Legal Pluralism and Islamic Law in Australia

Samuel Blanch*

Legal pluralism offers a critical and empirically sensitive way of thinking about justice in multicultural societies with a variety of legal traditions – Western, Indigenous, Islamic, or otherwise. Yet the critical theoretical potential of legal pluralism has not yet been properly utilised for understanding Islamic law in Australia. This article shows how studies of Islamic law in Australia have tended to reduce legal pluralism to a pluralism of rules or norms, or, in discussing its political implications, have failed to take seriously John Griffith's now famous claim that legal pluralism is simply 'the fact'. Against this, this article highlights some key theoretical insights of legal pluralism, focusing on its capacity to draw our socio-legal attention to the deeper normative, conceptual, and material processes that constitute a legal tradition. Based on ethnographic fieldwork in Western Sydney, it then offers an account of such processes as they appear in the Shia Muslim tradition of law in Australia. It shows material logics of hierarchy and plurality whose difference exceeds narrow rule-based approaches to law.

I. INTRODUCTION

How deep does multiculturalism go? Amongst its constituent communities, what types of diversity are the West capable of recognising? Australia has often struggled to comprehend diverse religious practices. These practices are sometimes barely legible as a form of diversity, and are instead represented as a backward and malign vehicle for offence, a dog whistle to elements of the 'progressive' left.[1] Even the widely used term 'Culturally and Linguistically Diverse' ('CALD'), while aspiring to include migrant and other communities, can work to subordinate religion to culture and language as preferred forms of diversity. In this article, I explore the presence of Islamic law in Australia through a critical discussion of legal pluralism. The existing literature on Islamic law in Australia offers a relatively narrow reading of legal pluralism, and so tends to reduce the encounter between Islamic and common law traditions to a conflict of norms. This limits scholarship's resources for understanding legal diversity in Australia. That is, it fails to recognise the legal traditions of Australia's constituent communities as they take place in fact.

I show here how Shia legal practices are more than a collection of threadbare rules left over from an archaic past. Drawing on broader ethnographic fieldwork in the transnational Shia community in Qom, Iran and Sydney, Australia, I consider how Muslims adopt, adapt, and in some cases transform the forms of modernity, including the law. Here I focus on Sydney, and the legal processes surrounding the obligatory tax or tithe on profit knows as the *khums*. Alongside my theoretical discussion, the ethnography discussed here shows how a more robust approach to legal pluralism facilitates a richer understanding of the autochthonous logics and

* Faculty of Social Sciences, Universitas Islam Internasional Indonesia. This research was supported by an Australian Government Research Training Program Scholarship, and was written up during a postdoctoral research fellowship at the Centre for Law and Social Justice at the University of Newcastle, Australia.

[1] Ben Smee, 'Brisbane's Citipointe Christian College Withdraws Anti-gay Contract but Defends "Statement of Faith"', *The Guardian* (online, 3 February 2023) <https://www.theguardian.com/australia-news/2022/feb/03/brisbanes-citipointe-christian-college-withdraws-anti-gay-contract-but-defends-statement-of-faith>; 'Purity: An Education in Opus Dei', *Four Corners* (Australian Broadcasting Corporation, 2023) <https://www.abc.net.au/news/2023-01-30/purity:-an-education-in-opus-dei/101908488>.

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processes by which Islamic law generates norms, practices, and institutions. These are the laws and practices, moreover, that in fact make up the substance of multicultural life in Australia's suburbs.

II. LEGAL PLURALISM AND *SHARĪʿA IN AUSTRALIA*

A. *Legal Pluralism as a Narrow Aperture*

The *Sharīʿa* or Islamic law is frequently described as 'comprehensive'.[2] It covers subject matters as diverse as ritual cleanliness, clothing, charity, divorce, and theft, with this breadth adduced in contrast to what the liberal tradition understands as its own more restrained legal reach.[3] One might say that Islamic law — through its traditional fivefold categorisation of acts into obligatory, recommended, neutral, not recommended, or prohibited — intends to 'cover the field'. Yet the majority of scholarship on Islam in Australia has tended to probe the *Sharīʿa*'s 'comprehensive' quality only as far the substance of its norms, and only insofar as those norms line up with Western legal subject matter.[4] Scholars have been more hesitant to explore how norms are actually generated, interpreted, or adjudicated on the ground. Analysis of the encounter between Islamic and state law is organised by subject matter, roughly parallel to modules taught in an Australian law school (e.g., family law, criminal law, banking, and finance), and according to the difference between the norms present in each system.[5] The resulting tabular analysis is repeated across the literature, arranging the compatibility between systems in terms of the gap between norms, such as the difference in the periods of notice required for the certification of a divorce. Elsewhere, the allegedly 'private' quality of many *Sharīʿa* rules make it quite compatible, in the most stereotypical of Protestant sensibilities, with Western law's primarily 'public' concerns.[6] In another prominent sociologically-oriented study, the authors examined the *Sharīʿa*'s role in Australia by interviewing Muslim respondents on their perception of the alignment between legal traditions. Here the interview questions seem to have been organised according to the different subject matters mentioned above.[7] Compatibility was a function of how far each tradition's norms (are perceived to) differ from one another.

Scholars are thus able to conclude that particular areas of Islamic law might be reasonably aligned with Australian law,[8] and further that this alignment need only be facilitated by the

[2] Adam Possamai et al, 'Shari'a and Everyday Life in Sydney' (2016) 47(3) *Australian Geographer* 341, 348–9; Ann Black and Kerrie Sadiq, 'Good and Bad Sharia: Australia's Mixed Response to Islamic Law' (2011) 34(1) *University of New South Wales Law Journal* 383, 406. Noting that 'Islamic law' is at once an unsatisfactory and indispensable translation and terminology: Wael B Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge University Press, 2009).

[3] This comparison is already implicit in Schacht, who organises this analysis in terms of the strictly 'legal' and 'ritual' aspects of the *Sharīʿa*: Joseph Schacht, *An Introduction to Islamic law* (Clarendon, 1964) 200–11.

[4] Jamila Hussain, *Islam: Its Law and Society* (Federation Press, 3rd ed, 2011) 2–3, 32.

