at other times, he would stick at no crime that was requisite for the gratification of his passion (Elphinstone, 1843, pp. 379-80).

The central message which we can draw from the history of the Mughal empire is therefore the following:

1°) The interpretation and application of the Islamic law were flexible under some tolerant emperors and strict under other, more doctrinaire ones.

2°) Therefore, Muslim fundamentalism, whenever observed, cannot be attributed to the Islamic doctrine as such.

3°) The selection of a liberal or conservative orthodox interpretation of the Islamic law results from political considerations or motives. In the particular case of Aurangzeb, a strict enforcement of a rigidly interpreted doctrine was an opportunistic outcome decided by a cynical and power-hungry (would-be) ruler.

[3] On this occasion, Aurangzeb displayed his usual hypocrisy. After the execution which he himself ordered, Aurangzeb asked for the head of Dara Shikoh to be cut off, placed on a platter and wiped and washed in his presence. Then, "when he had satisfied himself that it was the real head of Dara, he began to weep, and, with many expressions of sorrow, directed it to be interred in the tomb of Humayun" (Elphinstone,1843, p. 411).

1.3 Politics in Kuran's work

Kuran has not ignored politics. But his attention has been focused largely on the political consequences of well established Islamic institutions. There are several channels through which Islam exerted a negative influence on political freedom and democracy. First, the institution of the waqf promoted a culture of nepotism and discouraged the elite from demanding the constitutional enforcement of private property rights. Second, by preventing the emergence of large commercial enterprises, Islam made potential opposition to autocratic rule more fragmented and less effective. And, third, the deep-rooted habit of personalising exchanges and attributing responsibility for an adverse externality to a natural person or group rather than to a legal person has hindered the establishment of the rule of law in the modern Middle East (Kuran, 2004b, pp. 80-3; 86-7; 2006, pp. 819-23).

Kuran's argument is most elaborate in relation to *the political effects of the Islamic waqf*, a charitable endowment that was the only organisational form available for the private provision of public goods. In a recent paper (Kuran, 2016), he observes that while their huge asset base made waqfs potentially powerful political players and thus potential forerunners of a vibrant civil society capable of constraining rulers and majorities, in fact they did not sow the seeds of democratisation. On the contrary, they helped to perpetuate political centralisation by preventing subversive communities from getting organised. This is because they were devised as rigid and undemocratic organisations: in particular, the rules governing the waqf promoted neither broad political participation nor transparency in governance; their assets were inalienable and entirely dedicated to financing the waqf's activities forever through steady rental income; the founder had to be an individual property owner; and resource-pooling opportunities were severely restricted. As a consequence, the caretaker of a waqf faced the state alone and the possibility of concerted actions by several waqfs (for example, those satisfying similar needs or catering to the needs of the same communities) was precluded.

Kuran also makes three other important observations. First, a waqf enjoyed considerable immunity against confiscation because of the belief that its assets were sacred. The possibility to shelter wealth from unpredictable rulers offered a critical advantage in the absence of well established private property rights and the sultans usually respected the inalienability of

endowed assets except during periods of regime changes or major internal challenges.[4] Second, because a waqf's capital had to be illiquid and because high officials whose wealth was concentrated in real estate were at relatively high risks of being fired, expropriated and even executed, the benefits of forming a waqf were expected to accrue primarily to them and their families. As for religious officials, they also gained access to rents generated by waqfs through their supervisory authority. Reality differed from the widespread picturing of the waqf as an expression of pious charity: in the eighteenth century, almost sixty percent of all Anatolian waqfs were thus founded by state officials (forty-three percent) and by clerics generally allied with the sultan (sixteen percent).[5] Third, the Umayyad (661-750) and Abbasid (750-1258) rulers who enacted the law of the waqf (the waqf was not among Islam's original institutions), and were themselves inspired by pre-Muslim traditions dating back to the Sassanid and Byzantine empires, knew that this institution might be used by powerful officials to threaten central power. They therefore minimised the threat by restricting the uses of waqf's assets and keeping the waqfs strictly out of politics. In short, the precise characteristics of the waqf represented the outcome of "an implicit bargain between rulers and their wealthy subjects" (Kuran, 2006, pp. 799-802).

In view of these observations, it is unsurprising that the waqf was never a vehicle of democratisation, that it contributed to generate vast constituencies with a vested interest in the status quo, and that it bred a culture of corruption and nepotism (Kuran, 2003, pp. 428-31; 2004b, p. 81). Used by the elite as a stratagem to protect their interests in the guise of pursuing Islamic ideals, the manner in which it was crafted mitigated the risk of potentially rebellious coalitions (assuming that the law was reasonably well enforced). In other words, the adverse effects of the waqf seem to have been at least partly intended so that analysis of these effects cannot be disentangled from the question of the emergence of the institution which has an obvious political economics dimension. Note also that this question is closely linked to the one of enforcement. As a matter of fact, the waqf was probably not invented during the lifetime of the Prophet (it is not mentioned in the Quran) and accounts provided in the Hadith (remembrances about early Islam) according to which Muhammad's companions formed waqfs were probably concocted to legitimise an addition to the Islamic institutional complex. As a consequence, flexibility available to rulers was even greater than on matters covered in the Quran, as with inheritance, for example. And even on such matters, as we

[4] An asset was much less likely to be confiscated if it belonged to a waqf than if it was privately owned.

[5] For a statement of the conventional view about the waqf, see, for example Berkey, 2003, p. 214.

know, Quranic prescriptions may be loosely enforced. Clearly, the political economics approach is warranted regardless of the status of Islamic rulings or institutions, that is, whether or not they are, or result from, precise instructions attributable to the Prophet.

The central message is the following: it is not sufficient to examine the economic, social, and political consequences of Islamic institutions once they have been established. It is equally important to look into the motives behind their formation and into those determining whether, and to what extent, they are actually enforced in specific times and circumstances. We have a deep interest in understanding whether the Islamic rules and institutions inherited from the classical system constitute an ultimate or a proximate barrier to economic development: do they constitute the key binding constraint on development, or is their real weight influenced by the enforcement environment, itself critically shaped by political forces? Because of the enforcement issue, politics plays a role not only downstream but also upstream, and the divergence between the Middle East and Europe that drives Kuran's investigation cannot be properly understood unless the role of political authorities in the designing and enforcing of institutions is elucidated (see also Malik, 2012, and Koyama, 2013, for similar claims). The role of the merchant classes and their standing vis-à-vis the landowning elites and the sovereign must also be included in the research agenda. Thus, the question as to why Ottoman merchants were "too weak to reshape the dominant ideology in their own interests" (Kuran, 2011, p. 94), for example, is an important aspect of the divergence with which Kuran is concerned.

2. A political economics approach to complement Kuran

We first present a summary account of our theory which conceptualizes the strategic interactions between an autocratic power and religious clerics. At its core is the problem of enforcement of Islamic principles or tenets. Thereafter, we discuss different regimes in the light of its insights.

2.1 A novel approach to state-religion interactions

The central idea is the following: the specificity of Islam must be sought less in characteristics of its doctrine than in its decentralised mode of organisation. Unlike in Christianity, there is no vertical command structure that can impose uniformity of belief and behaviour on the faithful. At the same time, beyond a few precise injunctions contained in the Quran, there are few requirements that Muslims must meet, and it is easier to enter Islam than

the other two great monotheistic faiths, Judaism and Christianity. The originality of the work is that it develops the above idea by unfolding its consequences in a rather systematic and articulated manner. This requires special emphasis on the way politics is affected by religion, and vice-versa, on the basis of a tight analytical framework. Although grounded in the organisational mode particular to Islam, the analysis is able to account for substantial variations in outcomes achieved in terms of both political stability and state policies, including institutional choices.

