



# “Sharpen Your Blade and Put Your Animal at Ease”: Islamic Ethics and Rituals of Killing Non-Human Animals

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“Sharpen Your Blade and Put Your Animal at Ease”:  
Islamic Ethics and Rituals of Killing Non-Human Animals

A Dissertation Presented

by

Nuri Friedlander

to

The Committee on the Study of Religion

in partial fulfillment

for the degree of

Doctor of Philosophy

in the subject of

Islamic Studies

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**Abstract**

This dissertation approaches the question of killing animals in Islam from the perspective of ritual as adjudicated within the sphere of Islamic jurisprudence, one of the primary repositories of ethical values in Islam. Through assigning legal assessments to human actions, Muslim jurists describe and map moral behavior. Islamic legal manuals are one of places Muslims turn for moral guidance, but it is also where they look for direction on the performance of many rituals that are essential to the practice of Islam. I argue that ritual provides a meaningful framework to consider practices of killing animals in Islam that allows space for discussions of their ethical dimension, as well as deeper questions regarding what it means for humans to allow themselves to kill non-human animals and the ways in which that is justified. Embedded in these Islamic ritual practices and their legal exegesis are both an acknowledgment of the pain that animals suffer, as well as efforts to minimize that pain and to justify it by imbuing it with theological significance. Throughout the classical period of Islamic law, Muslim theologians, legal theorists, and jurists acknowledged animal suffering and explicitly stated that it should be a concern for all Muslims. They framed the permissibility of animal slaughter as a function of the divine decree that killing animals for food is an ethically good act. In addition to rituals of killing animals to produce food, works of Islamic jurisprudence also address rituals of sacrifice, which, as opposed to slaughter for food, are explicitly devotional. In all of these examples, jurists are concerned with minimizing animal suffering and ensuring that rituals are carried out appropriately so that

the meat they produce can be considered pure and the devotional act can bring the worshiper closer to God.

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## Prologue

In 2007 I moved back to the United States to start a doctoral program in the study of religion. Although I was born and raised in New York City, I had spent the previous twelve years living in the Middle East. My father and I had moved abroad when I was fifteen and now, at twenty-seven, I was remembering and relearning what it meant to live in the U.S. There were a number of facets to this remembering and relearning, and many of them had to do with what it meant to be an American Muslim. Leaving my home in Cairo, I was anticipating that there would be challenges involved in this relocation. I would have to find new friends, build new communities, and rethink what it meant for me to engage in spiritual practices that had become rooted for me in particular spaces and cultures. I was not anticipating that it would also involve a new engagement with food and, by extension, my relationship with non-human animals.

Living in Muslim majority countries, I had grown complacent regarding the idea of halal food. My assumption was that anything I might find in a store or a restaurant would be halal. Living in the U.S., I became more intentional about what I ate. In addition to avoiding foods like pork that are prohibited in Islamic law, I began making sure that I only ate meat that was halal or kosher. I found that this had the unintended effect of making me more aware of what I was eating and how my food was sourced. It was around this time that one of my oldest friends, Daniel Holzman, gave me his copy of Michael Pollan's *The Omnivore's Dilemma*. Daniel had started working in the restaurant industry when we were in high school, and he worked his way through some of the top kitchens in the U.S. before opening his own restaurants. Through him, I had been exposed to a wide variety of cooking styles and I had learned to appreciate food preparation. I have fond memories of shopping at farmers' markets with him before going back to his apartment where he taught me how to make fresh tomato sauce and roast a chicken.

Through Pollan, Daniel was introducing me to another aspect of food preparation; the different pathways that our food takes before it even gets to the markets. Reading Pollan, I realized that my focus on halal meat had only addressed the question of how animals are killed. The larger question of how the animals we eat live was new for me, as were related issues concerning the consumption of eggs, dairy, and seafood.

Parallel to these personal developments, my academic training at Harvard was introducing me to various discourses that were beginning to influence the ways that I thought about these questions. On the one hand, I was doing coursework with Prof. Baber Johansen that looked at the relationship between law and ethics as well as the place of the Islamic law of ritual within the study of Islamic law. Simultaneously, Prof. Jonathan Schofer was introducing me to the field of comparative religious ethics and, through him, I was meeting people at the American Academy of Religions who were looking at similar issues in other religious traditions. A course on religion and animals with Prof. Kimberley Patton opened me up to that growing field and, as my personal and academic interest began to come together, I searched for a topic through which I could address some of my questions about Islamic dietary law, ethics, and animals. As I started looking at contemporary practices of halal slaughter and sacrifice, I found that many of them fell short of the idealized version of halal slaughter in my imagination. While the meat that was being marketed as halal may have technically adhered to Islamic legal requirements regarding slaughter, some of the prevalent practices associated with it seemed to fall short of the ethical ideals of Islamic traditions. While I was primarily concerned with contemporary practices, my research disclosed that there was still a need for more foundational work that examined how these questions had been treated in premodern religious discourses.

Through the Committee on the Study of Religion's two semester long doctoral theory and methods seminars, I was introduced to the concept of ritual. Although the language of ritual is not native to Islam, I found it helpful in making sense of some of my own experiences. One such experience was when I performed the sacrifice for Eid al-Adha when I was living in Damascus. I went with a couple of friends to a village outside of the city where we knew a shaykh who had taught them Islamic law. The shaykh helped us procure a few sheep and introduced us to a butcher who could help us. On the sidewalk in front of his butcher shop, we lay one of the sheep on its side. I held its head with my left hand baring its neck while a friend helped hold the bottom half of the sheep's body. Uttering the phrase, "In the name of God, God is great" I drew the knife in my right hand across the animal's neck. It cut easily and the crimson blood spurted out and flowed into a drain in the ground. The color was much brighter than I had expected, but what surprised me the most was the sound of the sheep's breath exiting from its severed esophagus and the kicking of its legs. The violence of it frightened me, but stronger than the fear was a powerful and humbling sense of awe and reverence in bearing witness to the end of a life. I thought of my own mortality and of the fragility of life. I thought of Abraham on that distant mountaintop; a man from a pastoral society who had probably slaughtered countless sheep and other animals and who, in spite of his knowledge of the violence, was able to approach his son's throat with a blade. I thought of how powerfully present the sacred must have been in that moment and the moments of reprieve that followed. How that ram that was brought forward stood for so much. Within minutes, the living and breathing animal in front of me had been skinned and butchered, reduced to lumps of flesh whose nerves still twitched with the memory of life. The shaykh would distribute the meat to poor people in his village, and we would take some home and cook it to

feed our friends and ourselves. The skins we gifted to the butcher, although we made sure it was understood that they were not a form of payment.

It was an experience that stayed with me and that I recollected when I ate halal meat. Had the animals I was eating experienced the same kind of death as my sheep outside of Damascus? Had there been a sense of reverence present at the time? An awareness of the sacred? Knowing what I had come to know about industrialized halal slaughter practices, I doubted that this was the case, but I began to seek out farmers and suppliers who were providing halal meat that was produced both with an eye to environmental sustainability, the humane treatment of animals, and an engagement with the divine. This search brought me into contact with a number of people I would come to consider friends. These were Muslim farmers, founders of co-ops, and business owners who were all working towards the shared goal of engaging in a form of animal agriculture that they believed was more in line with Islamic values. I visited these interlocutors over the years and we shared meals, ideas, and we celebrated Muslim festivals on their farms. By reminding me that there were people in the world outside of academia who cared about these questions as much as I did inspired me as I slowly worked through the large amounts of primary sources on Islamic practices of hunting, slaughter, and sacrifice that I had gathered. It took some time, but through this topic I was able to bring together various aspects of my identity as an American Muslim scholar of religion and Islam working within the academy but serving a broad community of engaged practitioners. My hope is that this dissertation is seen as a meaningful contribution both by the academic community as well as by Muslims who are thinking through similar questions in their own ways.

## Introduction: “Put Your Animal at Ease”

Practices of killing animals feature prominently in works of Islamic law, most of which include chapters dedicated to hunting and slaughter, as well as various forms of animal sacrifice. In discussing these practices, Muslim jurists exhibit an awareness and concern for animal pain, which is reflected in the title of this dissertation. “Sharpen Your Blade and Put Your Animal at Ease,” is taken from a well-known hadith of the Prophet Muhammad found in canonical collections such as Muslim’s *Ṣaḥīḥ*, Tirmidhī’s *Sunan*, and Imām Aḥmad’s *Musnad*. The longer version of the hadith reads, “God has made excellence (*iḥsān*) an obligation in all things. So, if you kill, kill well, and if you slaughter, slaughter well. Sharpen your blade and put your animal at ease.”<sup>1</sup> In addition to the canonical collections of Muslim, al-Nisā’ī, Abū Dawūd, and Imām Aḥmad, this hadith is also included in important later compilations such as Abū Zakarīyah b. Sharaf al-Nawawī’s (d. 1277) forty hadith and Muḥammad b. ‘Abdullah Khaṭīb al-Tabrīzī’s (d. 1341) *Mishkāṭ al-Maṣābīḥ*. This is significant in that al-Nawawī states that his intention in bringing the specific hadiths in that collection together is to compile hadiths that form the heart of Islam. In his words he says, “Some scholars,” he writes, “have compiled forty hadiths on the foundations of religion, some on branches of religion, some on jihad, some on etiquette, some on sermons, all of which are good purposes, may God have mercy on those who had those intentions. I have considered compiling forty hadith that are more important than all of that. This is forty hadiths that encompass all of that, each one of them being a great principle among the principles of the religion which scholars have said Islam revolves around, or that it is half the

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<sup>1</sup> *Ṣaḥīḥ* Muslim *bāb al-ṣayd wa al-dhabā’ith wa mā yu’kal min al-ḥayawān*; *Sunan* al-Tirmidhī *bāb al-dīyāt*; *Sunan* al-Nisā’ī *bāb al-ḍaḥāyā*; *Sunan* Abī Dawūd *bāb al-ḍaḥāyā*; *Musnad* Imām Aḥmad *musnad al-shāmīyīn*.

religion, or a third of the religion, or some such statement.”<sup>2</sup> This hadith then is one that al-Nawāwī sees as establishing a key principle of Islam.

This hadith sets the tone for the dissertation in a number of ways. It includes both a clear indication that slaughtering animals is permissible as well as an exhortation to do so in specific ways that have the aim of minimizing the suffering that animals experience during the process. The hadith, however, is not primarily about animal slaughter. Its main focus is on the concept of *ihsān* and emphasizing the importance of performing all of one’s actions with this kind of spiritual excellence. It takes up the question of killing both humans and non-human animals as if to say, yes, even when engaging in actions that may appear to defy the meaning of excellence because of their violence, even then you must seek excellence out. Perform the acts well. Strive to avoid causing more suffering than the acts require. But even beyond this, put your animal at ease. Bring it to its death in such a way that it is comfortable. While sharpening the blade may at first seem to indicate a lust for violence and an action that appears to be at odds with putting the animal at ease, as we shall see in the chapters that follow, this is meant to be done out of the animal’s sight and, in this context, it is another way to ensure that the animal’s experience of slaughter is as painless as it can possibly can. The sharper the blade is, the faster and more painless the cut will be, and the easier its death.

The hadith indicates that one should care about the animal even as one kills it by having compassion when ending its life and considering its feelings and experiences even while inflicting pain and cutting off the possibility of future experiences. These tensions form the basis of this dissertation and the root of my argument is that ritual serves, in part, to resolve these

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<sup>2</sup> Abū Zakarīya Yaḥyā b. Sharaf al-Nawawī, *al-Arba ‘in Ḥadīth al-Nawawīyah* (Cairo: Maktabat al-Qāhirah, 1970), 12–13.

tensions. On the one hand, the stated goal of the ritual is to put the animal at ease, but it also functions to put the person carrying out the slaughter at ease; they perform the slaughter knowing that even though it is violent, it is good. Additionally, this moral position rests on their performing the ritual well by carrying out its requirements, adhering to certain recommended practices, and avoiding discouraged actions. If there were any hesitation about the ethics of killing animals, which as Chapter One demonstrates there has been, this may be overcome through faith that the ritual will both protect the animal and the person slaughtering it by ensuring that the actions are performed in a way that allows them to be deemed morally good and to achieve a praiseworthy end. By circumscribing killing animals with the performance of ritual, religious guidelines for slaughter involve a commitment to protecting the animal from experiencing unnecessary pain while bringing the violence inherent in the practices into the realm of the morally acceptable by orientating the action towards the divine.

An examination of works of Islamic law reveals that Islamic practices of killing animals form ritual complexes that serve to mitigate concerns regarding animal pain and bring humans into relationship with non-human animals. They do this in a way that emphasizes both compassion for animals and consciousness of the divine. In framing these practices as ritual, I rely on the work of Roy Rappaport. In his book *Ritual and Religion in the Making of Humanity* he defined ritual as, “*the performance of more or less invariant sequences of formal acts and utterances not entirely encoded by the performers.*”<sup>3</sup> Ritual is a non-native concept to Islam and, while Rappaport’s definition serves as a good basis for thinking about ritual, there are a few

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<sup>3</sup> Roy Rappaport, *Ritual and Religion in the Making of Humanity* (Cambridge, U.K.: Cambridge University Press, 1999) 24. It is worth mentioning that Amina Steinfelds also draws on this definition for her discussion of ritual in her chapter on ritual in *Key Themes for the Study of Islam* as does Gerd Marie Adna in her book on sacrifice in Islam, *Muhammad and the Formation of Sacrifice*.

adjustments that need to be made in order for it to apply meaningfully to Islamic practices. The first is to make explicit the role played by revelation and the interpretive traditions that build upon it. Rappaport's statement that the content of ritual is "not entirely encoded by the performers" is key in this respect. While it may not have been Rappaport's original intention, I use this phrase to refer to the role that Islamic law plays in encoding Islamic ritual practices. Further, because Islamic law is ultimately derived from scripture, either more or less directly, this opens up space for an acknowledgement of the transcendent in Islamic rituals. The second element that I add to Rappaport's definition is that of ritual effect. The performance of rituals allows for a particular effect to be obtained. In some cases, the effect is immaterial, for example the moral responsibility to pray is alleviated through the performance of an obligatory prayer. In other cases, such as those considered in this dissertation, there are also material effects, such as the production of meat that is considered pure and permissible for human consumption. Additionally, as in many areas of Islamic law, the intent of the person engaging in the practice is an important element of Islamic rituals. Framing ritual in this way allows it to apply both to practices that are devotional in nature as well as to practices that do not have an essentially devotional orientation. Practices of killing animals in Islam fall into both of these categories. Sacrifice, for example, is a ritual that has a prominent devotional element, whereas slaughtering animals for food is less devotional in nature. Sacrifice serves a devotional purpose of bringing the practitioner closer to the divine through a fixed set of practices. While non-sacrificial slaughter practices do not have this element of drawing near to the divine as a primary purpose, they can be similarly described as fixed practices. Additionally, while not expressly devotional, there are elements of these practices that orient them towards the divine, such as turning towards the *qibla* and invoking God's name at the time of slaughter.

Much of this dissertation is concerned with examining the ethical and legal discourses that Muslims engaged in when attempting to draw lines for how humans should interact with non-human animals. The focus of these discourses is primarily on human behaviors and their legal/ethical assessments. In the background is the question of the organizing principles behind these assessments, which are related to larger questions of the place of human beings in a cosmological order. The conception of this cosmological order informs and makes possible the ethical assessments of human actions related to interactions with animals. At the same time, those very same ethical discourses further a particular civilizational worldview confirming and asserting particular roles for human beings in the world. There is much at stake in these discourses since human/animal interactions are by and large unavoidable, and the ways in which those interactions are conceived, and what those conceptualizations allow for, represent principles by which societies are organized. Definitions are often made easier by comparison, so defining the human is accomplished by putting it in relation with what is not human, and the closest thing to contrast it with in the world is the animal. The question becomes whether to emphasize commonality or difference. The boundary between the human and the animal is not fixed and rigid. The human and the animal worlds constantly interact with each other; there are often possibilities for animals to cross over into the human world (see the example trained hunting animals below) but this crossing can be tenuous (the trained dog may become untrained at any moment) and, in Muslim mythologies, humans have been known to cross over to the animal world.<sup>4</sup>

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<sup>4</sup> I am thinking of narratives that indicate that certain groups of people were transformed into animals as a form of punishment as are referenced in Qur'an 2:65.

There are many ways in which humans and animals interact, but this dissertation focuses on what is perhaps the most dramatic interaction possible, that which involves humans killing non-human animals. This is the clearest example of human domination over non-human animals and it is one that makes possible the staples of so many civilizations: the consumption of meat and the use of animal hides, and other products. Other examples of this domination include using animals for riding and packing goods during travel, using them for labor to produce energy and to farm, and using them to produce non-meat foods such as eggs and dairy. Behind these dominating practices is an understanding that human societies are dependent on the animal world, but this dependence is often expressed as supremacy. How is this form of domination and supremacy, which was already present in various ways in pre-Islamic societies, justified by Muslims and what were the parameters set down for this domination?

Of course, it is possible to have societies organized such that they do not rely on a conception that holds humans as superior to animals, but this was by and large not the case in Muslim societies. Sara Tlili has made an argument that the Qur'an should not be read as an anthropocentric text by highlighting the ways in which the Qur'an attends to animals as subjects. The context for her thesis, however, is that "although a non-speciesist reading of the Qur'an is surprisingly well-founded, the Muslim tradition has not always read it in this way."<sup>5</sup> As we shall see in the chapters that follow, the Muslim theologians and jurists that I study generally do adopt what may be termed a speciesist perspective<sup>6</sup> on non-human animals in which humans are seen as having a right to use animals due to their particular status as human beings.

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<sup>5</sup> Sara Tlili, *Animals in the Qur'an* (New York: Cambridge University Press, 2012) 11.

<sup>6</sup> The concept of speciesism was popularized by Peter Singer as "a prejudice or attitude of bias in favor of the interests of members of one's own species and against those of members of other species." (Peter Singer, *Animal Liberation* (New York: Harper Perennial, 2009), 6.

The practices that Muslim jurists discussed and debated were technologically simple and required intimate relationships between humans and animals even, or especially, when the former were killing the latter. In a sense, this act of killing was conceived of as an intimate act which required not only physical presence and connection to the animal, but a spiritual presence as well, most clearly expressed by the invocation of God at the time of slaughter. The relationship is made even more intimate when the act of slaughter takes on a sacrificial aspect by being performed at certain times or places and where the animal can serve as a stand in for the human. This intimacy can be contrasted by the total lack of intimacy found in contemporary industrialized slaughter houses most commonly found in the United States and Europe but increasingly around the world. Timothy Pachirat has written compellingly about the ways in which industrialized animal slaughter thrives on invisibility and distance and he draws analogies between this and other institutions of modern society. “Like its more self-evidently political analogues — the prison, the hospital, the nursing home, the psychiatric ward, the refugee camp, the detention center, the interrogation room, the execution chamber, the extermination camp — the modern industrialized slaughterhouse is a ‘zone of confinement,’ a ‘segregated and isolated territory,’ in the words of sociologist Zygmunt Bauman, ‘invisible’ and on the whole inaccessible to ordinary members of society.”<sup>7</sup> In explaining his project, an ethnography of a slaughterhouse in the U.S. Mid-West, he describes the practices of the slaughterhouse as, “a labor considered morally and physically repellent by the vast majority of society that is sequestered from view rather than eliminated or transformed.”<sup>8</sup> The practices of hunting,

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<sup>7</sup> Timothy Pachirat, *Every Twelve Seconds: Industrialized Slaughter and the Politics of Sight* (New Haven: Yale University Press, 2011), 4.