[5] See ibid; Abdullah Saeed, 'Shari'a in Australia' in Anver M Emon and Rumee Ahmed (eds), *The Oxford Handbook of Islamic Law* (Oxford University Press, 2018) 751; Possamai et al, 'Shari'a and Everyday Life in Sydney' (n 2); Adam Possamai et al, 'Shari'a in Sydney and New York: A Perspective from Professionals and Leaders Dealing with Islamic Law' (2019) 30(1) *Islam and Christian-Muslim Relations* 69 ('Shari'a in Sydney and New York'); Adam Possamai, Selda Dagistanli, and Malcolm Voyce, 'Shari'a in Everyday Life in Sydney: An Analysis of Professionals and Leaders Dealing with Islamic Law' (2017) 30(2) *Journal for the Academic Study of Religion* 109.

[6] Black and Sadiq (n 2) 398-400. A similar argument, but from a historical vantage, is made by Saeed (n 5).

[7] Possamai et al, 'Shari'a and Everyday Life in Sydney' (n 2); Possamai, Dagistanli, and Voyce (n 5); Possamai et al, 'Shari'a in Sydney and New York' (n 5).

[8] Possamai, Dagistanli, and Voyce (n 5) 119.

'piecemeal' or modest 'tweaking' of Australian law in particular ways.[9] For example, Islam's proscriptions on usury might be aligned with Australian property law through small changes, like amending legislation so that a purchaser need not effectively pay stamp duty twice on a home bought with an Islamic financial product.[10] In some areas, of course, alignment requires reading down possible *Sharīʿa* practices deemed beyond the pale.[11] In this way, Australia is described as 'a case study in legal pluralism',[12] for it showcases this theatre of competing norms. This is a legal pluralism analytically reduced to a conflict of norms. It assimilates Islamic law, making it known through the schematic arrangements of the Western legal tradition. Of itself this is not an illegitimate strategy. But this is an under-investment in the resources that legal pluralism offers for the understanding of Islamic legal traditions.

Moreover, a narrow analysis of the law's pluralism tends to demand a normative version of *Sharīʿa* for comparative purposes. The scholar, in other words, must take a stand on what is orthodox in order to assess the conflict between normative systems.[13] It is worth noting that the broader field of Islamic studies can be understood as having worked precisely to avoid this assignment of orthodoxy to particular traditions.[14] It often means that the rules of a Muslim sub-majority (that is, the largest part within a Muslim minority population) are taken as the standard. Even Jamila Hussain's attempt to introduce Islam to an Australian academic context, which works hard to include the voices of multiple legal schools, settles on certain aspects of legal orthodoxy.[15] Real normative differences between the four major schools of Sunni jurisprudence are passed over, not to mention the Twelver Shia tradition which is rendered marginal. My point, of course, is not to suggest a more diligent approach that would endlessly represent ever more minor Muslim voices. Rather I argue that analysis needs to be augmented in its entirety away from norms and towards broader questions of a plurality of method. To anticipate my discussion below, this is why the former Archbishop of Canterbury, Rowan Williams, defined the *Sharīʿa* in this way in his contribution to this broad debate: as 'a *method* of jurisprudence governed by revealed texts rather than a single system'.[16] Something in the direction of what I am suggesting here is offered by Ahmed and Krayem in their study of 'Sharia processes', which opens up the analysis through a broader assessment of the players, practices, and procedures involved in particular cases of family law.[17]

I want to focus on two different approaches to the presence of Islamic law that are critically instructive for the purpose of this article. In complex ways, both examples adopt an aperture broader than legal norms, and in doing so take different stances on legal pluralism. First, Voyce has given a comparative account and 'wider view' of inheritance law in both the *Sharīʿa* and Australia. He explicitly takes a narrow approach to legal pluralism, which (not without some

[9] Black and Sadiq (n 2) 387.
[10] Ibid 404.
[11] Possamai et al, 'Shari'a and Everyday Life in Sydney' (n 2).
[12] Black and Sadiq (n 2) 384.
[13] See for example Black and Sadiq (n 2). The study by Dagistanli and others is relatively nuanced on this issue but does ultimately defer a position on orthodoxy to what we might call the 'vibe' about Muslim majority opinion: Selda Dagistanli et al, 'The Limits of Multiculturalism in Australia: The Shari'a Flogging Case of *R v Raad*, *Fayed, Cifci and Coskun*' (2018) 66(6) *Sociological Review* 1258, 1267.
[14] See Talal Asad, *The Idea of an Anthropology of Islam* (Center for Contempary Arab Studies, Georgetown University, 1986).
[15] See, eg, Hussain (n 4) 33–41. Hussain's discussion of the sources of Islamic law makes the Sunni Caliphate normative, both excluding and misrepresenting the role of the Imams in the Shia tradition.
[16] Rowan Williams, 'Civil and Religious Law in England: A Religious Perspective' (2008) 10(3) *Ecclesiastical Law Journal* 262, 264 (emphasis in original).
[17] Farrah Ahmed and Ghena Krayem, *Understanding Sharia Processes: Women's Experiences of Family Disputes* (Hart, 2019) 6–9.

analytical ambiguity) he defines as a 'system of law that allows more than one legal system to operate at the same time'.[18] It follows that because the *Sharīʿa* is not an operative 'system', inheritance is thus framed not as an issue of legal pluralism but of conflicting 'customs' working in parallel.[19] Arguing that inheritance norms are examples of broader cultural processes of social control, he contrasts the group mentality of Islamic traditions with the more egalitarian principle of the 'reasonable testator' in modern Australian law. Putting aside the substance of the claims made here, this contextual turn in itself is very welcome. Yet the dénouement of his discussion remains the difference between rules, like those that exemplify gendered inheritance distributions.[20] Thus culture illustrates the substance of law, that is its *rules*. Turner, Possamai, and Richardson took a different approach in an exemplary 2015 edited volume, where they defined legal pluralism as 'the development of a number of different legal traditions within a given sovereign territory'.[21] Their focus was not so much the rules themselves, but rather the classical Durkheimian sociological problem of solidarity. The 'merit' of legal pluralism, they conceded, was its political affordance to minorities.[22] But thus, the danger of legal pluralism relates to its undermining of 'legal centralism'.[23] That is, legal pluralism upsets the *political* apparatus of a singular conception of law allegedly inseparable from the state itself. Their concerns extend both to the formal aspects of sovereignty, the idea that the state ought to be the ultimate and secular arbiter of disputes, and to a more culturally substantive unease about the shared assumptions, narratives, or '*nomoi'* (see below) needed to bind a society together.[24] Both of these examples show an interest in legal issues beyond norms. They do so, however, without the critical resources that a broader understanding of legal pluralism would provide.

