

Khaled Abou El Fadl's Methodology of Reform: Law, Tradition, and Resisting the State

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Contemporary Islamic legal scholar Khaled Abou El Fadl offers up a coherent methodology for the narration of individuality within the Islamic community against its sublimation by both authoritarian fundamentalism and liberal relativism. In examining his work this article identifies a tripartite methodology involving a process of de-legitimisation of the currently hegemonic narrative, a re-presentation of plurality both possible and existent, and an evaluation of this plurality in light of the broader tradition. In doing so, his work functions as the building block of a political and social form of resistance to the homogenisation of identity and meaning within society which allows for the narration of alternate discourses to those that are currently hegemonic whether within the state as a whole or within a religious or social tradition. This resistance, brought about through his structural methodology, aims to offer insights for the development of a notion of state-individual negotiation and identity formation.

Khaled Abou El Fadl, authority, methodology, Sharī'ah, identity, political & social resistance, hegemony, Islam, Foucault, queer theory

Contemporary western reform thinking in Islam has taken an increasing interest in the state with a particular focus being on the relationship of the nation state to forms of the Islamic tradition and the way in which the Western form of the nation state helps or hinders the formation of Muslim identity and tradition in the diaspora context. This very recent explosion of interest is unsurprising given geo-political events such as the emergence of ISIS and the events of the Arab Spring, but the interest of reformist thinkers in the role and workings of the state extends backward beyond this flurry right to the inception of the movement. This article attempts to examine the work of one particular reformist thinker, Khaled Abou El Fadl, to argue that his methodology when engaging with the classical tradition of the law offers resources for a deeper theory of the placement of the individual relative to the state and their interaction. As such, the way in which he presents his socio-legal arguments on the Shari'a has a resonance with the way in which he sees the individual interacting with the monolithic and hegemonic state. To this end, the article begins with a positioning of Abou El Fadl within the broader schemata of Islamic reformism, looking at the way in which he situates himself within the loose boundaries of the tendency, before examining the specifics of his methodological project, identifying three characteristic steps used in order to engage with the tradition of the law and its contemporary formations. Having done so, this tripartite methodology is examined within the context of the state, specifically the way in which it provides a foundation for a project of social and political resistance to the hegemonic normativisation of the state.

1. Islamic Reformism and Abou El Fadl

The contemporary reform scene in Islam is a wide and varied field, ranging from conservative attempts at reform, such as those promoted by the Salafi's in an attempt to return to an imagined earlier and more pristine Islamic community,¹ to more radically liberal re-readings of the tradition in favour of women or in an attempt to overcome the perceived strictures and irrationalities of the religious tradition as can be seen in the work of Wadud² or Abu Zayd.³ This tradition, seeking to reform the classical tradition of Islam in response to the pressures of western modernity, has a long history within Islam, stemming from early pioneers like Jamal ad-Din al-Afghani (1838-1897)⁴ and Muhammad 'Abduh (1849-1905)⁵, to more recent figures such as Fazlur Rahman (1919-1988)⁶. Broadly conceived, the movement seeks to acknowledge the cultural and scientific achievements of the West, while also critiquing the colonial and imperialist imposition of Western values and systems of thought on the Muslim world. In doing this, reformism as a movement positions itself as an internally Islamic response to the difficulties faced by Muslim societies in their dealings with the West, although how this response is to be formulated differs between the thinkers under consideration.⁷

1 Roel Meijer, *Global Salafism: Islam's New Religious Movement*, (2009), 33.

2 Amina Wadud, *Inside the Gender Jihad: Women's Reform in Islam*, (2013).

3 Nasr Abu Zayd, *Rethinking the Quran: Towards a Humanistic Hermeneutics*, (2005).

4 Anwar Moazzam, *Jamal Al-Din Al-Afghani: A Muslim Intellectual*, (1984).

5 Muhammad Abduh, *Risalat al-Tawhid*, (1897).

6 Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition*, (1984)

7 Safdar Ahmed, *Reform and Modernity in Islam: The Philosophical, Cultural and Political Discourses Among Muslim Reformers*, (2013).

This particular article is mostly focused on two of Abou El Fadl's published works *And God Knows the Soldiers* and the *Conference of the Books*, which attempt to look at the methodology by which he goes about engaging with, and attempting to reform, contemporary understandings of Islam. For him the important matter is not just the content of the reformation proposed, but also the way in which that reformation is to be achieved with respect to the pre-existing tradition. Following on from those such as Al-Khuli,⁸ Rahman,⁹ Abu Zayd,¹⁰ and Arkoun,¹¹ who take the broad goal of reform in Islam to be the de-construction of the classical tradition, Abou El Fadl seeks a renewal and re-presentation of the genuinely Islamic tradition in the face of changing circumstances brought about by modernity, rather than an acquiescence to the essentialising processes of modernity – whether this leads to a rootless Islamic liberalism, or to a reductive, oppositional, and fundamentalist understanding of Islamic identity. In this, Abou El Fadl's position within the reformist tradition matches up well with his attempt at re-presenting the variety and diversity of the previous classical tradition of Islamic law and ethics – by seeking a renewal of the tradition, using the pre-existing tradition in new ways to engage with modernity, Abou El Fadl rejects the accommodation of the more liberal reform movement,¹² while also attempting to resist the reductionism and atavism of the fundamentalist approach.¹³

This strand of reformism is clear in Abou El Fadl's work, as it is in the work of others such as Hallaq¹⁴, Ramadan,¹⁵ and Jackson.¹⁶ However, his positioning and understanding of the relation between the narratives of Islam and modernity makes his particular narration differ from more general themes within Islamic reformism in key areas. While generally, Islamic law in the reformist tradition is seen as a resource for renewal through its re-envisioning in a modern context,¹⁷ Abou El Fadl places more stress on the plurality and diversity already apparent within the classical Islamic legal tradition and its applicability to wider politics, arguing that in many cases the corpus of Islamic law has already dealt with these issues,¹⁸ although this may have been forgotten, misunderstood, or overlooked since. In doing so, Abou El Fadl represents a unique combination of genuine engagement with the Islamic legal tradition from a Muslim perspective and with a serious commitment to the popularisation and politicisation of his project.¹⁹ Abou El Fadl's stress on the experience of Muslims living outside majority Muslim countries also sets him apart from the wider reformist position. In addition, while many thinkers have been educated or lived in the West, Abou El Fadl's deliberate positioning of himself as a Western Muslim scholar²⁰ sets him, and

8 Amin Al-Khuli, *Manâhij 'Tajdîd fi'l-Nahw wa'l-Balâghah wa 'l-Tafsîr wa'l-Adab* (1961), 303 – 304.

9 Fazlur Rahman, *Islam & Modernity: Transformation of an Intellectual Tradition*, (1984), 154 – 157.

10 Nasr Abu Zayd, *Reformation of Islamic Thought: A Critical Historical Analysis*, (2014), 93 – 101.

11 Mohammed Arkoun, *Re-Thinking Islam: Common Questions, Uncommon Answers*, (1994), 9.

12 Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, (2001), 172.

13 Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 23.

14 Wael Hallaq, *Sharia: Theory, Practice, Transformations*, (2009).

15 Tariq Ramadan, *Islam, the West, and the Challenges of Modernity*, (2001), 155 – 178.

Tariq Ramadan, *Western Muslims and the Future of Islam*, (2004), 62 – 102.

16 Sherman A Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihab al-Din al-Qarafi*, (1996).

17 Muhammad Abduh, *al-A'mal al-Kamilah li al-Imam Muhammad 'Abduh: al-Kitabat al-Siyasiyyah*, (1972), 309 – 315.

For more general accounts of the place of *ijtihād* in reformist Islam:

Emad Eldin Shahin, *Political Ascent: Contemporary Islamic Movements in North Africa*, (1997), 220 – 229.

Najib Ghabbian, *Democratization and the Islamic Challenge in the Arab World*, (1997), 26 – 76.

Hamid Enayat, *Modern Islamic Political Thought*, (1st ed. 1982), 81 – 101.

18 Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 35.

19 While, Hallaq and Jackson are involved in similar projects, neither possesses the particular characteristics of Abou El Fadl's religious and popular positioning. Hallaq, as a non-Muslim, and Jackson, writing for an exclusively academic audience, lack either the authenticity of Muslim belief, or the popular appeal, of Abou El Fadl.

