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INVENTING SHARIA

Egyptian Judges and the Islamic Legal Repertoire**

Baudouin DUPRET*

Let's begin with an example. The 22nd of May 1980, a whole range of provisions in the Egyptian Constitution have been amended, in particular article 2. Before, it stipulated that . Today, it stipulates that . In the preparatory works to the amendment, it is said that by forcing the ordinary legislator to refer to the Sharia principles in order to draw rules as to the organisation of the society, the Constitution brought limits to the legislator's power. The idea is therefore

«to force the legislator to refer to the Sharia law commandments to find what he looks for, to the exclusion of all other legal sources. If he doesn't find then an explicit commandment, he could infer from the interpretation of Sharia the rules to follow which do not run counter the general Sharia law principles» (Supreme Constitutional Court, May 4, 1985 ; see Jaquemond 1994).

The best way to measure the implications of article 2 and to analyse its application is to have a look at the interpretation given by the Supreme Constitutional Court. From its outset, the Supreme Court tried to avoid any interpretation of Sharia and tried to adhere to a strict legal technique¹. At the same time, the Supreme Court formulated the principle of the non retroactivity of article 2. It said that

(Supreme Constitutional Court, May 4, 1985 ; see Jaquemond 1994).

Obviously, the Court tried as much as possible to protect the country's legal stability. But when I take a closer look to more recent jurisprudence, I see a very significant change. While only very few texts could be found on the matter before the 1980 reform, after this date things changed dramatically. In a judgement delivered on May 15, 1993, the Court referred explicitly to Sharia as the main source of legislation. It explained what Sharia was and how it could be interpreted.

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¹ For instance, in its judgement (May 4, 1985) about the 44-1979 decree (called Jihan Sadat decree because of the former Egyptian President's wife who was considered as its instigator), it decided to nullify it, not because of its contradiction to article 2, but because there was no reason for a 1929 text which was not amended since that time to make use of the decree-law technique which results from the exceptional ruling competences given to the President of the Republic.

«A legal text cannot run counter to formal rules of Sharia whose immutability and meaning are absolute (*qat'iyyat al-thubût wa al-dalâla*). These rules and their definition cannot be submitted to individual interpretation (*ijtihâd*). It concerns prominent principles and fixed foundations which do not accept any interpretation or permutation. It is then impossible that their conception be modified according to changes in time or place. They are thus opposed to any amendment and we cannot escape them. The authority of the Supreme Constitutional Court is here limited to control their observance and their priority on any rule which contradicts them. (...) On the other hand, we find rules resulting from individual reasoning (*ahkâm zanniyya*), as well in their immutability as in their meaning, or in both. Interpretation is limited to these rules only and does not expand to others. It varies according to changes in time and place to keep them flexible and dynamic (...) in order to satisfy the rightful interests of the faithful» (Supreme Constitutional Court, May 15, 1993 ; see also Dupret 1996b).

It seems that the incorporating process of Sharia into the Egyptian legal system is on its way. In this article, I will attempt to describe this process not from a legal point of view, but from a sociological and anthropological one. This means that I will not focus on law and rules as such, but on the way they always are produced by people (whom I'll call) interacting with other people and embedded in a social and legal context that are influenced by norms and actors which in their turn are symmetrically influenced by them. In order to achieve such a goal, I'll mobilise theories from social sciences. It proceeds from the conviction that legal rules are not to be understood in a closed system which is supposed to function independently. Neither are religious rules. As Clifford Geertz pointed out, social sciences have to consider religion – to which I add law – as the product of interacting people which can be analysed, not as a given which is only subject to interpretation. It will lead to the deconstruction of what is generally understood by Sharia law and to the analysis of the role it plays in contemporary Egypt (among other Arab countries), something which has much more to do with social, political and ethical considerations than with legal technical ones.