B. *The Wider Aperture of Legal Pluralism*

There are other approaches to legal pluralism more fruitful for understanding *Sharīʿa* in Australia. The narrower approaches discussed above are more like what the common law knows as the conflict of laws, where a court must decide whether it has jurisdiction to hear a dispute involving elements from a foreign jurisdiction, and if so, 'what system of law should be applied to determine the dispute …?'[25] The court adjudicates, in short, on which body of norms will apply and what body will have the authority to decide. Legal pluralism is better thought of in a more expansive way than this. Certainly and minimally, legal pluralism calls for an attentiveness to the 'experiences' of the law's subjects and objects, and to the institutions and procedures that make up the 'processes' of Islamic traditions.[26] In addition, this article suggests two other particular expansions: firstly, towards a broader analysis of authority

[18] Malcolm Voyce, 'Islamic Inheritance in Australia and Family Provision Law: Are Sharia Wills Valid?' (2018) 12(3) *Contemporary Islam* 251, 264.
[19] Ibid.
[20] Ibid 255–6. Noting that there are four main Sunni schools of law.
[21] Bryan S Turner and Adam Possamai, 'Introduction: Legal Pluralism and Shari'a' in Bryan S Turner, Adam Possamai, and James T Richardson (eds), *The Sociology of Shari'a: Case Studies from around the World* (Springer, 2015) 1, 1.
[22] Ibid 5.
[23] Ibid 1.
[24] Ibid 5; Bryan S Turner and James T Richardson, 'The Future of Legal Pluralism' in Bryan S Turner, Adam Possamai, and James T Richardson (eds), *The Sociology of Shari'a: Case Studies from around the World* (Springer, 2015) 305, 311.
[25] Maebh Harding and Ruth Hayward, *Conflict of Laws* (Taylor & Francis, 2013) 168.
[26] Salim Farrar and Ghena Krayem, *Accommodating Muslims under Common Law: A Comparative Analysis* (Taylor and Francis, 2016); Farrah Ahmed and Ghena Krayem, *Understanding Sharia Processes: Women's Experiences of Family Disputes* (Hart Publishing, 2021).

beyond positivist norms within a state context, and secondly, towards a reflection on epistemic difference.

While acknowledging the diversity of this scholarship, and the diversity of theoretical approaches to legal pluralism itself, it is my contention that the Australian literature misses legal pluralism's critical value for the study of Islam in Western contexts. Legal pluralism has already offered important resources to scholars working on more complex approaches to Islamic law. I have already mentioned the quality of Krayem's work with others.[27] In Shahar's contribution, legal pluralism brings together broader shifts in the study of Islamic law that directs scholars towards questions of law in action, procedure, personnel, and the role of state context.[28] Yet Australia remains strangely isolated from these dividends, and its scholarship is thereby impoverished. Legal pluralist scholarship has long sought to explore the plural *experience* of law, or in an older terminology, the plural reality of 'living law' and 'law in action'. This is what Griffiths meant by his famous claim that 'legal pluralism is the fact', and moreover that 'legal centralism' is an ideology tied to the purposes of the nation state that hinders 'accurate observation'.[29] The fact that legal pluralism draws us back to the more basic question of the definition of law itself is not something to be avoided.[30] It is precisely this generative and critical question that one must not avoid in examining the encounter between legal traditions. And this is why it is less helpful to think of legal pluralism as concerning legal 'systems' in a formal sense. To the contrary, it is about the possibility of legal phenomena, or phenomena that make us scratch our jurisprudential heads, precisely where a 'system' is not immediately obvious inter alia for reasons of the nation state's dominance.

Turner, Possamai, and Richardson are surely right to identify that legal pluralism has implications for political authority, and that the state remains the ultimate coercive authority in fact. Legal pluralism may disrupt the Habermasian or Rawlsian vision of a rationality of authority discursively crystallising around certain points within the imprimatur of the state. Yet legal pluralism is not primarily a political programme. It *describes* an empirical legal situation: the facticity of co-existent orders bearing a legal quality.[31] The desirability of formalising this situation in state law is a related but logically subsequent question. Legal pluralism makes an empirical claim that contests the fiction of the law's monopolisation by the state. Robert Cover puts it like this:

> The state becomes central in the process … not because the cultural processes of giving meaning to normative activity cease in the presence of the state. The state becomes central only because … an act of commitment is a central aspect of legal

[27] See Farrar and Krayem (n 26), Ahmed and Krayem (n 26), Ghena Krayem, *Islamic Family Law in Australia: To Recognise or Not to Recognise* (Melbourne University Publishing, 2014).
[28] Ido Shahar, 'Legal Pluralism and the Study of Shari'a Courts' (2008) 15(1) *Islamic Law and Society* 112, 140–1.
[29] John Griffiths, 'What is Legal Pluralism?' (1986) 24 *Journal of Legal Pluralism and Unofficial Law* 1, 4.
[30] Krayem (n 27) 3–4. But see Bryan S Turner and Berna Zengin Arslan, 'Shari'a and Legal Pluralism in the West' (2011) 14 *European Journal of Social Theory* 139, 142.
[31] Gillian Rose is not a legal pluralist, but she does articulate the folly of modernity's attempt to separate and independently ground values and validity. Reflecting on Antigone and on Phocion's wife as they buried their loved ones outside the city walls, she observes: 'To acknowledge and to re-experience the justice and the injustice of the partner's life and death is to accept the law, it is not to transgress it — mourning becomes the law. Mourning draws on transcendent but representable justice, which makes the suffering of immediate experience visible and speakable': Gillian Rose, *Mourning Becomes the Law: Philosophy and Representation* (Cambridge University Press, 1996) 36. Here we do not tear apart fact and law.