<sup>8</sup> Pachirat, *Every Twelve Seconds*, 11.

slaughter, and sacrifice that are described by Muslim jurists do not suffer from this problem of invisibility. Although the actual social conditions under which slaughter and sacrifice have been carried out in different historical contexts is a topic for further research, at least in their idealized form enshrined in works of Islamic jurisprudence, visibility appears to be assumed. That is to say, when performed appropriately, these rituals should not only be available for viewing, but their performance should be such that the viewing does not become a spectacle of the grotesque but rather a witnessing of something that partakes of the sacred. But if we read between the lines of these texts and ask why it is that jurists address the specific questions that they do, we may conclude that the actual practices as they were enacted in the world often felt short of these ideals, hence the emphasis on excellence (*iḥsān*) in the hadith which this chapter began.

### **The Scholarly Context of the Study**

This dissertation is inspired by and contributes to scholarship in a number of different academic fields related to the study of religion. These fields are primarily Islamic law and ethics, ritual studies, and religion and animals. While I draw on works on ritual as well as animal studies in general, this dissertation is more specifically located in the context of the study of Islamic rituals and works on animals in Islam. Since the majority of this dissertation is based on examinations of Islamic legal texts, it is more specifically situated alongside scholarship on those discourses. At the same time, it benefits from the wealth of anthropological writing on ritual in Islam and it seeks to lay foundations for further study of the ways in which these particular rituals are enacted in the daily lives of Muslim communities around the world.

The field of animals and religion has grown over the past decade since Kimberley Patton and Paul Waldau published their groundbreaking edited volume, *A Communion of Subjects*.<sup>9</sup> The past few years have seen the publication of a number of works that, while not addressing the case of Islam specifically, have served as inspiration for my writing about Islam, animals, and ethics. I am particularly indebted to scholars whose work focuses on, or takes as a launching point, Jewish conceptualizations of animals. While this is not a comparative project, considering the similarities, and the differences, between practices related to animals found in Judaism and Islam has helped me think more clearly about the Islamic practices that I study. These include works such as Aaron Gross's *The Question of the Animal and Religion* and Jordan Rosenblum's *Food and Identity in Early Rabbinic Judaism*. The explicitly comparative work of David Freidenreich has also been illustrative of the kinds of conclusions that can be drawn from examining religious dietary laws. His *Foreigners and Their Food* has been particularly helpful in thinking through questions related to animals slaughtered by non-Muslims and the theological implications of these rules.

Within Islamic studies specifically, the work of Sarra Tlili has served as an important intervention to move the discourse on Islam and animals forward. Her book *Animals in the Qur'an* explored alternative readings of the Qur'an that center God rather than humans and allow more space for animals to be conceived of as religious subjects. Her published articles, such as "Animals Would follow Shāfi'ism"<sup>10</sup> explore the ways in which issues related to animals are

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<sup>9</sup> Kimberley C. Patton and Paul Waldau, eds. *A Communion of Subjects: Animals in Religion, Science, and Ethics* (New York: Columbia University Press, 2006). See this book reviewed and the works that followed over the next decade in Anna Peterson, "Religious Studies and the Animal Turn," *History of Religions* 56, no. 2 (Nov. 2016).

<sup>10</sup> Sarra Tlili, "Animals Would Follow Shāfi'ism: Legitimate and Illegitimate Violence to Animals in Medieval Islamic Thought," in *Violence in Islamic Thought*, edited by Robert Gleave and Istvan Kristo-

treated in works of Islamic law. Additionally, Richard Foltz’s contribution to the budding field of the study of animals and Islam has served to set a tone and provide a context for important further work.<sup>11</sup> Magfirah Dahlan-Taylor’s work on ethics and Islamic dietary law<sup>12</sup> as well as Kecia Ali’s reflections on the politics of vegetarianism have pushed me to consider classical sources in light of contemporary ethical and political concerns. Febe Armanios and Boğaç Ergene’s recent publication *Halal Food* provides a larger scholarly context within which my current work can be situated.<sup>13</sup>

In the realm of Islamic law, ethics, and ritual, I draw extensively from scholarship on ritual purity in Islamic law. This work has been furthered by three scholars in particular. Kevin Reinhart, Marion Katz, and Ze’ev Maghen, all of whom engage with Mary Douglas. Additionally, the work of William Graham has proved helpful in conceptualizing ritual and distinguishing it from the Islamic category of *‘ibādāt*. Richard Gauvain’s article “Ritual Rewards,” has been particularly helpful in examining these works and tracing the scholarly concerns that inform them. I explicitly engage with many of these works in the chapters that follow.

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Nagy (Edinburgh: Edinburgh University Press, 2015).

<sup>11</sup> Richard Foltz, *Animals in Islamic Tradition and Muslim Cultures* (Oxford: Oneworld, 2006).

<sup>12</sup> Magfirah Dahlan-Taylor, “Beyond Barbarity and Concealment: Animal Sacrifice and Religious Slaughter in Islamic Responses to Postdomesticity.” *Culture and Religion* 17, no. 3 (July 2, 2016): 352–65.

<sup>13</sup> Febe Armanios and Boğaç A. Ergene, *Halal Food: A History* (New York, NY: Oxford University Press, 2018).

## **Overview**

This dissertation is broken into three main chapters, each having a number of sections and subsections. The organization of the dissertation follows a main line of argumentation. I begin by establishing a discourse on animal pain and suffering. Next I examine ritual practices of killing animals for food. Finally, I look at the further ritualization of killing animals in cases of animal sacrifice. In this way each successive chapter builds on the previous one.

Chapter One, “Muslim Theologies of Animal Pain” takes as its subject the extensive debates that Muslim theologians and legal theorists engaged in regarding animal pain. Focusing on classical works of Mu‘tazilī and ‘Asharī theologians and legal theorists I examine the various ways in which they wrestled with animal pain and suffering. Both of these schools of thought took as their starting point that certain kinds of animal suffering could be justified as ethically good. In particular, acts that are explicitly sanctioned by Islamic scripture, such as killing certain animals for food and performing religiously mandated forms of animal sacrifice, were considered good actions because of the scriptural mandate. This, however, posed a problem for certain conceptualizations of God as just. How could such suffering be allowed? The chapter examines in detail the different ways that ‘Asharīs and Mu‘tazilīs argued this case while maintaining their respective theological commitments. In both cases, it is important to note that it is only those actions that are specifically sanctioned in scripture that are deemed good so that even when animal pain is sanctioned, it is treated as a special case. Only by adhering to the ritual is animal suffering acceptable or, in the case of sacrifice, a means for attaining divine pleasure. This last point leads to an emphasis on the ritual aspects of killing animals that are picked up in the subsequent two chapters.

Muslims theologians and legal theorists grappled with the challenges presented by Qur'anic verses and traditions of the Prophet that explicitly allow for humans to kill animals in particular contexts and through a set of practices carried out by specific categories of individuals. These texts raised the question of how God, being just, could permit the pain and suffering of innocents such as animals and children. Muslim theologians addressed this challenge in different ways depending on their theoretical orientations and the ideological commitments that came along with them. Reading through their debates reveals that while theologians found the idea of killing animals problematic enough to warrant discussion, they did not, for the most part, entertain the possibility that it was unquestionably wrong or immoral to engage in practices that involved the taking of animal life and the concomitant pain that animals would experience in the process. In fact, resistance to animal slaughter was cited as an example of the deviation of certain religions and sects. Theologians focused their arguments on justifying why and how practices of killing animals are in fact good even though they result in pain and suffering. These discussions fall within larger debates regarding the qualities of God and the nature of the ethical values of good and bad. It seems that, with the exception of the rare outlier, Muslim theologians were in agreement that killing animals, when carried out in accordance with the dictates of the law, falls into the ethical category of the good. This, however, is where their agreement ends, for they differed greatly in the ways in which they justified and explained the goodness of these acts.

It should be noted that theologians were not only concerned with the ethical challenge presented by God allowing humans to kill animals, but by larger questions of animal experience, such as cases of animals killing other animals, the pain and suffering that animals might experience in life, as well as the suffering that naturally goes hand in hand with the ending of life, no matter how merciful the process may be. The case of the pain and suffering experienced

by animals presented theoretically fertile ground for Muslim theologians to explore deeper ethical questions since they did not consider animals morally responsible for their actions in the same way that they considered humans to be. Whereas the pain and suffering that humans experience could be understood in terms of punishment for sins committed in this world or preparation of otherworldly rewards, the same could not as easily be said for animals. How then, theologians asked, could the goodness of God's actions be squared with the existence of animal pain and suffering?

Chapter Two builds on the ethical debate regarding killing animals by examining the ways in which Muslim jurists describe how animals should be killed and discuss the necessary and recommended ritual actions that define those practices. Works of Islamic jurisprudence generally discuss the rulings related to hunting and slaughter under the same chapter heading, so in treating practices of hunting and slaughter in the same chapter I am following those sources. Works of Islamic jurisprudence did not always address the foundational ethical questions associated with animal slaughter; instead they focused on the details of human/animal interactions by providing guidelines and boundaries for the practices that help define those relationships. Jurists addressed the kinds of animals that it is permissible to kill, the appropriate ways in which to do so, who may perform these acts, and the effects of performing them, such as purifying a legally edible animal's meat and hide rendering it permissible for consumption and use. Works of jurisprudence include detailed discussions of actions that are obligatory, forbidden, permitted, recommended and disliked when killing animals. While the obligatory elements of slaughtering animals ensure that the process renders an animal ritually pure, many of the practices that are legally recommended or disliked address the experience of the animal itself and appear to seek to make their death at the hands of a human one that is characterized by

respect and the intention to minimize pain, suffering, and distress. Obligatory rules include ensuring that the person carrying out the slaughter cut the appropriate vessels (a combination of the carotid arteries, esophagus, and trachea depending on the legal school) and invoke the name of God (although there is a difference of opinion between different schools of law as to whether mentioning the name of God is obligatory or recommended), while the recommended rules include practices such as hiding the knife from the animal's view and turning the animal in the direction of Mecca while it is being killed. While there is some disagreement between the different schools of Sunni jurisprudence regarding the details of practices that involve killing animals, there is significant agreement regarding the main elements that make up these practices as well as the legal effects obtained through performing them.

Focusing on foundational works in the four Sunni schools of Islamic law, this chapter argues that the elements that make up legislated practices of killing animals are made sensible by viewing them as components of a ritual complex that seeks both to bring about the effect of producing pure meat that is suitable for Muslims to consume and, at the same time, seeks to ensure that animals are killed in ways that minimize the pain and suffering they experience. This chapter builds on Rappaport's previously discussed definition of ritual while incorporating contributions by scholars of Islamic studies. This leads to a consideration of the categories of purity and impurity along with reflections on Islamic studies scholarship on Islamic rituals of purification. While rituals of slaughter and sacrifice are not explicitly conceptualized as rituals of purification, one of the main ritual effects of these practices is to render the meat of an animal pure. Muslim jurists clearly state that one of the chief purposes behind slaughter is the production of pure food and other useful animal products.

The bulk of the chapter is dedicated to enumerating and discussing the various elements of rituals of slaughter and hunting. Particular attention is paid to the kinds of animals that jurists permit for slaughter and hunting. While animals are not active participants in the ritual, they are the primary ritual object and the way that the ritual is carried out is based on the kind of animal upon which it is being performed. Because of this, one of the central focuses of this section is the various ways in which Muslim jurists categorize animals and place them in different taxonomical categories. These categories are discussed as ritual categories rather than purely zoological classifications. Major divisions include wild and domesticated animals, land animals, water-dwelling animals, birds, herbivorous animals, and animals that hunt prey for their food. In each case, the way in which an animal is conceptualized by the jurists impacts whether or not it is suited to serve as the ritual object of slaughter or hunting.

The specific practices of slaughter and hunting are covered in detail. This includes the different forms of slaughter that are applied to bovine cattle, sheep, goats, poultry, and camels. Hunting includes both hunting with a projectile weapon as well as using a trained animal (typically a dog or a falcon) to hunt. Sections of the chapter address explicitly ritualistic elements of these practices such as the invocation of God at the time of slaughter and the recommendation to face the direction of the *qibla* when slaughtering. A major element of any ritual is who is authorized to perform the ritual and this chapter includes a detailed discussion of the necessary characteristics of the person performing slaughter or hunting. While questions of gender, age, and ability are considered, the focus is on the issue of religious affiliation as that is where there is the most variety of opinion.

Finally, the chapter concludes with a section devoted to the ethical treatment of animals. I argue that one of the intended results of properly performing the ritual is that the amount of pain

and suffering the animal experiences will be limited. Many practices are specifically prohibited or disliked because of the pain that they inflict either physically or psychologically. This serves as one of the chief ethical aspects of these rituals and one of the ways in which this chapter builds on the theological discourses on animal pain that were the focus of Chapter One.

Chapter 3, the final main chapter of the dissertation, examines Islamic practices of animal sacrifice. These rituals involve many of the same principles and practices as non-sacrificial animal slaughter, with the addition of ritual elements related to time, place, the selection of the animal, and the intention and purpose of the ritual. The chapter begins with an overview of sacrificial theory as it has been discussed broadly in the study of religion and more specifically in Islamic studies. Sacrifice includes rituals that are performed in association with the hajj or *'umra* pilgrimages, the *'īd al-aḍḥā* festival, or the birth of a child. Sacrifices associated with the pilgrimages are conceptualized either as voluntary acts of devotion, acts of devotion associated with performing the pilgrimage in a specific way, expiation for an act of wrongdoing while on pilgrimage, or recompense for hunting while in a state of *iḥrām* or in the *ḥaram* sanctuary. The chapter also addresses additional ritual elements of sacrifice such as the distribution of the meat of a sacrificed animal.

### **Methodology**

The main substance of this dissertation is drawn from a critical reading of a selection of Islamic theological and legal texts ranging from the 11<sup>th</sup> to the 14<sup>th</sup> centuries. I read these texts through a ritual lens that allows me to identify and highlight ritual elements of the practices in question. Additionally, the ethical framework established in the first chapter carries through as a uniting them as I mine these practices for the ethical values that are embedded within them.

These include questions of the relationship between humans and non-human animals and practices that seek to minimize animal pain even when they are being killed.

I have selected texts that are representative of the positions related to killing animals from the four Sunni schools of jurisprudence, the Mālikī, Ḥanafī, Shāfi‘ī, and Ḥanbalī. I have limited the study to the Sunni schools due to considerations of space as well as focus. Further research on non-Sunni conceptualizations of animal slaughter would be a welcome addition to this study. For each school I have selected two texts from what some term the post-formative period of Islamic law.<sup>14</sup> This refers to that period of time after the schools were fully formed. While I find many unique contributions to the corpus of Islamic law in the later commentary tradition and they give us insight into the ways in which legal rules were applied in changed and changing contexts, I focus my study to the few centuries following the formation of the legal schools mainly out of concern for space. As it stands, comparing positions on killing animals from the four schools is an ambitious project. The only way to make it manageable is to limit the number of sources that are relied upon. This also opens up space for further research to examine the ways in which rulings related to animals shifted and developed within a school over an extended period of time.

For this project, I borrow from the method Marion Katz describes in her work on Islamic rituals of purification,

The discussion draws on sources covering a wide range of time and space. While the texts relevant to each theme will be presented in chronological order, I have made no attempt to situate individual texts in any detailed description of their historical context.

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<sup>14</sup> Sherman Jackson, “Taqīd, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory,” *Islamic Law and Society* 3, no. 2 (1996): 168. cited in Marion Katz, “The Age of Development and Continuity, 12th–15th Centuries CE,” in *The Oxford Handbook of Islamic Law*, edited by Anver M. Emon and Rumea Ahmed (Oxford: Oxford University Press, 2019).

This is because I believe that any work of Islamic scholarship is simultaneously informed by two different contexts, that of its own immediate social and historical circumstances and that of a citational tradition in which arguments and tropes were studied, reproduced and contested in times and places remote from their own original production.<sup>15</sup>

Islamic legal texts are certainly shaped by the contexts in which they were composed. In this study, however, I have opted to attempt to describe in broad terms the debates regarding Islamic practices of slaughter and sacrifice rather than delving into the specifics of how their positions are related to unique historical and social factors. At the same time, they are part of a tradition of discourse in which authors are constantly referring to positions advocated for by their peers and predecessors in order to build upon them or use them as a foil for their own contrasting perspective. Talal Asad describes tradition in the following way:

A tradition consists essentially of discourses that seek to instruct practitioners regarding the correct form and purpose of a given practice that, precisely because it is established, has a history. These discourses relate conceptually to a *past* (when a practice was instituted and from which the knowledge of its point and proper performance has been transmitted) and a *future* (how the point of that practice can best be secured in the short or long term, or why it should be modified or abandoned), through a *present* (how it is linked to other practices, institutions, and social conditions).<sup>16</sup>

He goes on to explain that “traditions should not be regarded as essentially homogenous, that heterogeneity in Muslim practices is not necessarily an indication of the absence of Islamic tradition.”<sup>17</sup> My aim here then is to represent the Sunni tradition of discourses on killing animals in its diversity, while also attempting to identify its core components and the values that they carry.

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<sup>15</sup> Marion Katz, “The Study of Islamic Ritual and the Meaning of Wuḍū’.” *Der Islam* 82, no. 1 (2005):113.

<sup>16</sup> Talal Asad, “The Idea of an Anthropology of Islam,” *Qui Parle* 17, no. 2 (2009): 20.

<sup>17</sup> Asad, “The Idea of an Anthropology of Islam,” 23.

The texts that I focus on here are all part of the commentary genre. In these works, authors comment and build upon works of their predecessors. They compile various opinions and, at times, indicate which opinion they or their peers consider most authoritative. As a result, although the texts are composed by an individual author, each one represents the opinions of a wide range of scholars. This means that even though I examine a limited number of texts, they allow for a fairly broad view of the various opinions that exist within the different legal schools. In reading these texts my focus has been on chapters that directly address practices of killing animals. Specifically, these are the chapters on hunting and slaughter, the chapter on the *udḥīya* sacrifice, and the chapter on hajj. For each school I have selected two major works of jurisprudence to focus on while occasionally citing other works when they offer unique opinions or important developments in thinking that are not expressed in the main texts. The texts I work with are the Mālikī *al-Nawādir wa al-Ziyādāt* by Ibn Abī Zayd al-Qayrawānī (d. 996) and *al-Tawḍīḥ* by Khalīl b. Ishāq al-Jundī (d. 1365); the Ḥanafī *Kitāb al-Mabsūt* by Muḥammad b. Aḥmad al-Sarakhsī (d. 1090) and *Badāʾiʿ al-Ṣanāʾiʿ* by ʿAlāʾ al-Dīn Abū Bakr b. Masʿūd al-Kāsānī (d.1191); the Shāfiʿī *Nihāyat al-Maṭlab fī Dirāyat al-Madhhab* by ʿAbd al-Malik b. ʿAbd Allāh al-Juwaynī (d. 1085) and *Rawdat al-Ṭālibīn* by Abū Zakarīya Yaḥyā b. Sharaf al-Nawawī (d. 1277); and the Ḥanbalī *al-Mughnī* by Muwaffaq al-Dīn Ibn Qudāmah (d. 1223) and *al-Inṣāf* by ʿAlī b. Sulaymān al-Mardāwī (d. 1480). In addition to these texts, I have at times referenced later work such as Zakarīyah al-Anṣārī’s (d. 1520) *Asnā al-Maṭālib* and Ibrahīm al-Bājūrī’s (d. 1860) *Hāshīyah* on Ibn Qāsim al-Ghazī’s (d. 1522) commentary on the text of Abū Shujāʿ (d.1194).