20 Khaled Abou El Fadl, *A Conference of the Books: The Search for Beauty in Islam*, (2005), xv.

his work, apart from others. This allows him to represent a specific methodology of narration against the type of approaches to Islam he sees as problematic. He provides a unique combination of characteristics that make him particularly apposite for study in this context and also set him apart from other similar thinkers.

As is clearly noted in the introduction of *And God Knows the Soldiers*,²¹ and is apparent in his other works, Abou El Fadl sees a connection between the experience of modernity by the Islamic tradition and the rise of reductivist and fundamentalist forms of religious belief. He argues that it is the attempted re-assertion of the Islamic identity in a post-colonial fashion that has led to the modern reduction of the diversity of the tradition. In an attempt to better narrate against the story of modernity, Abou El Fadl sees within fundamentalism the re-assertion of an Islamic narrative that bears little relation to the pre-modern tradition he, or they, seek to retrieve. In the face of a desire for the re-assertion of the Islamic narrative against the narratives of Western colonialism, imperialism, and modernism, Abou El Fadl posits that fundamentalist forms of Islam, such as Wahhabism,²² have deliberately rejected aspects central to the classical Islamic tradition - such as a structured diversity within Islamic law between differing schools, a respect for the variety of opinions held and espoused by scholars through the ages, and a willingness to investigate and appraise issues of law and ethics in differing contexts with an understanding of the historical tradition behind the decisions of the law²³ – in an attempt to insulate the Islamic narrative from the demands of the narrative of modernity, as well as from supposedly de-stabilising influences within the tradition. Arguing against this reduction of the multiplicity of the Islamic tradition, and the enforcement of conformity to a particular version of Islam in the name of social identity and strength, Abou El Fadl seeks to break the relationship he sees between the narrative of modernity and fundamentalism that is damaging the wider Islamic tradition,²⁴ as well as damaging the socialisation of Muslims in the West. Abou El Fadl seeks a renewal and re-presentation of the genuine Islamic tradition in the face of changing circumstances brought about by modernity, rather than what he sees as an acquiescence to the essentialising processes of modernity.

2. Methodological Reform

Abou El Fadl construes himself, and the classical tradition as a whole, as equidistant between the two extremes he identifies, relying on the previous classical tradition to orientate himself and to allow for narration against the two extremes. In this, Abou El Fadl relies on his practice of the law as a scholar in the context of the Muslim community within which he

21 Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001) 7.

22 Although Wahhabism comes into being in the 18th century, its growth and increasing importance is seen by Abou El Fadl to be intricately bound up with the various effects that the increasing impact of western colonialism and imperialism has had on the Muslim world. These effects, rather than causing the genesis of Wahhabism, created the conditions for its massive and continuing growth beyond its humble origins through the fragmentation of the authority of the classical legal tradition. Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, (2001), 17 n.43.

23 Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 5.

24 See, for example, his book *The Great Theft: Wrestling Islam from the Extremists*, where he highlights how fundamentalism has hijacked the Islamic tradition.

Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists*, (2007).

1 is embedded, far more heavily than on a laid-out theoretical approach. By starting from issues
2 and points of practice, such as his close engagement with community issues in the
3 *Conference of the Books*, Abou El Fadl allows greater space for interpretative possibility and
4 avoids being bound by theoretical rules or regulations in his interpretation of the Law in
5 particular circumstances, in a mirroring of the traditional practice of *fiqh* (Islamic
6 jurisprudence), and *fatwā* (legal opinions or rulings).²⁵ This is not to say that Abou El Fadl
7 rejects theory, but rather that his project begins from the point of practice,²⁶ following the
8 practical methodologies espoused by the classical tradition, rather than seeking to conform
9 the practicalities of life to the abstract theories or rules.

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14 The retrieval of the pre-modern tradition in this way in the work of Abou El Fadl is
15 not, however, a return to an anachronistic vision of a past golden age. Indeed, Abou El Fadl is
16 himself critical of this approach in his de-construction of Salafi fundamentalism in Islam.²⁷ In
17 Abou El Fadl this turn is married with an appreciation for a certain post-modernist
18 understanding of the functioning of society, which relies on the possibility of multiple
19 meanings being apparent within texts, a de-construction of established discourses on subject
20 matters, and broader questioning of established constructions of knowledge. While
21 postmodernism has come to have an impact on a variety of spheres, ranging from architecture
22 to epistemology,²⁸ each section of influence shares certain similar attitudes and expectations.
23 Although I would leave the attempt to define these shared connections to other, braver, souls,
24 generally post-modernism revolves around the internal distrust of meta-narrative
25 constructions of society, or knowledge, first delineated by Lyotard in his now seminal work
26 *The Postmodern Condition: A Report on Knowledge*.²⁹ Along with this distrust goes an
27 appreciation for, and suspicion towards, the power relationships that are upheld by the meta-
28 narratives that forms our societies,³⁰ and a general siding with the subaltern, or alternative
29 narratives, that present themselves as challenges to the normative meta-narrative.³¹ Abou El
30 Fadl draws on this general milieu, in a broad fashion, to bolster his presentation of multiple
31 meanings within the texts upon which the law rests, but also to present the established
32 tradition stemming from those texts as similarly fluid and multifaceted. Although his
33 explication does not extend to the epistemological construction of knowledge as some
34 contemporary post-modern thinkers in the West would have it,³² his understanding of the
35 nature of texts and traditions is similar to that proposed more broadly within postmodern
36 theory. In addition, and perhaps most importantly for this article, Abou El Fadl sees a
37 connection between the nature of tradition with the formation of identity, seeing a connection

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46 25 For expansion and clarification on the historical practice of *fiqh* and *fatwā*, see:

47 Wael Hallaq, "From Fatwas to Furu: Growth and Change in Islamic Substantive Law", 1(1) *Islamic Law and Society* (1994),
48 29, 44
49 and;

50 Mozaffar Hossain, "The Story of Fatwa", 4(2) *Interventions* (2002), 237, 238.

51 26 This can be most clearly seen in the structure and content of *A Conference of the Books*, where the subjects
52 dealt with are directly related to problems brought to Abou El Fadl's attention by the community around him.

53 27 See the contextualisation of Wahhabism and Salafism:

54 Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 5 n.5.

55 28 As examples:

56 Martynas Mankus, "Manifestations of symbolism in architecture of postmodernism", 38(4) *Journal of Architecture and*
57 *Urbanism* (2014), 274, 274.

58 Gregor McLennan, "Feminism, Epistemology and Postmodernism: Reflections on Current Ambivalence", 29(3) *Sociology*
59 (1995), 391, 392.

60 29 Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge*, (1984).

61 30 Ibid., 7.

62 31 Ibid., 42.

63 32 William G Tiernay, "The Autonomy of Knowledge and the Decline of the Subject: Postmodernism and the Reformulation of
64 the University", 41(4) *Higher Education*, 353.

between the deconstruction of “tradition” in a singular and monolithic sense, with the deconstruction of adopted or forced identities on individuals.

This postmodern approach is especially clear in Abou El Fadl’s use of the work of Gadamer³³ and his work on *Horizontverschmelzung*,³⁴ and Lyotard and his work on the structure of narratives and their influence on the production of knowledge,³⁵ central figures of the foundations of contemporary postmodern theory. Gadamer’s *Horizontverschmelzung*, the ‘fusion of horizons’, deals with the way in which the two opposed positions of absolute knowledge, the idea that one horizon or viewpoint is sufficient to encompass the universal history, and objectivism, the idea that it is required for the production of objective knowledge to reject subjectivity in all its forms, can be mediated dialectically and moved beyond through the fusion of differing horizons that occurs through engagement and the exchange of meaning between two viewpoints. Horizon for Gadamer is not merely the expressed opinions of an individual, rather:

“The horizon is the range of vision that includes everything that can be seen from a particular vantage point. Applying this to the thinking mind, we speak of narrowness of horizon, of the possible expansion of the horizon, of the opening up of new horizons etc. The word was been used in philosophy since Nietzsche and Husserl, to characterise the way in which thought is tied to its finite determination, and the nature of the law of the expansion of the range of vision”.³⁶

In this, the fusion of the differing horizons exemplified by the opinions, attitudes, and subjectivities of the individual can combine and begin to overlap through their sharing mutually comprehensible accounts of reality. One person’s explication of their position allows for a better understanding of their position by the other, and a concomitant expansion of the range of the horizon of the person. Through dialogue, and engagement with pre-existing and established traditions, a continuous process of horizontal expansion occurs between the established horizon of the individual, framed as it is by their individual circumstances, biases, and prejudices, and the other’s horizon, opening up ensuing possibilities for mutual exchange and concurrent development.