The starting point runs counter to a widespread view generally associated with the "clash of civilisations" thesis: unlike in Christianity, religion and politics are merged in Islam. As a result, it is commonly said, the risk of theocracy is intrinsic to the Muslim faith, and the ayatollah-dominated regime established in Iran by the 1978-79 revolution is taken as vivid testimony to that danger. My claim, which is well substantiated by deep historical evidence, is that in the lands of Islam religion is generally subservient to politics. It is required of rulers only that they publicly profess the faith: a ruler is called an infidel if he does not fast in Ramadan but not if he is corrupt, authoritarian, cruel, a womaniser or even a drunkard.[6] It is only in times of state crisis, when there is a power vacuum, or when despotism has degenerated into tyranny, that men of religion advance to the forefront of politics.

Interactions between religion and politics are examined in the specific context of autocracy because many pre-modern countries in which religion governs the masses were ruled by autocrats. Thus, European countries that became developed during the nineteenth-twentieth centuries had themselves been autocratically ruled in the prior period of their formation as modern states. If Islam is far from being the only religion possessing a decentralised mode of organisation (Hinduism, Buddhism, Judaism, and American Protestantism are other examples), it constitutes the best documented example of a religion combining religious decentralisation with autocracy. This political regime is indeed the hallmark of most Muslim states from the time of the foundation of Islam till the present day.

In order to understand why the difference between centralised and decentralised religions matters, key stylised facts on which my theory of state-religion interactions is predicated must be clarified. First, the autocrat must obtain the legitimacy and support of religious authorities if he wants to rule over a society whose cultural identity depends substantially on religion. This is particularly true when Islam (or Christianity) is the dominant religion, since its tenets do not forbid the involvement of clerics in politics. In fact, Islamic rulings or fatwas

[6] For example, the ulama never made a fuss about the fact that Ottoman rulers were often heavy drinkers and persons who easily abandoned themselves to a life of pleasure.

"represented a formality that was obtained without difficulty from accommodating theologians, in order to put in the clear religious opinion leaders who had already decided to adopt a certain measure for reasons that were strictly economic and political" (Rodinson, 1966, p. 193).

Second, because clerics are corruptible, in that they can be lured through the distribution of material privileges, the autocrat is able to seduce a more or less large fraction of them depending on the resources that he is willing to devote to the task. Religious clerics have two special features that distinguish them from other elites: (1) they hold values regarding social justice and human rights, or regarding proper behavior, that they draw from their religion; (2) as representatives of the supernatural world and as wise men possessing deep knowledge (theological and philosophical, in particular), they have a natural prestige and influence on the population. Because of these two traits, the clerics are susceptible of playing a role as political actors or social leaders, especially in traditional societies where most people are uneducated and believe strongly in the role of supernatural forces. At the same time, however, the clerics are vulnerable to corruption, meaning that they can be "bought off", seduced or corrupted, by the autocrat.

Third, there is a continuum of clerics with different preference profiles regarding the relative weight attached to material wellbeing and worldly prestige or influence, on the one hand, and ethical consistency in terms of stickiness to their values or religious tenets, on the other hand. The price of their submission obviously increases with the distance between their values and the policies or practices of the autocrat. Given this heterogeneity of the clerical body, the autocrat chooses the proportion of them whom he wants to co-opt. This he does with the knowledge that those left out may become opposition leaders, thereby representing a threat to the stability of his autocratic rule. The co-option strategy may create a divide in the religious body. On one side are the official clerics, who are co-opted by the autocrat and, on the other side, are the clerics who stand outside the ambit of the state and are therefore more independent. They either belong to rather independent institutions run by the ulama themselves, or they are self-appointed clerics and firebrands who act outside any kind of organisation. Clerics of the latter type are particularly radical socially and they are especially able to organise popular rebellions. Such a division is possible in the world of Islam, because no hierarchy exerts authority over the whole clerical profession. No church establishment exists and, as a result, the clerics operate in a rather decentralised way, pronouncing their own fatwas as they deem fit. Fatwas issued by official clerics can thus be followed by counter-

fatwas issued by one or several self-appointed clerics. The situation is highly unstable, especially so if self-appointed clerics head well structured and experienced Islamist organisations.

Fourth, co-option of clerics constitutes only one arm of the autocrat's strategy. The other arm consists of the policies followed: policies that have strong disequalising effects and involve a great measure of elite corruption, or those that hurt religious values or interests, tend to arouse more opposition from the clerical body, for given levels of perquisites received from the autocrat. When choosing both kinds of policies and the extent of co-option of religious clerics, the autocrat pursues his own interest conceptualised as the expected income earned, implying that he pays attention to his income and his political survival probability. Both variables are influenced by the extent of religious co-option, the former because co-option involves costs that must be subtracted from the gross income of the autocrat (and his clique), and the latter because more extensive co-option reduces the risk of popular rebellion.

Fifth, When a religion is centralised, implying that it is organised as a church with a head at the top, political instability is less likely than under a decentralised religion deprived of any strong authority structure. The reason is that whereas in the former case, the head of the church can bargain with the autocrat on behalf of all the clerics, in the latter the autocrat faces the clerics individually, knowing that they have heterogeneous preferences, in other words that they differ in their tradeoffs between values and income. When circumstances are such that the autocratic ruler can co-opt the whole clerical body even under a decentralised religious structure, the difference between the two types of religious organisations vanishes in regard to political stability, but not in regard to development outcomes. As a matter of fact, political stability under decentralisation may be obtained at the price of foregone institutional reforms, which is bad for development.

Alternatively, for the same purpose of achieving political stability, the autocrat may moderate the extent of rent-seeking and extortion, and this is is good for development from the standpoint of efficiency and equity. Institutional reforms conducive to long-term development and rent-seeking policies geared toward the exclusive benefit of a privileged elite are thus strategic substitutes available to an autocrat concerned with the stability of his rule: the more he indulges in reforms the less he can extract rents, if he wants to keep his regime stable. The extent to which an autocrat will choose progressive reforms rather than self-seeking policies will be crucially influenced by his traits and preferences. If he has a long-term view of the development potentialities of his country, from which he himself and

his close circle will be able to benefit, he will be eager to carry out institutional (and other) reforms. If, contrariwise, he is myopic, he will shun away from such reforms and try to exploit any possibility of abusing his superior position to increase his short-term gains.[7]

It is actually possible to link a good number of regime cases to various predictions of the above analytical framework.

2.2 A reasoned typology of country case studies

We first consider the polar case of *Saudi Arabia*. There, the potential gains from modernising reforms are modest and, therefore, eschewing any substantial institutional reform that could antagonise the clerics did not entail perceptible costs for the Saudi rulers.

Here is a country blessed with huge oil resources and led by a clique of authoritarian rent-earners (the Saud family) who rule over a deeply conservative society. These huge resources have been widely redistributed inside the native population under the from of lavish benefits, cushy government jobs, subsidies, pay rises and bonuses. But this is not the only way the rulers have followed to maintain loyal citizenry. Their close alliance with religious clerics forms the second arm of their pampering strategy. Regarding the latter, it bears emphasis that the religious establishment of Wahhabite Sunnis is entirely allied with the Saud regime and has been so since the foundation of the modern Saudi state. The founder of the creed, Muhammad Ibn Abd al-Wahhab (1703-1792), had developed a puritanical and ultra-conservative doctrine which rejected all that could be regarded as illegitimate innovations, including reverence to dead saints as intercessors with God, and the special devotion of the Sufi orders. It gained significant influence only when the Saud tribe decided to espouse it as the national ideology of their newly formed kingdom in 1932 (Hourani, 1991: 257-58; Al-Rasheed, 1996, 2002, 2006; Nevo, 1998; Feldman, 2008: 93-4; Saint-Prot, 2008: 271-316).