While the focus here is on classical legal traditions, the questions that this dissertation address are also driven by contemporary concerns. In this sense, it serves as the foundation for

future work on contemporary issues related to animal slaughter and sacrifice in Islam. Using the legal discourses of the classical legal tradition as background will allow researchers to examine contemporary practices in light of them and highlight areas of continuity and change.

## Chapter 1: Can Pain Be Good? Muslim Theologians and Legal Theorists on the Question of Animal Pain

### Introduction

The question of animal pain found its way into theological debates because of the ways in which it challenged notions of the good and forced theologians and legal theorists to find ways to justify animal suffering in order to maintain the ethical systems to which they were committed. Muslim theologians readily acknowledged the challenges posed by naturally occurring animal pain as well as animal pain that is the result of human interactions with nonhuman animals, particularly pain experienced during divinely sanctioned practices such as hunting, slaughter, and animal sacrifice. The importance of discussions of pain to Islamic theology is expressed in one theologian's statement that, "[D]ue to their ignorance of the aspect of pain's goodness and its badness, many people have gone astray."<sup>1</sup> Muslim theologians and legal theorists debated a variety of positions that attempt to make sense of these experiences of pain, some held by rival schools of Islamic theology, and some held by non-Muslims. These include theories of reincarnation,<sup>2</sup> the idea that nonhuman animals are incapable of feeling pain,<sup>3</sup> that pain is always deserved,<sup>4</sup> that pain must result in recompense (*iwaḍ*) and generate serious consideration (*i'tibār*), and the reliance on a definition of ethical value grounded in divine revelation.<sup>5</sup> It is,

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<sup>1</sup> 'Abd al-Jabbār ibn Aḥmad al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah* (Cairo: Maktabat Wahbah, 1965), 483. While this statement refers to pain broadly construed, one of the issues that Mankdīm explores in this section of his work is non-human animal pain and animal slaughter.

<sup>2</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 483.

<sup>3</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 483.

<sup>4</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 483.

<sup>5</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 483.

however, the last two, the theory of recompense and the reference to revelation, held by Muʿtazilī and Ashʿarī theologians respectively, that get the most attention in the works cited below.

While the majority of this dissertation focuses on discussions of killing animals in literatures of Islamic jurisprudence (*fiqh* compendiums, fatwas, and public discussions surrounding them) we will begin with a study of discourses on ethics found in works of Islamic theology and legal theory, since it is in those works that Muslims grappled with the question of how practices that involve killing animals can be considered good. While works of Islamic law also engage in the question of whether killing nonhuman animals is permissible, their focus is on how practices of killing animals should be properly performed, and why certain practices are recommended, discouraged, mandated, or forbidden. It is in the discourses of theology and legal theory that Muslims engage in larger debates in which they attempt to justify the ethical values of those practices and to make sense of them in light of theological principles. The example of killing animals with divine sanction, and the issue of animal pain more generally, was used as a rhetorical device by competing schools of Islamic theology in order to raise questions regarding the positions held by members of other schools. As a result, the attempt to justify some forms of animal pain as being good became a prominent feature of many works of Islamic theology and legal theory across different schools of thought. These discussions found a natural home amidst larger ethical questions of what constitutes the good and the bad, how they are known, and what it means for morally responsible agents to engage in actions described as such.

This chapter focuses on this set of ethical questions that relate to the ways in which Muslim theologians and legal theorists understood the good and the bad, the discourses that surrounded their definitions of those terms, the ways in which these understandings influenced

their justifications of animal pain and suffering, and their relationship to categories of Islamic legal assessment (*al-ahkām*). While there are numerous Islamic theological schools, I will be focusing on the Ash‘arī and the Mu‘tazilī schools, which had markedly different approaches to justifying animal pain and divinely sanctioned animal killing, and which saw each other as their primary interlocutors and opponents. The ethical theories that underpin these approaches have been variously categorized as subjectivist/voluntarist<sup>6</sup> (‘Ash‘arī)<sup>7</sup> and objectivist (Mu‘tazilī)<sup>8</sup> but they can also be understood as being scripturalist and rationalist<sup>9</sup> respectively. While these descriptions may be appropriate when we analyze discussions of the nature of good and bad and how they are known, which are found in works of theology and legal theory, we must ask whether these descriptions hold when we turn our attention to works of jurisprudence in which the ethical rules themselves are often described and justified in terms of practice and the impact that they have. As we will see in the chapters that follow, while the practices regarding killing animals are derived from divine sanction, lending credibility to the voluntarist/scripturalist reading of Ash‘arī ethics, many of the rulings on different practices, particularly those that fall into the categories of recommended or discouraged, appear to be based on the effect that those practices have on nonhuman animals themselves. As a result, it may be conceptually helpful to

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<sup>6</sup> See Ayman Shihadeh’s article in *The Oxford Handbook of Islamic Theology* where he critiques the labelling the Ash‘arīs as following a divine command theory of ethics (Ayman Shihadeh, “Theories of Ethical Value in Kalam: A New Interpretation,” in *The Oxford Handbook of Islamic Theology* edited by Sabine Schmidtke. Oxford: Oxford University Press, 2016, 396).

<sup>7</sup> George Hourani describes Ash‘arī ethics as theistic subjectivism (George Hourani, *Reason and Tradition in Islamic Ethics*, Cambridge: Cambridge University Press, 1985,) 57, and as voluntarism (Hourani, *Reason and Tradition in Islamic Ethics*), 125.

<sup>8</sup> Hourani, *Reason and Tradition in Islamic Ethics*, 57.

<sup>9</sup> For a critique of the applicability of the label “rationalist” to the Mu‘tazilīs see Kevin Reinhart’s *Before Revelation* (Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought*. Albany, N.Y.: State University of New York Press, 1995), 182.

think of Islamic ethics in those contexts as having an element of consequentialism rather than being purely voluntarist or objectivist.

While this is not the place to engage in a full exposition of the Mu‘tazilī and Ash‘arī schools, their history, development, and significance, it is important to note some of the major ways in which they differed, particularly as those differences will help us understand why and how they arrived at their respective positions regarding animal pain. There are amongst the Mu‘tazilīs a number of different schools of thought which diverge in how they explain some of the finer points of theology while agreeing in large part with regards to the main principles of Mu‘tazilism.<sup>10</sup> These main principles, some of which are more relevant to the question of killing animals than others, are often expressed in terms of the “five principles” which guide Mu‘tazilī theological thought. These principles are: Divine unity (*al-tawhīd*), justice (*al-‘adl*), the promise and the threat (*al-wa‘d wa al-wa‘īd*), the intermediate state (*al-manzilah bayn al-manzilatayn*), and enjoining the good and forbidding the wrong (*al-amr bil-ma‘rūf wa al-naḥī ‘an al-munkar*).<sup>11</sup> As Mariam al-Attar points out, “A Mu‘tazilite would never accept a judgment that contradicted the principle of justice or any other of the five principles.”<sup>12</sup> The most significant of these principles for an understanding of how Mu‘tazilīs understood animal pain is the principle of justice. Briefly put, the Mu‘tazilī conception of justice held that God’s actions, including what He commands and permits humans to do, must be just and good in a way that conforms with human understandings of justice as known through reason. As a result, Mu‘tazilīs understand

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<sup>10</sup> Mariam al-Attar, *Islamic Ethics: Divine Command Theory in Arabo-Islamic Thought* (New York: Taylor & Francis, 2010), 45.

<sup>11</sup> al-Attar, *Islamic Ethics*, 45

<sup>12</sup> al-Attar, *Islamic Ethics*, 48. For an in-depth examination of the five principles see al-Attar, *Islamic Ethics*, 48-62.

divine justice and human justice in the same way and apply a principle of “analogy of the invisible to the visible,”<sup>13</sup> the invisible referring to God’s domain and the visible referring to the created world and the actions of human agents. It was their allegiance to this principle that led Mu‘tazilīs to develop the doctrine of compensation for pain and suffering, which we will examine below.

The Ash‘arīs in many ways defined themselves in opposition to the Mu‘tazilīs, but they have their own substantive doctrines as well. These include the doctrine of acquisition (*kasb*), which holds that humans do not create their actions, rather it is God who creates everything, including human actions, but humans retain moral responsibility for what they do; the doctrine of the uncreated Qur’an; the belief that it is only divine revelation that determines whether something is good or bad, and that, while all of God’s actions and all of the rulings of the sacred law are just, that justice is not defined in accordance with the same human rational conceptions of justice that apply to created beings. It is, of course, these last two points that are the most relevant to our topic and a discussion of them, along with the Mu‘tazilī counterpoints, provides context for their discussions of animal pain and suffering.

For Mu‘tazilī positions, I will be relying on Al-Qāḍī ‘Abd al-Jabbār’s multi-volume work *al-Mughnī fī Abwāb al-Tawḥīd wa al-‘Adl*, the most extensive exposition of Mu‘tazilī thought that we have access to today, and his student Mankdīm’s *Sharḥ al-Uṣūl al-Khamsah*. For Ash‘arī positions I will be focusing on foundational works of Ash‘arī *kalām* by Abū Bakr al-Bāqillānī, al-Juwaynī, and al-Ghazālī. I will be relying on the same authors in the discussion on animal pain and suffering that follows with the addition of the Hanafī jurist and legal theorist al-Sarakhsī. Many of these authors refer to each other when explaining their positions and also juxtapose

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<sup>13</sup> al-Attar, *Islamic Ethics*, 48.

them with members of other schools of thought so that, by putting them in conversation with one another, we are able to see a more complete picture of the ways in which theologians grappled with the ethical challenges killing animals raises.

### ***al-Husn and al-Qubh: Mu‘tazilī Ethics***

The discussions of the nature of the good and the bad, and many of the issues that are related to ethical assessment, fall into the first part of volume six of al-Qāḍī ‘Abd al-Jabbār’s *al-Mughnī*, entitled “Justice” (*al-‘adl*). At the outset of this volume ‘Abd al-Jabbār states, “The goal of this chapter is to clarify that God only does good, that He must do that which is obligatory, and that he is not worshipped in the ways in which he is worshipped except in a manner (*wajh*) that is good.”<sup>14</sup> As we see, ‘Abd al-Jabbār’s primary ethical concern is a theological one rather than being related directly to human actions, and the issues he addresses serve his larger theological point about the nature of God. This does not, however, detract from the importance of these ethical questions, and he spends considerable time discussing them. He goes on to say, “Clarifying this cannot be done except by clarifying the reality of action (*al-fa‘l*), the legal

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<sup>14</sup> ‘Abd al-Jabbār ibn Aḥmad al-Asadābādī, *Al-Mughnī Fī Abwāb al-Tawḥīd Wa-al-‘Adl*, vol. 6 (1) (Cairo: Wizārat al-Thaqāfah wa-al-Irshād al-Qawmī, al-Idārah al-‘Āmmah lil-Thaqāfah, 1962), 3. Ayman Shihadeh lists four primary doctrines that Mu‘tazilīs address when discussing the topic of God’s will: 1) That an act is produced by its agent’s capacity and in accordance with his volition. 2) That the ethical value of an act is objective. 3) That God is capable of performing bad acts. 4) That it is impossible, on ethical grounds, for God to perform bad acts. He also lists an additional six secondary doctrines that detail Mu‘tazilī theodicy: 1) The doctrine that human acts are produced by the autonomous volition and power of their human agents. 2) That it was good to create both the world and human beings, and to impose obligations on them. 3) That none of the obligations imposed on humans are beyond their capacity. 4) That it is obligatory on God to assist and motivate human agents to fulfill the obligations imposed on them. 5) That all undeserved and uncompensated suffering that an individual experiences in this world, whether it is produced by God, another human being, or an animal, will be compensated in the hereafter. 6) The doctrine of the promise and the threat, i.e. the praise and reward deserved for good acts, and the blame and punishment deserved for bad acts. Shihadeh, “Theories of Ethical Value in Kalam: A New Interpretation,” 385–86.

assessments of actions (*aḥkām al-af'āl*), and the reality of the bad and the good.”<sup>15</sup> He goes on to list the ways in which various theological and ethical issues are interdependent to show why this section of his work includes subjects one may not expect to find in a chapter on justice (such as that speech is one of God’s actions rather than an attribute of His essence), as well as those that are particular to Mu‘tazilī ethics, such as the doctrines of compensation and grace.<sup>16</sup>

Abd al-Jabbār introduces the subject of ethical assessment and the values of good and bad through a discussion of action (*al-fa‘l*). For ‘Abd al-Jabbār, actions fall into one of two categories: those which do not have a characteristic additional to their existence, such as actions committed by a sleeping or unaware (*sāḥī*) person, and those that do have an additional characteristic, which is the ethical value of being good or bad. Whether an action is good or bad depends on whether or not the performance of the action is blameworthy. In the case that blame is deserved, the action is bad, and in the case the blame is not deserved, the action is good.<sup>17</sup>

After excluding actions performed by a coerced agent, ‘Abd al-Jabbār divides the good into two further categories. The first describes those actions that do not have a characteristic additional to their being good; an agent may engage in or refrain from such an action equally. Because ‘Abd al-Jabbār defines the good in terms of the absence of blame rather than the presence of praise, it allows him to include permitted (*mubāḥ*) actions in the category of the good since they are not considered blameworthy.<sup>18</sup> For Abd al-Jabbār, good actions that have a characteristic additional

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<sup>15</sup> al-Asadābādī, *al-Mughnī Fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):3.

<sup>16</sup> al-Asadābādī, *asl-Mughnī Fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):3–4.

<sup>17</sup> al-Asadābādī, *al-Mughnī Fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):7.

<sup>18</sup> al-Asadābādī, *al-Mughnī Fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):7; ‘Abd al-Jabbār ibn Aḥmad al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah* (Cairo: Maktabat Wahbah, 1965), 326–27.

to their goodness (i.e. additional to their not being blameworthy) can fall into two additional categories: the recommended (*nadb marghūb fīh*) and the obligatory (*al-wājib*).<sup>19</sup> If one engages in an action that is recommended, one would be deserving of praise, but if one were to refrain from such an action, one would not be deserving of blame. Similarly, one would deserve praise for performing an obligatory action, but one would additionally deserve blame for neglecting it.<sup>20</sup>

In the Mu‘tazilī view, the ethical assessments of good and bad can be ascribed to actions performed by human agents as well as to actions performed by God<sup>21</sup>. There are, however, some slight differences between the assessment of human and divine acts. For example, while ‘Abd al-Jabbār and other Mu‘tazilīs hold that God is capable of committing acts that are bad, they also believe that he refrains from doing so such that effectively all of his actions are good. In this context they argue that God is both aware of the badness of the bad (*qubḥ al-qabīḥ*) and is without need of it, so there is no reason for him to choose to do something that is bad<sup>22</sup> and were He to do so, it would mean that he were either ignorant or in need, which He is not.<sup>23</sup> Another

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<sup>19</sup> Kambiz GhaneaBassiri explains that in Abd al-Jabbār’s ethical system “Bad acts, unlike good acts, are not subdivided, because even though in Islamic jurisprudence distinctions are made between divinely forbidden (*ḥarām*) and reprehensible acts (*makrūh*), ethically speaking, all bad acts should be avoided regardless of their status in the law. Good acts, however, are distinguished from one another, because the goodness of breathing differs ethically from the goodness of acting justly.” (Kambiz GhaneaBassiri, “The Epistemological Foundation of Conceptions of Justice in Classical Kalām: A Study of ‘Abd al-Jabbār’s al-Mughnī and Ibn al-Bāqillānī’s al-Tamhīd,” *Journal of Islamic Studies* 19, no. 1 January 1, 2008, 78. While this statement is true, I think it is more accurate to point out that, while reprehensible acts should be avoided, there is no blame attached to performing them, only praise for refraining from them, so that they cannot be categorized as bad according to ‘Abd al-Jabbār’s definition. Performing recommended acts is also not blameworthy, so it is categorized as good along with the obligatory.

<sup>20</sup> al-Asadābādī, *al-Mughnī Fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):7–8; al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 326.

<sup>21</sup> This is in contrast to the position of Ash‘arī theologians who held that everything that God does is necessarily good.

<sup>22</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 302.

<sup>23</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 317.

important distinction that ‘Abd al-Jabbār makes between the ethical assessment of actions performed by human agents and actions performed by God is that all of God’s actions are deserving of praise and gratitude, even those that bring about hardship or harm since, coming from God, these are all forms of benefit (*naḥ*) and blessing (*na‘ma*). The only exception is God’s punishment (*‘iqāb*), the recipient of which is not obliged to thank or praise God. In this sense, ‘Abd al-Jabbār likens God’s punishment to the category of permitted (*mubāḥ*) actions as applied to humans in that God’s punishment does not deserve praise. It differs, however, in that God does deserve praise for not inflicting a punishment as this is a form of magnanimity (*tafaḍḍul*), whereas a human refraining from committing a permitted action deserves neither praise nor blame.<sup>24</sup> While we may think of ethics as relating primarily to the actions of human agents, these similarities and distinctions regarding the ways in which ethical assessments can be applied to God’s actions will be relevant to our discussion regarding animal pain because the Mu‘tazilī doctrine regarding the objective nature of ethical value is challenged by God permitting the suffering of nonhuman animals.

One reason that Mu‘tazilīs are often referred to as rationalists is that they argue that certain ethical values are intuitively and necessarily known to be good or bad through the use of reason without having to consult revelation. To illustrate this, Mu‘tazilīs cite examples such as lying (*al-kadhb*), oppression (*ẓulm*), or harm (*ḍarar*), which they argue are necessarily known to be bad. In this regard ‘Abd al-Jabbār says, “It is necessarily known that lying that does not involve a benefit or prevent a harm greater than it, as well as [inflicting] harm that does not involve benefit or prevent a harm greater than it, and is also undeserved or thought to be deserved, when

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<sup>24</sup> al-Asadābādī, *al-Mughnī Fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):15.

performed by one who is capable and alone (*mukhallā*) deserves blame.”<sup>25</sup> Başran Mu‘tazilīs<sup>26</sup> like ‘Abd al-Jabbār and his students further explain that a given action’s ethical value is not related to that action’s essential characteristics, but is dependent on the way in which an action is performed (*wajh*).<sup>27</sup> At times this key element that determines whether something is bad or good is termed a state/condition (*ḥāl*) such as when ‘Abd al-Jabbār states, “The bad must be characterized by a condition (*ḥāl*) according to which it becomes bad.”<sup>28</sup> At other times he uses the term “aspect” (*wajh*) to refer to this determining factor, such as when he lists the various aspects (*wujūh*) of an action that would make it bad, “Know that even though bad actions are brought together under a single definition, according to what has preceded, the aspects (*wujūh*) based upon which they are bad differ.”<sup>29</sup> The good is similarly considered good because of the aspect in which it is performed, however ‘Abd al-Jabbār and other Başran Mu‘tazilīs add that it has to be free of aspects that would make it bad as well.<sup>30</sup> ‘Abd al-Jabbār refutes the claim that things are not good or bad due to their essential characteristics (*jins*) by saying, “If injustice (*ẓulm*) were bad due to its essential characteristics, it would mean that every harm or pain would be bad, and our knowledge that there is some harm and pain that is good indicates that this assertion is false.”<sup>31</sup> Mankdīm distinguishes this position that actions are bad or good due to the

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<sup>25</sup> al-Asadābādī, *al-Mughnī Fī Abwāb al-Tawḥīd Wa-al-‘Adl* 6 (1):18.