> meaning. And violence is one extremely powerful measure and test of commitment.[32]

A situation of legal pluralism is therefore political in a deeper sense than Habermas and Rawls, and closer to that of Rancière. It is not a tactical political programme but a way of analysing in a spatial idiom who can speak, who can be heard, and who is legally visible.[33] The question rightly posed by Krayem is therefore whether the state can ignore these non-state orders.[34]

A brief contextual discussion of Indigenous legal traditions in light of settler colonialism shows what I mean by multiple co-existent orders, and that this concerns much more than rules. Clearly one needs to allow for significant differences in the colonial histories of these traditions. But the parallel between the situations of Islamic and Indigenous traditions in encountering the state form and its logic, which has not to my knowledge been remarked upon, also helps to clarify how analytical questions of law themselves relate to the politics of recognition. Law under settler colonialism should be understood as conceptually absolutist. As elsewhere, the Australian colonial 'structure' does not seek to exert power 'over' but rather 'destroys to replace', only allowing the vestiges of Indigenous forms of life so that the state can 'express its difference' in the international order.[35] As Wolfe famously expresses it: settler colonialism — being a 'structure not an event' — is not something that is completed. Rather, 'elimination is an organizing principle'.[36] This principle is expressed, among other ways, through the singularity of legal sovereignty. And in this sense, notwithstanding the liberal ideology of legal restraint, Western 'liberal' law does indeed intend to 'cover the field'.[37] Gover argues that states like Australia rely on 'absolutist notions of sovereignty and law to deny the independent legal authority of Indigenous peoples'.[38]

Recalling Turner, Possamai, and Richardson's arguments above, one might make the political case for the desirability of singular de jure sovereignty. But in making this argument, one needs to recognise that other sovereignties are being in fact *denied* the legal integrity that they claim. These other modes of governance exist in fact: but they are denied de jure recognition. However, one should note that even a strong form of legal pluralism takes on a violent hue when expressed in this way as a 'question of fact' because, as Gover says, even using the fact/law distinction serves to deny 'the authority of Indigenous law in situ'.[39] Thus *Mabo v Queensland [No 2]*,[40] an example of Australian law 'expressing its difference', effected a denial of Indigenous legal sovereignty by subordinating Native Title to a question of fact within

[32] Robert M Cover, 'Foreword: Nomos and Narrative' (1983) 97(1) *Harvard Law Review* 4, 11.
[33] See Jacques Rancière, *The Politics of Aesthetics: The Distribution of the Sensible*, tr Gabriel Rockhill (Continuum, 2004) 13. See also Mónica López Lerma and Julen Etxabe, 'Introduction: Rancière and the Possibility of Law' in Mónica López Lerma and Julen Etxabe (eds), *Rancière and Law* (Routledge, 2018) 1–13.
[34] Krayem (n 27) 5.
[35] Patrick Wolfe, 'Settler Colonialism and the Elimination of the Native' (2006) 8(4) *Journal of Genocide Research* 387, 388.
[36] Ibid.
[37] As Schmitt has it, law comes from 'the initial measure and division of pasture land … it is the "radical title"': Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, tr G L Ulmen (Telos Press, 2003) 70.
[38] Kirsty Gover, 'Legal Pluralism and Indigenous Legal Traditions' in Paul Schiff Berman (ed), *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press, 2020) 848, 847.
[39] Ibid 848.
[40] (1992) 175 CLR 1.

a broader logic of extinguishment.[41] Indigenous law, in short, is denied its own de jure integrity. Yet Gover would I think say that Indigenous law *does* exist as a question of law, and further that it *judges* the violent illegalities of Western law. So against the extant fact of legal violence, legal pluralism tries to be attentive to Indigenous communities' historical and continuing capacity to generate the qualities, habits, and processes of a discrete legality. Gover argues that 'the very possibility that states do not have a monopoly on law confronts first principles of settler legal and political theory'.[42] The voices of Indigenous scholars therefore speak against elimination by asserting their legality and denying the absolutism of state sovereignty. Watson sings: 'The First Nations law of the land was birthed by song. Law is sung into place, land, waters, people, the natural world and the cosmos, the sky-world. It is the law that I speak of here, not "customary law", lore, myth or story.'[43] Indigenous voices say their law is neither lost nor dead.

Let me now offer a more positive account of legal pluralism pursuant to encountering the presence of Islamic law in Australia. Here my intention is not to offer a history or comprehensive analytic of legal pluralism.[44] Instead, my purpose is to signal and demonstrate legal pluralism's critical reach beyond rule comparison, and indeed beyond an attentiveness to law as 'experience', by drawing on two classic texts from the history of legal pluralism as well as a more recent summary by Margaret Davies. Boaventura de Sousa Santos examines legal pluralism through the metaphor of cartography.[45] Law exists at different 'scales' and 'projections' — both on the factory floor and in the stock exchange — and is distributed through different 'superfacts' or capillary mechanisms, like markets and bureaucracies. For Santos, these differences constitute the diversity of encounters with law that is legal pluralism. In his now classic essay, Robert Cover observed that a 'great legal civilization' is 'marked by the richness' of its *nomos* or normative universe. He continues:

> The varied and complex materials of that *nomos* establish paradigms for dedication, acquiescence, contradiction, and resistance. These materials present not only bodies of rules or doctrine to be understood but also worlds to be inhabited. To inhabit a *nomos* is to know how to live in it.[46]

Specific norms or rules are always interpretively and materially encumbered. 'No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture.'[47] And to that we might add: for every scripture there is a cosmology. Cover therefore says that it is through a 'know-how' of the thickness of these *nomoi* that we are able to navigate our world.[48] So what we might very crudely call 'culture' is the medium of law, not just its backdrop or illustration, and

[41] Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Taylor & Francis, 2014) 37; Irene Watson, 'Indigenous Peoples' Law-Ways: Survival Against the Colonial State' (1997) 8(1) *Australian Feminist Law Journal* 39, 47.
[42] Gover (n 38) 848.
[43] Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (n 41) 30.
[44] See Gover (n 38) 851–4.
[45] Boaventura de Sousa Santos, 'Law: A Map of Misreading. Toward a Postmodern Conception of Law' (1987) 14(3) *Journal of Law and Society* 279.
[46] Cover (n 32) 6.
[47] Ibid 4.
[48] Ibid 6. For sophisticated treatments of Islam as a civilization, see Hodgson, *The Venture of Islam: Conscience and History in a World Civilization* (University of Chicago Press, 1974-1976) (three volumes); Armando Salvatore, *The Sociology of Islam: Knowledge, Power and Civility* (Wiley Blackwell, 2016).

law is made through the movement or 'jurisgenesis' by which these *nomoi* are propelled and generated across time.

I do want to admit Dupret's critique of a kind of scope creep in legal pluralism. Its analytical value diminishes when it becomes a functionalist proxy for any kind of social control.[49] Dupret therefore proposes restricting its use to what he calls the 'praxiological' scenarios where a community itself understands its order as 'law'.[50] With that caveat in mind, I adopt Davies' recent definition of pluralism as 'a situation in which incommensurable things coexist in a comparative space'.[51] This definition 'attempts to grasp … the situation where two or more theoretical objects (persons, legal systems, values, cultures) come into contact with each other … but cannot be reduced to a singular form'.[52] Davies here very helpfully points us to the heterogeneity that legal pluralism tries to catch sight of; a heterogeneity of kind and not just of variations across species. She offers us two foci: on the one hand, 'a comparative space', which I understand to be a location for the 'governance' or regulative ordering of people,[53] and on the other hand, an incommensurability. Schematic comparisons of norms are no doubt important. Yet Davies shows us why this approach does not exhaust the critical potential of legal pluralism. Rather than tracing differences between norms, legal pluralism directs us towards the *question* of the broader dynamics and quality of the incommensurability between legal traditions, questions that will inevitably touch critically upon the state form and sovereignty itself.