Wahhabism was a state ideology that delivered to the ruler and his clique "undisputed authority, social mobilization and a legitimizing discourse" (Filiu, 2015: 39). Wahhabism has offered, and still offers, a privileged way to construct a national identity and to acquire a legitimacy that their lack of a strong association with tribal confederations failed to confer. The alliance with Wahhabism would also serve their ambition to project Saudi Arabia as a

[7] Auriol and Platteau (2017b) nevertheless show that progressive reforms and corruption are more likely to be complements than substitutes. This is because in their model more reforms lead to higher growth and a given rate of embezzlement of national wealth now produces a higher rent for the autocratic ruler. This said, the possibility of substituting institutional reforms for corruption exists for a more reform-oriented ruler even in their tight framework.

major regional player. This required a doctrine that appears more true to the original message of Islam than the versions prevailing among rival neighbours, and also one that could supply a concept, jihadism, susceptible of justifying expansionist moves inside the Arab world itself.

That political expediency is the major driver of the sovereign's attitude toward religious forces was manifested early on, in 1927 and again in 1928, when Ibn Saud held a conference with leading ulama who eventually sanctioned the use of arms against the insubordinate Ikhwan (the Brothers) whom they deemed "overly zealous in proclaiming jihad without the permission of the emir" (Lee, 2014: 243). Their repression was somewhat delicate because they were religious Bedouins who had helped the Sauds in conquering the Arab peninsula in the name of the faith, and they wanted to pursue the conquest by subordinating Transjordan, Iraq, and the shaykhdoms of the Persian Gulf. This was more than what the British could accept. The same sort of political expediency was again observed on the occasion of the occupation of the Grand Mosque in 1979 (when Juhayman al-Utaibi and hundreds of armed followers denounced the Saudi monarchy for corruption and promoting Westernization), and in the 1990s when the Saudi regime was threatened by Islamist protests and jihadi attacks. In both instances, the state sought autorization of the Council of Senior Ulama to use force to put down the rebellion (228, 233).

Finally, although strongly puritanical, al-Wahhab followed a well-established Muslim tradition when he came to define the proper attitude of Muslims vis-a-vis political power. He thus proclaimed that, in order to avoid chaos and anarchy, all Muslims should obey a secular ruler, even if demonstrably corrupt. This attitude has been dutifully followed by the Wahhabite clerics who have supported the Saudi regime across all winds. Their puritanical opposition against innovations did not matter much for the Sauds since economic growth could be achieved with little or no major reform. And whenever an innovation is deemed necessary by the regime, acquiescence of the religious clerics can be obtained after the required justifications, however far-fetched, have been found. Thus, it is upon the request of king Abdul Aziz that ulama close to him had to exert themselves to find in the sacred texts a proper justification for an innovation as fundamental as photography. This innovation was eventually accepted, despite the idolatry of pictorial art, on the ground that it brings together light and shadow, which are both divine creations (Nomani and Rahnema, 1994, p. 139).

Similar efforts were deployed to allow the introduction of the wireless into the kingdom (Feldman, 2008, p. 97). By contrast, the prohibitions originating in the deep-rooted patriarchal values of the Bedouin society, such as the prohibition of driving for women, the banning of the sexes mingling, which compels male and female employees of a same firm to

travel to meetings in separate cars, and the prohibition of driving for women, which forces their husbands to spend hours every day ferrying wives to and from work, face much more resistance against change in spite of the heavy cost they impose on the country's economy.[8] Among the efficiency losses involved, one must also count the transaction costs caused by complex negotiations and frequent changes in laws and decrees dealing with highly contentious issues such as interest rates. It is evident that the country's immense oil wealth affords the Saudi elite the luxury of disregarding such costs; in the absence of that wealth, they would have to limit them in one way or another.

Kemalist Turkey offers a striking contrast to Saudi Arabia. There, a dynamic autocrat eager to reform the country's institutions and promote modern economic growth achieved absolute power. In terms of our analytical framework, the price of reforms is a diminished ability to co-opt clerics and reduced political stability. The reforms undertaken by the Young Turks and Atatürk, which included the outright suppression of autonomous Islamic institutions, the secularisation of education, and the introduction of Western-inspired civil and penal codes, marked a major turning point in the modern history of Turkey, ending her relative stagnation vis-à-vis the Western world and laying the basis for long-term development (Kuran, 2011).[9] The other side of the coin is that, though officially suppressed, religion was not dead and popular Islam turned into a vehicle for opposition. When the regime started to democratise, the opposition came into the open; in steps, Islamists began to compete in elections, and in 2002 they won a landslide victory.[10] The leader of the victorious party (the Justice and Development Party), Recep Tayyip Erdoğan, gradually revealed himself as another autocrat bent on undoing many reforms implemented under secular governments stretching back a century. The case of Bourguiba's Tunisia resembles that of Kemalist Turkey, although corruption and cronyism were much more widespread, particularly under Ben Ali, his successor. There, too, major reforms were undertaken, yet the instability of the regime became manifest in the Arab Spring of 2010-11.

In both Turkey and Tunisia, unnecessary tensions were created within the social fabric as a consequence of the antagonistic, even contemptuous stand adopted by an autocratic ruler toward the culture of the masses. This was reflected in policies of exclusionary secularism that generally arise when aspiring modern elites consider the old society and institutions

[8] Regarding the latter rule, it is only very recently (February 2012) that a royal order stipulated that women who drive should not be prosecuted by the courts (*Economist*, 3-9 March, 2012, p. 56).
[9] In the late 1920s, even judicial responsibility in family matters was taken away from the clerics.
[10] In 1994, they won the local elections in Istanbul for the first time.

responsible for the backwardness of the country and its inability to compete globally. Unnecessary tensions also arose because new economic opportunities went disproportionately to Westernised elites, thereby accentuating the social rift between masses and elites. In Turkey, the effect was made even worse by the fact that a good number of new income-earning opportunities, those available in the form of jobs in the state bureaucracy, were actually closed to people who practiced Islam openly.

Iraq offers an intermediate case. In many respects, the Baathist rulers of Iraq resembled the reformists of modern Turkey and Tunisia. This was especially evident under Abd al-Karim Qasim. However, around the year 1980, the country suffered from a series of dramatic shocks that increased people's frustrations and dissatisfaction with the regime: the rise of Khomeini to power in Iran (1979), the stirrings of a Shi'a revolt in Iraq, Saddam Hussein's catastrophic miscalculation in attacking Iran, and the ill-fated invasion of Kuwait. The first two events radicalised the clerics, while the latter two undermined the effectiveness of the reforms. In accordance with the predictions of my theory of state-religion interactions, Saddam's response to the mounting criticism by influential religious clerics was the adoption of regressive policies intended to placate the growing opposition. These regressive steps culminated in the ominous "Campaign for the Faith" (1993-2003), which de-secularised the legal and educational system, cracked down on manifestations of modern life, and set barbaric penalties to punish thefts and speculative behaviour. In complete contradiction with his 1977 declaration that the Sharia is irrelevant to modern life, and with his early commitment to the ideal of a national, secular, united Arab mega-state, Saddam claimed that Islam, rather than Arabism and Arab culture, could be the cement of the Iraqi nation.

