Chapter 7

A New Picture

In a dramatic depiction of the changes that took place in Egypt between 1860 and 1900, Muhammad al-Muwilbi imagined a conversation between a deceased pasha who had stood at the helm of the Ministry of War during the first half of the nineteenth century and a character like Muwilbi himself, living at the end of the nineteenth century, who speaks for the author (Muwilbi) much of the time. The pasha’s interlocutor, named ‘Isa Ibn Hisham, took it upon himself to explain these changes as the circumstances allowed. In one section of the book, ‘Isa tells the pasha about a major change in attitudes toward the role of the Shari’a in public life, at least by the Egyptian elites, and perhaps many others who aspired to be like them.

In this section of Muwilbi’s book, one hears of the unbelievable existence of an imperial law unsupported by an occupying army representing an empire. But this bizarre state of affairs is described after some preparation for the poor pasha, who failed to witness this development that took place over a couple of generations, since, for better or worse, he had been dead. The deceased pasha’s misfortune leads him to have to make a court appearance. The pasha naturally expects to find himself in the same Shari’a court with which he is familiar. His companion, ‘Isa, explains that the court that will handle his case is a civil, rather than a Shari’a, court. This leads to a further explanation by ‘Isa that there are now different types of courts in the Egypt of the second half of the nineteenth century. The pasha could only see this as a sign that the country had ceased to be one—that it is now fragmented and no longer functions as one unit. ‘Isa comes back with another explanation, correcting the pasha and stating that the jurisdiction of Shari’a courts has simply been curtailed and is now limited to some areas of family law. In reaction, the pasha issues a lamentation of a people
who lost their ability to live by their laws and adopted another people’s as their own. There is no military occupation, and the fact that French laws rule many aspects of life in Egypt has nothing to do with a return of the French who had invaded Egypt in 1798 but had to leave the country three years later. It is a choice by the Egyptians themselves, 'Isa asserted, as he explained that the presence of the imperial law, rather than the Hamayuni law of an Ottoman sovereign who at least shared the populations’ religion, was because of us (Egyptians, that is). How could this imperial law, being in disagreement with God’s law, be adopted by Muslims? 'Isa surprises both the pasha and the reader with an assertion that one mufti in the ministry of justice said that this French law was not really irreconcilable with Islamic law (anna hadha al-qanun al-faransawi ghayru mukhalif li al-shar' al-Islami) and hence may simply be today’s shari’a.

The idea that the Shari’a can be reconciled with other laws of different types was known to medieval Muslim jurists; juristic discussions of abkam al-dur (the world’s legal abodes) address the conflict and reconciliation of Islamic with non-Islamic laws, for example, in cases where Muslims live in non-Muslim lands. (Some reconciliations are also found when non-Muslims live among Muslims.) But the idea that reconciling different laws is an easy task (or that reconciling most of the Shari’a with whole legal systems of different sources is possible) is a modern aspiration. This is the high burden of the effort to “reform” Islamic law.

To assert, however, that non-Shari’a laws has nothing good in them would be an extreme that could probably not be promoted by any Muslim jurist who had strong contacts with non-Islamic laws. In the modern era, Muslim jurists saw good and bad in non-Islamic laws. For example, Jabarti (d. 1251/1835), who chronicled the French occupation of Egypt (1798–1801), had more than one chance to praise French bureaucracy and regulations. In describing one of the turning points of the French occupation, the assassination of Kleber (Napoleon’s replacement as leader of the French expedition in Egypt) at the hands of Sulayman al-Halabi in 1215/1800, Jabarti favorably compared French legal practice with some practices claiming to represent the Shari’a. The French whose laws are based purely on reason, he said, were more careful in their investigation of the assassination of their top officer, Kleber, even though clear circumstantial evidence was on the side of the apparent claim of assassination. Between Jabarti and Muwilhi, the shift was going in a direction of change both for traditional jurists like Jabarti and the new (Western-educated) lawyers who appear in Muwilhi’s book.

The Muwilhi court drama captures a shift in the status of the Shari’a from the twelfth/eighteenth century onward. To be sure, it was not only that new intellectual elites who grew up in Muslim countries happened