Complementing this is a drawing on by Abou El Fadl of the work of Lyotard, specifically his understanding of the narrative nature of the construction of knowledge, and the way in which narratives interact with society. Drawing on Foucault’s work on the nature of power in society, and Wittgenstein’s delineation of the nature of ‘language games’ and the incomprehensibility of much exchange between discourses constructed according to different patterns of legibility and comprehension,³⁷ Lyotard, in Abou El Fadl’s usage, focuses on hesitancy and suspicion towards the idea of there being a universal and totally explanatory narrative about the nature of society, particularly that one that forms the narrative bedrock of our contemporary, modern, period. This, as Lyotard terms it, ‘incredulity towards meta-

33 Gadamer appears most regularly in Abou El Fadl’s *Speaking in God’s Name*, but is also often referred to, or alluded to, elsewhere such as conference presentations or talks. See, for example:

Khaled Abou El Fadl, *Speaking in God’s Name: Islamic Law, Authority, and Women*, (2001), 99, 104, 118, 123, & 139.

34 Hans-Georg Gadamer, *Truth and Method*, (1997), 302.

35 Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge*, (1984).

36 Hans-Georg Gadamer, *Truth and Method*, (1997), 302.

37 Ludwig Wittgenstein, *Philosophical Investigations*, (2009), 6c-7c.

narratives'³⁸ pervades much of Abou El Fadl's work, and seems to function as the driving force behind his own critique of modernity.³⁹ Lyotard's identification of this nature of narrative in society leads to an appreciation for the alternative, the non-normative, and the queer within society, and an awareness of the diversity, plurality, and eternally instability of our attempts at universalising narratives about ourselves.⁴⁰ Postmodernity, and postmodern societies, are therefore to be seen as kaleidoscopic spaces formed by the interaction of a multitude of micronarratives, formed from the experiences of subcultures, individuals, and different groups, which exist in a permanent state of flux. While meta-narratives attempt to assert control and structure over this fluidity, causing epistemological violence to the conceptions offered by the subaltern discourses,⁴¹ this assertion of control is constantly in a state of being questioned, queered, and out-narrated by micro-narratives which better serve to encapsulate and explain the nature of reality for those individuals who express them. In this way, Abou El Fadl's attempts at narration throughout his project mirror this continuous process of questioning and queering the normative accounts of established authorities and their presentation of reality.

This postmodern turn is down played in his work⁴², but remains in how his positioning of the retrieval of the pre-modern tradition is a qualified, dialectical recovery and in proposing its use within a new context; rather than seeking to apply an unmodified or fossilised account of the pre-modern tradition to the changed circumstances of modernity, Abou El Fadl sets himself against the prevailing currents of thought within the contemporary Islamic intellectual milieu. The move toward reform is therefore a qualified one that relies heavily on pre-existing modes of expressing the religious tradition and seeks to preserve not just the content of the earlier tradition, but also the processes and attitudes associated with it. This complicated reformism uses the half-turns toward pre- and post- modernity in order to de-stabilise and dis-locate the modern patterning of society that has been identified as problematic for the meta-narrative of Islam, with both out-right acceptance and out-right rejection, each proving problematic.

His methodology is particularly prominent in the book '*And God Knows the Soldiers*' as he attempts to interact with and narrate against a particular fatwā issued in response to the Abdul Rauf affair. This controversy was caused by the refusal of an NBA player, Abdul Rauf, born Chris Jackson, to stand for the American national anthem citing his Islamic faith. This action resulted first of all in a one-match ban, being followed by a compromise whereby Abdul Rauf would be able to stand and pray during the anthem. Further events, including the pranking of his local mosque by two radio DJ's, made the atmosphere in Denver uncomfortable and led to him leaving the team, before leaving the USA after three more

38 Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge*, (1984), xxiv.

39 Khaled Abou El Fadl, *A Conference of the Books: The Search for Beauty in Islam*, (2005), 118.

Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women*, (2001), 100.

40 Jean-Francois Lyotard, *The Postmodern Condition: A Report on Knowledge*, (1984), 17.

41 Ibid., xxv.

42 The downplaying of the similarity between certain currents of western post-modernist thought and moves made in analysis and interpretation by Abou El Fadl can perhaps be linked to a broader anti-intellectual current he identifies within contemporary Islamic society. While, in places, Abou El Fadl does engage with post-modern western scholarship, he is keenly aware of the difficulties of presenting his work as having been influenced by it.

Discussion of the anti-intellectual atmosphere within which he sees himself working can be found here:

Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 5 - 6.

seasons of basketball. Now returned to the USA, he has faded into relative obscurity.⁴³ The choice of the particular email fatwā sent out by the ‘Society for the Adherence to the Sunnah’ is made for specific reasons – as it “illustrates the tension between the authoritative and the authoritarian”, the “process by which the authoritative is used to produce the authoritarian”, and because “in style and method it is fairly representative of the endemic quality of contemporary Muslim discourses”.⁴⁴ As Abou El Fadl goes on to note, he does not choose the SAS fatwā because it represents something against which he wishes to narrate specifically, as an example of rampant liberalism or fundamentalism, but rather because it characterises the broader process of authoritarianism he sees going on within contemporary reactions to the Sharī’ah, and within their particular methodology of reasoning to reject standing for the national anthem.

Abou El Fadl at this point is setting up a particular situation, and a particular response to that situation, as an example of the broader patterns he sees as prevalent within Muslim society. In *And God Knows the Soldiers*, Abou El Fadl relies most heavily on a three stage process in order to further his project. First, he relies on a process of de-legitimising the discourse that attempts to make itself authoritative (and, in this case, authoritarian), secondly he re-presents a contextualised version of the plurality of the classical tradition in opposition to both fundamentalist reduction, and modernist relativism, and thirdly he appeals to a broader ethical understanding informed by the commitments of the Islamic faith in order to provide a structure to the plurality presented. In doing so he offers up a methodology by which the process of narration against extremism can be done in a way that is internally Islamic and presents a significant challenge to the legitimacy of the Islamicity of the narratives presented.

2.1. De-legitimisation

The first part of Abou El Fadl's methodology is a focus on de-legitimising the narrative of the Sharī’ah offered by the SAS. This effort, as he explains in the Introduction to his book,⁴⁵ is required because the classical structures of Islamic law and authority have been destroyed leaving little social awareness or knowledge of the correct methodologies to be employed in the resolution of issues in the Sharī’ah. He traces this destruction of the legacy of the classical Islamic legal tradition to the rise in puritanism brought about by a series of blows to the Islamic self-consciousness through the post-colonial period.⁴⁶ The de-authorisation of the SAS's discourse is critical to allow Abou El Fadl to showcase the strength and vitality of the classical discourse on Islamic law, while also showcasing the inconsistencies in the fundamentalist approaches to issues of interpretation, authority, and law. By highlighting the shallow foundations of the discourse promoted by the SAS, Abou El Fadl not only discredits this particular fatwā, but also begins to undermine the authoritative

43 For more information see these two retrospectives:

5280 The Denver Magazine. October 2007. “The Conversion of Chris Jackson”. Retrieved 8 April 2016.

<http://www.5280.com/magazine/2007/10/conversion-chris-jackson?page=full>

SBNation. March 2014. “Mahmoud Abdul-Rauf: Here, gone, and quickly forgotten”. Retrieved 8 April 2016.

<http://www.sbnation.com/2014/3/25/5544920/mahmoud-abdul-rauf-nuggets-national-anthem>

44 Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 44.

45 Ibid., 7.

46 Ibid., 2.

(and authoritarian) position that those such as SAS have appropriated within the Islamic community.