Next, we consider country cases where a strong but effective state undertook important reforms, avoided large-scale corruption, and successfully co-opted the religious clerics. Such a combination of characteristics was found in *Safavid Iran*. It bears emphasis that when they built the modern Iranian state in early sixteenth century, the Safavids relied on Shi'a clerics who formed a rather homogeneous body of loyal supporters and provided a viable alternative to less controllable tribal groups. Although no church structure existed to facilitate cooperation between clerics and the Safavid dynasty, the alliance proved solid because an overwhelming majority of the new clerics (old Sunni clerics had been eliminated) were close to the new regime. Since they were of foreign extraction, their loyalty to the regime was more easily secured. The collapse of the Safavids initiated a period of power vacuum and social disorder that broke the existing politico-religious equilibrium and eventually prompted Iranian clerics to lead a persistent opposition against the deeply corrupt and largely ineffective regime

of the Qajar shahs. Their gradual rise into prominence in the course of the nineteenth century was strongly supported by various population groups, including merchants and bazaar people who rallied behind them upon realising the effectiveness of religious leadership. Although the clerics were in agreement with regard to the Qajar regime's abuses, they were far from unanimous in their conception of a new political and social order. This was especially evident during the constitutional crisis and the revolutions of 1905-17. Such divergences, which reflected the absence of a unique command structure even among the Shi'ates, persisted until and after the revolution of 1978-9 that toppled the Pahlavi dynasty.

To complete this summary survey, we shift our attention to the most common situation encountered in our inquiry into post-independent states of the Muslim world. It concerns countries where the autocrat's policy mix consisted of moderate institutional reforms and blatant forms of favouritism, corruption, and even extortion. In these conditions, it was impossible for the ruler to co-opt all the clerics. As a result, the clerical body became divided into two groups. On the one hand, were the high and generally urban clerics who more easily agreed to trade their support to the regime against various privileges, as they were not antagonised by drastic institutional reforms affecting their role and status. On the other hand, being relatively sensitive to corruption and empathetic towards the masses, the low clerics entered into political opposition. In *Egypt*, *Sudan*, *Algeria*, *Pakistan*, and other countries, corrupt autocrats and their cliques tried to fend off criticisms against their iniquitous regime not by meeting the most important objections and amending the prevailing system, but by allying themselves with religious authorities for the purpose of putting down leftist movements. Through such tactic, they have not only miscalculated but also betrayed their mission. These last statements deserve further explanation.

Regarding miscalculation, it bears emphasis that in Muslim countries the left has never succeeded in mobilising the support of more than a modest fraction of the population. As a matter of fact, while the urban elites, intellectuals and trade unionists in particular may feel attracted by Marxist and socialist ideas and ideals, the masses of ordinary people are generally rebuffed by irreligious doctrines of foreign origin. Targetting the left as the main enemy thus reflects an erroneous assessment of the balance of political forces. The consequences of such an ill-judgement are made even more serious because identifying with religious clerics is dangerous in a context where only a fraction of them can be brought under the regime's control. A bidding war between the regime and its allies in the high clergy and the masses led by members of the low clergy is thereby unleashed, which leads to a religious radicalisation of the political debate. Every term of the debate becomes framed in the religious idiom,

fatwas pronounced by religious officials are succeeded by counter-fatwas issued by lower or self-appointed clerics, anathema is substituted for reasoned controversies, and violent confrontation risks replacing peaceful discussion. Placing the political debate in religious territory becomes even more risky when the regime's dark forces embedded into the deep state give discreet support to violent movements of the religious right. Egypt, Pakistan, Algeria and Syria provide sad examples of this ominous possibility.

It is perhaps the starkest and most discouraging finding of our whole study that at the root of the present predicament of many Muslim countries is a betrayal of their secular ideals by political leaders who rapidly turned into autocrats. To protect their personal interests and satisfy their lure for power, they have often mixed up nationalism with Islam in a highly combustible manner.[11] The real tragedy behind the dominant political regime found in post-independent Muslim countries can be formulated as follows. While the minimum benefit that people can expect from autocracy is physical security and political stability, such a hope has been dashed in the case of the countries concerned. Where political stability cannot be achieved, instability might be seen as the necessary price to pay for modernising reforms. In those cases, unfortunately, instability goes to waste. It is fueled not by reforms but by prebendiary policies that benefit a narrow elite around the autocratic power.

From the foregoing discussion, it is easy to conceive the optimum policy mix, which minimises the risk of regime demise and simultaneously pursues modernisation. It combines flexible reformism with economically inclusive policies. Flexible reformism entails institutional reforms that avoid head-on confrontation with the masses through legal and cultural pluralism. Under such pluralism, multiple court systems coexist and judges are allowed to draw on multiple legal systems. Even on the most sensitive matters of personal status, however, political and judiciary authorities must enact a national code that promotes modern principles of equality and respect of individual autonomy. This is best done by turning into a statutory or quasi-statutory law the practices already followed in the most developed and sophisticated sectors or regions of the country. The hope is that the new national code will serve as a magnet that pulls the verdicts of conservative judges in the desired direction.

Combining the magnet effect theory with the theory of religious seduction, it becomes evident that excessively radical reforms can yield two distinct perverse effects. For one thing,

[11] This explains, but only partly as we shall see in the next section, why regimes which in the immediate post-colonial period were generally pro-Western in their political and economic ideologies and policies later lost this orientation. They became less identified with the West or squarely antagonistic to it (Huntington, 1996, p. 214).

they may generate greater political instability by antagonising religious clerics. For another, they may create a backlash by making judges and law enforcers more reluctant to implement progressive laws.

Modernity can be reached more easily if two other principles are followed. First, a national code must be promulgated that lays down fundamental rules applying strictly to all citizens. This requirement is especially important in matters of criminal justice. Second, the culture of Islamic jurisprudence must be recognised, so that judges are able to rationalise or vindicate judgements adapted to modern life in terms compatible with the faith. Several Muslim countries have actually adopted legal pluralism; in them, reforms tend to proceed in a calm and gradual manner. Indonesia provides the most inspiring example.

By expanding economic opportunities to the masses, the adoption of inclusive policies lessens opposition to secular reforms. This objective cannot be achieved where nepotism and cronyism are pervasive. Furthermore, there must not be strong barriers that prevent ordinary people from accessing modern education and jobs because of their traditional culture and religious beliefs. These barriers can either be imposed by the state as a result of discriminatory policies or be the outcome of internalised constraints and social norms. In the latter instance, the promotion of cultural pluralism would facilitate the integration of traditional groups into the modern economic system. Members of those groups should not fear a loss of cultural identity when they accept work in a modernised sector.

3. Local customs as a source of Islamic law

At the level of the ordinary people, rural masses in particular, Islamic principles are not rigorously followed as they have been typically blended with erstwhile customs. This creates a distance between Muslim officialdom, located in cities, and popular Islam as practiced in rural areas and towns, especially small and remote towns. The first sphere of Islam is represented by the ulama while the second one is represented by the mullahs. It bears emphasis that radical clerics of the reformist type, the Islamists, must be seen as dissenters eager to distance themselves from the official ulama who have compromised with secular power. They do not come from the rural world. Compared to the Islamists who adhere to a puritanical and scripturalist interpretation of Islam, the mullahs are easy to buy precisely because they are ideologically flexible and behave pragmatically. Moreover, they are not very concerned by institutional reforms that hurt the position of the religious officialdom from

which they feel rather estranged. Yet, on the other hand, they tend to be more radical than the official ulama in terms of sensitivity to corruption and social injustice and, in this regard, they are closer to the Islamists.