This argument, I suggest, aligns in an important respect with critical historical studies of Islamic legal traditions. The latter identify the advent of the state, that is the definitive colonial form, as the critical inflexion point in Islamic legal history.[54] Unless we consider Islamic law entirely backward, lost, or dead, we ought therefore consider the possibility of a conceptual incommensurability embedded in this legal civilization's narratives and logics, and should further be prepared to critically encounter an incommensurability through an attentiveness to the law's scale and projection. This is why legal pluralism is good to think with. But just so, is not religion also good to think with? In her contribution, Davies' key interlocutors include Indigenous legal perspectives, theorists of new materialism (particularly in light of our current ecological crises), new currents in feminism, and so on. Yet there seems to me perhaps a curious historicism to her work, which locates itself negatively vis-à-vis the past, and especially so-called 'natural law'.[55] Bringing the possibility of contemporary religious incommensurability into this conversation would perhaps serve to hallow the kind of poststructuralist triumphalism discernible in some renditions of the legal. This same point can be made through a critical reflection on the meaning of multiculturalism itself. The latter might be taken as a narrow cultural pluralism facilitated by the state wherein differences are presented as various *ethical* options.[56] Rose says 'this is where the danger of aestheticising politics

[49] Baudouin Dupret, 'Legal Pluralism, Plurality of Laws, and Legal Practices' (2007) 1(1) *European Journal of Legal Studies* 296, 303.
[50] Ibid 305–7.
[51] Margaret Davies, *Law Unlimited: Materialism, Pluralism, and Legal Theory* (Routledge, 2017) 10.
[52] Ibid.
[53] For an example of 'governance' as a way of thinking comparatively about Islamic law in a critical postcolonial context, see especially the foreword of Wael B Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (Columbia University Press, 2013).
[54] Hallaq, *Sharīʿa: Theory, Practice, Transformations* (n 2).
[55] Davies (n 51) *passim*.
[56] See Gillian Rose, *Mourning Becomes the Law: Philosophy and Representation* (Cambridge University Press, 1996), especially ch 4. On this view, one envisages members of '*modern religion[s]*, practised according to private

currently lies': in this reduction of political life and frustration to a shallow cultural otherness.[57] But might we not take it as a richer encounter more attendant to the quality of pluralism we see in the Shia community? Might it not be a more 'difficult' history, 'the risk of action arising out of the negotiation of the law'?[58]

III. LAW AS REFRACTION AND EXCELLENCE

The remainder of this article draws on my own ethnographic fieldwork, which comprised participant observation over two years in and around three Islamic Centres in Sydney, Australia and five months in a religious seminary in Qom, Iran between 2017 and 2020. From one perspective, this multisite fieldwork occurred within a single, relatively unified community bound together by transnational practices of travel, media, finance, and kinship, as well as a whole economy of *Sharīʿa* advice, administration, and education. But from another perspective, my fieldwork was profoundly shaped by the plural authorities that characterise the Shia community. This dispersion of authority surfaces almost immediately as structurally distinct from the singular ideology of Western law. The Shia say that every Muslim is required to have a working knowledge of the *Sharīʿa* of everyday life.[59] For more complex legal matters, a structure of institutional *taqlīd* or what I will call *Sharīʿa* deference requires the Muslim to choose 'the most learned mujtahid (jurist)' to follow or emulate.[60] In short, Shia Muslims must defer to the judgement of one of the high-level clerics, the so called *marājiʿ al-taqlīd* (singular. *marjiʿ*) or 'objects of emulation', for matters that exceed their own jurisprudential capability.

In practice this means that the overwhelming majority of ordinary Shia are obligated to follow the rulings of a senior jurist for hard or novel cases, or for anything that falls in the uncertain 'penumbra' around settled principles. Notwithstanding what might seem the perilous clerical utopianism of this idea of a 'most learned' cleric, at any one time the global Shia community recognises plural *marājiʿ*.[61] An example of this can be seen even in an ethnically homogenous Islamic Centre in Sydney where I conducted much of my fieldwork. Within this single Centre, the important legal event that is Ramadan commences and concludes on different days within the community due to the different methods of the sighting of the moon employed by their respective *marājiʿ*.

The Shia *marājiʿ* also give different precise renderings of the rule of the *khums*, the tithe or tax on 20 per cent or one fifth of yearly profits obligatory on all Muslims within the Twelver Shia confession.[62] The *khums* is divided into two parts. The first is set apart for poor descendants of the Prophet who are distinguished by their status as 'Sayyids' and are prohibited from relying on alms. The second is set apart for the Imam or 'leader' of the time, which in the Shia community is a title given to a particular descendant of the Prophet, the rightful leader of the

inclination and interest by individuals defined as legal persons, bearers of rights and duties … within the boundaries of civil society separated from the modern state': at 94 (emphasis in original).

[57] Ibid 78.

[58] Ibid 85.

[59] See Hussain Waheed Khorasani, *Islamic Rulings*, tr Various (Negharish Press / Imam Baqir al-Ulum School, 2015) 15.

[60] Ibid.

[61] On the tension between the traditional plural formulation and the institutions of the Islamic Republic of Iran, see Naser Ghobadzadeh and Shahram Akbarzadeh, 'Religionization of Politics in Iran: Shi'i Seminaries as the Bastion of Resistance' (2020) 56(4) *Middle Eastern Studies* 570.