From this perspective, I'd like to scrutinize the many ways Egyptian judges consider and utilise the legal sources which are at their disposal. My material is constituted by the many interviews I have conducted with magistrates and the various judgements I have collected and translated. In order to show that law and religion don't refer exclusively to rules and conflict resolution, I'll proceed to the following demonstration. In a first part, I'll try to make some statements on some of the sociological aspects of law. A first section will deal with the way actors and rules interact within the social context. Starting from this, I'll put forward in a second section the suggestion that a distinction can be made between norms and rules and that many of the actors' behavior can be considered as a strategy aiming to make regulatory what is at first cultural. This will enable me finally, in a third section, to show how the use of the many legal repertoires belongs to policies of identity definition and to the re-construction of tradition. In the second part of this paper, I'll focus on Sharia Law as it seems to me to be perceived today in Egypt. I'll first present what I call the actors of Egyptian law and the kind of position their professional activities seem to give

them. Then, in a second section, I'll briefly propose a typology of judicial decisions referring to both Sharia and statute law, followed by an analysis of what actors are doing when manipulating the many legal repertoires they have at their disposal. Finally, in a last section, I'll try to show that Sharia law cannot be understood in a transhistorical manner, but as one of the few formal resources Egyptian legal actors have at their disposal. Then it is only when making use of it that they give it a meaningful and practical substance.

1. Sociological Aspects of Law

i. Actors, rules and social context

Following Sally Falk Moore (1978) and John Griffiths (1986), I'm keen to consider law from a sociological point of view. It means that I prefer to proceed from the ground, i.e. from the many places where norms are produced, than from the top, i.e. from the rule or the law itself as given by a so-called legislator (be it the State or any other corporate group). Such a statement implies we accept that there are plenty of such places, what Moore calls semi-autonomous social fields, which have, on the one hand, , and, on the other hand, are (Moore 1978: 56)².

For the scope of this paper, I'll speak of legal institutions as aggregates of some of the many social fields which are semi-autonomously producing rules and compliance to them. This is what I call the legal field (Bourdieu 1994)³, but even this restricted legal field must be sociologically considered. This is the place where people compete to monopolise the expression of official law⁴. Rather, this is where a tendency to monopolise the expression of the law and a situation where the fragmentation of the law production areas clash with each other. What does this mean? Simply that there are many groups aiming at monopolising the expression and the administration of law and that these people, with their various understandings and strategies, are competing with each other. Therefore, one must also go beyond the mere study of the state considered as the main law-producing institution. The interaction between the legislator (which is nothing but a group of individuals and social fields) and people takes place in a social context where many social factors influence the

² According Moore, society is made off semi-autonomous social fields (SASFs). Many such fields may articulate with others in such a way to form complex chains (...). The interdependent articulation of many different social fields constitutes one of the basic characteristics of complex societies» (Moore 1978: 57-58).

³ For Bourdieu, a field is a social space where people have a position which is determined by their ressources (which can be economic as well as political or symbolic) and compete for maintaining or improving it (Bourdieu 1994).

⁴ It is common for professional categories to develop a way to behave and to deal with their affairs which makes it difficult or impossible for outsiders to have any access to these affairs without the intermediation of these professionals.

many individuals' behaviour. This is why one needs a sociological analysis of the law, for it takes into account the complexity of social matters.

The mainly anglophone anthropological literature has been interested in conflict solving matters, and therefore in judicial procedure. The following two conclusions can be drawn from its reading. First, examining the micro processes that influence judicial actions shows us to what extent state law has penetrated into the different social fields and thus affected the level of their imperviousness. This type of study involves all tribunals and courts. Secondly, legal procedures would not so much represent the application of a corpus of binding rules (originating from statute or religious laws), but rather the adaptation of the judge's decisions to inextricably linked cultural and social concepts (Rosen 1989). What stands out first is that each conflict involves reaching a balance between norms and results. One must therefore stress the significance of the notion of *balance*. This notion helps us to identify the actors' constraints and choices, which depend on the representations the actors have of them.

ii. From the normative to the regulatory

Hence, the judge represents the social to himself and claims for a translation of the social into binding rules. These rules belong to various legal systems (e.g. Sharia law, Statute law, etc.). In fact I prefer the term of repertoires, for it reveals more about the rhetorical nature and use of law⁵. To the respect of such a translation, Carol Greenhouse has made a fundamental distinction between norms and rules. While norms have an *a posteriori* and justificative character, rules have an *a priori* and regulatory character (Greenhouse 1988)⁶.

One could raise the question of whether the various legal repertoires used by the many actors don't often constitute a justification discourse (e.g. normative character of the Islamic legal repertoire) about a law system (e.g. regulatory character of the statute law legal repertoire). According to this point of view,

⁵ For instance, I prefer to speak of an *analogy*, for it reveals more about the discursive use of Sharia law by magistrates.