3.1 The sharia law and the custom

Custom has always played an important role in actual Islamic jurisprudence. Its role was immediately recognised by jurists, for example in the domain of commercial life. They thus went to some lengths to ensure that their legal rulings were consonant with the custom of the marketplace. As a result, commercial law, which deals with sales, loans, business partnerships, and contracts, allows for a great deal of flexibility and adaptability to the demands of business life (Berkey, 2010, p. 41). Yet, and the same applies to other domains of law, especially the sensitive area of family matters, such adaptability was the outcome of the amalgamation of the customs of those regions where the law had originated, mainly Western Arabia and Iraq, and the teachings of the Prophet. They were bound to arouse serious resistance in parts of the Arab Empire where different customs prevailed. As illustrated below, many communities rejected the influence of the Sharia in religious rituals and the regulation of their family relationships, for example. As pointed out by N.J. Coulson (1964), "they accepted Islam as a religion, but not as a way of life, and consequently remained, from the standpoint of strict orthodoxy, superficially Islamicised" (pp. 135-6). The Berber populations of North Africa provide a perfect illustration of this reality (Lugan, 2011, 2013).

In this context, the Sharia had to make important concessions to custom, even though custom per se had no binding force in Islamic legal theory. Custom actually operated as a principle of subsidiary value: customary law is implicitly endorsed by the Quran unless it is expressly rejected (Coulson, 1964, pp. 117, 143). Flexibility in regard of customs is even greater in the Maleki school, because of its adherence to the maxim that "necessity makes prohibited things permissible" (p. 144). In general, local customary laws were called upon when the Sharia or the other classic sources of Islamic jurisprudence failed to provide answers to recurring problems, or simply when the 'law of the land' prevailed. Hence, by its very nature, Islamic legal practice was "a cultural hybrid", and legal service providers had to know local cultural norms in addition to Islamic codes (Lydon, 2007, p. 19). The "fiqh" principle, which is human knowledge of a divine law and is therefore fallible (it is not law in the sense of sacred rules), recognises the possibility of reciprocal acculturation between Islam and local culture as a basic tenet of religious jurisprudence: a society's customary practices are a source of law in Islam (Bowen, 2003, pp. 15, 158). This is especially evident in the case of the

Ottoman state which drew upon all four schools of Islamic law in its law-making (even though the Hanafi school was the official, and dominant school of the empire), institutionalized various systems of Sufism (Islamic mysticism) within its urban communities and military organisations, and did not hesitate to use customary law in order to placate its disparate population of Christians, Jews, and followers of different schools within Sunni Islam (Goffman, 2002, p. 73; Finkel, 2005, pp. 10-11; An-Na'im, 2008, pp. 188-91).

The *hybridisation of Islam* does not cause problems in the absence of possible contradictions or tensions between the Sharia and the custom. In any case, they can be denied and subsumed under a broad religious reference. As aptly pointed out by Lawrence Rosen (1995) with reference to North Africa, "custom does not stand apart from the sacred law but is seen by its adherents as itself Islamic and hence indissolubly linked to Islamic law. Local practice and universalizing principles of the sharia thus merge in popular conceptualization" (p. 194). This blending of the two sources of law is facilitated by the aforementioned fact that any local custom or practice that is not strictly forbidden by the sharia is considered consistent with Islam and may therefore be brought within the ambit of the Islamic. People then tend to attribute to Islam what are actually principles derived from their traditional patriarchal culture.[12] And if the state has adopted Islam as its official ideology, as in Saudi Arabia, many tribal customs may be embalmed as Islamic by the religious establishment itself (Economist, May 17-23 2014, p. 32). Such reconciliation needs not occur, however. As we shall see when we turn to concrete examples, from non-Arab countries, there may exist genuine contradictions between what religion prescribes and what custom prescribes, and the people may perceive them as such. Ways to justify dissonant practices must therefore be found.

3.2 The pervasive influence of Sufism

Often manifested under spiritualist and syncretic forms, Sufism represents an important strand of Islam, and its role in the above amalgamation process is hard to overestimate (for a detailed account, see Knysh, 2010). Born among the Muslims whose response to the troubled times of the eighth century took the form of concentrated piety, Sufi mysticism slowly moved from the fringes of the Islamic intellectual world to the center. By the twelfth century, the Sufis had succeeded in creating a vivid form of spirituality that grasped the imagination of both Muslims and non-Muslims. Like Christian mystics, Sufi spiritual leaders indulged in acts of self-denial and displayed ascetic behaviour involving

[12] See, for example, Chaara, 2014, on the basis of fieldwork in Morocco.

continual fasting and the wearing of coarse garments (Sufi means "wearer of wool"). However, they did not fully embrace the other-worldliness of Christian monks who lived in remote places behind monastic walls. Instead, they generally mingled with ordinary people (Berkey, 2003, p. 154). Revealingly, conversion to Islam during the centuries of Islamic expansion took place more often through their efforts than through those of any other representatives of Islam. In particular, the conversion by Sufis of the Turks of Central Asia came just in time to save the Islamic world from disaster. Indeed, when hordes of Turkish-speaking nomads moved from Central Asia into the Muslim Middle East in the middle of the eleventh century, the Turkish conquerors had recently converted to Islam, largely thanks to the missionary activities of the Sufis. They did not, therefore, try to change the religion of this region (Mottahedeh, 2000, pp.145-6).

In Central Asia, Adeeb Khalid (2007) reminds us that the Quran was not central to the everyday conduct of Muslims, and learned people were not expected to master given passages of the holy text. Rather, local communities "asserted their Muslim identities through elaborate myths of origin that assimilated elements of the Islamic ethical tradition with local norms and vice versa" (p. 21). If Islam does not have officially canonised saints, Muslims came early on to accept that certain individuals have an intimate relationship to God and may intercede with him on behalf of ordinary Muslims. This cult of sacred persons was actually a replication of patronage networks that existed in society. After the death of the friends of God, their mausoleums became shrines, places of pilgrimage, and foci of communal identity, and their disciples provided a living link to sacred origins (p. 22). In the thirteenth to fifteenth centuries, the Sufi movements of Central Asia became gradually institutionalised in "tariqats" which were seen as sources of authority complementary to the sharia. In fact, all the ulama had Sufi affiliations. Hence, one may speak of the ulama and the Sufis as a single group (pp. 27, 31).

The predominance of Sufism has also characterised the history of Islamic South Asia. Mingling classical Islamic mysticism with Hinduism and folk beliefs, popular Sufism has been, and still is, an emotional faith mainly expressed in the form of the veneration of saints, living and dead, with associated ceremonies of remembrance, mourning, and ritual marriages and funerals, and in the form of pilgrimages to shrines and burial sites, or festivals full of superstitions and magical representations or rituals.[13] For orthodox Sufis, such practices are

[13] The distinctive feature of the various Sufi orders was the organisation of a brotherhood built around the total devotion and obedience of the disciples to the master. Besides believing in the miraculous

absurd because they believe that it is through self-knowledge that the devout mystic strives to attain knowledge of God. Yet, this belief also sets them apart from scripturalist Islam, which is committed to the beliefs and laws set out in the Quran, the hadith of the Prophet, and the sharia. While Islam's classical functionaries demand obedience and discipline, Sufis tend to stress tolerance and the cult of pleasure through poetry and physical love. It is largely thanks to them that "the diversity of South Asian Islam is a staggering multicultural achievement" (Lapidus, 1988, p. 458; Economist, December 20th 2008, p. 70).