[62] For a more detailed discussion of the *khums,* see Samuel Blanch, 'Is the Subject the Locus of Muslim Ethics: Relocating the Ethics of Tithing in the Transnational Shi'i Community' (2022) 33(2) *Islam & Christian-Muslim Relations* 145.

community of Muslims. But in this time of the current Imam's occultation,[63] this part is to be given to and administered by the *marājiʿ* in his stead. Of the second part, Ayatollah Sistani says it 'must either be given to a fully qualified jurist or spent for purposes that he authorises. And the obligatory precaution is that the fully qualified jurist must be the most learned'.[64] Ayatollah Khorasani says that 'for its use, it must be given to the most just and knowledgeable jurist'.[65] Ayatollah Shirazi says it should be given 'to a just mujtahid [one capable of conducting jurisprudence] or his representative to be spent for such purposes to which the Imam consents including those that serve the interest of Muslims and needs of Islamic seminaries, etc'.[66]

The Quranic verse relevant to the *khums* reads as follows: 'And know that out of all the booty that ye may acquire (in war), a fifth share is assigned to Allah, and to the Messenger, and to near relatives, orphans, the needy, and the wayfarer …'[67] There is a gap between the apparent meaning of the relevant verse and the *khums* jurisprudence mentioned above, a gap that widens further still when one takes into account the Sunni jurisprudence. This already hints at the analytical weakness of making the Quran functionally equivalent to primary legislation in the Western tradition. So again, the *Sharīʿa* must be considered a *method*. Moreover, I will show momentarily how focussing on the semantic issues is only one part of the legal aspects at play in the community. But it is worth even here making a few initial observations about the *Sharīʿa* in Australia based on the small example of the *khums*. First, it is not usefully described through the binary concepts of 'public' or 'private'.[68] The *khums* operates as an ordinance to organise relationships at a global scale, and yet is not enforceable by a public body as such. Second, it is not usefully thought of as 'culture' in a way that would distinguish this kind of normative order from a 'legal' system.[69] It understands itself quite consciously *as* law, and is treated as such by the community.[70] It has, for example, a very prominent place in the legal summaries of the Shia jurists.[71] Or as H. L. A. Hart might have put it, the *khums* has an 'internal aspect': a sense by which many Shia recognise themselves as 'having an obligation'.[72] And although I do not purport to make a quantitative claim about the Shia Muslim population in Australia writ large, my research shows the qualitative mechanisms of how the *khums* is in fact complied with within the pious Shia community in Australia. In this sense, again, legal pluralism is simply a fact. Third, and as I will continue to discuss, at least this aspect of *Sharīʿa* practice does not operate in the 'shadow' of Australian law.[73] The *khums* is not overshadowed. It has its own integrity which interacts in complex ways with the legal apparatus of the Australian state.

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[63] For an arresting account of the politics of the Twelfth Imam's absence in a Lebanese context, see Fouad Ajami, *The Vanished Imam: Musa al Sadr and the Shia of Lebanon* (IB Tauris, 1986).

[64] Ali al-Husayni al-Sistani, 'Islamic Laws', *The Official Website of the Office of His Eminence Al-Sayyid Ali Al-Husseini Al-Sistani* (Web Page) ch 6 <https://www.sistani.org/english/book/48/2277/>.

[65] Hussain Waheed Khorasani, *tuwḍīʿ al-masāʾil* (2010) 324-5, Rule 1852 <http://wahidkhorasani.com/Data/Books/resale.pdf> (my translation).

[66] Makarem Shirazi, 'Practical Laws of Islam', *The Official Website of Grand Ayatollah Makarem Shirazi* (Web Page) issue number 1566 <https://makarem.ir/main.aspx?lid=1&typeinfo=30&catid=9001>.

[67] Quran, Surat al-Anfal 41 (Haleem).

[68] Cf Ann Black and Nadirsyah Hosen, 'Fatwas: Their Role in Contemporary Secular Australia' (2009) 18(2) *Griffith Law Review* 405; Saeed (n 5).

[69] Cf Voyce (n 18).

[70] This seems to be the higher threshold test for legal pluralism set by Dupret (n 49) 309–10.

[71] See above nn 52–4.

[72] H. L. A. Hart, *The Concept of Law* (Oxford University Press, 1961) 80–1, 98–9.

[73] Cf Malcolm Voyce and Adam Possamai, 'Legal Pluralism, Family Personal Laws, and the Rejection of Shari'a in Australia: A Case of Multiple or "Clashing" Modernities?' (2011) 7(4) *Democracy and Security* 338, 343.

Consider the way that the law of the *khums* does not project out from a single rule or principle, but rather refracts along and disperses along a network of relationships. Different renderings of this rule make up the diverse structure of the Islamic law. As mentioned, the Sunni schools take an entirely different approach to the *khums*, limiting it to the theoretical (or is it impossible?[74]) circumstance where the Muslim community is united under its Caliph. Within the Twelver Shia school of jurisprudence, plurality is built into the fact of the coexistence of multiple *marājiʿ*. Each cleric gives a different precise formulation, however marginal the difference between them. Each rule also contains an unstable interaction between the *Sharīʿa* legal categories 'obligatory', 'prohibited', and the medial categories between. Furthermore, and notwithstanding the rules mentioned above, the *khums* payer (functionally playing the role of the grantor of the *khums* conceptualised as a trust) makes their own prudential decision about the 'best' destination for their funds.

My own interlocutors in Sydney tended to distribute their *khums* widely, diversifying their investments by spreading it between different intermediaries: Islamic Centres, other charitable organisations, the authorised representatives of various *marājiʿ*, and trusted family members. These decisions do not always align with, and sometimes contradict, the semantics of the rules. And crucially, showing the recursive quality of the law, by making these decisions the grantors actually shape who is in fact considered a *marjiʿ*. For qualification as a *marjiʿ* is a matter of recognition by the consensus of the community: it turns on who the Shia community in fact treats as the most just and knowledgeable. Voting with their feet, as it were, this decision is made, among other ways, through the community's decisions about their *khums*. I suggest that this refraction through dispersed authorities operates as what Santos called 'superfacts', or principles that shape a particular 'projection' of legality,[75] in this case of the Shia tradition of Islamic law. In his classic study of Islamic legal pedagogies in North Africa up to their disruption by colonialism, Eickelman describes the mechanics of *Sharīʿa* 'interpretation and elaboration' as 'prismatic', or as allowing paradigmatically for a kind of improvisation within limits set by established classical patterns and economies of memorisation.[76] One might say, then, that something like this quality is also found in the dynamics of the Shia tradition of law. Like a hall of mirrors, the interaction between law and authority refracts and bounces up and down along a chain of relationships. This refraction is not ancillary to the law. It is central to its structure and practice. This stands distinct from the uniformity sometimes demanded by commentators on Islamic law in Australia.