<sup>26</sup> For more on Başran Mu‘tazilī ethical doctrine see Shihadeh, “Theories of Ethical Value in Kalam: A New Interpretation,” 391–96, and Reinhart, *Before Revelation*, 146–57.

<sup>27</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 309–10.

<sup>28</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):52.

<sup>29</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):61.

<sup>30</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1)70–72.

<sup>31</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):75. On *wajh* see Reinhart, *Before Revelation*, 148 where he shows that the Basran Mu‘tazilīs are critiquing the rigid ethical ontologies of

aspect in which they are performed from that of the Baghdādī Mu‘tazilī Abū Qāsim al-Balkhī, who he says considered a bad action to be bad because of its characteristic (*ṣifah*) and essence (*dhāt*).<sup>32</sup> Mankdīm rejects<sup>33</sup> this and says that it is a view that is also held by some “fatalists” (*al-jabrīyyah*).<sup>34</sup> Other “fatalist” positions that he rejects include the doctrine that the bad is only bad because humans are subservient, contingent beings, and the good is only good because it is commanded<sup>35</sup>, which is the doctrine held by the Ash‘arī theologians we will be examining later in this chapter.

In discussing the topic of things being bad or good due to the aspect in which they are performed, ‘Abd al-Jabbār provides an extensive list of actions and reasons why they might be good or bad. For example, he provides approximately nineteen reasons why speech could be considered bad including it being pointless (‘*abath*), a lie, a command to do something that is bad, forbidding something that is good, or a command to do something unbearable (*ma lā yuṭāq*).<sup>36</sup> ‘Abd al-Jabbār lists significantly fewer aspects due to which speech can be considered good naming only seven broad characteristics, “Speech is good when it occurs in such a way as to bring about benefit or prevent harm, if it is free of aspects that would make it bad, such as by being truthful (*ṣidq*), if it is a command to do good, an obligation of something that is bearable,

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the Baghdadis as much as they are addressing non-Mu‘tazilī views. He traces the development from essentialism to the later position of Abd al-Jabbār in Part 4 of *Beyond Revelation*.

<sup>32</sup> For an exposition of the more absolutist views of Baghdādī Mu‘tazilīs see Shihadeh, “Theories of Ethical Value in Kalam: A New Interpretation,” 388–91.

<sup>33</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 309–10.

<sup>34</sup> I put “fatalist” in quotes because it is a label that Mankdīm uses for polemical purposes and may or may not accurately represent the views of his interlocutors.

<sup>35</sup> al-Asadābādī, *Sharḥ al-Uṣūl al-Khamsah*, 309–10.

<sup>36</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):61–62.

forbidding something that is bad, or being useful (*maṣlaḥa*).<sup>37</sup> While it may be straightforward to think of speech as being neither good nor bad in and of itself, the same holds, according to ‘Abd al-Jabbār, for more complex topics such as pain and pleasure, which we might think naturally fall into the categories of bad and good. For ‘Abd al-Jabbār, pain is bad if it is unjust (*ẓulm*) or pointless (*‘abath*), and pleasure is bad if it leads to harm, is a form of iniquity, and if it is undeserved.<sup>38</sup> This conception of the good and the bad as being separate from the innate characteristics of an action requires that one deeply consider not just the action, but the ways in which an action is performed, so that one may arrive at its appropriate ethical assessment.

While Mu‘tazilīs claim that ethical values are rationally knowable, this should not be taken to mean that revelation does play a clarifying role as well. There are particular cases wherein reason alone would have arrived at a different conclusion had revelation not come to guide it in another direction. ‘Abd al-Jabbār lists possibilities for these:

1. Something that is obligatory according to revelation, but is bad according to reason, such as prayer.
2. Something that is encouraged by revelation, but is bad according to reason, such as supererogatory prayers.
3. Something that is obligated by revelation, and is considered good by reason<sup>39</sup>, such as giving charity and paying expiations.

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<sup>37</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):73.

<sup>38</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):63. This last point regarding pleasure being bad if it is undeserved is an important distinction between the Mu‘tazilīs and the Ash‘arīs who hold that were God to choose to reward sinners and punish the pious it would be considered good.

<sup>39</sup> The distinction here is that reason would not have arrived at its being obligatory without the additional information provided by revelation.

4. Something that revelation shows is bad, but it is rationally permissible, such as illicit sex and eating during fast days.
5. Something that revelation shows is bad, but is encouraged by reason, such as feeding the poor during fast days.
6. Something that revelation permits, but is forbidden by reason, such as slaughtering animals.<sup>40</sup>

‘Abd al-Jabbār explains that revelation does not make anything good or bad, “Revelation discloses a condition of these actions which, had that condition been known through reason, we would have known that it was bad or good. If we had known through reason that prayer had such a great benefit for us, that it leads us to choose to do obligatory acts, and that by performing it we deserve reward (*thawāb*), we would have rationally known that it is obligatory. Had we known that illicit sex leads to corruption (*fasād*), we would have rationally known that it is bad. For this reason, we hold that revelation does not necessitate that anything be bad or good, rather it discloses that condition of the act by way of indication, just like reason does.”<sup>41</sup> Abd al-Jabbar continues to make the important point that God’s commands are unlike the commands given by anyone else in that God is wise (*ḥakīm*) so He only commands what is good.<sup>42</sup> It is not that revelation always makes the condition of the action according to which that thing is assessed known, rather it makes the assessment known and theologians who take the Mu‘tazilī position

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<sup>40</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):64. See also Reinhart, *Before Revelation*, 158–59.

<sup>41</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):64.

<sup>42</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawḥīd Wa-al-‘Adl*, 6(1):64–65.

are forced to seek out a rationale for it. We will have opportunity to look at this issue more closely when we examine the case of animal slaughter in the second half of this chapter.

### ***al-Husn and al-Qubh: Ash‘arī Ethics***

Ash‘arī discussions of the good and the bad are generally shorter than those found in ‘Abd al-Jabbār’s *Mughnī*. This is due in part by the nearly unparalleled breadth and size of *al-Mughnī*, but it is also true that the Ash‘arī arguments regarding the good and the bad, at least in the generation of authors I examine here, are less complex than those that their Mu‘tazilī counterparts engage in. For example, George Hourani notes that out of the 44 pages that make up the chapters “On Justice and Injustice (*al-ta‘dīl wa al-tajwīr*)” and “On Advantage and the Most Advantageous” in Imām al-Juwaynī’s *Irshād*, “Less than two pages are allotted by Juwaynī to expounding his own general theory of ethical value.”<sup>43</sup> Hourani goes on to explain that, “The brevity is possible because the elements of his theory can be stated very simply.”<sup>44</sup> Hourani’s bias towards the rationalism of Mu‘tazilīsm aside, this does appear to be a trend that runs through most, if not all of the Ash‘arī works I examine here; authors seem more concerned with refuting the positions held by their rivals than with buttressing and expounding on their own through elaborate argumentation.<sup>45</sup>

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<sup>43</sup> George Hourani, *Reason and Tradition in Islamic Ethics* (Cambridge: Cambridge University Press, 1985), 125. In this essay, Hourani provides an in-depth analysis of sections in al-Juwaynī’s *al-Irshād* while providing references to relevant sections from ‘Abd al-Jabbār’s *Mughnī*.

<sup>44</sup> Hourani, *Reason and Tradition in Islamic Ethics*, 125.

<sup>45</sup> Cf Shihadeh, “Theories of Ethical Value in Kalam: A New Interpretation,” 385. Regarding Asharite discussions of God’s justice he writes, “the focus from the outset being to criticize Mu‘tazilite claims concerning God’s justice, rather than to offer an alternative rationalist theodicy. Ash‘arites instead advocate a theological voluntarism: the view that God’s will and acts are free and never subject to ethical considerations. The bulk of classical Ash‘arite discussions, hence, are dedicated to demolishing the ethical theory and theodicean teachings of the Mu‘tazila...”

I will begin by examining selected passages from Al-Juwaynī’s theological work *al-Irshād*.<sup>46</sup> He introduces his chapter on “Justice and Injustice” saying that it includes two “prefaces” (*muqadimatān*) and addresses three issues. Here I will focus on the first of the prefaces, which is “a response to those who believe that reason determines the ethical values of good and bad,”<sup>47</sup> in which he refutes the Mu‘tazilī positions we have examined above and introduces the Ash‘arī doctrine.<sup>48</sup> As with Mu‘tazilī critiques of Ash‘arī ethics, when we examine Ash‘arī critiques of Mu‘tazilī ethics, we should keep in mind that their representations of their rivals’ positions may be more or less accurate. In all cases, we should attempt not to judge the positions that an author is refuting, but rather to focus on the positions that the author in question is endorsing in their writing. As is indicated by the quote from Hourani above, this is slightly more challenging in the case of some Ash‘arīs since so much of their writing is concerned with refuting other positions. Our task then, is to determine whether these refutations are expressions of the author’s own views rather than accurate representations of the beliefs held by others with whom they disagree.

Al-Juwaynī begins his section on the good and the bad stating, “Reason does not indicate (*yadull*) that something is good or bad regarding moral responsibility (*fī’l-taklīf*)<sup>49</sup>. Rather, the judgment that something is good or bad (*al-tahsīn wa al-taqbīḥ*) is met by way of the divine law

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<sup>46</sup> Although Hourani critiques al-Juwaynī’s engagement with Mu‘tazilī ethics at times, he also acknowledges that “in spite of some defects Juwaynī’s criticisms of the Mu‘tazilī ethics are of considerable interest, both because there is probably nothing of such length on the subject by any earlier Ash‘arite theologian and because of the importance of Juwaynī in the development of Ash‘arite doctrine.” Hourani, *Reason and Tradition in Islamic Ethics*, 124.

<sup>47</sup> ‘Abd al-Malik ibn ‘Abd Allāh al-Juwaynī, *al-Irshād ilá Qawāḥi’ al-Adillah fī Uṣūl al-I’tiqād* (Cairo: Maktabat al-Khānjī, 1950), 257.

<sup>48</sup> We will return to this section of the *Irshād* later in this chapter as the first “issue” that he deals with has to do with the ways in which different faiths address the question of God inflicting pain on His creation.

<sup>49</sup> His addition of *fī’l-taklīf* helps distinguish the ethical values of good and bad since the language of ethics in Islamic theology uses terms that could be understood as aesthetic rather than moral.

(*al-sharʿ*) and what is necessitated by revelation (*mūjib al-samʿ*).”<sup>50</sup> He continues to explain that the principle behind this is that, “A thing is not deemed good due to its own self (*li-naḥsihi*), its categorical definition (*jins*), or a necessary attribute.”<sup>51</sup> The important difference that al-Juwaynī is drawing between Muʿtazilī and Ashʿarī ethics is that the former relies on reason to decipher ethical value while the later considers revelation to be its sole arbiter. Like ʿAbd al-Jabbār, al-Juwaynī defines the good and the bad in terms of praise and blame, however for him the relevant praise and blame are those that are found in revelation.<sup>52</sup> In order to dispel the idea that ethical value might be an objectively knowable trait of which revelation makes us aware, al-Juwaynī is careful to clarify that the ethical values of good and bad are not characteristics additional to revelation, rather, “The good is itself the praise of revelation for the one who does the act.”<sup>53</sup> This is a stark contrast even to the less absolutist version of Muʿtazilī ethics expounded by ʿAbd al-Jabbār since there is no room in al-Juwaynī’s framing for the manner in which an action is performed to determine its ethical value.

Al-Juwaynī chooses the doctrine that certain things are necessarily known to be good or bad as the site of his main attack on the Muʿtazilīs which, according to him, will dismantle the entire edifice of their argument.<sup>54</sup> Again, I am less concerned with al-Juwaynī’s attack on the Muʿtazilīs as I am with what the content of that attack tells us about his own beliefs and values.

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<sup>50</sup> al-Juwaynī, *al-Irshād*, 258.

<sup>51</sup> al-Juwaynī, *al-Irshād*I, 258.

<sup>52</sup> al-Juwaynī, *al-Irshād*, 258.

<sup>53</sup> al-Juwaynī, *al-Irshād*, 259.

<sup>54</sup> Shihadeh, “Theories of Ethical Value in Kalam: A New Interpretation,” 397; al-Juwaynī, *al-Irshād*, 260.

When al-Juwaynī's imagined interlocutor<sup>55</sup> argues that Mu'tazilīs and Ash'arīs are all in agreement regarding which actions are good and which actions are bad, with their difference only being how they arrive at this knowledge, al-Juwaynī refers back to his previous statement regarding the differences between the Mu'tazilī and the Ash'arī doctrines of ethical value. He reasserts that the Ash'arīs do not accept the idea that the good and the bad are attributes of something that is good or bad, but rather hold that, "Goodness and badness have no meaning other than the conveyance of a command or a prohibition."<sup>56</sup>

In the pages that follow, al-Juwaynī advances a number of arguments against the Mu'tazilī position, however they are mostly directly at the essentialist version of Mu'tazilism and do not adequately address the doctrine of actions being bad due to their aspect (*wajh*). One example of al-Juwaynī's argument, which is particularly relevant given the topic of this dissertation, is that of the Barāhima.<sup>57</sup> Al-Juwaynī posits that, if the Mu'tazilī position were true, even those like the Barāhima who reject revelation, would be able to distinguish the good from the bad.<sup>58</sup> When it comes to the case of animal slaughter, however, the Barāhima disagree with both Ash'arīs and Mu'tazilīs and consider it to be bad. For al-Juwaynī, this is sufficient to demonstrate that the

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<sup>55</sup> It is typical for works of theology and legal theory authored by both Ash'arīs and Mu'tazilīs to engage in a back and forth argument with an imagined interlocutor. Such texts will often read as follows, "We say...and if they were to say...we would say...etc."

<sup>56</sup> al-Juwaynī, *al-Irshād*, 261.

<sup>57</sup> On the various ways in which historians have understood the identity of the Barāhima and whether the views ascribed to them are those of a real Indian sect, see Norman Calder, "The Barāhima: Literary Construct and Historical Reality," *Bulletin of the School of Oriental and African Studies, University of London* 57, no. 1 (January 1, 1994). For my purposes, I take Calder's statement that, "The Barāhima are a foil for polemical argument and defense of faith," as a guide since my concern is more with the arguments that Muslim theologians presented in response to views ascribed to the Barāhima than with the Barāhima themselves (Calder, "The Barāhima," 43).

<sup>58</sup> al-Juwaynī, *al-Irshād*, 263.

claim that ethical value is necessarily known through reason is false.<sup>59</sup> George Hourani points out what he perceives as some deficiencies with this argument, however, namely that Mu‘tazilīs never claimed that all of the positions held by the Barāhima are true.<sup>60</sup> We might add to this that Mu‘tazilīs like ‘Abd al-Jabbār do not claim that animal slaughter being good is something that reason would arrive at without the aid of revelation. Regardless of the merits of either argument, however, what emerges is that al-Juwaynī perceives categorical differences in the way in which he and the Mu‘tazilīs conceptualize ethical value.

Al-Juwaynī’s student Abū Ḥāmid al-Ghazālī takes a different approach in attempting to refute the Mu‘tazilī doctrine that the good and the bad are determined through reason. The issue, according to al-Ghazālī, is that many people who enter into this debate do not fully understand the terms that are being used.<sup>61</sup> In order to enter into this discussion, al-Ghazālī says that we must properly understand six terms: the obligatory (*al-wājib*), the good (*al-ḥasan*), the bad (*al-qabīḥ*), uselessness (*al-‘abath*), folly (*al-safah*), and wisdom (*al-ḥikmah*).<sup>62</sup> In discussing the meaning of the good and the bad, al-Ghazālī indirectly refutes the doctrine that things are good or bad due to their essences or to how they are performed by invoking a form of moral relativism. On this understanding, the good is that which is in accord with one’s aim in

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<sup>59</sup> A similar argument is presented by Ibn ‘Aqīl who also asserts that those who consider ethical value to be rationally determined, like the Barāhima, believe that animal slaughter is bad. Refuting this he says, “We are in agreement that the Lawgiver causes pain without needing to, and that this is good, so the claim that ethical value is rationally determined is proven false.” Abū al-Wafā’ ‘Alī Ibn ‘Aqīl, *al-Wāḍiḥ fī Uṣūl al-Fiqh* (Beirut: Nasharāt al-Islāmīyah, 1996), 12.

<sup>60</sup> Hourani, *Reason and Tradition in Islamic Ethics*, 129.

<sup>61</sup> Abū Ḥāmid al-Ghazālī, *al-Iqtisād fī ‘Itiqād* (Ankara: Nur Matbaası, 1962), 160.

<sup>62</sup> al-Ghazālī, *al-Iqtisād fī ‘Itiqād*, 160-161.

undertaking an action, and the bad is what is not in accord with it.<sup>63</sup> Al-Ghazālī also admits that one could base one’s assessment of ethical value on whether or not an action is in accord with another’s aim. In this way, if a person were to kill a king, that king’s enemies would view his action as good, and the king’s friends would view it as bad.<sup>64</sup> Al-Ghazālī does address the Ash‘arī view when he says that one could also differentiate between an immediate and a delayed aim, the future aim being that which the sacred law encourages and for which it promises a reward.<sup>65</sup> Al-Ghazālī does not completely reject the possibility that the good and the bad can be known through the intellect, although since the good and the bad are not essential characteristics of a thing, what an individual would know, according to al-Ghazālī would be different than what the Mu‘tazilīs claim to know through reason. For al-Ghazālī, such knowledge is gifted by God to the saints (*al-awliya*) whom He blesses to know the truth and to follow it. “As for following the pure intellect,” he writes, “nobody is able to do this except the saints to whom God has shown the truth as it really is and enabled them to follow it.”<sup>66</sup>

Although these Ash‘arī theologians approach the question from different vantage points and provide different arguments, they both agree that ethical value is defined in terms of what God commands and forbids, without it being the result of a characteristic of the action which is rationally knowable. For Mu‘tazilīs, ethical value is either the result of an essential characteristic (for the Baghdādī Mu‘tazilīs) or due to an aspect of the action (for the Baṣrans). While historically it was the Ash‘arī view that came to dominate Sunni Islamic theology, Mu‘tazilī

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<sup>63</sup> al-Ghazālī, *al-Iqtisād fī Itiqād*, 163.

<sup>64</sup> al-Ghazālī, *al-Iqtisād fī Itiqād*, 163-164.

<sup>65</sup> al-Ghazālī, *al-Iqtisād fī Itiqād*, 165.

<sup>66</sup> al-Ghazālī, *al-Iqtisād fī Itiqād*, 168.

perspectives continued to exert influence as they remained an important interlocutor and foil against which Ash‘arī theologians established their ethics and informed Shi‘ī theology.

### **Animal Slaughter and Pain**

Both Mu‘tazilī and Ash‘arī theologians and legal theorists held the view that pain inflicted on animals directly by God in the form of illness and death, as well as pain that is the result of religiously legislated acts, such as animal slaughter and sacrifice, is morally good. They differed, however, in the ways in which they justified it, in large part because of their differing opinions regarding justice and the nature of ethical value. The Mu‘tazilīs engaged in a more extensive justification of animal pain than the Ash‘arīs because their doctrine of justice meant that the question of animal pain posed more of a challenge to their ethical system than it did to the ethics of the Ash‘arīs. Ash‘arīs, on the other hand, had little trouble incorporating animal pain and death into their ethical schema. For them, the question of animal pain appears primarily as a way of arguing against their rivals, Mu‘tazilīs and others. In this sense, some theologians found in the issue of animal pain a tool that they used to refute rival ethical systems, while others found the inspiration to develop more sophisticated ethical doctrines. In examining these discourses, I am concerned with attempting to locate attention to animals’ subjective experiences in order to determine the extent to which Muslim theologians considered animal pain a real concern to be addressed in the world through action, or a theological theme to be addressed in books through speculation.