For example, under the Chistis, a powerful Sufi order that began in the thirteenth century, soon after the conquest of Delhi by an army of Persian-speaking Afghans, a remarkably harmonious cohabitation came to prevail between Hindus and Muslims in India. This was made possible by the great amount of tolerance displayed by both Hindu and Sufi Muslim beliefs. In particular, the Chistis preached a non-political and non-violent philosophy based on the central idea that spiritual attitude was more important than specific religious laws or practices. In accordance with this idea, they have always shown a lot of laxity with regard to enforcement of the Islamic law. In addition, they had no problem accepting recalcitrant non-Muslims as Sufi initiates, and they understood that Islam and Hinduism shared spiritual insights susceptible of leading to an assimilation of Sufi and Hindu beliefs. Popular saint worship blurred the religious distinctions between Muslims and Hindus, and certain Sufi theories and cosmologies blended Hindu and Muslim concepts (Lapidus, 1988, pp. 447, 449, 458-9).[14] Shared practices among Hindus and Muslims thus "reflected highly syncretised understandings and expressions of religious-cultural affiliation and close ties between communities" (An-Na'im, 2008, p. 152).

Rather astonishingly, not only did Sufi orders adopt Hindu ceremonies, devotional songs, and yoga techniques, but they also did not wholly exclude the worship of local gods within and alongside Islam. The veneration of Sufi graves and their annual festivals even coincided in some cases with the Hindu calendar. Thus, "in Bengal and the Punjab Muslims celebrated Hindu festivals, worshipped at Hindu shrines, offered gifts to Hindu gods and

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powers of their saints, the Sufis thought that the order of the universe was upheld by a hierarchy of Sufi masters. For them, the Sharia was only a preliminary step towards "haqiqa", the realisation of God that was attained only through ascetic exercises and emotional insights (Lapidus, 1988, pp. 448, 460).

[14] For example, in orthodox Islam and Sufism, dead Muslim saints cannot intercede with God or perform miracles. This would be a form of idolatry. Therefore, if Muslims pray at their shrines, it can only be for the dead man's own salvation. In practice, however, the Sufi orders have not insisted that such a principle be strictly observed (Economist, December 20th 2008, p. 68).

goddesses, and celebrated marriages in Hindu fashion". If Hindus who converted to Islam retained many of their past beliefs and practices, it is also true that many Hindus venerated Muslim saints without changing their religious identity (Lapidus, 1988, pp. 446, 449). The end result was that "popular religious culture became a mixture of Muslim and Hindu practices", and "despite the formal Muslim establishment, the influence of the ulama on the general society was very limited" (pp. 447, 449). The fact of the matter is that for the majority of Muslims, the Sharia was "only an object of reverence, not a body of law that was, or could be, enforced" (Mujeeb, 1967, p. 213).

It is the Sufi orders which played the critical role in the creation of a Muslim community in India, giving rise to communal-religious structures pervaded by a syncretic and pluralistic tradition. Originated in the period of the Delhi sultanates (1206-1526), these structures were passed on to the Mughal Empire, at least until the reign of Aurangzeb (1658-1707) who reversed the policy of conciliation of Hindus in favour of Islamic supremacy.[15] Indian Muslims thus came to form numerous religious bodies divided by allegiance to schools of law, Sufi orders, and to the teaching of individual masters, scholars, and saints (Lapidus, 1988, pp. 458, 463).

The lesson from Muslim India has been aptly summarized by Ira Lapidus:

> Thus in India the pursuit of a cosmopolitan state identity led to a distinctive civilisation. Similarly, Muslim religious life both resembled and departed from Middle Eastern norms. Islam in India replicated the basic forms of ulama and Sufi Islam… the various forms of ulama scholarship, Sufi contemplation, worship of saints, and reformist tendencies remained in open competition with each other… The formation of a popular Muslim subculture in India was not, however, a departure from Muslim norms, but an example of a process that was universal in the formation of Muslim societies. In the Middle East, Islam had been formed as a syncretism of popular Christian and Jewish religious practices with Muslim teachings, though the passage of time has concealed the syncretic nature of Middle Eastern Islam. Thus the Mughal era bequeathed to modern India a distinctive variant of Muslim institutions and culture (Lapidus, 1988, p. 466).

To India and the Middle East, Lapidus could have added the Caucasus as another instance of a region where *reciprocal religious acculturation* took place. In this region,

[15] The Mughals, indeed, intended to create a cosmopolitan Indian-Islamic order based on a synthesis between Hinduism and Islam. The famous emperor Akbar (1556-1605) actually supported the Chisti order and considered himself to be a Sufi master and a philosopher-king in charge of protecting all his subjects regardless of their religious beliefs. In the whole Mughal period, however, the order of importance of Sufi orders shifted: the influence of the Naqshbandis and the Qadiris gradually replaced that of the Chistis and the Suhrawardis (Lapidus, 1988, pp. 456, 459). We will return to this significant shift later, when we consider the role and nature of Islamist movements (Chapter 7).

indeed, certain sacred places were jointly honoured by members of different religions, Islam and Christianity in particular. In the city of Movka, for example:

> Common shrines revered by followers of both religions [Christians and Muslims] are by no means rare. The tomb of St. George in the Church of Mokus-Su and the Christian shrine of Dzivar are honoured by both Georgians and Armenians on the one hand and by Azerbaidzhan and Moslem Kurds on the other. According to a local tradition the former was built by a Christian and a Moslem shepherd. Similarly the Moslem shrine of Pir-Dovgan (or Saint Dovgan) was revered as earnestly by the Armenians as by the followers of Mahomet (cited from De Waal, 2010, pp. 13-14).

Examination of the case of Afghanistan broadly confirms the above observations. Throughout this country, indeed, customs and superstitions of pre-Islamic origin subsist everywhere. In the tribal areas, in particular, the tribal law and the sharia are clearly opposed, and the former supersedes the latter. Thus, in the tribes, following the principle of strict patrilineage, women are not allowed to inherit property whereas the Quran prescribes that they should inherit half of the male share; the dowry frequently exceeds the limits set by the Sharia; the repudiation of a wife by her husband, which is not opposed by the Quran, is practically impossible, since this would be an insulting gesture towards the wife's family; vengeance is allowed by the tribal code to defend the family's honour, while the sharia attempts to limit the occasions on which it can be resorted to. At a deeper level, the ulama, who do not recognise ethnic entities in accordance with the universalistic approach of the Quran, are seen as a threat to the identity of the tribe, to the extent that they appear willing to replace the tribal code (the "pashtunwali") by the Islamic law, and to minimise the role of the khan, whose power rests entirely on secular foundations.

Revealingly, the village mullahs, whose status is low (placed in the same social category as the artisans, they are not consecrated as clerics), are typically closer to the tribal communities than the ulama, and their influence and moral prestige are generally considerable and proportional to their piety. They are typically careful not to interfere in delicate matters where tradition and Islam may clash (Roy, 1990, pp. 35-6; Magnus and Naby, 2002, p. 75). Similar situations have been observed in the tribal societies of the Middle East (e.g., in Iran and Yemen) and North Africa (e.g., among the Berbers in Morocco, and in Algeria's Kabylia) (Coulson, 1964, pp. 136-37; Keddie, 2003, pp. 31-32).

It is not only in South Asia, but also in Sub-Saharan Africa that the traditional forms of ulama and law school organisations play no significant role and Sufi brotherhoods are the principal form of Muslim association. In East Africa, for example, a dominant role for the

ulama is found only in Sudan. Elsewhere, Muslim life is mostly organised around brotherhoods, fraternities, Sufi families and lineages, individual holy men and revered local shrines. To this date, Muslim communities in Africa have remained mainly associations for worship, education and welfare. In the words of Lapidus (1988): "Whereas Islam is in principle a religion which shatters all lesser loyalties, in Africa it is an integral part of Hausa, Berber-Somali, Arab, Mossi, Dyula, and other linguistic and ethnic affiliations. Whereas in principle Islam is a universal religion based on a revealed scripture, in Africa it takes on an infinite variety of local forms. Islam, then, is a symbol of identity adaptable to various economic, social, and political circumstances. Its principles of religious belief, communal organisation, and state power can be combined and recombined in different ways" (pp. 877-8).