⁶ According to such a distinction, the norm is invoked by the individual who ascribes it to society, while the rule is publicly promulgated by an authority ; the norm is resulting from a shared experience, a culture, while the rule is produced by the decision of an authority ; one does not have to conform to the norm, whereas one does have to conform with the rule ; a norm can be explained whereas a rule is imposing. Any normative thinking requests an analogy to be drawn between the thinker's situation and the justifications invoked by someone else. It is a process of classifying reality and oneself into this reality. The result is a system made off of inclusions and exclusions. Thus the norm is a classificatory element dividing acts between normal and abnormal. That's why the norm is a justification. Referring to a norm means to justify oneself vis-à-vis and against others on a common ground of a shared experience whith which an analogy is made. The more it will proceed from an exact perception of what is socially acknowledged, the more the justification will be effective (Greenhouse 1982).

there wouldn't be conflictual legal systems or legal repertoires, but tension between what François Ost calls the three circles of legal rules validity (Ost 1987), that is legality (technical adequacy), legitimacy (ethical adequacy) and effectiveness (social adequacy). The professional discourse could be analysed, from this point of view, as strategies aiming at reducing this tension and to make correspond the legality circle (statute law rules) with the effectiveness circle (existing statute law observance) and moreover with the legitimacy circle (inscription of the rule in the classificatory system of the local normative).

This point leads to reintroduce Bourdieu's concept of (legal and especially political) field, which is as well a field of forces as a field of conflicts⁷. What is at stake in this passage from the normative to the regulatory is something distinctive of this field the components of which are instrumentalised according to the balances of power. Thus the political explanation remains crucial in appreciating the attitude which is adopted by judges (and many other legal actors). So I turn to Kertzer's idea of a kind of (Ferrié, forthcoming, following Kertzer 1988). How can one know, beyond solidarity on the reference to a legal repertoire, what justifies the dissensus on its implications or even its content ? Till now, I didn't find any explanation but by polity, power stakes and instrumentalisation.

iii. Social representations, tradition, and identity

The normalisation process results from the representations a judge has, which can be of two types. First, the representation of a legal ideal and the representation of the place the judge pretends to occupy vis-à-vis this ideal and that he ascribes to other people. It can also be analysed in terms of theatralisation. Erving Goffman's works can be very helpful in this regard (Goffman 1959). It comes to this : the judge, whoever he is, anticipates what he believes to be socially acceptable and desired. The representation he gives of himself, which narrowly determines his behaviour and the content of his action, results itself from anticipated representations and evaluations of the social. On the basis of these anticipations, the actor, the judge for instance, tries to project an image (a façade image in Goffman's words) of what he is and what he does, which corresponds to largely abstract and idealised categories that can be understood by the social field. Naturally he mobilises to this end all the elements which are useful to make up his façade : scenery, accessories, appearance, manner.

When one accepts that there is, for magistrates dealing with various legal repertoires, a game of representing social reality and ascribing rules to society according to these representations, and when one accepts that magistrates are staging themselves and the society they're embedded in within this frame, one

⁷ See *supra*, footnote 3.

has to admit the importance of studying the way in which representations are built and the role they can play. Social representations seem to be an ever more important issue for legal sociologists and anthropologists. The various legal actors' behaviour and moreover the meaning which can be given to it cannot be properly understood without paying attention to informative, cognitive, ideological, and normative elements, and to beliefs, values, attitudes, opinions, and images underlying it. Thus in legal anthropological terms, legal representations can be taken as a representation system – individual or collective – regulating the relationship between the subject and the world, orienting and organising his legal behaviours and, more generally, social communication (Foblets 1994: 104-107). Thus, it cannot have but something to do with cultural identity and its construction.

Law in its work of identity fixation functions through the affirmation of continuities and discontinuities: historical continuities, through reinterpretations, and cultural discontinuities through a process of borders building that define belonging to identities. Legal discourse and emphasis on one or another legal repertoire reflect this typification function of (legal) norms. As in the scapegoat parabola, as given by François Ost following Michel Serres, law is to be used for building unity based on a division operation and an exclusion practice (Ost, forthcoming). Legal language and discourse on law constitute a symbolic that facilitates the fixation and the polarisation of identities, on the basis of relevance criteria focusing on certain distinctive features and concealing others. Concerning actors, it mainly aims to produce appearances of conformity with group rules, even if practice is contradictory to rules or doesn't proceed from pure and simple obedience (Bourdieu 1994: 239). What follows is that conspicuous claim to be member of the group is more important than adopting practices which substantially belong to it.