## Mu‘tazilīs on Animal Pain

In addition to addressing the ethical challenges posed by animal pain, Mu‘tazilīs like ‘Abd al-Jabbār included extensive discussions of pain in their works of theology, which go beyond the realm of ethics and engage with ontological questions regarding what pain is and how it occurs. Margaretha Heemskerk has authored an exhaustive study of ‘Abd al-Jabbār’s teachings regarding pain and the ways in which it both challenges and forces him to develop his doctrine of divine justice.<sup>67</sup> In the pages that follow, I rely on her work as well as original Mu‘tazilī texts in the hopes of elucidating whether Mu‘tazilī ethics reflect a genuine ethic of care for animals and their suffering, or if the main concern is to maintain specific theological doctrines in the face of moral challenge. As was mentioned above, Mu‘tazilī theologians categorized animal slaughter as something that reason would have deemed bad had revelation not indicated that it is permissible,<sup>68</sup> which forms an important acknowledgment that human intuition left alone leads one to be suspect of practices that inflict pain on others, even when those others are members of another species. Revelation, however, did not provide details regarding how to reconcile this permission to inflict pain on animals with the Mu‘tazilī understanding of justice. Perhaps due to the paucity of early sources on Mu‘tazilī thought, I have not come across a discussion regarding how Mu‘tazilīs first arrived at their doctrine of compensation as the solution to this problem. It seems likely, however, that, having already affirmed that pain can be deemed good when it has

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<sup>67</sup> Margaretha Heemskerk, *Suffering in the Mu‘tazilite Theology: ‘Abd al-Jabbār’s Teaching on Pain and Divine Justice* (Leiden: Brill, 2000).

<sup>68</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawhīd Wa-al-‘Adl*, 6(1): 64; Reinhart, *Before Revelation*, 158–59.

some positive benefit for those who are morally responsible (*mukallaf*),<sup>69</sup> they had to come up with a way to affirm a similar benefit for the pain that animals suffer in order to maintain the cosmic balance required by their understanding of justice.

Since pain is a form of harm, all pain presents an ethical dilemma of sorts. There are, however, ways in which pain can be considered good according to ‘Abd al-Jabbār. Heemskerck lists four conditions that can make pain good: that it involves a profit that is greater than the harm it inflicts, that it prevents a harm greater than the harm it inflicts, that the pain is deserved, or that one supposes (*zann*) that it is in accordance with these conditions.<sup>70</sup> There are some important differences, however, when discussing pain that is inflicted directly or indirectly<sup>71</sup> by God, namely that the second condition, pain preventing harm, does not apply.<sup>72</sup> Pain that does not meet ‘Abd al-Jabbār’s criteria for being good is considered a form of harm and compensation must be provided.<sup>73</sup> Heemskerck points out that, in the case of acts committed by non-divine agents,<sup>74</sup> even when compensation is provided, the original act is not transformed into an act that is good.<sup>75</sup> When the agent is God, the original act is considered good even if it requires

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<sup>69</sup> A common analogy they provide is that consuming distasteful medicine is good because it brings about healing.

<sup>70</sup> Heemskerck, *Suffering in the Mu’tazilite Theology*, 126–37.

<sup>71</sup> An example of the direct infliction of pain is in the form of illnesses, which Abd al-Jabbār considers to be an act of God. An example of indirect infliction of pain by God is the pain that results from divinely sanctioned practices such as animal slaughter.

<sup>72</sup> Heemskerck, *Suffering in the Mu’tazilite Theology*, 157.

<sup>73</sup> Heemskerck, *Suffering in the Mu’tazilite Theology*, 157.

<sup>74</sup> I use “non-divine agents” to refer to all actors other than God including both humans and nonhuman animals.

<sup>75</sup> Heemskerck, *Suffering in the Mu’tazilite Theology*, 157.

compensation.<sup>76</sup> Such is the case with an illness afflicted on one by God for which He ensures compensation. ‘Abd al-Jabbār compares this to the pains that people undergo in exerting themselves to seek knowledge.<sup>77</sup>

It is not only God, however, who provides compensation for the infliction of harm. When non-divine agents inflict harm on others, they are responsible for providing compensation for it. This includes morally responsible agents as well as those who are not, such as children, humans lacking the faculty of reason, and animals.<sup>78</sup> This category includes carnivorous animals who hunt and kill prey for food. While we might assume that carnivorous animals would be exempt from having to provide compensation to their prey since they appear to have very little choice in the matter of what they eat, ‘Abd al-Jabbār states that God merely enables them to kill other animals for food and does not compel them to do so comparing them to the case of a person who sells someone a knife; they are not responsible if that other then goes and commits murder with it.<sup>79</sup> “We know in these cases that an animal may choose not to inflict pain and harm and to refrain from it or to engage in it. Thus, compensation must be their responsibility, just as it would be the responsibility of one of us regarding the harm that we choose to commit. This is because of what we have previously clarified, namely that compensation must be the responsibility of the agent who commits the harmful act, or the one who takes their place.”<sup>80</sup> This poses an interesting challenge in that ‘Abd al-Jabbār both affirms nonhuman animals’ agency, and holds them

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<sup>76</sup> Heemskerk, *Suffering in the Mu’tazilite Theology*, 158.

<sup>77</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawhīd Wa-al-‘Adl*, 13:387.

<sup>78</sup> Heemskerk, *Suffering in the Mu’tazilite Theology*, 161.

<sup>79</sup> Heemskerk, *Suffering in the Mu’tazilite Theology*, 164–65.

<sup>80</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawhīd Wa-al-‘Adl*, 13:475.

morally responsible for behaving in a way that is in accordance with their natural inclination. It is as if he is considering them similar enough to human beings to be in possession of free will such that they are responsible for the harm that they enact in the world, but not similar enough to benefit from the rewards (*thawāb*) that God promises humans for subjugating their desires. Had God revealed that it is permissible for carnivorous animals to hunt and kill other animals, God would have been responsible for the compensation just as He is responsible for compensating animals that humans kill for food.

There are other cases, however, in which Abd al-Jabbār explains that compensation is God's responsibility even though it is not God who is performing the act directly.<sup>81</sup> Most relevant among these cases to our discussion is that of humans slaughtering animals when God has given them permission to do so. This compensation is vital since, according to 'Abd al-Jabbār, without it the act would be considered bad.<sup>82</sup> This compensation is provided by God because it is God who permitted it to occur by giving divine sanction for it in revelation. It is only through compensation that the act can be redeemed because it is inconceivable that slaughtering an animal would prevent greater harm since there is no greater harm for an animal than slaughter itself. Similarly, 'Abd al-Jabbār does not consider animals deserving of punishment, in opposition to those whom he refers to as "reincarnationists," so the slaughter cannot be justified in those terms. He concludes, "The only remaining option is that God Most High assures a great compensation for it, and it is due to this that permitting slaughter is ethically good."<sup>83</sup> In bolstering his argument that God must be responsible for the compensation rather than the person

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<sup>81</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawhīd Wa-al-'Adl*, 13:352ff.

<sup>82</sup> Heemskerck, *Suffering in the Mu'tazilite Theology*, 166.

<sup>83</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawhīd Wa-al-'Adl*, 13:453.

carrying out the slaughter, he explains that there is a difference between these two forms of compensations. The compensation provided by the one carrying out an act can only be equivalent to the harm that they caused, whereas the compensation provided by God must be so great that all rational beings would choose the harmful experience in order to receive the compensation.<sup>84</sup> If a person were to kill an animal in a manner other than that which God has permitted (*'alā ghayr wajh al-zakāh*) then the person would be committing an act of injustice and they would be responsible for the compensation, not God.<sup>85</sup> This means that it is better for an animal to be slaughtered in accordance with the sacred law than for it to be slaughtered otherwise, not because the method of slaughter that God permits is necessarily more merciful in and of itself, but because when the slaughter is performed in this manner, the animal receives compensation from God rather than from the person. This would mean that an animal that is tortured to death and dismembered will receive a lesser compensation than an animal that is slaughtered quickly with a sharp blade.

### **Ash'arīs on Animal Pain**

As was the case with the ways in which Ash'arīs conceptualized ethical value, their discussions of animal pain are much more brief and less involved than those engaged in by Mu'tazilīs. This should not be surprising since their understandings of animal pain are directly related to the ways in which they understand other theological issues related to justice and injustice, including how to assess ethical values. Ash'arīs did not have to develop complex doctrines such as that of compensation in order to allow animal pain to be categorized as

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<sup>84</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawhīd Wa-al-'Adl*, 13:453–54.

<sup>85</sup> al-Asadābādī, *al-Mughnī fī Abwāb al-Tawhīd Wa-al-'Adl*, 13:550.

ethically good in certain circumstances. Instead, their argument is grounded in their understanding of God as not being held responsible by human notions of justice and by their identifying ethical value with the content of revelation. Al-Qadī Abu Bakr al-Bāqillānī, a near contemporary of ‘Abd al-Jabbār and a prominent early Ash‘arī theologian, initiated a discussion of animal pain and suffering not in response to Mu‘tazilī views regarding God’s justice, but as part of an argument against the Barāhima who, according to him, held that God does not send prophets to humanity. As his argument progresses and he addresses the question of whether it is just for God to allow animals to suffer, he identifies Mu‘tazilīs as holding the view that he is opposing as well. The argument against prophethood that he ascribes to the Barāhima holds that all of those who claim to be prophets endorse practices that are forbidden by reason, such as animal slaughter. Al-Bāqillānī attempts to refute this argument in a number of ways, but most relevant to our discussion is his claim that killing animals is not forbidden by reason. He argues that God initially blesses animals with pleasures that they have no reason for deserving, and that God is free to refrain from granting them these pleasures, just as He was free to grant them initially. Furthermore, to refrain from continuing to grant them would be to cause them a form of suffering, which shows that God may permit acts that cause animals harm.<sup>86</sup> He ends his argument by taking a strong position on God’s sovereignty stating, “It is established that the Sovereign of all things may permit His creation what He wills, destroying some animals and causing them pain, and no created being can object to His rule.”<sup>87</sup>

Al-Juwaynī, engages in a more prolonged discussion of the problem of animal pain, but again much of it is comprised of his critique of the doctrines of the Mu‘tazilīs, and others, rather than a

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<sup>86</sup> Muḥammad ibn al-Bāqillānī, *al-Tamhīd* (Beirut: al-Maktabah al-Sharqīyah, 1957), 115.

<sup>87</sup> al-Bāqillānī, *al-Tamhīd* (Beirut: al-Maktabah al-Sharqīyah, 1957), 116.

direct exposition of his own position. Al-Juwaynī begins the section on pain in *al-Irshād* by stating, “Pain and pleasure do not come about except by God, and if they occur through the action of God, then they are good.”<sup>88</sup> This is the case, according to al-Juwaynī, whether or not the pain is deserved, without there being a need for compensation, or for it to bring about a benefit or ward off harm.<sup>89</sup> Al-Juwaynī lists a number of what he considers to be false beliefs regarding the ethical assessment of animal pain, including the doctrines that pain is inherently bad, that animals and children do not experience pain, the reincarnationist view that animals suffer pain as punishment for misdeeds they performed in previous lives<sup>90</sup>, as well as the Mu‘tazilī doctrines discussed above<sup>91</sup>. He then refutes each of these arguments in turn.<sup>92</sup> One area where the lived experiences of animals enters into al-Juwaynī’s argument is when he discusses the idea that animals do not feel pain. He says that those who hold this view are ignorant of obviously apparent and necessary knowledge since, “We are forced to know that animals and children suffer pain, as well as worry (*qalaq*) when approaching something painful and fleeing what they know causes pain.”<sup>93</sup> In his refutation of Mu‘tazilī doctrines regarding animal pain, al-Juwaynī goes through beliefs held by both Baghdādī and Baṣran Mu‘tazilīs. At the end of this section however, al-Juwaynī invokes the essential disagreement between Mu‘tazilīs and Ash‘arīs, and makes the simple statement that, “If we stick to our principle of

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<sup>88</sup> al-Juwaynī, *al-Irshād*, 273.

<sup>89</sup> al-Juwaynī, *al-Irshād*, 273.

<sup>90</sup> al-Juwaynī, *al-Irshād*, 274–75.

<sup>91</sup> al-Juwaynī, *al-Irshād*, 276–78.

<sup>92</sup> al-Juwaynī, *al-Irshād*, 278–86.

<sup>93</sup> al-Juwaynī, *al-Irshād*, 279.

denying that reason determines that something is bad or good, holding to that would undo all that they have established.”<sup>94</sup>

Although this chapter is dedicated to examining views of killing animals found in works of theology and legal theory, I would like to introduce one brief example of legal reasoning provided by a jurist attempting to justify animal pain found in the Hanafī compendium *al-Mabsūt* by al-Sarakhsī (d. 1090). The value of including this here is that it provides a glimpse of other ways in which Muslim scholars incorporated animal pain into their ethical worldview. Al-Sarakhsī begins his discussion of slaughter and animal pain by refuting the argument that killing animals is rationally or inherently forbidden due to the pain that it causes and that it is only considered permissible because revelation made it so.<sup>95</sup> Since he is writing as a jurist and not a theologian, we should not be surprised to find him eschewing abstract arguments and instead basing his position on the practice of the Prophet Muḥammad. His argument is as follows, “The Prophet would eat meat before he was sent as a Messenger, and it is inconceivable (*lā yuẓann*) that he ate the meat slaughtered (*dhabā’ih*) by the polytheists because they would slaughter in the name of their idols. Thus, we know that he would slaughter and hunt himself, and he would not do something which was forbidden through reason, such as oppression, lying, or murder (*al-safh*), it is impermissible to even consider that he would have done so.”<sup>96</sup> In this argument, al-Sarakhsī seems to stand against both the Mu‘tazilī and the Ash‘arī arguments cited above by showing that animal slaughter is not rationally forbidden and also that it was good before the

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<sup>94</sup> al-Juwaynī, *al-Irshād*, 286.

<sup>95</sup> Muḥammad ibn Aḥmad al-Sarakhsī, *al-Mabsūt*, vol. 11 (Cairo, 1906), 221.

<sup>96</sup> al-Sarakhsī, *al-Mabsūt*, 11:221.

coming of revelation and therefore independent of it.<sup>97</sup> Since this argument does not address the concern that animal pain and suffering might raise, al-Sarakhsi introduces an argument based on a hierarchical view of the world in which humans enjoy superiority over animals. He claims that animals were created for the benefit of human beings, and one of those benefits is nourishment, which can only be achieved through slaughter.<sup>98</sup> This should not be taken as a blanket permission to abuse animals or treat them poorly for, as we shall see in the chapters that follow, Al-Sarakhsī views the infliction of pain as justified and acceptable only up to the point that it is necessary.

## Conclusion

As we have seen, although Mu‘tazilī and Ash‘arī theologians differ greatly regarding their conceptions of justice and ethical value, both schools arrive at the same conclusion in regards to animal pain and suffering, which is that the pain animals experience as a result of God’s actions, and as the result of human actions sanctioned by God, is good. We are left with the question of whether there is genuine concern to be found amongst Muslim theologians for the subjective experiences of animals. We may be inclined to answer that Mu‘tazilī theologians exhibit more concern than Ash‘arīs do for the subjective experiences of animals as evidenced by their doctrine of compensation, whereby they attempt to make right the suffering an animal experiences in this world by providing some form of pleasure or gain that outweighs it in the afterlife. This doctrine

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<sup>97</sup> It is important to note that al-Sarakhsī is generally much closer to the ‘Ash‘arīs than to the Mu‘tazilīs. In his work on legal theory, he clearly defines ethical value in terms of what the sacred law commands and forbids and he denies that the good and the bad are either essential characteristics of actions or rationally determined. Muḥammad ibn Aḥmad al-Sarakhsī, *al-Muḥarrar fī Uṣūl al-Fiqh*, vol. 1 (Beirut: Dār al-Kutub al-‘Ilmīyah, 1996) 42.

<sup>98</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

of compensation, however, does nothing to mitigate the pain animals experience in real time, and it functions more to protect Mu‘tazilī notions of justice than it does to protect animals from harm. Even though their intuitions inform them that killing animals is bad, they give priority to the information conveyed by revelation, which indicates that killing animals can be good. Ash‘arīs also, while recognizing the reality of animal pain, remain unswayed by it in the face of divinely sanctioned practices of killing animals and seem more concerned with preserving God’s freedom to act any way He pleases than with mitigating the negative experiences of animals.

That being said, all of the authors we have examined seem to be aware of a tension between deeming animal pain good and an innate aversion to suffering that extends to animals as well as humans. For the Mu‘tazilīs, this tension was dealt with through a doctrine of recompense whereby animals were paid their due in the afterlife, while for the ‘Ash‘arīs this was resolved through a doctrine that proposed a definition of the good that relies solely on the commands and actions of God. While being at odds with each other in regards to content, both of these approaches serve to make acceptable for their followers something whose goodness might otherwise be questioned. In the realm of jurisprudence, animal suffering is brought out of the realm of the averse and into the realm of the acceptable and good through recourse to ritual practices of killing animals that are grounded in revelation. Much like the theological discourses we just discussed, the ritual serves to transform actions which humans might be averse to into actions that are good, while maintaining human dominance over nonhuman animals. Where theologians did this by giving a sense of meaning to the pain that animals suffer, jurists do this by enumerating the ways in which it is permitted to kill animals and the ways in which it is not permitted, in accordance their professions and specific genres of writing. The chapters that follow take this as their starting point and engage in a close examination of practices of killing

animals as described in works of Islamic jurisprudence so that we can better understand the nature of this mediation and what is at stake for Muslim jurists in assuring that these practices are properly performed.

## Chapter Two: Hunting and Slaughter

### Introduction

Chapter One of this dissertation analyzed Islamic discourses regarding animal pain and suffering, particularly as related to the question of killing animals. One of the conclusions that Muslim theologians and jurists universally arrived at is that killing animals can only be considered morally good when it is done in ways that are endorsed by the *sharī'ah*. This chapter takes up that question and examines practices of killing animals, primarily for food but in some cases for other purposes, that Muslim jurists sanction as being in harmony with the teachings of the Qur'an and the practice of the Prophet Muhammad. I focus on the ways that Sunni jurists identify and discuss the various constituent elements of these practices and how they relate to overarching ideas about the ethics of how humans interact with and relate to non-human animals. In order to make sense of these practices, I utilize the concept of ritual to capture the sense of practices encoded in religious law that must be performed in specified ways in order to bring about and desired effect. Viewing Islamic practices of killing animals through this lens helps us to identify their key elements as well as the various ends that they serve while asking how they address the overarching question of animal pain.