Interactions between Islam and local African customs have often been highly syncretic, allowing for both an "*Africanisation of Islam*" and an Islamisation of certain customary rules, a tolerance of animist and spirit worship practices, and even some changes in the dogma and legal principles (I.M. Lewis, 1966, pp. 58-75; Brenner, 2000, p. 347; Robinson, 2004, Chap. 4; Ntampaka, 2004, p. 158; Soares, 2005, p. 35). For example, the value of talismans was generally accepted provided that they contained Quranic verses (Robinson, 2004, pp. 148-9). The fact of the matter is that Muslim religious leaders tend to recognise the necessity of balancing strict religious principles with the practical needs of the common people for magical sustenance and adherence to erstwhile customs (Lapidus, 1988, p. 876). Owing to the many continuities in belief and practices that were thus preserved between the old rituals and the new creeds, there was actually "a great deal more osmosis and cross-over, more *convergence* than *conversion* in the sense of radical change", when Africans converted to Islam, or to Christianity for that matter (Sarro, 2009, p. 145).[16]

3.3 Conciliatory gestures and stratagems

Deserving special emphasis is the flexibility regarding some of the most explicit Islamic rules, such as the law of commercial partnerships, and inheritance prescriptions (contained in the Quran). Thus, among the Juula and the Hausa (in present-day NorthernNigeria), descent rules could be manipulated so as to circumvent the prescription that all children ought to inherit from their parents, thus avoiding dispersion of business assets. This is done by selecting one unique successor among slaves/clients (rather than relatives)

[16] Sarro (2009) also makes the point that religion is a technique "to make a synthesis between what is inherited and what is received from outside" (p. 147).

recruited into the trading organisation as a junior partner. In effect, specific solutions "depended almost entirely upon arrangements made within a modified version of the secular kinship idiom" (Austen, 1987, pp. 43-4).

That mergers of the Sharia and customary law could take place at the most official level is attested by the concessions which the former had to make to the latter in NorthernNigeria after the Fulani conquests of the early nineteenth century. Here the courts of the qadis came to recognise the custom whereby a wife may obtain dissolution of her marriage by returning to the husband the brideprice she received from him. This differs from the form of divorce known as "khul" in Islamic law (release of the wife in consideration of a payment made by her) because the latter can never be enforced by the wife unilaterally. But it is a normal contract for which the free consent of the husband is absolutely necessary. Likewise, the rule according to which male children must be removed from the custody of their divorced mother as soon as they reach the age of two is drawn from the customary practice and not from the Sharia.

In Java, to take an example from Asia, the customary regime of common ownership by husband and wife (a doctrine known as "adat") gained recognition in the Islamic courts thanks to the fiction that a commercial partnership existed between the spouses. This fiction thus allowed the Islamisation of customary Javanese law through an idiom that can be justified in terms of Islamic jurisprudence. In this manner, the sharia courts were entitled to apply, inter alia, the customary rule that a wife was entitled on divorce to receive one-third of the couple's joint earnings (Coulson, 1964, pp. 137-8; Cammack and Feener, 2008). Moreover, the 2:1 ratio prescribed by the Quran in matters of inheritance was circumvented on the grounds that such a rule is justified only in conditions where the man bears most economic burdens and responsibilities within the household. When women put in considerable effort and even manage small-scale businesses, equal division between genders is the only fair rule. And the move is legitimate because the Quran also says that we must be just and good (Bowen, 2003, pp. 162-3).

Another striking illustration from Indonesia concerns Minangkabau society in West Sumatra. Here is a society with a matrilineal tradition prescribing that ancestral lands are passed down from mothers' brothers to sisters' sons. At least by the late eighteenth century, some groups in the region began to clamour for a change of custom in the name of Islam. Unsurprisingly, those groups included dynamic coastal traders and highlands cash-crop farmers who had acquired new wealth. They wanted the right to transmit it directly to their

own children, thus availing themselves of a powerful incentive to create that wealth. It was therefore natural for them to ask for the application of the Islamic law against the (matrilineal) custom. In due time, such a claim gave rise to a heated debate between reformist and traditional Islamic jurists. The latter defended the customary system by resorting to the following argument: ancestral ricelands formed a type of endowment (waqf), held in trust by the sub-lineage heads in each generation and, therefore, they were not to be divided according to the "science of shares", which the reformists viewed as the correct Islamic rule (Bowen, 2003, pp. 142-3). Conservative clerics argued that the custom-based rule of transmission applies not only to ancestral lands but also to other forms of property.

Parallel to the above controversy, a practice developed on the ground whereby the new elite increasingly resorted to pre-mortem donations rather than to division into shares after death as recommended by Islam (for a similar process in matrilineal societies of Ghana, see Quisumbing et al., 2001; La Ferrara, 2007; Aldashev et al., 2012b; Platteau and Wahhaj, 2013, pp. 666-9). The perceived advantage of such donations is that they allow the parents to designate the persons to receive the property, and that the gift can be taken back if the children fail to take good care of the parents. This second rationale has been labeled the strategic bequest motive by economic theorists (see Bernheim, Shleifer, and Summers, 1985). It bears noticing that no objections appear to have been made to these inter vivos transfers on Islamic law grounds while strong resistance has come from advocates of adat (custom).

A formal compromise was eventually reached in 1952. According to the agreement, landowners must give one-third of their non-ancestral lands to their sisters' children and divide the remainder on the basis of the Islamic rule of shares. At about the same time, court decisions also recognised the right of parents to donate non-ancestral lands to children provided that this is done with the knowledge of the sisters' children. By the late 1960s, this formal consensus of jurists "coexisted with a wide array of social and legal practices in West Sumatra": many Minangkabau people actually donated all their non-ancestral property to their children. They "were supported in the courts in the rare instances when such donations were challenged" (Bowen, 2003, p. 144). It is therefore unsurprising that Bowen strongly disagreed with "all ideas that Islam (or any other collection of norms) consists of a fixed set of rules –as if a codebook called Sharia contained a timeless and repressive plan for abolishing rights and diversity" (p. 19).

3.4 Encounters between high and low Islams

From time to time, urban reformers from the "high Islam", who stand for Islamic orthodoxy, have tried to re-establish a purified order among the rural self-governing communities practicing a "low Islam". In particular, they have asked for a strict enforcement of the Islamic family law that is regarded as a vital and integral part of the scheme of religious duties (Coulson, 1964, p. 147). Historical evidence attests that in most instances when reformers of the high Islam have attempted to make the beliefs and practices of the popular masses more consonant with the injunctions of Islam, they prevailed for only a limited period of time. Afterwards, things slowly returned to normality (Gellner, 1992, p. 14). For example, toward the beginning of the twentieth century, the reformist ulama Ibnou Zakri rose against the archaism of rural Islam in Kabylia, denouncing, in particular, the ignorance of the Islamic law of inheritance. Yet, while he succeeded in persuading the French colonial administration to abrogate the customary Berber law according to which women are not entitled to inherit parental wealth, his struggle did not produce tangible effects on the ground (Chachoua, 2001, pp. 185-87). The central Saharan Berbers, despite Islamisation, clang to their language and many of their customs. They even succeeded in absorbing the Arab groups as tributaries into their own tribal system (Fage and Tordoff, 1995, p. 189).