2. Imagined Sharia Law

We now turn to Sharia law – what I'll call the Islamic legal repertoire – as a scrutiny in Egyptian jurisprudence and legal discourses makes it appear.

i. Law, Sharia, and their actors

After having stated the importance of a sociological analysis of the law, we must consider Sharia like any other set of rules, i.e. something which is interpreted in its conception, expression and practice. Texts remain socially silent until they are expressed, mentioned, read or interpreted (Ferrié, forthcoming). Here again, the idea is that there is a sort of . In other words, as far as Sharia is concerned, I can say that there is concord on the rhetoric without unanimity on the content, the applications or the implications, perhaps nothing else that it would be difficult for the social field to get rid off of all

reference to religious norms. Whether or not symbols are shared, their conversion into rules is not.

On the other hand, we must consider the fact that Sharia law, as far as article 2 of the Egyptian Constitution is concerned, is not the exclusive product of the state. On the opposite, one can note the great number of social fields involved in producing such a law, just by compounding the various actors involved in Sharia matters : al-Azhar University, the Ministry of *waqf*⁸, the State legal department, the competent magistrate when he refers to the Constitution, the legal practioners etc., and of course the Supreme Court, its members and the examining magistrates⁹.

Thus, the place Sharia occupies in the Egyptian legal system can be analysed from two levels : a scholastic level where law and jurisprudence pretend to be in a situation of autarky and therefore find from within themselves (statute law and authorised sources of Sharia) the elements required to deal with the questions they have to answer ; and an level where magistrates for instance make decisions not so much according to religious knowledge they question and interpret but according to the that shapes their understanding of religion and the part it plays. This is why, when analysing the interviews I conducted with different Supreme Court magistrates between September and October 1994 (Dupret 1995a), it appears that it is possible to differentiate the statements into elements depending on a purely legal logic and elements belonging to a certain vision of Islam mainly due to the social context. Among the first elements can be mentioned : jurisdiction and interpretative rules, relations between the Court and the institutions belonging to the executive, legislative and judicial powers, possibility for a qualified non-Muslim to investigate and interpret Sharia as requested by article 2, independence vis à vis religious institutions such as al-Azhar University¹⁰ or the Republic's Mufti¹¹. In the second case, the adoption of a point of view grants Islam with the paternity of the constitutional system, the human rights, the principle of the responsibility of leaders and governants, etc., and gives the image of a very close conformity of Egypt's legal system with Islamic principles.

⁸ The Ministry of *waqf* is responsible for religious affairs, among which the mortmain goods.

⁹ Members of the Supreme Constitutional Court are appointed by the President of the Republic without any term, but on the condition they are older than 45. Moreover, they cannot assume their office after the age of 60. From 1979 till now, there were 5 different presidents, usually chosen from among the SCC judges (Jacquemond 1994: 82).

¹⁰ Al-Azhar is an eleven-centuries old mosque and a famous center for religious education. Its activities and influence go much beyond its sole educative role.

¹¹ The Republic's Mufti is the head of a religious administration, *Dâr al-iftâ'*, which is entitled to deliver advices on several matters related to religion.

Thus, the Egyptian judges are in an intermediary position, at the cross-road between their professional logic and their common sense regarding Sharia. Their attitude can be seen as a strategy to reduce the tension between ethics and justice. The magistrate is influenced both by his legal knowledge and his understanding of life. This was confirmed by the fact that the several talks I had with the Supreme Court magistrates show standard answers, from which it clearly appears that the legal professional's opinion does not differ so much from that of ordinary men. In other words, what they told me depends more on common sense than on a technical understanding of Sharia. One sees thus that Sharia, as a referring principle, participates to the structuration and the interpretation of the Egyptian law and legal system. At the same time, Sharia influences social fields, the one of the magistrates among others, who decide of its content according to the way they perceive it.