Abou El Fadl begins his attempt at de-authorising the position of the Society for the Adherence to the Sunnah by unearthing the poor exegetical and historical analysis of the examples they provide from the Qur'ān and from the Sunnah. Abou El Fadl approaches the key aspects of the SAS's argument by disrupting the easy link drawn in their fatwā between the presentation of particular hadith and the interpretation that they give to these selective hadith. As Abou El Fadl notes:

“In other words, what is particularly problematic is the way Islamic sources are employed, explored, and recast in order to establish authority. The speaker, in this case SAS, invokes the authoritative text in a fashion that constructs the authoritarian”.⁴⁷

In providing the history of the hadith, and the historical interpretations applied to it, Abou El Fadl disrupts the simplistic reading of the SAS, while simultaneously showcasing the difficulties apparent in attempting to use hadiths dealing with similar occasions in different contexts. As Abou El Fadl writes, the existence of a hadith relating to an issue is not the end of discussions about how the Sharī'a views or relates to certain actions, but is rather only the starting point for an investigation into how this hadith is related to the issue at hand, the authority of the hadith itself, and its wider relation to the Sharī'a as a whole.⁴⁸ While the SAS fatwā attempts to project particular hadith, and others mentioned in its original statement, in an unproblematic way onto the modern situation under consideration, Abou El Fadl exposes the dangers and difficulties in doing this by retrieving the diversity of opinion about each of the fatwas within the classical tradition.

2.2. Re-Presentation

It is this re-presentation of the classical tradition that forms Abou El Fadl's own position in the book. In contrast to the SAS, he attempts to represent the plurality and depth of the classical juristic tradition by presenting the historical antecedents of the sources quoted and illustrating the multitude of opinions formed around them. This is perhaps most clearly seen in Abou El Fadl's continuous presentation of both sides of a juristic debate, in the specific case of *And God Knows the Soldiers* and more generally in his practice in *A Conference of the Books*. This can clearly be seen in his extensive presentation of opinions in *And God Knows the Soldiers*,⁴⁹ from Mālik (711 – 795),⁵⁰ Abū Hanīfah (699 – 767),⁵¹ and al-

47 Ibid., 46.

48 Ibid., 61.

49 Ibid., 57.

50 A highly respected scholar of Sunni Islam, Mālik ibn Anas was born and practised in Medina right at the very beginning of the formation of Muslim discourses on the law. The founder of the Maliki School of jurisprudence which remains influential to this day.

51 Born in Kufa, Iraq, Abū Hanīfah is the founder of the Hanafi School of jurisprudence and widely recognised as a formative figure in the development of Islamic law and theology.

Shāfiʿī (767 – 820),⁵² who proposed that the prophetic example of standing for funerals had been abrogated, the opinions of Ibn Hanbal (780 – 855),⁵³ who proposed that it was a matter of personal choice, the opinion of al-Nawawī (1234 – 1277),⁵⁴ that standing for funerals is not preferred, and the opinion of al-Suyūṭī (1445 – 1505),⁵⁵ who reported that sitting down is permissible, but that standing is preferred.

While this appreciation for the plurality of interpretation is held in high esteem by Abou El Fadl, and by the classical tradition, it could be fair to argue that the SAS does not feel bound to follow these rules of interpretation and juristic practice that require strong evidence and restrained juristic analysis for the application of a *ḥadīth* onto a particular practice. However, if this is the case, then it presents serious problems and questions about the authority on which the *fatwā* offered by the SAS can stand as a legitimate expression of the *Sharīʿah*. After all, as Abou El Fadl notes, even in calling itself the Society for Adherence to the Sunnah, the SAS appropriates and takes on the authority of the discourse of Islamic law. As he writes:

“In short, I would say that SAS claims to speak for Sharīʿah. At this point, Sharīʿah is defined by the juristic interpretative community and its various methodologies and determinations. Without the juristic tradition, the very idea of Islamic law would vanish. Having invoked this legal tradition as the basis for its legitimacy and authoritativeness, SAS had become bound by sources that endowed it with authority”.⁵⁶

Abou El Fadl's positioning allows him to retrieve the classical tradition in the face of its reduction by either the discourses of modernity or fundamentalism, while undercutting the claims to legitimacy made by the SAS in their appeal to traditional forms of scriptural and juristic authority. This defence of the Islamic tradition's role in conferring authority on particular interpretations and conclusions is a critical part of Abou El Fadl's wider project and is clearly seen in the way in which he goes about engaging with the SAS and their *fatwā* on this particular instance of potential tension between modernity and Islamic identity.

In engaging with the SAS *fatwā* in this way, Abou El Fadl is not merely engaging with a particular form of Islamic discourse that he opposes, but is also addressing the effects that modernity has had on the Islamic community. The move toward more authoritarian readings of the tradition, such as the one contained within the SAS *fatwā*, is symptomatic of the broader effects of modernity Abou El Fadl sees as impacting the Muslim community. These effects, the breakdown of structures of authority, an increasing challenge to systems of religious legal thought, and the pressure of western dominance in technological and scientific

52 Idris al-Shāfiʿī is another founder of a legal school that remains prominent today, the Shafi'i school of jurisprudence. Born in Gaza, he studied under Mālik ibn Anas for a time.

53 Founder of the fourth Sunni legal school, the Hanbali, Ahmad Ibn Hanbal was born in Baghdad before travelling in order to collect *ḥadīth*. Returning to Baghdad, he studied jurisprudence under al-Shāfiʿī before setting up on his own.

54 A member of the Shafi'i school of jurisprudence, Yahya ibn Sharaf al-Nawawi was born in Nawa, near Damascus.

55 Jalal al-Din al-Suyuti, nicknamed *Ibn al-Kutub* or Son of Books, is another member of the Shafi'i school of jurisprudence well known for being one of the most prolific writers on Islamic law for his time.

56 Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 51n.15.

pursuits has led to the growth and creation of new forms of Islamic discourse in relation to them, typified as can be seen in Abou El Fadl's de-construction of the SAS *fatwā* by a dependence on certainty, simplicity, and authoritarianism.

2.3. *Beauty and the Law*

This framework of practice informs the way in which Abou El Fadl approaches the SAS *fatwā*, including the terms on which it is to be judged – if SAS are going to attempt to use the social legitimacy and authority of the mantle of Islamic law, then, as Abou El Fadl points out, it is only fair to judge them on that basis. This positioning of the oppositional narrative is key to the process which Abou El Fadl then invokes in his narration against them – by situating them within a tradition on which they presume to adjudicate, but by exposing the shallow nature of their understanding – Abou El Fadl effectively de-legitimises SAS's movement from the authority of the Sharī'a to the authoritativeness of their presentation of the Sharī'a.

Following on from this general methodological approach, the use of the term 'beauty' in Abou El Fadl's work deserves further attention as it occupies a place of critical importance in his work and is an established part of the classical methodology of Islamic law. The use of beauty as a marker for the discerning of the relevance of particular juristic formulations to specific practical occasions allows Abou El Fadl to present flexibility in the law regarding contexts and particularities. Beauty, in Abou El Fadl's project, is not an appreciation for logical clarity in argumentation, the satisfaction of having resolved a legal problem, or a static position, but is instead a process of making and becoming beautiful.⁵⁷ In the same manner as the internalisation and practice of beautiful practices, *ihsan*, based on scriptural descriptions of divine beauty and the example of the Prophet, leads to the outward beautification of the believer as a *muhsin*, so the practice of picking the outcome of the law most in accord with the beauty of the divine becomes a continuous practice of self-reflection and improvement.

Stemming from one of the names of the divine, *Al-Musawwir*, the Shaper of Beauty,⁵⁸ the conception of beauty, or beautification, has a long history within Islamic discourse, within both the legal tradition and the Sūfī stream of thinking.⁵⁹ This connection to Sūfism in the work of Abou El Fadl is no surprise given the underlying currents apparent in his work,⁶⁰ but in this case his reliance on the process of beautification rests on the classical division of religious practice into three dimensions or aspects – *al-islām*, *al-īmān*, and *al-ihsan*: i) *islām*,

57 Khaled Abou El Fadl, *A Conference of the Books: The Search for Beauty in Islam*, (2005), xix.

58 Qur'an 59:24.

59 Martin Van Bruinessen & Julia Howell, *Sufism and the 'Modern' in Islam*, (2007), 157.

60 The connection between the work of Abou El Fadl and Sufism is not the subject of this article, but it does bear some examination here as it is strikingly prominent in his connection of the juristic process with an inner search for beauty. For further examination of this see:

Nazanine Eman, "On the Way to Beauty: The Need for the Reaffirmation of the Authoritative in the Contemporary Islamic Legal Context", 4 *UCLA Journal of Islamic and Near Eastern Law*, (2004), 75 – 93.

And my own upcoming publication on this topic:

Angus Slater, "Strategic Hesitancy in the Discourse of Khaled Abou El Fadl: Sources and Implementation", 2 *ReOrient: The Journal of Critical Muslim Studies*, (2016).