In Senegal and Mali, as our own fieldwork has revealed, erstwhile customs regarding inheritance (girls do not inherit) remain very much alive in spite of long centuries of Islamisation. When we brought to the notice of men that they were thus violating a precise prescription of the Quran (Verse 4:12, stating that daughters should inherit half the share of their brothers), they did not deny the fact. Instead, they started smiling and looking at each other, perfectly aware of the blatant contradiction between their behaviour and the Islamic law in this regard. Recognising the question as important, they did not try to eschew it. The type of answer elicited from several village communities in the regions of Koutiala and Sikasso (Mali, February 2008) is remarkably identical. Essentially, inhabitants advance the somewhat contradictory claim that Quranic prescriptions ought to be taken literally yet a difference exists between theory and practice. Actual practice should take account of local customs bequeathed by their ancestors, which implies that they persist in parallel with Islamic tenets. Schematically, their customary ways are pertinent because of two reasons. To begin with, their sheer poverty prevents them from abiding by the Quran as they would like. This is particularly evident in the case of inheritance. Indeed, land is their only wealth and, if they divide it among sons and daughters, the parcels bequeathed would fall below a viable size. Had they possessed other forms of wealth, they would have readily share it equally among all

their children, girls included. Moreover, under the patriarchal tribal system women obtain access to land through their husband. Upon marriage, their daughters join another family, and it is the duty of that family to provide for the needs of women and children. Therefore, parents must keep enough land to give to their own sons since as husbands they must be able to ensure a decent livelihood for the daughters-in-law, which often implies that the latter are granted use rights over particular parcels.

In the whole discussion, emphasis is thus placed on poverty and local customs. Because they are poor, they cannot afford to abide by all the Quranic prescriptions. They just try to follow as many as possible, which is why they cannot be accused of being bad Muslims. Islamic law, says one villager, provides that we should be clean while praying, but this is a luxury which we cannot afford since we are so poor that we have only one set of clothes. Interestingly, in the village of Samogossoni (near the town of Sikasso), a local mullah (called imam in local parlance), was attending the whole discussion and, by nodding, he discreetly approved what the villagers were saying. While he had been quite talkative until that stage of the focus-group discussion (in fact, he almost monopolised the floor when the subjects addressed did not have a religious character), he suddenly stopped intervening as soon as the contradiction between behaviour and the Islamic law was brought to light by me. In another village (Ouahibera, again in the Sikasso region, but closer to Mali-Côte d'Ivoire border), a middle-aged villager who plays an active role in local committees told me in private that their mullah tends to defend a strict observance of the sharia, but in actual practice he is the first to violate it whenever it suits his interests. This causes the villagers to laugh quite a bit when the mullah blames them for their bad behaviour. Some practices are forbidden by Islam but are done in a concealed manner by everybody, including the imam. In still other villages, there are several mullahs, and they differ in how they interpret the Islamic law.

In the Senegal river valley (region of Podor), household heads tend likewise to be embarrassed and confused when the contradiction between their inheritance practices and the Quran is pointed out. Nevertheless, they are eager to stress that the contradiction is more apparent than real because, in compensation for their lack of land inheritance, women receive gifts from their brothers (e.g., harvest shares). Unfortunately, it proved difficult to make out from the interviews the size or regularity of such transfers. In Niger, likewise, Barbara Cooper (1997) reports an arrangement known as *aro*, whereby women, in recognition of their ownership rights, receive part of the crop harvested on some portion of the family land by their brothers. Yet, women's access to land remains fragile and difficult to secure: owing to

their absence from the native village following marriage, they find it typically hard to exercise whichever rights over land might have been granted to them, especially so if their male relatives are ready to exploit the situation (pp. 78-81). Bedoucha (1987) offers yet another illustration of the flexible interpretation of the Quranic inheritance law among the Tuaregs. Such flexibility obtains, he says, because practice is based on a subtle blending of written tenets, oral tradition and tacit understanding.

If a marriage is broken up, the custom in many African countriess provides that the separated or divorced woman has a right to return to the parental household and make a living there until she becomes remarried. Typically, the woman is awarded temporary use rights over a parcel of family land. This social protection mechanism is especially strong when the husband is deemed responsible for the marriage's failure (Gaspart and Platteau, 2010). Problems arise, however, when land becomes scarce. Brothers then tend to get nervous about applying the custom, and they pressure their father to deny their sisters the right to return to, or stay on, a portion of the family land. In such circumstances, a separated woman can be pushed to go back to her previous husband (in the event she took the initiative of leaving him) or to accept quickly a new one so as to free land. Hence the precarious situation in which separated women can fall and their low bargaining power vis-à-vis their husband in the event of an unhappy marriage. In this new context, customary norms become less pertinent, and the granting of inheritance rights to women, such as prescribed by the Quran and, in a still more equitable measure, by the modern statutory law based on the Napoleonic code, is increasingly justified. Therefore, uneasiness about the persistence of the custom in the face of these evolving economic conditions and in the presence of alternative prescriptions, especially those drawn from religious texts, is bound to rise as time passes. What deserves to be emphasised, however, is that if the inheritance system eventually evolves (such it has started to do gradually in densely populated regions of Sub-SaharanAfrica, like Malawi, Rwanda, Burundi, and parts of Kenya and the Senegal river valley), the evolution is ultimately caused not by religion, but by profound changes in the surrounding economic, ecological and demographic environment.

The above evidence shows that, in large parts of the Islamic world, customs remain strongly resistant to the Islamic law when the two stand in clear contradiction. In matters of inheritance, in particular, the strength of custom is observed in many regions, particularly in countries of Sun-Saharan Africa and South Asia where the traditional ulama and law schools

are weakest, being almost non-existent or without much influence.[17] Sufi brotherhoods and orders are the principal form of Muslim association, and Muslim identity is often superimposed upon pre-existing village identity. The influence of Islam has been manifest mostly in the spheres of trade and politics, as well as in the blending of faith in the miraculous power of Islamic holy men with pre-Islamic beliefs. Social usages, by contrast, remain very much guided by erstwhile customs. In the words of Lapidus (1988), again, Islamic belief "did not necessarily lead to the formation of an organised body of believers, but could serve as a shared identity among diverse people who preserved their own kinship, territorial, linguistic, ethnic, and other bases of non-Islamic culture in group organisation and social relations" (p. 262).[18] The acceptance of Islamic rules was always easier in merchant circles, both in Africa and South Asia. For these people, indeed, conversion to Islam made sense because it integrated them into intra- and inter-regional trade networks using effective contract enforcement mechanisms based on the sharing of Islamic beliefs and culture (Platteau, 2009).

In Indonesia, for example, traders adopted Islam quickly simply because it gave them something in common with their south Asian and Middle Eastern trading partners (by the thirteenth and fourteenth century, most of the traders exporting Indonesian spices west to Europe were Muslims from these two regions) who preferred to deal with fellow co-religionists. Moreover, they had no particularly strong religious beliefs of their own, or they found those that they had increasingly at odds with the changing world within which they lived. Conversion to Islam, therefore, offered them spiritual benefits in addition to commercial ones (Brown, 2003, p. 31).

[17] An anthropological study of a small village in Upper Egypt has concluded that "both Christian and Muslim families follow inheritance rules where a daughter inherits half the share of a son and where part of the property will go to other male members, such as the father, brothers, or brothers' sons, if a man does not leave a son at his death" (Bach, 2004, p. 187).

[18] The long persistence of pagan social usages and beliefs in spite of conversions to monotheistic religions has been observed in numerous contexts. Thus, most of the Abkhaz people in the Caucasus converted to Islam in the nineteenth century after having been Orthodox Christians, a religion to which many returned later in the same century. The important feature of their religious practices, however, is the persistence of pre-Christian rituals and customs. This led the Abkhaz historian and politician Stanislav Lakoba to describe his people as "80 percent Christian, 20 percent (Sunni) Muslim and 100 percent Pagan" (cited from De Waal, 2010, p. 148).