Here we are. If one adopts a so-called "actor analysis", one sees the emergence of an autonomous group of legal actors (i.e. lawyers and theologians) who monopolise the access to legal resources. They represent a sort of go-between between the uninitiated person and the rule he might want to see applied. This phenomenon is not unique, though one has not to overestimate the lack of legal knowledge of the former and the mastering of technical knowledge of the latter. Whatever the case, this intermediary position has existed before, in different fields (religious, political, economic, etc.) and at different eras (e.g. the way religious scholars were monopolising the interpretation of religion and its social, political and economic consequences in 18th century Egypt).

But what I see, above all, is an increasing rift, within the group of people monopolising legal knowledge, between two dynamics, one proceeding from a technical knowledge and the other from a more common sense, intuitive type of knowledge. As far as Sharia in the Egyptian normative system is concerned and according to the definition that legal professionals attach to it, one sees that these professionals play an active part in the monopolisation and mediation process. However, they don't seem to escape a common sense type of understanding. For although they are supposed to apply a technical set of rules, they in fact only have a basic knowledge of them. It can be explained by various factors. Indeed it may be attributed as well to a (Foblets 1994: 109) and a (*id.*: 110) as to a manifest will to submit Sharia legal dimension to its ethical and globalising dimension, that is the regular assumption that Sharia goes much beyond the political field and affects all sectors of life to such an extent that it becomes the overall organisational framework. This is why the vast majority of Egyptians I met found it difficult to make a difference between what belongs to Sharia's technical knowledge and what belongs to a more general sense of justice. The legal professional finds himself therefore at a cross section between two normative dynamics: the statute law science and the prevailing ethical

logic (also at the crossroad of different currents, i.e. reformism, fundamentalism, radicalism, etc.).

ii. Judicial decisions referring to Sharia : the normalisation of positive law

In another article, I tried to formulate a typology of judicial decisions in which, in Egypt and in the Arab world, the judge refers to the Islamic legal repertoire (Dupret 1995b). On the basis of jurisprudential excerpts, I distinguished between and processes of the Islamic reference, on the one hand, and and processes of positive law by this reference, on the other hand. Substantialisation concerns the kind of decisions that determines the content of Islam, as a recognized and eventually privileged cult or as a legislative referring principle. Instrumentalisation concerns those types of argumentation structures that make use of Islam to ground decisions dealing with the institutional form of the State or a certain conception of public order. The third category results from a kind of overvalidation of statute law rules whose writing down as such is deemed to be self-sufficient and does not explicitly justify such a use of an Islamic reference. Lastly, invalidation concerns those judicial decisions in which the judge has been up to deny any validity to statute law on the basis of Sharia law.

Starting with the aforementioned distinction, my aim was to analyse the need for the judge who is confronted with multiple legal standards to positive law, that is to shift from the reference to the legal norm as such onto the reference to the norm considered as socially, ethically and religiously legitimate (see Lochak 1993). An illustrating examples is the attitude of judge Ghurâb who explicitly invalidated some of the Egyptian statute law regulations because of their alledged contradiction to Sharia.

«Considering that the Court refers to the previous rules (doctrinal rules) to declare the nullity of any law which is opposed to the rules of Heaven, first of all the repressive dispositions of this request. Their nullity is absolute. They are deprived from the reference to the Islamic legality (*shar'iyya*). We must therefore apply the *shar'i'a* of Islam and its rules, because of the obedience to God and His Messenger, by making possible the enforcement of its rules in the State» (district Court of 'Abidîn, 12 Jumadâ al-awwal 1402 h./8 march 1982, in Ghurâb 1986).

Such an attitude can be analysed as an attempt to reduce what appears to the judge as contradictions between the positive and religious legal repertoires. He makes use of the Islamic legal repertoire in order to realise the of positive law to the transcendental or social reference. In his quest for a passage from legality to conformity, the judge seems to look for . Let's have a look at the following excerpt from his book to illustrate this notion.

«So I presented to you these judgements as an excerpt of the whole judicial life, and I put these documents in the balance for all members of the judicial power and lawyers worrying about Islam, as application, doctrine and conduct, as to make them better realise how it is

possible for the Muslim judge to serve Islam through the judicial power, in fighting, sustaining and serving God.