As I have already suggested, to understand the plurality of the Shia tradition of law we need to go further even than the multiple *marājiʿ*. Consider this problem: in addition to his more 'orthoprax' dispersions of the *khums*, one of my interlocutors (I will call him Zain) chose to give part of his tithe to a member of his extended family in Iraq. He explained to me that this family member could disburse it directly to the poor and needy. 'This is like diversification, spreading the risk around', he said, 'putting your cash in different places'. This decision is an apparent breach of the *khums* rule as expressed by the *marājiʿ* mentioned above. Must we conclude, therefore, that Zain acted outside of the law?

[74] Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (n 53).
[75] Santos (n 45).
[76] Dale Eickelman, 'The Art of Memory: Islamic Education and its Social Reproduction' (1978) 20(4) *Comparative Studies in Society and History* 485, 490.

Seen from a broader socio-legal perspective the *khums* is regulated by what I am going to call practical reasoning.[77] As part of 'spreading the risk' Zain gave other parts of his *khums* to projects authorised by the *marājiʿ*. Thus, Zain's practical reasoning included but was not exhausted by the semantics of rules. To give a different example of practical reasoning, Qom's seminarians are entitled to receive a bursary drawn from trust funds made up of the *khums*, and administered by the *marājiʿ's* organisations. In class one day, our teacher reminded us that Ayatollah Khamenei (himself a *marjiʿ*) had pronounced study *wājib* ('obligatory') for those in receipt of the *khums* bursary, and that failing to study would constitute 'theft' from the Imam. Alongside these parameters, however, my interlocutors in Qom made various choices about their *khums*. These choices were informed by the shifting legal complexities of accounting for their actions between the Islamic legal categories of the obligatory and the prohibited, as well as what we might crudely think of as spiritual considerations.[78] Some chose not to accept the bursary at all, given their existing savings and the weighty moral burden of accepting money so auspiciously tied to the Twelfth Imam. Others chose to accept it, but severely limited their receipt and use according to the *Sharīʿa* principle of avoiding 'waste' (Persian. *isrāf*).

During my fieldwork in Sydney between 2017 and 2020, my interlocutors' practical reasoning saw them increasingly utilising charities simultaneously registered with the Australian Charities and Not-for-profits Commission ('ACNC'), and sometimes also authorised by a *marjiʿ*, as their preferred *khums* intermediaries. Charitable organisations with an income under A$250,000 are not required to provide the ACNC with their audited accounts (see below). Yet one of the Islamic Centres where I conducted fieldwork chose to submit their financial report notwithstanding that their income rarely met this threshold. They chose to report anyway, and adopted a suite of comprehensive accounting practices like universal receipting for all but anonymous donations, because they considered them 'best practice'. Assuming that the financial flows involved here are all compliant with sanctions and other discrete laws, there is a temptation to describe the *Sharīʿa* operating in the 'shadow' of state law, and relatedly, to describe the *khums* as a 'private' legal arrangement perfectly compatible with Australian financial regulation.[79] In a longer historical context, we might also see Zain's choice as consistent with Abdullah Saeed's suggestion that Muslims in Australia are intuitively liberal secularists simply wishing to carry on their religion without bothering the state.[80]

Yet we have learned from Robert Cover that 'to inhabit a *nomos* is to know how to *live* in it'.[81] Herein, the more interesting analytical question is the *nomos* that cradles my interlocutors' practical reasoning and guides their use of the *khums*. One ought to ask why Zain (who was, not incidentally, quite assiduous about his personal obedience to the *Sharīʿa*) did not consider his decisions outside of the law at all. We also need to understand why, for organisations like the Islamic Centre mentioned above, submitting their audited books had become what they considered a quite necessary part of 'common sense' (in their terms) or 'know-how' (in Cover's terms). Herein, Zain's decision should be understood as an act of prudence not outside of the law but rather within a tradition conceived as cosmologically ordered towards more excellent

[77] Here I am drawing loosely on Salvatore's approach to classical Islamic civilization: Armando Salvatore, *The Public Sphere: Liberal Modernity, Catholicism, Islam* (Palgrave MacMillan, 2007); Salvatore, *The Sociology of Islam: Knowledge, Power and Civility* (n 48).
[78] See Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge University Press, 2000).
[79] The expressions of 'in the shadow of the law' and 'private' are descriptions offered respectively by Voyce and Possamai (n 73) 343 and Black and Hosen (n 68) 423.
[80] Saeed (n 5).
[81] Cover (n 32) 6 (emphasis in original).

practice.[82] My research has also showed how a legality of rigorous prudence with the Imam's money also recursively forms the *marāji*ʿ and their organisations. Recall that the *marāji*ʿ emerge through the practical consensual actions of the global Shia community. My interlocutors in Sydney suggested that the rigorous prudence of best practice accounting would become the hallmark of the senior clerics. In other words, the conduct of auditing described within the Australian regulatory system will become part of the Shia *nomos*. 'The best *marāji*ʿ will do this', Zain reflected. Zain said this after describing the financial propriety of the first Shia Imam, Ali. Upon finding a suspicious discrepancy in the treasury, the Imam had said 'I will get that money back, even if it means going down into real property …' Zain then drew the link between this commitment to propriety and his enemies' opposition to him. 'This is why they hated him, they fought against him'. In the Shia tradition there can be no stronger affirmation than the practice of an Imam, figures who are considered, in a word, to *personify* the Quran. As an index of the superior character of the clerics who adopt them, auditing practices would literally form the *marāji*ʿ of the future, shaping the apex and chrysalis of *khums* law.

A compliance mechanism, like that of the annual financial report stipulated under the ACNC regime, is capable of bearing more than one legal meaning. First, the act of reporting is compliant with the Australian statute.[83] It denotes, in other words, the coincidence between practice and theory, action and rule, natural existence and legal meaning. This is the analysis of law in terms of what Foucault calls the 'juridical subject', where questions of behaviour relate to compliance with an external rule.[84] But, second, in the Shia community the same act of reporting indexes a *khums* stakeholder's relative probity as a trustee of the Imam's money. That is, the act can be taken as 'meaning' something else entirely, according to the 'schema' of the Shia tradition. This is one component of the legal plural situations that Santos also calls 'interlegality': the convergence of intersecting legal orders even in one site or person.[85] This is a more fruitful way to think about the *Sharīʿa* than suggesting it falls in the 'shadow' of state law. Here there is a complex dialogue and interaction of state and *Sharīʿa* legal arrangements, both of which retain an integrity.