1 is the voluntary submission of oneself to God and the practice of the five pillars of Islam, the
2 *arkān al-islām*; ii) *īmān* is the belief that underlies and motivates practice, including the
3 *arkān al-īmān*, the six articles of faith required; iii) *ihsan*, constitutes the highest form of
4 worship, and is the perfection of one's inner faith through perfection of all outward aspects of
5 living, a showing of the beauty of the divine life to society through the believer's actions and
6 deeds.⁶¹ It is this mirroring of the beauty of the internal belief in the external actions of the
7 believer that drives Abou El Fadl's use of, and engagement with, the concept of 'beauty' in the
8 context of Islamic law. If the law, in its processes and judgements, does not come to mirror
9 the internal beauty of the divine, then it is failing in its purpose of causing society as a whole
10 to become more beautiful.⁶² As Shah-Kazemi notes:

11 “[Abou] El-Fadl shows that the real beauty of this apparently arid dimension
12 of the Islamic tradition arises out of the effort of the jurist to transcribe in legal
13 terms his inner ethical sensibility – his 'aesthetic' appreciation of the good,
14 which is inherently beautiful, and not merely the moral sense of right, based
15 on what is lawful”.⁶³

16 This search for the position and opinion that best reflects the process of beautification
17 inherent within the discourse of Islamic law connects the methodologies and process of the
18 law used by the jurist to his own inner search for the beautiful dimension of Islam, a
19 connection seemingly lost in the contemporary formulation of a division between the legal
20 and mystical dimensions of Islam.

21 Abou El Fadl's relation to Sūfī conceptions of being, love, and knowledge is a
22 complicated one; however, it drives the underlying personal engagement with the law seen in
23 his work, especially in the heart-wrenching expositions of personal anguish seen in the
24 *Conference of the Books*, but also forms an important part of his wider project. The concept
25 of 'beauty' for Abou El Fadl takes the place in his life of the certainty and love sought after by
26 the Sūfī mystics. Indeed, given that all three find their perfection in the divine, they are in
27 some sense inter-changeable within his broader pattern of thought. The 'beautification' of
28 society through the law is not a goal that can be achieved or finished, rather it is a continual
29 quest to perfect the mirroring of the love and beauty of the divine in the workings of the
30 community. Abou El Fadl uses the concept of beauty as a way of measuring his own social
31 life as well as his practice of the law within the community against a larger ethical ideal. In
32 this sense, Abou El Fadl is working within a pre-existing tradition, taking on its processes
33 and systems of authority, and measuring his practice against already existing ethico-
34 theological standards.

35 This is most apparent within his most recently published book, *Reasoning with God:
36 Reclaiming Shari'ah in the Modern Age*,⁶⁴ where the notion of contemporary reasonableness
37 and proportionality are more fully fleshed out. While this could bear greater examination in a
38 separate article, generally throughout Abou El Fadl's work beauty functions as a

39 61 Mahmoud Ayoub, *Islam: Faith and History*, (2005), 68.

40 62 Khaled Abou El Fadl, *A Conference of the Books: The Search for Beauty in Islam*, (2005), 352.

41 63 Shah-Kazemi R, "Review of: Conference of the Books by Khaled Abou El Fadl", 15(2) *Journal of Islamic Studies*, (2004),
42 220, 221.

43 64 Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern Age*, (2014).

determinative value, which allows for the determination of the best course of action among the structured plurality offered by the broad tradition of the law. In doing this, each possible interpretation offered by the tradition can be evaluated and measured against the broader goal of Sharī'ah - the beautification of the believer, the society, and the world. Abou El Fadl's methodology goes beyond the more common appeals to the *maqāsid* (the goals of Sharī'a) or *maslaha* (common good) offered by some contemporary reformists such as Ramadan and Auda. While these others seek to reform Islam in favour of its broader over-arching principles, they do so in such a way that the particular substantive legal methodologies and rulings are marginalised or dismissed. In contrast, Abou El Fadl is focused on preserving the substantive aspects of the Islamic legal discourse in order to re-present the validity and vitality of the tradition and its ability to shape society towards the broader goals of the *Sharī'ah*. In doing so, the role of beauty within the methodology offered is one that comes after the process of legal determination offered by the Sharī'ah, rather than as a replacement.

3. The State

This tripartite methodology provides a foundation for a project of social and political resistance to the hegemonic normativisation seen in the sociality of the state.⁶⁵ The determinism seen in the connection between certain aspects of identity, whether religious, racial, or gender based, with the meanings that the state imparts onto those differences is, in the work of Abou El Fadl, closely connected to the working of the individual relative to the religious tradition. Both aspects, the state and the religious tradition, possess authority in a way in which needs to be interpreted and developed in its production within society.⁶⁶ This interpretation and development that the authority of the tradition undergoes, for example the textual interpretation of authoritative rules and regulations into their application to social circumstances, or the way in the machinery of the state creates, promotes, and reinforces certain narratives about social groups, produces the space within which the hegemonic power is reinforced and reproduced demonstrates a remarkable similarity in the way in which the structure of power and authority exercises itself within the life of the community.

This usage of power within the state is obviously a source of competing theoretical models, examining the way in which the state produces, uses, and maintains its dominance over aspects of the individual's life. While Foucault is commonly regarded as being fundamentally hostile to the issue of general theorisations about the state, his understanding of the place of power and authority *within* the state offers up room for examination in the light of the methodology proposed by Abou El Fadl. I aim to do this by examining Foucault's account of the state, particularly in his later lecture series on governmentality, drawing points of comparison between the position and exercise of power by the state in Foucault's understanding and the way that Abou El Fadl demonstrates the functioning of the authority of the religious tradition within Islam.

⁶⁵ Michel Foucault, *Naissance de la biopolitique: Cours au Collège de France 1978-1979*, (2004), 193-194.

⁶⁶ Bob Jessop, "From Micro-Powers to Governmentality: Foucault's work on statehood, state formation, statecraft, and state power", 26(1) *Political Geography*, (2006), 34-40.

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2 For Foucault, the power of the modern state to mould and control the lives of those
3 coming under its authority, largely rests in social norms, prevalent social institutions, and the
4 distinctive forms of knowledge produced and maintained by the state, rather than in a
5 sovereign authority.⁶⁷ Power, more generally, is seen to be an intrinsic part of all social
6 relations, permeating every form of exchange, and necessarily polyvalent in structure, being
7 diffused among a variety of social relations and discourses.⁶⁸ For this reason, while Foucault
8 rejected attempts to formulate a general theory of power, and how it is deployed by the state,
9 his work offers a deep account of the nature of power, its usability by state structures if not
10 the state as a whole, and methods of resistance to its hegemonic tendencies. As Foucault
11 notes,
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15 “Power's condition of possibility... must not be sought in the primary existence of a
16 central point, in a unique source of sovereignty from which secondary and descendent
17 forms would emanate; it is the moving substrate of force relations which, by virtue of
18 their inequality, constantly engender states of power, but the latter are always local and
19 unstable. The omnipresence of power: not because it has the privilege of consolidating
20 everything under its invincible unity, but because it is produced from one moment to the
21 next, at every point, or rather in every relation from one point to another. Power is
22 everywhere; not because it embraces everything, but because it comes from
23 everywhere.”⁶⁹
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27 While this envisioning of power may seem antithetical to a religious tradition, with
28 established, divine, authorities and a deep connection to ‘unique sources of authority’, what
29 Abou El Fadl, among others, has determined is that while religions do hold onto sources of
30 divine authority, this fails to recognise the way that these unique sources of authority function
31 *within* the socio-historical construction of the religious *tradition*. While the religion may
32 itself focus power on the divine text, this power and authority is interpreted by the religious
33 community in a variety of ways, flowing from the divine to individuals, institutions, and
34 social norms in the same way Foucault identifies with aspects of state power. In addition,
35 while power, for Foucault, is everywhere, permeating everything, the construction of this
36 overlapping account of power into the structured forms of authority and power structures we
37 see all around is a different matter. As Foucault outlines:
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41 “And ‘Power’ insofar as it is permanent, repetitious, inert, and self-reproducing, is simply
42 the over-all effect that emerges from all these mobilities, the concatenation that rests on
43 each of them and seeks in turn to arrest their movement. One needs to be nominalistic, no
44 doubt: power is not an institution, and not a structure; neither is it a certain strength we
45 are endowed with; it is the name that one attributes to a complex strategical situation in a
46 particular society”.⁷⁰
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49 It is this complex strategical situation that bears a resemblance to the nature of power and
50 authority within a religious tradition, spread between competing accounts of the meaning of
51 the ultimately authoritative text, differing institutional forms, and individual practice.⁷¹ In this
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57 67 Michel Foucault, *Naissance de la biopolitique: Cours au Collège de France 1978-1979*, (2004), 27-34.