«I don't present these judgements to semi-judges and I'll never do it, since the aim of such judgements (and their equivalent) is to free Islam from any control by those who are venerating power, money or lethal things, so the judge improves himself and evolves to become, in the eyes of God, the most notable of notable people, to extirp Islam from any shadow to shed it into the light of conviction. [...]

(Ghurâb 1986).

In judge Ghurâb's literature, one can observe this staging of himself, but also of society to which a set of idealised norms is attached. His perspective doesn't reflect so much social expectations but the translation of what he thinks (what he represents to himself) to be social waitings and moreover the place he intends to occupy in such a game. Ghurâb presents himself as possessing what Bourdieu calls a *habitus* from which he aims to take advantage (Bourdieu 1994).

This is one of the crucial points of the issue. Demanding the application of Sharia law could reflect the will of transforming what can be considered as a norm (i.e. *a posteriori* rationalisation or justification)— which corresponds to a kind of anticipation of what is socially recognised and desirable and its ascription to the social field — into a set of prescriptive and proscriptive rules (which are no more explicative). There would be a sort of structural reversal : from a *habitus* translated and manipulated by the norm to a *habitus* acting on culture and ascribing to it its legitimate norms. This transformation can probably operate through a *process* of the norm. It asks for regulatory qualities of the original normative repertoire, something which is generally linked to the question whether it has functioned as such historically and ideologically and has been perceived as such as well. This is the case for Sharia law. But this condition is not in itself sufficient. It must be linked to more political conditions. The many actors must intend to make use of the regulatory qualities of the normative repertoire.

iii. Sharia principles in Egyptian law : inventing legal tradition

When one turns to Egyptian magistrates' representations, one must recognize their explicit reference to the various repertoires they have or want to deal with (at least the statute law and Islamic law repertoires), even if it can involve to invalidate the one in favour of the other (Dupret, forthcoming). The main problem is about the reference question, not the content of regulations the many actors declare to be largely compatible. This reference problem reflects the representation of a cultural normality, i.e. the *habitus*, society would consider as the only legitimate. Also, it has something to do with cultural identity and its construction. The following excerpt may illustrate this statement.

(interview with AW, advocate and former magistrate, june 1994).

This can help us to understand my last point. I've stated that there was, among the many actors of law I met in Egypt, solidarity on the reference to the Islamic legal repertoire. We still have to know what justifies the eventual dissensus on its implications or even its content. Till now, I didn't find any explanation but by polity, power stakes and Sharia instrumentalisation. This is what I call the closure of the legal field and the substantialisation process of its repertoires. By closure, I mean that the protagonists can only get hold of a necessarily limited number of repertoires, not because there are few, but because the conditions prevailing in the Egyptian legal field make it impossible to resort to an unauthorized source. Thus, a closed field is a structure of possibles with which the protagonists are playing and of impossibles which they cannot use. Within such a frame, the protagonists develop tactics allowing them to seize the opportunity of participation in the redefinition of the bending power and, by so doing, to establish their role. These snatched opportunities often consist of appropriation of "traditional" legal concepts by what Becker calls (Becker 1963). In the process of establishing rules defining normalcy and deviation, these entrepreneurs re-utilize the many repertoires available to their memory and give them a practical meaning.

In a political context such as the Egyptian one, where the ways for participation in power are narrow, there is a proliferation of small entrepreneurs of Islamic morality. The Nasr Hâmid Abû Zayd affair, i.e. the story of this professor convicted of apostasy and hence forced to divorce his wife because of its alleged heretical writings, makes appear in a very characteristic manner the way such actors are ensconced in a space providing them a limited number of combinations of the authorized references (cf. Dupret 1996a and Dupret et Ferrié, forthcoming). Using the Islamic concept of apostasy (*ridda*, *irtidâd*) can be understood as one of these constant recycling operations, that is the present action of past forms through which one witnesses many constructions, not reproductions, even though the protagonists claim to be going back to a precedent (Lepetit 1995). Aside the lawyers who initiated the proceeding against Abû Zayd, one can illustrate the point by quoting the judge's decision itself, in which we see a magistrate of a modern high court of justice claiming for the application of an Islamic legal principle, while making a very modern distinction between inner conviction – , , and – and apostasy – which and . In drawing such a dichotomy the origin of which would be difficult to find in Islamic legal tradition, the judge unvoluntarily displaces the issue of apostasy from the domain of religious economy of meaning to the domain of law and puts it within a secular logic. Not only does he interpret apostasy in a rather non-classical way. He also functions in a context where the use of "traditional" legal concepts has new reasons, modalities, consequences, i.e. has nothing to share with its previous meanings but the word.