But I want to suggest that for my interlocutors the legal aspects of this act exceed the 'meaning' attributed to it by a schema or external rule. For Hans Kelsen, emblematic of the mainline positivist jurisprudence, and further demonstrating the assumptions made within a narrow account of legal pluralism, a process or behaviour is 'legal' because of the *meaning* (in other words, the conceptual 'schema') attributed to it by a code or other instrument.[86] One can see the affinity between this way of thinking about law and the private/public dichotomy, as (crudely expressed) a meaning will usually be either a private right or a public obligation. But for my interlocutors, the legality of this act has to do with the material quality of its participation in a cosmology of excellence. Practices like receipting and financial auditing substantially *participate* in a material and cosmologically embedded legality.

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[82] On prudence (or 'phronesis') in the classical Islamic tradition, see Salvatore, *The Public Sphere: Liberal Modernity, Catholicism, Islam* (n 82).
[83] *Australian Charities and Not-for-profits Commission Act 2012* (Cth) sub-div 60-C.
[84] Michel Foucault, *The Hermeneutics of the Subject: Lectures at the Collège de France, 1981-1982* (Picador, 2006).
[85] Santos (n 45).
[86] 'That which makes the process into a legal (or illegal) act is not its factuality, not its natural, causal existence, but the objective significance which is bound up with it, its meaning. Its characteristically legal meaning it receives from a norm whose content refers to it. The norm functions as a schema of meaning': Hans Kelsen, 'The Pure Theory of Law: Its Method and Fundamental Concepts' (1934) 50 *Law Quarterly Review* 474, 479.

A *khums* receipt physically traces the flow of finance and *Sharīʿa* trust that constitutes the global Shia clerical hierarchy. It moves from hand to hand, from *marjiʿ* through intermediary to the *khums* payer, and so marks the refracting context of money, rules, authorisation, and hierarchy. The receipt exemplifies the *khums* exhaustion of the idea of a 'private' *Sharīʿa*: it moves through a pathway of legal roles, recognising individual choices, jurisprudential and moral excellence, transnational institutions, and national regulatory bodies. Davies makes the theoretical point like this: 'Plural legality is… not simply a reflection of plural human subjectivities and their constructions… but the consequence of law being intrinsically a material social dialogue in process'.[87] The empirical point is this: the Shia *nomos* holds these characters, these actions, and these physical artefacts (receipts, accounting books, and the *khums* money itself) to be existentially 'better'. This is why Zain and others argued that the *marājiʿ* of the future will adopt the highest standards of accounting and auditing practice. These practices will register who is the most just and knowledgeable cleric.

I have outlined elsewhere how the language and practices of *khums* administration and handling betrays a teleological orientation towards the 'better', 'higher level', and 'more perfect', an orientation that guides my interlocutors' practical reasoning.[88] Here I describe this orientation as one aspect of the *nomos* of the Shia tradition. These terms are not reducible to rhetorical devices or ideological fronts. Instead, they should be understood as indexes of the arrangement of Islamic legal authority. They denote a cosmology where materiality and actions are defined as more or less spatially close to God. Thus, the occupation of the lower level cleric, whose job is to respond to petitions for *fatawa* (legal opinions) on behalf of a *marjiʿ*, is a higher 'level' job than that of a street cleaner or labourer. Thus, a seminarian who collects the *khums* must display the necessary moral behaviour, and must 'always be better, more perfect, go further'. And for Zain, a lower risk of waste for his *khums* meant that it was 'better to send the money directly. The shorter the route the better'. And so the *marjiʿ*, although to a lesser degree than the Imams themselves, who are 'after God, the most perfect (*kāmiltarīn*)', is considered by many an embodiment of 'higher level'. He is, again, the most knowledgeable (*ʿārif*) and most just (*ʿādil*). This telos gives order to the refracting authorities, norms, and practices of legal interpretation and adjudication in the pious Shia community.

The same point can be made in a different way. As mentioned, the *Sharīʿa* offers a spectrum of responses to every possible question of law ranging from prohibited to obligatory. This spectrum organises the famous adage of enjoining the good and forbidding the wrong.[89] On the one hand, this spectrum can be seen as a way of using rules to attribute legal meaning to human action. For example, and prototypically, in Joseph Schacht these categories serve the same function as valid/invalid in a 'mature' (Western) legal system. Yet the *Sharīʿa* categories lack the legal formality and rational simplicity of the latter.[90] Their religiousness makes them rationally deficient. On the other hand, this spectrum might be seen as a way of arranging all actions according to their relative excellence, whereby the law is essentially concerned with effecting movement towards this excellence. With that in mind, consider again the structure of *taqlīd,* the *Sharīʿa* deference that I mentioned earlier. The doctrine of *taqlīd* is the opening issue and chapter in the key legal documents of the *marājiʿ*. It is functionally equivalent to a prolegomenon or to an analytical or definitional foreword. But instead of outlining the epistemological premises of a subsequent representation of legal knowledge, it sets out

[87] Davies (n 51) 7.
[88] Samuel D Blanch, 'Is the Subject the Locus of Muslim Ethics? Relocating the Ethics of Tithing in the Transnational Shi'i Community' (2022) 33 *Islam & Christian Muslim Relations* 145.
[89] See Cook (n 78).
[90] Schacht (n 3) 200–3.

deference as the mode of the law's projection, and a hierarchy of jurisprudential capacity as the structuring order of law. There is no ideology of transparency here.[91] Instead there is an organisation of legal knowledge according to relative capability. *Taqlīd* sets out the materiality of a hierarchy *inside* the law.

IV. CONCLUSION

The critical utility of legal pluralism for the study of Islamic law in Australia and other common law jurisdictions goes well beyond the analysis of the conflict of norms. Studies of Islamic law must look more closely at different sites of incommensurability, tension, and overlap. In this article I have showcased two such sites. I have shown refractions of legal authority and knowledge that do not coalesce around the state but rather around dispersed logics of practical excellence culminating in the most senior Shia jurists. That is, I have discussed the Shia legal tradition in terms of a different 'projection'. In this I have also described the logic of a legal tradition inclined towards excellence rather than representational compliance. I have shown, that is, the lineaments of legal civilization sustained by a different *nomos*. Questions of the justice and desirability of Islamic legal traditions, and the analytical question of a compatibility or modus vivendi between traditions, are important questions indeed. But in order to address them one needs a clear-eyed view about the nature of the encounter between these traditions. It is an encounter that will be misunderstood if approached through the terms of one side only.

[91] Compare to law's so called 'desiderata' in Lon L Fuller, *The Morality of Law* (Yale University Press, rev ed, 1969).