58 68 Ibid., 193-194.

59 69 Michel Foucault, *The History of Sexuality Vol 1: The Will to Knowledge*, (1976), 93.

60 70 Ibid.

61 71 Dorothee Schaper, “Power and Authority in the Religious Traditions: A Protestant Perspective”, 46(1) *European Judaism*,
62 60, 64.
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milieu of competing power relations, it is the exercise of power through discourse that produces changes within the socially constructed matrix of society.

It is this discursive power that the state produces, uses, and maintains, that I wish to turn to now. While power may be diffuse within society according to a Foucauldian analysis,⁷² state power, the concatenation of instances of power exercised in individuals' lives by institutions and social norms empowered by the state, forms a more permanent and repetitious form of established power, which in turn provides a certain form of legitimation to the exercise of authority.⁷³ This exercise of authority by the state, its performance of its power over individuals, communities, and norms within society can take a variety of forms and proceed in a variety of different ways, from the relatively minor use of public information and health ministries to encourage healthy eating, more consequential uses of the state's influence over broadcast and print media to encourage certain discourses surrounding political policies, to controversial uses of the coercive power of the state through security services, the judicial system, and other systems of oppression and control. This machinery of the state, ranging from educational bodies, political think tanks, directly controlled police and civil order forces, the judiciary, embedded institutions, and complicit organisations, produces discourses regarding the place, purpose, and legitimacy of social representations such as religious and community groups.

The narratives that states produce about groups within society, both consciously and not, often contain within them a legitimation of the state's role in producing and maintaining its own position.⁷⁴ This can most clearly be seen in the nexus of discourses on national security, radicalisation, state authority, and Muslim communities produced in the post 9/11 era.⁷⁵ Entwined with the state-produced discourse about Muslim communities in the West, in reaction to incidences of terror related to Islamic extremism, was a conjunction of concurrent discourses also produced by the state around its role as a guarantor of national security, the extent of personal liberties, and its ability to define the acceptable limits of political and individual action. What this mixture of discourses produced was not only the securitisation of Muslim communities in the West, well documented elsewhere,⁷⁶ but also, through its presentation of a continued threat to the defined markers of statehood, a legitimation of an expansion of state power and authority to a previously undreamt of extent.⁷⁷

The use of this discursive power by the state to describe certain communities and social groups, through its institutional machinery, in turn shortens the horizon of possibility of identities connected to those communities and social groups. In doing so, the normative narrative maintains its structural power and its legitimacy. With the production of normative

72 Michel Foucault, *Naissance de la biopolitique: Cours au College de France 1978-1979*, (2004), 79.

73 Michel Foucault, *Society Must Be Defended: Lectures at the College de France 1975-1976*, (2003), 37-39.

74 See, for example:

Carolyn L Hsu, "Political Narratives and the Production of Legitimacy: The Case of Corruption in Post-Mao China", 24(1) *Qualitative Sociology*, (2001), 25, 43-52.

75 Luca Mavelli, "Between Normalisation and Exception: The Securitisation of Islam and the Construction of the Secular Subject", 41(2) *Millenium: Journal of International Studies*, (2013), 159-181.

76 Clara Eroukmanoff, "The remote securitisation of Islam in the US post-9/11: euphemisation, metaphors and the "logic of expected outcomes" in counter-radicalisation discourse", 8(2) *Critical Studies on Terrorism*, (2015), 246.

77 Matt McDonald, "Securitization and the Construction of Security", 14(4) *European Journal of International Relations*, (2008) 563, 564.

narratives about communities formed around markers of identity, such as a religious community whose members all share certain religious beliefs, the state is also producing accounts of normative identities⁷⁸ – the aspects of identity that are seen within the narrative of the state as essential to those members of the described community. In describing something, we impart meaning on to that thing, and differentiate between the normative, or essential, form of the thing and its less legitimate representations. This is the process of hegemonic normativisation, whereby the hegemonic performance of power produces categories or identities within society, which are judged according to their respective representation of the essentials defined by authority as essential to that category or identity.⁷⁹ This process, outlined above, can be seen to function not only for the state, but for any aspect of authority that controls institutions and social structures, that in turn produce narrative about the legitimate and non-legitimate forms of identity. In this way the interpretation and development of the discourse produced by the state about aspects of the identity of its citizens, mirrors the process by which religious authorities of various shades, shape and create discourses within their traditions which legitimates certain expressions of religious identity, and de-legitimises others.

4. Resistance

It is this process of legitimisation and authorisation to which Abou El Fadl's previously explicated methodology speaks. For Abou El Fadl, there is a recurring form of social non-finality that stresses the lack of rigidity possessed by our social constructions of meaning. This non-finality draws on aspects of his methodology such as the three steps mentioned above, but also recurring attitudes or positions that reflect personal commitments within his work. Abou El Fadl's constant recourse to notions of modesty in opinion,⁸⁰ uncertainty regarding the validity of a particular legal opinion to a social circumstance,⁸¹ and non-finality regarding the identification of divine authority with the authoritativeness of a jurist's opinion,⁸² outline a vision of society that is based on a constant reflexive flux between the authority of the individual to self-define the meaning of their identity characteristics and hegemonic power of the state to produce meaning about identity characteristics. Obviously, in the ordinary course of events this power to define is unequally distributed between the state and the individual, or the tradition and the individual, or the currently hegemonic interpretation of the tradition and the individual.⁸³ This does not mean that there is no space for alternative narrations of meaning or identity as can be seen in Abou El Fadl's own practice. This example of meaning negotiation between tradition, self, and currently hegemonic interpretation, opens up space for Abou El Fadl to promote a similar proposal in the context of the negotiation between the self and the state. It is this process of resistance that the methodology speaks to, providing a way of countering aspects of the discursive power of the state and established tradition to legitimate certain markers of identity.

78 Robert Dunn, "Identity, Politics, and the Dual Logic of Postmodernity Fragmentation and Pluralization" in *Identity Crises: A Sociological Critique of Postmodernity*, (1998), 153-162.

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80 Khaled Abou El Fadl, *A Conference of the Books: The Search for Beauty in Islam*, (2005), 123.

81 Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 62-63.

82 Ibid, 32-34.

83 Jovan Babic, "On State, Identity, and Rights: Putting Identity First", 25 *International Journal of Semiotics and Law*, (2012), 197, 203.

4.1 De-legitimation

The process that Abou El Fadl uses, outlined above in the context of *And God Knows the Soldiers*, begins with the step of de-legitimising the particular interpretation of the authoritative text offered by the alternative discourse. In the case of the *fatwā* considered above, the interpretation offered by the SAS is de-legitimised as a legitimate representation of the *Sharī'ah* through its failure to adequately represent the original context of the text in its ensuing opinion. Abou El Fadl does this by contrasting the unitary account of power and authority within the SAS's *fatwā* and the plural, multiple, forms of power and authority apparent within the diversity of the established religious and judicial tradition.

This step of the process developed is echoed in the way in which power structures in society can be de-legitimised through the questioning of their ability to adequately represent both the duties of the state, as codified in its self-produced documents and social norms, and its ability to adequately describe the realities of individuals' identity performances.⁸⁴ However, while in the de-legitimation stage explicated above, Abou El Fadl used the established context of the sources imbued by the tradition with authority in order to ground his de-legitimation process, this established context and content is far more ephemeral when considered in the context of state authority. When we examine the foundations of state authority and legitimacy, as in the section above, we see that the power of the state primarily rests within a discursive framework that produces a series of instances whereby the narrative produced by the institutions of the state causes changes in the way in which individuals, and society as a whole, comes to understand themselves.⁸⁵ This framework produces streams of authority, and legitimation, that, in contemporary societies in the West, as often found to be codified – not only in textual documents like constitutions or international treaties, but also in the preserved social norms that have come to be seen, through repeating discourses, as essential to aspects of the national identity, in the same way that the state can produce certain discourses about essential characteristics of social or group identity.