Conclusion

Dans cet article, je me suis attaché à étudier les modalités d'intégration de la norme d'inspiration religieuse dans le système juridique égyptien contemporain. J'ai avancé qu'une seule étude de droit positif ne pouvait suffire à rendre compte des modes et, surtout, du contenu de pareille intégration. J'ai de ce point de vue insisté sur le fait que la *sharī'a* tend, aujourd'hui, à se trouver à l'intersection du sens commun et d'un savoir technique. Au-travers des entretiens menés avec différents acteurs du droit, j'ai tenté de montrer l'importance d'une appréhension du discours sur la *sharī'a* en termes de représentation sociale. Les représentations que les acteurs du droit se font de la *sharī'a* traduisent, finalement, la façon dont le groupe se pense (et ils pensent qu'il se pense), pense l'autre et pense ses relations à l'altérité, avec ce que cela suppose comme inflexion récursive du réel et des représentations qui lui sont attachées. J'ai également voulu faire remarquer que, dans le contexte égyptien, le répertoire juridique islamique (un des ordres normatifs en présence) n'est pas la propriété exclusive d'un groupe social bien identifié revendiquant un surcroît d'islamisation, mais constitue, au contraire, une des ressources juridiques majeures aux mains de l'ensemble des acteurs du champ juridique étatique (et autre). Souvent, les différents lieux de production du droit ne sont pas producteurs de différents répertoires, mais de différentes substantialisations et instrumentalisations des mêmes répertoires. Cette clôture du champ du droit semble rendre compte de ce qu'on a appelé une solidarité de logiques idéelles sans consensus politique. Alors que, dans le premier cas, on peut penser qu'il y a convergence des termes du discours, dans le deuxième cas, il y a divergence sur ses implications politiques correspondant à autant de stratégies de légitimation ou d'illégitimation du pouvoir : les mêmes répertoires juridiques s'avèrent instrumentalisables dans des directions politiques opposées. La lecture rapide qu'on s'est autorisé de l'affaire Abû Zayd correspond au schéma conceptuel proposé tout au long de ce travail. Le champ du droit est, en Egypte, un espace de combinaison d'un nombre limité de répertoires maniés et manipulés par des acteurs. Ces derniers, dans un contexte de monopolisation politique, élaborent des tactiques qui leur permettent, quand l'occasion s'en présente, de maximiser les potentialités que l'une ou l'autre de ces ressources rhétoriques – le répertoire juridique islamique, dans le cas qui nous occupe – leur offre. Ces ressources ne sont rien d'autre que des vérités, au sens où Veyne (1983) entend le terme. Agencées les unes aux autres dans un certain ordonnancement hiérarchique, elles constituent un programme. Si l'ordonnancement vient à être modifié – quand l'accent est mis sur le répertoire juridique islamique, par exemple –, c'est à un infléchissement du programme qu'on assiste. Ce n'est donc pas l'adoption de points de vue différents, de vérités différentes, qui conditionne le changement ; c'est, bien davantage, l'agencement différent de vérités pouvant, le cas échéant, être parfaitement identiques. On en revient ainsi à l'idée de logiques idéelles similaires renvoyant à des jeux politiques différents, voire concurrentiels. En ce

sens également, on constate que le changement ne peut être le produit d'une formulation qui l'anticiperait. Il n'est, au contraire, qu'un effet secondaire, le produit d'actes qui ne se le donnaient pas pour objectif. L'utilisation du répertoire juridique islamique, telle qu'on a pu la décrire, procède de cet effet secondaire de transformation. Alors qu'on pourrait légitimement la penser comme la traduction d'une situation, elle n'est en fait possible, dans la forme qu'on a observée, que parce que la situation est, intellectuellement et pratiquement, totalement moderne. Le jeu des répertoires s'inscrit, en ce sens, dans une logique parfaitement séculière, quelle que puisse être l'emphase donnée à sa composante religieuse. Cette emphase, pour tout dire, bien loin d'assurer une quelconque recentration du religieux, traduit en fait tout son contraire : sa périphérisation.

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