Although animal slaughter in Islam, as well as Judaism, is frequently referred to as “ritual slaughter,” it is not always clear what is meant by “ritual” in this context and how this category was arrived at. What is it about animal slaughter in Islam that invites us to consider it as a ritual? Are there individual elements of slaughter that we can consider ritual actions or is it that taken as a whole the practice of animal slaughter in Islam adheres to a ritual form? One of the challenges of answering this question is that there is no one term used by Muslim jurists writing in Arabic that translates well as “ritual.” In his essay “Islam in the Mirror of Ritual,” William Graham

demonstrated that we cannot equate ritual with the category of *ibādāt*.<sup>1</sup> In explaining the distinction he used the example of *zakat*<sup>2</sup> which, according to his analysis, fits squarely in the category of *ibādāt* but cannot be considered a ritual. He writes, “Just as it is difficult to define ‘ritual’ as a generic concept with precision, so too it is not easy to isolate those parts of Muslim practice that qualify as ‘rituals.’ To begin with, there is no exact equivalent for ‘ritual’ in Muslim Arabic usage.”<sup>3</sup>

In her 2005 essay, “The Study of Islamic Ritual and the Meaning of *Wuḍū’*,” Marion Katz provides a helpful summary of the scholarly treatment of Islamic rituals. In particular she highlights the neglect of Islamic rituals that characterized much previous scholarship on Islam. In this context she focuses on recent examinations of Islamic purity rituals. In speculating on why the “central rituals of normative Islam” had not received more scholarly attention, Katz says it, “reflects the resistance of central Islamic rituals to certain modes of analysis. Specifically, it results from these rites’ perceived failure to yield to the process of decoding traditionally favored by cultural anthropologists and historians of religion.”<sup>4</sup> Although she refers to the “central rituals of normative Islam,” her statement holds for rituals that some might consider to be less central, such as those that deal with animal slaughter. In the context of her essay, she is referring to the distinction between what she takes to be rituals that are central to normative Islam and those

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<sup>1</sup> Works of Islamic jurisprudence are generally divided into sections that focus on different categories of human action. These sections include *ibādāt* (acts of worship), *mu‘amalāt* (activities related to trade and commerce), *nikāḥ* (marriage), and *jināyāt* (criminal justice).

<sup>2</sup> The religiously obligated charity donated annually by Muslims in possession of a certain amount of wealth.

<sup>3</sup> William Graham, “Islam in the Mirror of Ritual,” in *Islam’s Understanding of Itself*, ed. Richard G. Hovannisian and Speros Vryonis (Malibu, CA: Undena Publications, 1983), 61.

<sup>4</sup> Katz, “The Study of Islamic Ritual and the Meaning of *Wuḍū’*,” 107.

more culturally distinctive rituals that she says tend to be the focus of anthropologists who study rituals in Islam.

Referencing the views of William Graham, Paul Bowen, and Kevin Reinhart, Katz notes that they “share the basic element of denying any substantial core of meaning to the rituals as defined by the classical sources. The implications of this perceived void, however, vary in each case.”<sup>5</sup> In Graham’s view, she says, this characteristic of Islamic rituals is due to a direct function of Islamic doctrine, “which denies the efficacy of ritual in order to emphasize the cultivation of theological attitudes and moral states...”<sup>6</sup> Bowen and Reinhart, on the other hand, see Islamic rituals as a kind of blank canvas that local meanings can fill in.<sup>7</sup> While Katz seems to endorse this view of Islamic ritual in broad terms, she also adds her own nuance to the question. Thus, we find her drawing on more recent theories of ritual practice. She explains the benefits of this in the context of many previous theories of ritual assuming that, “ritual actions are a form of symbolic communication whose necessary end is to be decoded.”<sup>8</sup> In response she highlights the theories of Pierre Bourdieu, Catherine Bell, and Talal Asad who have critiqued the idea of ritual as symbolic communication. While adopting this critique, Katz is careful to note that “to critique the understanding of ritual as ‘symbolic communication’ is not to assert the absence of meaning...The symbolic logic of ritual is an embodied logic, and its meanings are physically mastered rather than spiritually pondered or intellectually understood.”<sup>9</sup> Katz makes a statement

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<sup>5</sup> Katz, “The Study of Islamic Ritual and the Meaning of Wuḍū’,” 109.

<sup>6</sup> Katz, “The Study of Islamic Ritual and the Meaning of Wuḍū’,” 109.

<sup>7</sup> Katz, “The Study of Islamic Ritual and the Meaning of Wuḍū’,” 109.

<sup>8</sup> Katz, “The Study of Islamic Ritual and the Meaning of Wuḍū’,” 111.

<sup>9</sup> Katz, “The Study of Islamic Ritual and the Meaning of Wuḍū’,” 111.

regarding the ritual of *wuḍū'* that I think could equally apply to rituals of animal slaughter.

“Despite its ubiquity in daily life,” she says, “*wuḍū'* is not a rite generally regarded as spiritually central or symbolically potent, either by Islamic scholars or by ordinary believers. As an apparently formalistic rite which carries a minimum of overt religious content, it represents a useful test case for the proposition that Islamic ritual is symbolically sparse. As we shall see, in fact, the learned Islamic tradition invests *wuḍū'* with a range of religiously resonant meanings.”<sup>10</sup>

The actual rituals of killing animals may not themselves be ubiquitous in the daily life of the majority of Muslims, the effects of this rituals are ever-present at their dinner tables and therefore can be considered as having a central place in the lives of Muslim. This allows us to ask what it means for animal slaughter in to be a ritualized practice in Islam and whether there are values embedded in it that impact the ways in which Muslims think about and experience the world.

While relying on the concept of ritual as a heuristic that allows us to think meaningfully about Islamic animal slaughter, I also note that “ritual” is an imported concept that is not native to the premodern languages and discourses of Islamic traditions. William Graham made this observation when he wrote, “Just as it is difficult to define ‘ritual’ as a generic concept with precision, so too it is not easy to isolate those parts of Muslim practice that qualify as ‘rituals.’ To begin with, there is no exact equivalent for ‘ritual’ in Muslim Arabic usage.”<sup>11</sup> Although Graham acknowledges that some acts of worship ( *‘ibādah*) such a *zakat* are not rituals in the narrow sense of the term, he goes on to use the concept of *‘ibādah* more generically to show that Islam is a religion that is permeated with ritual and to make the claim that, “From the standpoint

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<sup>10</sup> Katz, “The Study of Islamic Ritual and the Meaning of Wuḍū’,” 111.

<sup>11</sup> Graham, “Islam in the Mirror of Ritual,” 61.

of penetration of all sectors of life by ritual or ritualized practices, Islam is arguably the most ritualistic of all traditions (including even the Jewish) in its vision of individual and collective life as perpetual *'ibādah*.”<sup>12</sup> Since the focus of my project is on Islamic legal discourses, I restrict the term *'ibādah* to the usage of Muslim jurists who employed it to refer to the category of human activity that includes ritual purification, prayer, fasting, almsgiving, and pilgrimage. While the worshipful attitude that accompanies acts of *'ibādah* can be an important feature of Islamic rituals, particularly when we examine the role of intention, I do not take that perspective to be the defining characteristic of rituals in Islam. Instead, I choose to focus on patterns of action, their desired outcomes, and the ways that they instantiate a particular Islamic ethic in their performance.

Another possible reason for the neglect of ritual in the study of Islam was the resistance some scholars in Islamic studies to allow that there is such a thing as a “cult” in Islam, let alone that there is law or ethics properly speaking. In an article critiquing this position, Baber Johansen highlights the role that jurists assigned to the concept of *taqarrub* (drawing near to God) as an important aspect of Muslim jurists’ discussions of obedience to the divine in both acts of worship and acts that are not considered worship. In his conclusion to this section of the paper, he states, “Rather than using a theoretical concept, in this case deontology, in order to establish a negative check-list denying the existence of Islamic law, Islamic cult, and Islamic ethics, we should focus on the complex character of the notions through which Muslim scholars structure their debates, the way in which the content of these categories develops over the centuries and how the concept of social morality is distinguished from the cult and at the same time related to the aspiration to

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<sup>12</sup> Graham, “Islam in the Mirror of Ritual,” 61.

come closer to God.”<sup>13</sup> One of the claims that this dissertation makes is that animal slaughter in Islam falls into this middle ground that Johansen draws our attention to: it is not a form of *‘ibādāt* per se, but it includes an aspect of *taqarrub* through as a ritualized practice that seeks to obtain the purification of meat for consumption and to bring killing animals into the sphere of the ethically acceptable.

In viewing Islamic animal slaughter through the lens of ritual, I rely primarily on Roy Rappaport’s definition from in *Ritual and Religion in the Making of Humanity*. There he states, “I take the term ‘ritual’ to denote *the performance of more or less invariant sequences of formal acts and utterances not entirely encoded by the performers.*”<sup>14</sup> At the same time, I am not dogmatic in my adherence to this definition. As Talal Asad has noted, “a definition of ritual is not necessary for understanding the meaning of ‘ritual.’ The meaning of the term resides, as Wittgenstein says, in its various uses, not in a permanent fixed definition.”<sup>15</sup> When identifying activities and practices as rituals, I also take into consideration the ritual effects of the practice. One of the major concerns of Muslim jurists when discussing rituals such as animal slaughter is whether the ritual is valid in the sense that the desired effects are obtained. The incorrect performance of a ritual can render it ineffective in the sense that jurists regard it as an invalid performance that does not achieve the goals of the ritual. These effects can be physical, spiritual, or a combination of the two. In some cases, such as prayer, we can consider the effect of the ritual as reflecting back on the person performing it, whereas in other cases, such as animal

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<sup>13</sup> Baber Johansen, “Changing Limits of Contingency in the History of Muslim Law” (The Nehemia Levtzion Center for Islamic Studies, The Hebrew University of Jerusalem, 2013), 22.

<sup>14</sup> Rappaport, *Ritual and Religion in the Making of Humanity*, 24.

<sup>15</sup> Talal Asad, *Secular Translations: Nation-State, Modern Self, and Calculative Reason* (New York: Columbia University Press, 2018), 79.

slaughter, they have an obvious transitive property with their effect manifesting in a ritual object other than the person performing the ritual.

In line with Katz's reflections, Seligman et al have pointed out that Rappaport's definition of ritual refocuses our attention away from what ritual means to what ritual does.<sup>16</sup> This is helpful in considering animal slaughter in Islam since I view rituals of animal slaughter in Islam not primarily as ways of communication, but as the performative embodiment of the ethical values and principles discussed in the previous chapter. I argue in other words that animal suffering matters in Islam, and while Islamic theology may view part of the purpose of the creation of animals as service to humans, the taking of animal life can only be sanctioned when it adheres to practices outlined in the *sharī'ah*. Although I will examine particular elements of Islamic animal slaughter, instead of thinking of these as individual acts that communicate a specific meaning, I am concerned more with the ritual as taken as a whole and the ethical values that it embodies.

Talal Asad has a more recent articulation of ritual as doing rather than meaning, which focuses on what ritual does internally rather than externally. In his *Secular Translations*, he writes, "I want to shift the focus from the social function of ritual to its structure and how that might articulate the agent's feelings, thoughts and attitudes. The idea of ritualization, I suggest, can help us focus on the way the agent attempts to form appropriate feelings and thoughts in particular action and how the action can be seen as a moment for the formation of the self."<sup>17</sup> Asad focuses on the ritual of prayer, which many Muslims take part in and all Muslims have access to, and although the case of animal slaughter is different in that it is generally a ritual that

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<sup>16</sup> Adam B. Seligman et al., *Ritual and Its Consequences* (Oxford: Oxford University Press, 2008), 11.

<sup>17</sup> Asad, *Secular Translations*, 77.

a minority of people take part in, I think his comments are valuable for considering Islamic animal slaughter as well. Rather than dissecting the parts and pieces of Islamic animal slaughter in order to identify a kind of symbolic order, I ask what these rituals do, not just for the individual performing them, but for the community on whose behalf they are being performed. To expand Asad's comments about ritual action as a moment of the formation of the self, I ask how Islamic animal slaughter functions as a moment of both self-formation and community formation. In light of this question, is it possible for Islamic animal slaughter to emerge not only as a practice that functions to provide food for Muslims who are concerned with adhering to the dictates of Islamic law, but also as a ritual that contributes to the definition of the appropriate relationship between humans and non-human animals? Does Islamic animal slaughter, in part, assist in defining a particular role and place for humans to inhabit in the world?

### **Conceptualization of Slaughter in Islamic Law**

Muslim jurists generally discuss animal slaughter and hunting in the same chapter of their works on Islamic jurisprudence. While hunting and slaughter are distinct practices, they are linked by a number of important commonalities that justify categorizing them together. Sacrifice can also be seen as a subcategory of slaughter with its own special laws and regulations additional to those that apply to non-sacrificial slaughter, however Muslim jurists discuss questions related to sacrifice in their own chapters of Islamic legal texts. The main thing that links hunting and slaughter as related practices is that they represent the only ways that Islamic law allows for people to kill animals for the purpose of acquiring food. It is only by killing an animal through hunting or slaughter that the animal can be considered pure meat rather than a dead carcass (*maytah*). Hunting and slaughter also render the hide and other parts of the animal

pure. Most jurists agree that there are other ways to purify the hide of a dead animal, such as through tanning, but there is no other way to purify its meat.

There are a number of different terms that refer to these practices and the terminology can be a bit confusing both because there is some overlap between the terms and because jurists from different schools may employ some of them differently. Taking al-Sarakhsī as an example, we may say the jurists employ the term *al-dhakāh* to indicate a broad category that refers to all of the legislated practices of killing animals that render the animal pure upon its death.<sup>18</sup> Al-Sarakhsī explains that the linguistic meaning of the term *al-dhakāh* is related to sharpness, hence its relationship to words referring to intelligence and to the intense heat of the sun. He understands this as indicating that in *al-dhakāh* there is an aspect of increase/development (*nudj*) and he states that this is why properly slaughtered meat is better (*aṭyab*) than carrion and is less spoiled. Al-Sarakhsī also relates a legal definition of the term *al-dhakāh* as, “Shedding the filthy blood.”<sup>19</sup> He explains the importance of this in Qur’anic terms stating that what is impermissible in an animal is “flowing blood” (*damm masfūh*) so that slaughter is “The removal of filth (*al-khabath*), purification (*taṭyīb*), and a differentiation between the pure and the filthy.”<sup>20</sup> This explanation of the value of slaughter is similar to a statement that al-Nawawī makes in his commentary on Ṣaḥīḥ Muslim, “Some of the scholars said that the wisdom in requiring slaughter is to drain blood (*inhār al-damm*) and differentiate between the permissible (*ḥalāl*) meat and fat and the impermissible (*ḥarām*) as well as to call attention to the impermissibility of dead animals

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<sup>18</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

<sup>19</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

<sup>20</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

(*maytah*) due to their blood remaining in them.”<sup>21</sup> The reference to draining blood implies that slaughter primarily seeks physical ends, however such an explanation is not sufficient justification for some of the ritual elements of slaughter.

Technically, the term *dhakāh* refers to two different practices: hunting (*al-ṣayd*) and slaughter (*al-dhabḥ*). As we will see in the sections below, the factor which dictates which practice a person should use to kill an animal relies in large part on the kind of animal that is being killed. If the animal is an edible wild animal, then it should be killed through hunting (*ṣayd*). This can be carried out either with a projectile weapon that has the capability of piercing, or with an animal that has been trained to hunt. If the animal is an edible domesticated animal in one’s control, then one should cut its throat with a sharp-edged blade. If the animal is a camel this is done higher up on the animal’s neck and it is referred to as *naḥr*, and if it is a head of bovine cattle, a sheep, a goat, or fowl, then it is performed lower on the neck and it is referred to as *dhabḥ*. While I generally translate *dhabḥ* and *naḥr* as slaughter, I will also, on occasion, refer to the broader category of *dhakāh* as slaughter for lack of another appropriate term in English. In this sense I mean the ritual practice of slaughter, which is distinct from non-ritual forms of killing.

While the focus of this chapter is on ritual practices of killing animals that are performed in specific ways, it should be noted that there are some acts of killing that do not need to adhere to the same guidelines and do not possess a ritual element. An example of this is killing snakes and scorpions, which can even be done while someone is in a state of prayer provided a person

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<sup>21</sup> Quoted in Zakarīyā b. Muḥammad al-Anṣārī, *Asnā al-Maṭālib Sharḥ Rawḍ al-Ṭālib* (Beirut: Dār al-Kutub al-‘Ilmīyah, 2001), 3:375.

does not engage in too much movement.<sup>22</sup> Al-Sarakhsī bases this ruling on a hadith that states, "Kill the two blacks even if you are in prayer." He also relates that the Prophet crushed a scorpion while he was praying by putting his sandal over it and pressing down (*ghamazahu*) until it was dead. When he finished his prayer he said, "May God curse the scorpion. Do not be concerned whether you are a Prophet (or praying)<sup>23</sup> or not." He also asserts that this is permissible because a person who is praying is allowed to do what they need to in order to ward off things that would distract them from their prayer. He says that this act of killing must be done in one motion otherwise it invalidates the prayer.<sup>24</sup> Here the main concern is that the actions be minimal such that an observer would think that the person was praying rather than doing something else. It is not the killing, the taking of life, that invalidates the prayer, but rather the amount of movement that it takes to do the killing. This, then, is one of a very few number of examples of legislated killing of animals that do not have a particular form that must be followed in order for their desired consequences to be achieved. Significantly there are no effects beyond killing the animal that are obtained through this. This is one of the key differentiators between killing (*al-qatl*) and slaughter (*al-dhakāh*) with the performance of the latter following a specific form and obtaining ends additional to the death of the animal. When the ritual of slaughter is not performed correctly, the act is considered an act of killing rather than slaughter and the effects of slaughter are not obtained such that the meat is impure and Muslims are not permitted to consume its meat.

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<sup>22</sup> al-Sarakhsī, *al-Mabsūṭ*, 1:194.

<sup>23</sup> This is an alternate reading of the hadith that al-Sarakhsī provides.

<sup>24</sup> al-Sarakhsī, *al-Mabsūṭ*, 1:194.

## Purity and Impurity

Purity and impurity are of the major concerns that Muslim jurists have when addressing practices of Islamic animal slaughter. Although animal slaughter is not technically categorized as a ritual of purification, as are *wuḍū'* and *ghusl* ablutions which a Muslim performs in order to purify themselves for the performance of certain acts of worship, one of its effects is to produce pure meat. When discussing purity and impurity, jurists generally refer to a set of concepts that refer to physical and spiritual purity and impurity. While the term *tāhir* indicates purity in various contexts, there are multiple terms that refer to different forms of impurity. *Ḥadath* refers to the state of ritual impurity that a human enters into by urinating, defecating, farting, having sex, menstruating, and a few other acts concerning which there is scholarly disagreement. *Ḥadath* can be either a major state of impurity or a minor state of impurity, depending on the cause, and it can be alleviated either through *wuḍū'* or *ghusl*.<sup>25</sup> While a major aspect of purity in Islamic law, this form of impurity is not relevant to the discussion of animal slaughter. *Najas* is the adjective that describes something that is physically filthy, such as urine or feces. One of the key characteristics of something that is *najas* is that one cannot perform the ritual *ṣalāt* prayer if one has any *najas* substance on one's body, clothing, or on the place where one is praying. Another related term is *khabīth*, which refers to something that is considered to be disgusting. When applied to animals it generally indicates animals that humans consider unappetizing and which they wouldn't think of eating.<sup>26</sup> Although these animals are not necessarily *najas* while they are alive, *khabīth* shares a similar semantic field with *najas*. Some jurists define *najāsa*

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<sup>25</sup> Marion Katz, *Body of Text: The Emergence of the Sunnī Law of Ritual Purity* (Albany: State University of New York Press, 2002), 2.