It is this identification of certain aspects as essential to the character of the state, whether preserved in codified documents, or established social norms, that provides he context within which the de-legitimation of state discourse can begin to function. While aspects of state discourse come and go, and change over time, these norms established represent an authoritative point of reference for judging the more ephemeral actions of that state than may run counter to broader, more established, accounts of the place and legitimacy of state power. An example of this can be seen in the tension expressed between established state commitments to individual liberty and freedom of conscience, and the perhaps more pressing issues of security and intelligence gathering in the light of terror attacks or suspected criminal activity.⁸⁶ In this context, Abou El Fadl's process of de-legitimation functions to reflect the short term actions of the state back onto its more long-term commitments,

84 Drew Chappell & Sharon Chappell, "Stories of Resistant Play: Narrative Construction as Counter-Colonial Methodology", 5(1) *Narrative Works: Issues, Investigations, & Interventions*, (2015), 1, 17.

85 Michel Foucault, *The History of Sexuality Vol 1: The Will to Knowledge*, (1976), 93.

86 Ghia Nodia, "Freedom and the State", 21(1) *Journal of Democracy*, (2010), 136, 136-138.

1 examining state action on a particular point in the context of the structure that legitimises that
2 state action. In doing so, the de-legitimisation process functions as a corrective to the singular
3 implementation of state authority, for example its production of discourses that identify
4 extremism as an essential character of Muslim identity, by questioning any particular action
5 on its citizens, whether these are contained in constitutional rules about equitable treatment or
6 in unwritten, but still authoritative, social norms regarding innocence and respect.⁸⁷ An
7 essential character for any project of resistance to incidences of state identity formation and
8 power exertion is therefore a de-legitimisation of that exertion of power through its
9 contextualisation within the established norms and institutional apparatus of the state,
10 referring the specific instance of discursive creation regarding individual identity to the
11 broader framework which governs the legitimisation of state authority.
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16 **4.2 Re-Presentation**

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20 In the methodology outlined above the stage of de-legitimisation is followed by the stage of
21 re-presentation. As part of this, Abou El Fadl, in contrast to the previously de-legitimised
22 discourse of the Society for the Adherence to the Sunnah, attempts to re-present the variety
23 and plurality contained within the whole of the tradition, paying attention to both alternative
24 established positions, say the differences of legal opinion between competing *madhabs* or
25 legal schools,⁸⁸ and to minority or marginalised discourses on the point of law under
26 consideration. This re-presentation is given as a counterpoint to the singular and often
27 authoritarian presentation of the meaning of the *Sharī'ah* by the original discourse, and as a
28 correction to the ability of that discourse to effectively represent itself as having adequate
29 knowledge of the tradition in order to assume its authority. Abou El Fadl outmanoeuvres the
30 original discourse within the framework it itself draws on for authority, queering and
31 problematising its reading of the tradition. Obviously this stage, and the stage of de-
32 legitimisation which precedes it, are often accomplished together – the de-legitimisation of
33 the original discourse offered can occur through the presentation of plurality within the
34 broader tradition it seeks to represent, undercutting its claim to adequately represent that
35 tradition and showcasing the variety embedded within the broader tradition simultaneously.
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43 In the context of the legitimate rules and processes of the *Sharī'ah*, these steps are
44 somewhat clear, relying on established norms of practice and authority that define the
45 legitimate guardians and transmitters of authority, even if the specifics can be disagreed
46 over.⁸⁹ In the case of the state, however, this particular step of re-presentation proves
47 somewhat more problematic. The diffuse nature of state authority, and its lack of beholden-
48 ness to alternative power structures or systems of authority mean that the re-presentation that
49 can be performed must take into account this differing structure of authority. This is not
50 insurmountable, but requires a shift in the terms of what is authoritative and how the plurality
51 that is re-presented is to be conceived.
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60 ⁸⁸ Khaled Abou El Fadl, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, (2001), 57.

61 ⁸⁹ Wael Hallaq, *Shariah: Theory, Practice, Transformations*, (2009), 223-354.
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1 The diffuse nature of state authority and power as examined above differs from that
2 seen within the structured formation of authority and power within the Islamic tradition.
3 While Abou El Fadl utilises pre-existing norms of legitimacy and authority, using
4 authoritative source texts and authoritative commentaries and judgements about those texts to
5 question the authority usurped by the SAS in their reading of the same source texts, when
6 engaging with issues of state power, legitimacy, and authority, this position of being within,
7 and a better representation of, an established and authoritative tradition becomes problematic.
8 However, the process of re-presentation, while changed, can continue to challenge the
9 hegemonic normativisation of identity, by presenting alternative discourses which better
10 reflect not only the states internal, and established, ideals, but also offer up alternative
11 discourses about the state itself.⁹⁰ What this means is that in de-legitimising discourses
12 produced by the state about groups which fail to match their lived realities, one engages in
13 the production of discourses that hold the state to account – both to its own commitments,
14 and to those social norms and practice that remain, as yet, partly outside the ability of the
15 state to control.
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21 This notion of re-presentation in the context of resistance to the discursive power of
22 the state can therefore be formed around two differing, but connected, strategies which could
23 easily be read back into the process possible within the sphere of Islamic law. The first, is a
24 re-presentation of the state's own commitments which, necessarily, produce authoritative
25 statements for the state's own actions. An example of this could be the re-presentation of the
26 state's own discourses surrounding privacy and equal treatment before the law, codified in
27 constitutional, legal, or international documents, in contrast to the discourses and actions of
28 the state which undermine this established commitment, including actions such as illegal
29 phone-tapping or email interception.⁹¹ This juxtaposition of two contrasting, and opposing,
30 actions by the state, one an established principle, given weight by its position of authority and
31 legitimacy, and the other de-legitimised in the previous step of the methodology, seeks to
32 highlight the internally contradictory performance of authority by the state, and therefore
33 undercut its claim to be acting in a consistent manner. This is working within the defined
34 boundaries that the state itself has produced as limiting its freedom of action, the state
35 producing regulations which govern its behaviour, and similar to the way in which Abou El
36 Fadl utilises the produced tradition surrounding the authoritative sources texts in order to
37 critique the SAS's attempt at representing those texts. The second strategy involves the
38 expansion of Abou El Fadl's original methodology beyond the critique of internal
39 inconsistency described, to a broader critique of aspects of the state itself, that draws on those
40 social norms and values, formed outside the influence of the state, that contradict the
41 performance of state authority.⁹² While this may seem tenuous, the use of alternative
42 authority structures, religious, social, or cultural, to critique the state cannot be dismissed as a
43 discursive tool of resistance.⁹³ Rather, through re-presenting alternative narrative
44 constructions about the state two steps are accomplished – the first is a de-legitimisation of
45 the presentation of the current state as the only possible or legitimate form, and the second is
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55 90 Max Kirsch, *Queer Theory and Social Change*, (2000), 113-123.

56 91 Neve Gordon, "Human Rights as a Security Threat: Lawfare and the Campaign against Human Rights NGO's", 48(2) *Law & Society Review*, (2014), 311-344.

57 92 This can be seen in Abou El Fadl's use of religious and non-religious ethical argumentation in his discourse against security
58 policies aimed at the Muslim community in the USA:

59 Khaled Abou El Fadl, *A Conference of the Books: The Search for Beauty in Islam*, (2005), 12-13.

60 93 Alexander Wendt, "Collective Identity Formation and the International State", 88(2) *The American Political Science Review*,
61 (1994), 384, 389.
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the opening up of narrative space for the development of alternative forms that better reflect the desired ideals of the community.

Re-presentation, in the context of resisting the discursive power of the state, therefore takes on a plurality of forms that move beyond those expressed by Abou El Fadl in the context of narrating against particular conceptions of the *Sharī'ah*. In doing so, the source of authority for re-presentation changes from a solely internal authority, the authority of the divine text and established legal tradition that surrounds it, to a more diffuse form of authority that draws on both internal aspects, the previously established “rules” by which the state attempts to govern, and external aspects, such as alternative structures of ethics and legitimation like religious traditions or non-religious philosophies, in order to present both better forms of action by the state, and better forms of the state itself.