<sup>26</sup> See below on how this apparently subjective affect of disgust is incorporated into normative legal assessments.

specifically in terms of consumption. For example, Zakarīya al-Anṣārī says, “Some of them have defined (*al-najāsa*) as being every substance (‘*ayn*) that one is absolutely forbidden to consume when able to choose, it being easy to differentiate it and possible to consume it, not because of its prohibition, its disgustingness (*istiḡdhār*) or its harm to one’s body or mind.”<sup>27</sup>

One of the main principles endorsed by Sunni jurists is that whatever is *ṭayyib* is permissible and whatever is *khabīth* is impermissible based on the verses of the Qur’an, “They ask you what is permitted for them. Say: permitted for you are the *ṭayyibāt*,”<sup>28</sup> and, “Permitted for them are the *ṭayyibāt* and forbidden are the *khabā’ith*.”<sup>29</sup> These verses, however, are not explicit in naming what determines whether something is *ṭayyib* or *khabīth*. One of the chief ways that Sunni jurists have interpreted these verses is by referring the question of what is *ṭayyib* and what is *khabīth* back to the culture of the Arabs.<sup>30</sup> Jurists, such as Zakarīya al-Anṣārī explain this as being because it is Arabs who are addressed by the revelation.<sup>31</sup> In light of this, if *ṭayyib* has something of a subjective element, in that different people and different cultures can view the same thing with either desire or disgust, then the tastes of the people who the Qur’an addressed are to be given some weight in determining what is good to eat and what is disgusting. Al-Anṣārī acknowledges that the concept of *ṭayyib* as it is presented in the Qur’an opens up the possibility of the sacred law being determined through a kind of cultural relativism.<sup>32</sup> As a result, he

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<sup>27</sup> al-Anṣārī, *Asnā al-Maṭālib*, 1:25.

<sup>28</sup> Qur’an 5:4.

<sup>29</sup> Qur’an 7:157.

<sup>30</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:408.

<sup>31</sup> al-Anṣārī, *al-Maṭālib*, 3:408.

<sup>32</sup> al-Anṣārī, *al-Maṭālib*, 3:408–9.

restricts the community whose tastes are given consideration to not just the Arabs but to town-dwelling, well-off Arabs and he excludes the nomad beduins and those who suffer need.<sup>33</sup> This is only relevant, however, in regards to animals concerning which there is no text of the sacred law indicating whether it is permissible or impermissible.<sup>34</sup> This is not just reserved to the Arabs at the time of the Prophet. Zakarīya al-Anṣārī notes that if there is an animal concerning which it is unknown what its ruling is, then it should be presented to the Arabs so that they can say whether or not it is *ṭayyib*,<sup>35</sup> although successive generations cannot alter the ruling of previous ones.<sup>36</sup>

Additionally, some jurists like Al-Sarakhsī highlight what we may call spiritual reasons for why certain foods are impermissible. He states, for example, that eating impure foods can have a deleterious effect on a person's character. When explaining why eating disgusting (*mustakhbath*) animals is forbidden he says, "The effects (*āthār*) of that must manifest in the character (*khuluq*) of the one who eats it, as the Prophet said, 'Do not have an imbecile (*ḥamqa*) as a wet nurse for milk passes [it] along.'<sup>37</sup> It is important to note that the effects to which he is referring are not related to physical health, rather they are related to morality. As such this statement may serve as an overall principle that connects the law of food to ethics and spirituality. It also presents a holistic vision of human beings which integrates their physical, moral, and spiritual wellbeing and connects them to food.

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<sup>33</sup> al-Anṣārī, *al-Maṭālib*, 3:408.

<sup>34</sup> al-Anṣārī, *al-Maṭālib*, 3:408.

<sup>35</sup> al-Anṣārī, *al-Maṭālib*, 3:409.

<sup>36</sup> al-Anṣārī, *al-Maṭālib*, 3:409.

<sup>37</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:220.

Many scholars of religion have addressed questions of purity and impurity. Perhaps the most famous and influential of these is Mary Douglas with her work, *Purity and Danger*. Her study of purity laws in Leviticus and her attempt to understand them as part of a system that regulates purity and impurity inspired a range of other scholars, including those working on Islam. While not adopting Douglas's specific schema, these scholars have examined Islamic purity laws and sought ways to systematize the rulings related to purity and impurity in Islam more broadly. Much of what drives these approaches to purity and impurity, as well as the related issues of ritual and practice, is an urge to uncover something behind the texts that would allow contemporary scholars to make sense of religious purity laws. By and large, however these discussions of purity in Islam have focused on those sections of Islamic law that address questions of ritual purity related to the human body. In particular, these works look at issues regarding purity and menstruation, sex, and rituals of purification that are prerequisites for the performance of prayer. The categories of pure or impure, however, go far beyond this in Islamic legal literature. In some sense one may say that the entire world can be divided into that which is pure and that which is impure as well as those impure things which may or may not become pure through some process. That being said, the vast majority of things in the world are categorized as pure. This is mentioned in the chapters on purity when jurists discuss impure substances, what can be used to purify something, and which animals' saliva is pure or impure such that it could make a vessel of water impure if it drank from it. In these chapters they also address the impurity of a dead animal's body, which can make a body of water impure since the focus of these chapters is the purity of water and its ability to serve as a means for Muslims to ritually purify themselves in order to perform certain devotional rituals. Some of the sections below on the

different ways that Muslim jurists categorize animal bodies as pure or impure draw on these chapters on purity and ritual purification.

### *The Concept of Maytah*

As we will see below, jurists divide the animal world in many different ways. Most relevant to the discussion of purity and impurity are the distinctions that jurists make between animals that are inherently pure and animals that are inherently impure. The vast majority of living animals are considered by jurists to be pure. The exceptions to this are dogs and pigs, although even in regards to these there is a fair amount of disagreement among jurists from different schools. Additionally, jurists discuss animals that are inherently pure but whose saliva and other bodily secretions (such as sweat) may be impure. While these are inherent qualities that animals possess independently of their behavior, there are some cases where an animal's behavior dictates its standing as being pure or impure. This is the case specifically with animals who consume filth regularly, which jurists refer to as *jalālah*.

Jurists agree that, with some possible exceptions, all living animals are pure while they are alive. The two exceptions to this are dogs and pigs, although the schools of law differ regarding them. Shāfi'ī jurists take the most restrictive view and consider both dogs and pigs to be *najas* while they are alive.<sup>38</sup> As we shall see in the sections that follow, although dogs are considered impure by Shāfi'ī jurists, they are not without uses. Contemporary readers may be confused by the fact that although scholars like Imam al-Juwaynī consider dogs to be inherently impure, he also considers dogs to be among the most intelligent animals. In this regard, al-

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<sup>38</sup> 'Abd al-Malik ibn 'Abd Allāh al-Juwaynī, *Nihāyat al-Maṭlab* (Jeddah: Dār al-Minhāj, 2007), 1:22; Abū Zakarīya Yaḥyā b. Sharaf al-Nawawī, *Rawḍat al-Ṭālibīn* (Damascus: al-Maktab al-Islāmī li-al-Ṭibā'ah wa-al-Nashr, 1966), 1:13; al-Anṣārī, *Asnā al-Maṭālib*, 1:27.

Juwaynī states that if a dog is trained in the way that he has described, “it has an intelligence (*kays*) which cannot be compared to that of any other animal.”<sup>39</sup> Dogs, according to al-Juwaynī, are naturally familiar (*‘alīf*) and long to be trained.<sup>40</sup> Mālikī jurists are at the opposite end of the spectrum with the prominent (*mashhūr*) position being that all living animals, including dogs and pigs, are pure.<sup>41</sup>

The corpse of a dead animal that has not been ritually slaughtered is referred to as *maytah*. This term is essential for our discussion of animal slaughter in Islam. In the sections below I will discuss the various ways that jurists categorize animals and the impact that their categorization has on the ruling of whether or not that animal is considered to be pure. These categorizations are, however, by and large related to the animal when it is alive. Dead animals can also be considered pure or impure depending both on the species of animal and the way that it died. Unless an animal is killed through the practices of hunting or slaughter, the dead animal’s body is considered impure. The term that jurists use to refer to animals that have died without being hunted or slaughtered is *maytah*. This can literally be translated as corpse, but it must also be distinguished from human corpses and from the bodies of animals that have been ritually slaughtered. What this indicates is that how an animal dies dictates the state of its corpse. Zakarīya al-Anṣārī defines *al-maytah* as, “Any animal that died other than through legislated slaughter (*dhakāh ‘ shar ‘ ī*).<sup>42</sup> Discussing the category of *maytah*, Marion Holmes Katz observes that, “the fundamental taboo involved in the prohibition of carrion is not merely death, but death

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<sup>39</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:110.

<sup>40</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:110.

<sup>41</sup> Khalīl b. Ishāq al-Jundī, *al-Tawdīh* (Beirut: Dār Ibn Ḥazm, 2009), 1:22.

<sup>42</sup> al-Anṣārī, *Asnā al-Maṭālib, Ṭālib*, 1:27.

that is not subject to cultural control. Islamic law, after all, permits the consumption of meat. However, the meat must undergo ‘purification’ (*dhakāh*)<sup>43</sup> through appropriate slaughtering. *Natural* death, in contrast, renders the animal carrion and its meat ritually impure.”<sup>44</sup> We could add that it is not just natural death that renders the animal carrion, but a flawed performance of the slaughter.

### **Kinds of Animals**

The first ritual element that I consider is the animal upon whom slaughter or hunting is performed. Only certain species of animals may be rendered pure through ritual slaughter. Their species further dictates the kind of slaughter that should be performed. Because the Sunni schools of law adopt different approaches to deriving legal rulings, the taxonomical order in which Muslim jurists place animals, particularly in regards to questions of edibility and inedibility, tends to defy a grand systemization. While we may be able to identify trends within each school, it seems an impossible task to try and draw broad conclusions about Islamic law as a whole in regards to the classification of animals. This is particularly the case as the differences between the schools of law are often striking in their diverging opinions. As a result, the kind of schema that Mary Douglas developed in regards to the dietary laws of Leviticus is particularly inapplicable to the case of Islamic law. In this section I hope to demonstrate that all of the legal schools developed classificatory schema that categorized animals as being either edible or inedible based on a range of criteria including whether they live on land or in the water, whether they are wild or domesticated, and whether they are predatory carnivores or grazing herbivores.

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<sup>43</sup> Note that she translates *dhakāh*, the term that refers to practices of slaughter, as “purification.

<sup>44</sup> Katz, *Body of Text*, 20.

These categories are not always clean and neat and we will find that the disagreements between the jurists frequently concern animals that live on their margins. This is not to say that it is the marginal nature of these animals themselves which is the cause of their rulings, rather that certain animals can be perceived in different ways which results in varying classifications.

The taxonomies that Muslim jurists develop in order to categorize animals are both based on and serve the legal rulings jurists establish regarding non-human animals. They also often represent an effort to make sense of these rulings by arguing that they are part of a meaningful order that inheres in the world. This is the case when, for example, textual evidence requires that an animal be considered edible even though its characteristics align more with animals that are not permitted for consumption.<sup>45</sup> The ways in which these jurists categorize animals is different from what we might expect from works of other genres such as modern zoology. Because human actions are the locus of Islamic law, the emphasis of Islamic legal discussions regarding non-human animals is on the various ways in which humans relate to and benefit from them. This includes discussions of animals as property, the rights that animals have over humans, human responsibilities toward animals, as well as animals as sources of food and provision.<sup>46</sup> The legal discussions that I will focus on here are mostly in regards to this last category. There are other genres of Islamic literature that seek to provide more comprehensive treatments of the animal world engaging in a variety of zoological discussions ranging from species classification to

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<sup>45</sup> See the case of the hyena below.

<sup>46</sup> For an extended discussion of the various ways that Muslim jurists consider rulings related to animals, see: Sarra Tlili, “Animals Would Follow Shāfi‘ism: Legitimate and Illegitimate Violence to Animals in Medieval Islamic Thought,” in *Violence in Islamic Thought*, ed. Robert Gleave and Istvan Kristo-Nagy (Edinburgh: Edinburgh University Press, 2015).

literary tropes and mythological narratives.<sup>47</sup> Some of those works, such as that of al-Damīrī, frequently invoke legal rulings regarding animals as well and I have often had recourse to them as references when preparing this chapter.

Some of these questions of taxonomy fall outside the scope of chapters on hunting and slaughter, while others are squarely related to their concern. In the pages that follow, the main questions that I will be addressing are concerned with which animals a person is allowed to kill for Muslim human consumption, although they also touch on larger questions related to humans and animals sharing spaces more generally. The fundamental categories that jurists employ when thinking about animals are wildness and domesticity, land and water-dwelling animals, and land animals and birds. All of these categories are fundamental to considerations of which animals may be eaten and how they should be killed. As such they inform the broader division of edible and inedible animals and are related to the question of purity and impurity. This dictates not only which animals a Muslim may eat, but also which parts of the animal may be consumed as well as how other non-food parts of the animal should be treated.

Some of the classifications that Muslim jurists use to discuss animals do not correspond to contemporary zoological and biological understandings of animal life. In the pages that follow we will see this show up in a number of ways in regards to animal classification. My intention is not to enquire into the origins of these schema or evaluate them in light of a modern scientific understanding. Instead my focus is on describing their perspective and exploring the ways in

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<sup>47</sup> These include works like al-Jāhīz's *Kitāb al-Ḥayawān* and al-Damīrī's *Kitāb al-Ḥayawān al-Kubrā* as well as broader encyclopedic works such as al-Nuwayrī's *The Ultimate Ambition in the Arts of Erudition*. On this last book and the genre as a whole see Elias Muhanna, *The World in a Book: Al-Nuwayri and the Islamic Encyclopedic Tradition* (Princeton: Princeton University Press, 2018).

which it informs their conceptualization of animals and how they are categorized. I will also note that just because some of the claims made by Muslim jurists about animals are discounted by modern science, this does not mean that the categories they developed are not meaningful for their legal deliberations. These classificatory schemas are not reality but representations of reality that assist jurists in organizing the world in meaningful ways and allow for the development of principles according to which they can apply the law.

### *Edible and Inedible Animals*

Among the many ways in which jurists categorize animals, one of the most relevant for our discussion is the distinction between animals that Muslims are allowed to eat and animals that Muslims are not allowed to eat. Some jurists discuss this question in dedicated chapters to food while others locate them alongside discussions of hunting and slaughter or in chapters that address what is more broadly permissible and impermissible. Much of the discussion of what Muslims are permitted to eat relates to the consumption of animals. This is partly due to the principle that some jurists adopt which states that the base position (*al-aṣl*) is that things are permissible since they are created for people to benefit from.<sup>48</sup> This means that the only foods that are impermissible are those that the *sharīʿah* indicates as being so. There are a number of verses from the Qurʾan that jurists cite to provide a broad basis for their discussions of what Muslims are allowed to eat and what they are not allowed to eat. These include, “Say: I do not find in that which was revealed to me any food that is consumed that is *ḥarām* except that it is *maytah*, flowing blood, or the meat of swine.” [6:145],<sup>49</sup> which is the most explicit verse in

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<sup>48</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:371; al-Anṣārī, *Asnā al-Maṭālib*, 3:401.

<sup>49</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:209; al-Anṣārī, *Asnā al-Maṭālib*, 3:401; al-Jundī, *al-Tawḍīḥ*, 2:634.

naming what is permitted and what is not permitted when it comes to food. Jurists also mention [6:15], “Permitted for them are the *ṭayyibāt* and forbidden for them are the *ḵhabā’ith*” [7:157],<sup>50</sup> “They ask you what is permitted to them. Say: Permitted to you are the *ṭayyibāt*,” [5:4].<sup>51</sup> There are other specific verses that enumerate a number of impermissible things such as wine and alcohol [5: 90],<sup>52</sup> as well as pork, carrion (*maytah*), and blood [5:3]. Jurists also rely on numerous hadiths to identify which specific animals are permitted for consumption. Additionally, jurists employ a set of principles drawn from these verses of the Qur’an and hadiths that act as guidelines for determining whether an animal can be eaten. As we shall see below, there are instances where these principles appear to be at odds with the scriptural texts permitting or prohibiting a particular animal. This leads some jurists to conceptualize the animal in question so that it falls in line with their principles.

For example, al-Sarakhsī states that consuming things which are disgusting (*mustakḵbath*) is forbidden according to the text, “Disgusting things are impermissible for you.” Thus, eating insects is forbidden because human nature finds them disgusting.<sup>53</sup> He goes on to assert that it is only things that are pure (*al-ṭayyibāt*) that are permitted for consumption quoting the Qur’anic verse, “O you who believe, eat from what we have given you that which is pure.” This, he says, is an honor for the believers since it is what the Prophets were addressed with “O

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<sup>50</sup> ‘Alā’ al-Dīn Abū Bakr b. al-Kāsānī, *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’* (Beirut: Dār al-Kutub al-‘Ilmiyah, 2003), 6:189; Muwaffaq al-Dīn ‘Abd Allāh b. Aḥmad Ibn Qudāmāh, *al-Mughnī* (Cairo: Maktabat al-Qāhirah, 1968), 9:504.

<sup>51</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:209; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:275.

<sup>52</sup> On the development of differing views on alcoholic drinks between Sunni schools of jurisprudence see Najam Haider “Contesting Intoxication,” *Islamic Law and Society* 20, no. 1–2 (2013): 48–89.

<sup>53</sup> al-Sarakhsī, *al-Mabsūṭ*, 1:220.

prophets, eat from the pure...”<sup>54</sup> As we saw in the previous section, this question of purity is the main qualifier that indicates whether something is permissible for consumption or not. Al-Kāsānī seems to consider the ability to differentiate between what is *ṭayyib* and what is *khabīth* to be an innate capacity of the human nature when it is in a correct state (*al-ṭibā’ al-salīma*). Explaining [7:157]<sup>55</sup> in the context of the impermissibility of eating horse meat he writes, “Horse meat is not *ṭayyib*, rather it is *khabīth* because correct natures do not deem it *ṭayyib*, rather they perceive it as disgusting (*tastakhbathahu*) such that you do not find anyone left to their own desires except that their nature is disgusted by it and avoids eating it.”<sup>56</sup>

Jurists can be explicit in systematically laying out their methods for determining whether or not an animal is permissible for consumption. Al-Juwaynī, for example, discusses three sources (*uṣūl*) for legal rulings regarding what is edible and what is inedible. These are the Qur’an and the sunna, with the latter being divided into explicit statements regarding the permissibility or impermissibility of eating certain animals, and statements that indicate their permissibility or impermissibility indirectly. This second category of hadiths include those hadiths in which the Prophet prohibits the killing of an animal, such as ants, bees, or the hoopoe (al-Juwaynī considers these to be impermissible for consumption) as well as those that he commands to be killed, such as *al-fawāsiq*<sup>57</sup> (these are also impermissible).<sup>58</sup> Both the Qur’an and the hadith fall into what are generally understood by Muslim legal theorists to be sources of

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<sup>54</sup> al-Sarakhsī, *al-Mabsūt*, 1:220.

<sup>55</sup> “Permitted for them are the *ṭayyibāt* and forbidden for them are the *khabā’ith*.”

<sup>56</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:189.

<sup>57</sup> This is a category of animal that includes scorpions and snakes.