4.3 Beauty

The re-presentation stage of Abou El Fadl’s methodology leaves us with a kaleidoscopic vision of competing possible discourses, drawing on multiple differing authoritative structures in order to attempt to produce a narrative about the world which adequately represents the individual’s identity, their lived realities, and the established structure of the religious community of which they are a member. Abou El Fadl has re-presented the plurality that makes up the tradition, but the question remains - how can one choose between these pluralities in order to decide the correct course of action? In the context of the *Sharī'ah*, this is accomplished through an appeal to an internally authoritative concept of beauty as reflective of the Divine, and therefore the best option is the one that is most reflective of the broader ideals of the *Sharī'ah* and its purpose of beautifying society. While this appeal is framed within an explicitly religious context, and functions within that context as a check against the authoritarianism of the particular against the universal, the specific law against the general vision, the egregious abuse against the contextual sympathy, this function remains the same within the context of the resistance to state identity discourses. Abou El Fadl’s use of ‘beauty’ as a determinative function for practice, allowing him to ground his own particular choice of discourse beyond the plurality of the law he has presented, mirrors the utilisation of ideal forms in counter-acting the discursive power of the state, allowing for a higher goal to act as a method of judgement for those representations and interpretations offered.⁹⁴

The nature of this higher goal is the critical aspect for the functioning of Abou El Fadl’s methodology, specifically in shaping its differences from others forms of religious discourse regarding the formation of society according to divine authority.⁹⁵ Within Abou El Fadl’s project, and in his own practice, beauty is not a fixed or settled thing, rather, as it is within much of the Islamic tradition, beauty is seen to be a process, a continuous

⁹⁴ Khaled Abou El Fadl, *A Conference of the Books: The Search for Beauty in Islam*, (2005), 245-246.

⁹⁵ This relates to my previous explication of the methodological differences between Abou El Fadl’s project and both the conservative reformism of Salafism, and the liberal reformism of the *muqasid* thinkers.

1 beautification of the believer.⁹⁶ As we have seen, authority, within the life of the individual,
2 is formed of a diffuse network of sometimes competing and sometimes complementary
3 discourses regarding the nature of reality, whether these discourses are internally formed,
4 produced by the state, or come from a religious tradition the individual identifies with. This
5 nature of authority provides the ground from which the states actions can be judged, allowing
6 for the states discourses to be matched against the lived realities of the individual who
7 identifies with those markers of group identity the state is narrating about, and for those
8 narratives to be questioned by the individuals re-presentation of the internal and external
9 inconsistencies of the state's action. The marker of beauty moves beyond a critique of
10 existing narratives about the individual or community and instead allows for the expansion of
11 alternative narratives from that individual or community - a constructive phase.
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16 Obviously, the nature of this constructive phase differs in the context of resistance to
17 the state from that practiced by Abou El Fadl in the context of resisting reductive accounts of
18 the *Sharī'ah*. However, the act of choosing among the structured plurality of the various
19 interpretations of the *Sharī'ah* offered in the re-presentation stage mirrors the ability of the
20 individual to choose the personal narration they engage in – how they act, how they perform,
21 how they narrate about themselves – among all the possible options available to them. The
22 notion of beauty, functioning within the context of the *Sharī'ah* as a determinative marker of
23 practice, a way of deciding *what to do*, is also a teleological calling that pushes the individual
24 believer to reshape the narrative in a way in which better represents their own, individual,
25 lived experience of the identities to which ascribe, and *to continue to do so*.
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31 Therefore, there is a more beautiful discourse available within the authority structure
32 produced by the state, the one that more effectively describes the shared lived reality, the
33 everyday experiences and self-understanding, of the community that the state wishes to
34 propose essential characteristics for. In holding this up as the performance of process of
35 beautification, the moment of discursive finality, the point at which a narrative settles in one
36 form and suggests that is encapsulates reality, is postponed and pushed back in the face of its
37 constant questioning by the lived reality of the individual. The discursive power of the state
38 to create and control our identities, is resisted through the performance of our identities as
39 alternate to that which the state proposes.⁹⁷ Through developing the connection between the
40 discourses we tell and the lived reality of our lives, the process of beautification and the
41 determination between differing ethical ideals is continued within the political and social
42 sphere. This choice of resistance is the beginning of the process of beautification - as Abou El
43 Fadl's identifies, a refusal to settle for the authority of power purely on the basis of its own
44 self-legitimizing discourse, but rather a continuous process of de-legitimation and re-
45 presentation, in favour of an internally produced discourse that mirrors the desires of the
46 community for a vital, but never completed, ideal.
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58 ⁹⁶ This process can most clearly be seen in the way that Abou el Fadl deals with a particular situation over the course of a
59 number of pages in *A Conference of the Books* regarding the beating of wives. See particularly:
60 Khaled Abou El Fadl, *A Conference of the Books: The Search for Beauty in Islam*, (2005), 108-112

61 ⁹⁷ Dustin Goltz & Jason Zingsheim, "It's Not a Wedding, It's a Gayla: Queer Resistance and Recuperation", 30(3) *Text and*
62 *Performance Quarterly*, (2010), 290, 293.
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5. Conclusion

Abou El Fadl resists the impulse toward a homogenisation of social and cultural practice under the cover of a reductive and unified account of the law, preferring a mirroring of the structured plurality of legal opinion offered in the classical tradition within the cultural and social practice of contemporary Muslim societies. This is mirrored in his narration against the construction of Muslim identity by the western nation state, preferring a loose and undefined construction of identity and meaning that requires a constant process of self-reflexive negotiation and dialogue. Politically, his practice of a strategy of political and social resistance to those discourses he sees as harming the community through the forced reduction of its plurality, involves the narration against the authoritarian accounts of the tradition offered by fundamentalists, the rootless acquiescence and loss of the traditions offered by liberal reformists, and the de-sacralisation and homogenisation of a full integration into western modernity through the medium of the state. In this context, he offers up a basis for a continual queering of authoritarian and hegemonic epistemological structures that service the need of the state to homogenise and control not only those it regards as its citizens, but also those portrayed as *others* embedded within it.⁹⁸

Practically, this conception of resistance can take many forms. As can be seen in Abou El Fadl's work, the narration of individual Muslims' identities, drawing on the tradition of Islam, can be used to counteract both the authoritarianism of the fundamentalist social narrative and the overweening power of the state in determining aspects of identity as being essential to the character of religio-social groupings. Of course sometimes these can be simultaneously targeted – the narration of an alternative “happy” British Muslim by the Honesty Policy's video⁹⁹ not only undermines the claim of the fundamentalists to represent the “true” pattern of serious Islamic behaviour by presenting a number of important community figureheads in a non-serious light, but also undercuts the attempts of the state to position the Muslim community as an object of fear and suspicion by humanising actual members of the Muslim community and presenting them as “normal” in a non-threatening way. The formation of these narratives can, and will,¹⁰⁰ take on a variety of forms as the terrain of post-modernity continues to unfold, but the continuing evolution of the narrative form and its performative nature seems to be a continuing presence in our interaction with wider society.

Abou El Fadl offers up a significantly new way of approaching the project of reform in Islamic law, while his work also offers up an engaging explication of the position and performance of authority within contemporary society. By preserving and utilising the resources already embedded within the breadth of the classical legal tradition, Abou El Fadl is able to provide a new way of dealing within issues that arise from the confluence of Islamic identity and faith. His process of de-legitimisation, re-presentation, and evaluation

98 As an example of this kind of layered, intersectional, attempt at queer narratives, see: Nikita Dhawan, “The Empire Prays Back: Religion, Secularity, and Queer Critique”, 40(1) *boundary 2: an international journal of literature and culture*, (2013), 191-222.

99 Honesty Policy. 2014. “Happy British Muslims”. Retrieved 2 September 2015, <https://www.youtube.com/watch?v=gVDIXqILqSM>

100 Ellen Rose, “Hyper Attention and the Rise of the Antinarrative: Reconsidering the Future of Narrativity”, 2(2) *Narrative Works: Issues, Investigations, & Interventions*, (2012), 92, 100.

1 using the notion of beauty, provides a framework for the counteracting of narratives about the
2 Muslim community that seek to close down the opportunity for plurality and difference to
3 exist. This process, as I aim to have demonstrated, provides a position for critical resistance
4 to the formulation of discourses by the state which interact with individual identity and
5 attempt to reduce the possibility of alternative discourses. In utilising the methodology
6 implemented by Abou El Fadl, the project of political resistance can be seen to contain a de-
7 legitimisation of the state's hegemonic normativisation of identities, a re-presentation of
8 alternative account that draw on internal and external legitimating authorities, and the
9 narration of continuous individual discourses that better mirror the live experiences of the
10 individual and their community.
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