<sup>58</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:210; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:272.

the sacred law. The third source that al-Juwaynī mentions, however, stands out. In addition to the Qur'an and the sunna, al-Shāfi'ī jurists refer to what people consider appetizing and what they consider unappetizing (*ma yustaṭāb wa yustakhbath*), which they say al-Shāfi'ī related to the verse from the Qur'an, "Say: permitted to you is that which is good (*al-ṭayyibāt*)" (5:4) and which he considered to be the greatest source of these rulings.<sup>59</sup> He acknowledges that there are aspects of this principle, however, that raise questions. Specifically, were the tastes of each and every people to be taken in to consideration, this would create differences in what is permissible and impermissible, "which is in opposition to the instantiation of the law which holds everyone to one rule."<sup>60</sup> For this reason he concludes that in order to determine what is *ṭayyib* one must look to the tastes of the Arabs. He sees an additional benefit here in that the Arabs are not prone to disgust so the list of permissible foods is expansive.<sup>61</sup> Al-Nawawī also engages in a prolonged discussion of this principle in which he addresses which Arabs should be taken into consideration.<sup>62</sup>

Al-Mardāwī opens his section on food stating that every substance that is pure is edible.<sup>63</sup> Al-Khiraqī begins the section of his *Mukhtaṣar* by endorsing two broad principles. The first is that an animal is forbidden if there is an explicit text of scripture prohibiting it.<sup>64</sup> The second is

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<sup>59</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:210; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:275.

<sup>60</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:210. A similar explanation is provided by al-Nawawī: al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:276.

<sup>61</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:210.

<sup>62</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:276.

<sup>63</sup> 'Alī ibn Sulaymān al-Mardāwī, *al-Insāf fī Ma'rifat al-Rājiḥ min al-Khilāf 'alā Madhhab al-Imām al-Mubajjal Aḥmad ibn Ḥanbal* (Cairo: Maṭba'at al-Sunnah al-Muḥammadīyah, 1955), 10:354.

<sup>64</sup> Ibn Qudāmah, *al-Mughnī*, 405.

that whatever the Arabs considered to be *ṭayyib* is permissible, and whatever they considered to be *khabīth* is impermissible.<sup>65</sup> As for the scriptural texts, Ibn Qudāmah highlights Qur’an [5:3] as explicitly prohibiting carrion, blood, pork, and whatever is slaughtered in other than God’s name.<sup>66</sup> As for the idea that what Arabs considered to be good is permissible and whatever they considered to be disgusting or impure is impermissible, Ibn Qudāmah supports this by quoting Qur’an [7:157], “Permitted to you are the *ṭayyibāt*,” and [5:4], “They ask you what is permitted to them. Say: Permitted to you are the *ṭayyibāt*.”<sup>67</sup> For Ibn Qudāmah, *al-ṭayyib* cannot be a mere synonym for halal since if it were, the answer provided in the Qur’an would be redundant.<sup>68</sup> He interprets it as meaning, “what they deem to be *ṭayyib*.”<sup>69</sup> The evidence that what the Arabs deem to be disgusting is forbidden is found in the verse, “Forbidden to you are the *khabā’ith*.”<sup>70</sup> Ibn Qudāmah further limits those whose tastes are taken into consideration in this context to the city-dwelling Arabs of the *ḥijāz* since they are explicitly addressed by the Qur’an and the sayings of the Prophet. As such, it is their linguistic usage in particular that is given precedence when interpreting scripture.<sup>71</sup> In this conceptualization of the rule, it is not so much that the cultural

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<sup>65</sup> Ibn Qudāmah, *al-Mughnī*, 9:405. The same principle is found in *al-Inṣāf* (Mardāwī, *al-Inṣāf*, 10:357).

<sup>66</sup> Ibn Qudāmah, *al-Mughnī*, 9:405.

<sup>67</sup> Ibn Qudāmah, *al-Mughnī*, 9:405.

<sup>68</sup> Ibn Qudāmah, *al-Mughnī*, 9:405.

<sup>69</sup> Ibn Qudāmah, *al-Mughnī*, 9:405. *al-Mardāwī* gives a similar explanation of what is *mustakhabath* (*al-Mardāwī*, *al-Inṣāf*, 10:357).

<sup>70</sup> Ibn Qudāmah, *al-Mughnī*, 9:405–6. See also *al-Mardāwī*, *al-Inṣāf*, 10:356. where he mentions that *al-Khiraqī* was the first *Ḥanbalī* to state that what the Arabs deemed *khabīth* is forbidden and that although this is now the position of the school, early scholars did not pay attention to what the Arabs deemed *khabīth* and considered anything not forbidden by the law to be permissible.

<sup>71</sup> Ibn Qudāmah, *al-Mughnī*, 9:405–6. For various opinions on which Arabs are taken into consideration on this question see: *al-Mardāwī*, *al-Inṣāf*, 10:357.

tastes of the Arabs, their likes and dislikes, have inherent ethical value, rather it is that their use of language is given primacy. What the Arabs deemed to be *tayyib* is relevant because it is a key to understanding the meaning of the term *tayyib* when it is used in the Qur'an. That being said, non-city dwelling Arabs' tastes are not considered because, according to Ibn Qudāmah, they eat anything they can due to the challenging circumstances in which they find themselves. This does raise the question of how to determine the ruling of animals that were unknown in the *hijāz*. Ibn Qudāmah says that in this case one looks to see if there are any animals in the *hijāz* that are similar to it. If there are, then it takes the same ruling. If there are not, then it is permissible based on the general meaning of the verse, "Say: I do not find in what was revealed to me anything that is forbidden except..." [6:145] and the statement of the Prophet, "Whatever God is silent about He has forgiven (*'afā 'anhu*)."<sup>72</sup>

In the following pages, I will look in detail at some of the debates that Muslim jurists engage in regarding different animal species and whether or not they are edible. At the root of this debate is the question of which animals may be hunted or slaughtered. I divide this section of the chapter into smaller sections each devoted to a particular species or relevant theme as viewed from the four Sunni schools of jurisprudence. I will with those animals regarding which there is agreement that they are edible, then I will discuss those regarding which jurists agree are inedible, and I will devote the remainder of the section to animals regarding which there is significant disagreement between the schools.

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<sup>72</sup> Ibn Qudāmah, *al-Mughnī*, 9:406.

### *Permissible Animals*

Jurists broadly agree that among domesticated animals, bovine cattle, camels, sheep, goats, are all permissible.<sup>73</sup> As for wild animals, jurists similarly agree that herbivorous animals that do not have canines that they hunt with<sup>74</sup> are permissible.<sup>75</sup> These include animals such as the gazelle and the wild ass. Jurists discuss the question of whether the ruling of the wild ass changes if it becomes domesticated. At the heart of this question is whether the defining characteristic is the animal's species or its state of being wild or domesticated. On this point jurists across the schools agree that the wild ass is permissible regardless of whether it is in a wild state or becomes domesticated,<sup>76</sup> although there are two opinions in the Mālikī School regarding this case. One opinion says that if the wild ass becomes domesticated, it is no longer permissible for consumption, although Khalīl seems to indicate that the opinion that says the domestication would have no effect takes precedence.<sup>77</sup> Zakarīya al-Anṣārī of the Shāfi'ī school states that the difference between the domesticated donkey and the wild ass is that the wild ass cannot be benefited from as a riding or a pack animal so the benefit of them must be found in

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<sup>73</sup> al-Jundī, *al-Tawdīh*, 2:642; al-Sarakhsī, *al-Mabsūt*, 11:220; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:185; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:210–11; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271–73; Ibn Qudāmah, *al-Mughnī*, 9:411; al-Mardāwī, *al-Inṣāf*, 10:363–64.

<sup>74</sup> This refers to the way in which Muslim jurists conceptualized these animals. As we shall see below, they considered elephants to be wild animals that hunt and thought of their tusks as canines (al-Mardāwī, *al-Inṣāf*, 10:356).

<sup>75</sup> al-Jundī, *al-Tawdīh*, 2:642; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:191; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:211; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271; Ibn Qudāmah, *al-Mughnī*, 9:411; al-Mardāwī, *al-Inṣāf*, 10:355.

<sup>76</sup> al-Sarakhsī, *al-Mabsūt*, 11:233; Ibn Qudāmah, *al-Mughnī*, 9:411.

<sup>77</sup> al-Jundī, *al-Tawdīh*, 2:650.

their meat.<sup>78</sup> Embedded in this justification of the ruling is the idea that animals exist to benefit humans and that one of the roles that the sacred law plays is in identifying the nature of that benefit and making it available to people. It is clear however, that there are many animals concerning which it is challenging to identify a direct line of benefit for humans. It is also hard to ignore the idea that animals live for their own sakes as well as, or instead of, solely for the benefit of humans. In this regard, Sarra Tlili's work examining Qur'anic discourses on animals is helpful in identifying that this anthropocentric worldview is not necessarily universal in Islamic discourses.<sup>79</sup> It does seem apparent, however, that Muslim jurists do adopt a primarily anthropocentric view when thinking about animals in the sphere of the law.<sup>80</sup> This may be due in part to the nature of Islamic law in that it applies exclusively to human actions, while other Islamic discourses may identify animals as having their own ends and intrinsic value. Even in the realm of Islamic law, the view is not completely anthropocentric. One of the things I hope to demonstrate in this chapter is that, when considering animal slaughter in particular, the subjective experience of the animal being slaughtered is an area of primary concern for Muslim jurists and an important way that the ritual is framed, even if they adopt an anthropocentric view of the world in which animals are created for the benefit of humans.

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<sup>78</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:401.

<sup>79</sup> See: Tlili, *Animals in the Qur'an*.

<sup>80</sup> One of the clearest articulations of this is that provided by al-Sarakhsī which was quoted in Chapter One. See: al-Sarakhsī, *al-Mabsūṭ*, 11:221.

### *Impermissible Animals*

There are very few animals regarding whose impermissibility jurists agree across the schools. Primarily, jurists agree that pigs are not permissible,<sup>81</sup> although some jurists do not name them, perhaps because they are the one species that is explicitly mentioned in the Qur'an.<sup>82</sup> Additionally, there is agreement regarding the impermissibility of donkey and mules.<sup>83</sup> Although there is general agreement on this point, there is also significant discussion of the evidence backing it up, whereas in the case of pigs, they are often just lumped in with wild animals that hunt. Even here, however, there is some slight disagreement. The widespread opinion (*mashhūr*) in the Mālikī School, for example, is that donkeys and mules are not allowed, but there is also an opinion of Mālik's that says they are *makrūh*.<sup>84</sup> It is in this context that some Mālikī jurists state that all the animals between the elephant and the ant are either *makrūh* or *mubāḥ* except for what is exempted in the verse of the Quran (i.e. 6:145). After stating that donkey is impermissible according to the Hanafī position, al-Sarakhsī mentions that it is permissible according to Mālik.<sup>85</sup> One of the points that he discusses regarding this difference of opinion is that some held that the donkey was similar to the wild ass (*al-ḥimār al-waḥshī*). According to the principle that views all domesticated animals as having the same ruling as similar wild animals, this would mean that

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<sup>81</sup> al-Jundī, *al-Tawdīḥ*, 2:642; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:210–11; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271; Ibn Qudāmah, *al-Mughnī*, 9:405.

<sup>82</sup> “Forbidden to you are carrion, blood, and the flesh of swine...” [4:3].

<sup>83</sup> ‘Abd Allāh ibn ‘Abd al-Raḥmān Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt* (Beirut: Dār al-Gharb al-Islāmī, 1999), 4:372; al-Sarakhsī, *al-Mabsūṭ*, 11:232–33; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:185–86; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:211; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271; Ibn Qudāmah, *al-Mughnī*, 9:407.

<sup>84</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:372; al-Jundī, *al-Tawdīḥ*, 2:645.

<sup>85</sup> As we have seen however, this is not the position adopted in the Mālikī School.

donkey is permissible. In addition to debating the interpretation of texts that might be used to argue that donkey meat is permissible, al-Sarakhsī refutes this taxonomical argument and states that there is no similarity between the donkey and the wild ass, and even if there were a similarity, similarities are merely outward forms, so this argument cannot be used as evidence for permissibility<sup>86</sup> Aside from these two, there is some form of disagreement among the schools regarding almost every other animal. This is due, in part, to the expansive position adopted by Mālikī scholars who consider the vast majority of animals to be either permissible or disliked, but not forbidden.

### *Horses*

While we have seen that there is agreement between the schools of law regarding the impermissibility of donkeys and mules, there is not similar agreement regarding horses. Some schools of law permit the consumption of horses; some forbid it; and some consider it disliked. The case of horses is helpful in illustrating what is at stake for jurists in assessing the permissibility of horses. While it reveals something about scholarly commitments to scriptural traditions, it also sheds light on the ways in which jurists thought about the relationship between humans and non-human animals as one in which non-human animals are meant to benefit humans. As we shall see, some jurists rationalize the impermissibility of horses in terms of what their purpose is; horses are meant for riding, not for eating.

There is a variety of opinions in the Mālikī School regarding horses including positions that they are permitted, *makrūh*, or *ḥarām*.<sup>87</sup> The apparent opinion in the *Muwaṭa'* is that horses

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<sup>86</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:233.

<sup>87</sup> al-Jundī, *al-Tawḍīḥ*, 2:645. On this point, Ibn Abī Zayd says, “Horses are not eaten, but this does not reach the ruling of them being forbidden because of the difference of opinion that exists regarding them,”

are forbidden based on the verse that states, “Horse, mules, and donkeys for you to ride and as adornment,” [16:8]. Mālikī jurists interpret this as indicating that the ways that humans are meant to use these animals are limited to what was mentioned in the verse. Here we see that there is a vision that animals are created for the benefit of human beings, but that the roles and benefits of some animals are clearly delineated and restricted in revelation.<sup>88</sup> This is further supported by the idea that the Qur’an explicitly mentioned that *al-an‘ām* are to be eaten, so if this were true for horses it would have been mentioned in their regard as well.

Al-Sarakhsī engages in a fairly extensive discussion of the permissibility or impermissibility of eating horse meat. He begins by relating two hadiths that he says indicate the permissibility of eating horse meat by showing that companions of the Prophet would slaughter horses to benefit from eating them. According to al-Sarakhsī, this is the opinion adopted by all of Muḥammad al-Shaybānī, Abū Yūsuf, and al-Shāfi‘ī, but that Abū Ḥanīfah considered it disliked. He says that the apparent meaning of Abū Ḥanīfah’s statement in the *Kitāb al-Ṣayd* is that it is a dislike of *tanzīh* because he says, “Some scholars have allowed (*rakhaṣa*) for the eating of horse meat. As for me, I do not like eating it.” His statement in *al-Jāmi‘ al-Ṣaghīr*, however, indicates that it is a dislike of *tahrīm* because he says “I dislike (*akrah*) horse meat.” Al-Sarakhsī explains that according to Abū Yūsuf, when Abū Ḥanīfah says of something, “I dislike it (*akrahahu*)” it means it is forbidden (*tahrīm*).<sup>89</sup> Al-Sarakhsī goes on to explain the evidence of those who allow eating horse meat which includes indications that horse meat was sold in markets without anyone denouncing it, water that horses have drunk from being completely pure, and its urine taking the

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(Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:372).

<sup>88</sup> al-Jundī, *al-Tawdīh*, 2:645.

<sup>89</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:233.

same ruling as the urine of animals which are permitted for consumption.<sup>90</sup> Those who held this opinion would interpret reports that individuals forbade eating horse meat because horses were few in number and they were needed as weapons in battle. Thus, horse meat was not forbidden in and of itself, but rather for an external reason.<sup>91</sup> Al-Sarakhsī explains that Abū Ḥanīfah’s opinion is based on the Qur’anic verse which states “Horses, mules, and donkeys for you to ride and as an adornment.” [16:8] This indicates that “God has blessed His servants with the benefits that He has provided in horses in the form of riding and adornment. If they were to be eaten then it would have been more fitting to have clarified the benefit of eating them since it is the greatest form of benefit through which people remain alive. It is not befitting of the wisdom of the All-Wise to disregard the greatest form of benefit when manifesting blessings and mention that which is beneath it. Do you not see that when it comes to cattle He mentions this saying, ‘And of them you eat?’”<sup>92</sup> Al-Sarakhsī makes a number of other arguments for the impermissibility of horse meat including citing traditions that declare horse meat impermissible and highlighting the similarities between horses, donkeys, and mules. Although al-Sarakhsī does not make a clear statement as he does on some other issues he seems to uphold Abū Ḥanīfah’s position of horse meat being *makrūh taḥrīmī*.<sup>93</sup> Al-Kāsānī also adopts the opinion that eating horse meat is *makrūh* and provides similar evidence indicating that the appropriate use for horses is riding.<sup>94</sup> One of the things that makes the arguments regarding horse meat valuable for coming to an understanding

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<sup>90</sup> al-Sarakhsī, *al-Mabsūt*, 11:233.

<sup>91</sup> al-Sarakhsī, *al-Mabsūt*, 11:234.

<sup>92</sup> al-Sarakhsī, *al-Mabsūt*, 11:234.

<sup>93</sup> al-Sarakhsī, *al-Mabsūt*, 11:234.

<sup>94</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:187–89.

of the ways in which al-Sarakhsī categorizes animals is the emphasis that is placed here on the ways that humans use and benefit from them. The argument is not so much that horse meat is impure or filthy, but rather that horses are meant for humans to benefit from in ways other than eating. At one point, al-Sarakhsī even likens horses to human beings: they are not eaten because of their being honored, not because of their being impure.<sup>95</sup>

Shāfi‘īs consider horses to be permissible<sup>96</sup> based on hadiths such as the narration of Jābir who reportedly said, “We ate horse and wild ass during the time of Khaybar.”<sup>97</sup> Shāfi‘ī jurists respond to the claim that the verse, “To ride them and as adornment, “ [16:8] restricts the use of horses and excludes their consumption by saying that the verse does not preclude their being permissible uses for horses other than those mentioned.<sup>98</sup> Ḥanbalī jurists also permit the consumption of horse meat.<sup>99</sup> In part this is because they do not consider the verse that refers to riding horses as being exhaustive in listing the permitted uses of them. Therefore, they find no reason to prohibit their consumption, particularly in light of hadiths reporting that the companions of the Prophet ate horse meat during his time in Medina.<sup>100</sup>

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<sup>95</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:234.

<sup>96</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:210–11; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271.

<sup>97</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:402.

<sup>98</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:402.

<sup>99</sup> Ibn Qudāmah, *al-Mughnī*, 9:411–12; al-Mardāwī, *al-Inṣāf*, 10:363.

<sup>100</sup> Ibn Qudāmah, *al-Mughnī*, 9:411–12.

### *Beasts of Prey*

In the case of beasts of prey that hunt for their food and nourish themselves with their canine teeth, many jurists argue that these fall under the category of *khabā'ith*,<sup>101</sup> “because they eat corpses (*al-jīf*) and the Arabs do not consider them desirable (*tastaṭīb*).”<sup>102</sup> There are two principles that are imbedded in such a statement. The first is that what an animal eats can impact whether or not that animal is permissible for consumption. For example, some Muslim only allow the consumption of herbivorous animals. The second is that, as we have seen above, the tastes of the Arabs are given legal weight. Jurists list specific animals that fall into this category of wild carnivorous animals, particularly in larger works of jurisprudence. While many of the animals mentioned there are unsurprising, such as dogs, lions, wolves, and leopards, there are some animals that we would not expect to find in this category, such as the case of elephants discussed below.

There is a difference of opinion amongst Mālikīs, regarding wild animals that hunt (*yaftaris*).<sup>103</sup> The opinion found in the *Muwaṭa'* is that these animals are forbidden due to the hadith that Mālik relates which states that the Prophet said, “Eating beasts of prey that have canine teeth is *ḥarām*.”<sup>104</sup> The opinion that is related by the Irāqī Mālikīs, and which is the apparent ruling of the *Mudawana*,<sup>105</sup> however, is that wild animals that hunt for food are

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<sup>101</sup> This category is deemed impermissible due to Qur'an 7:157.

<sup>102</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:402.

<sup>103</sup> al-Jundī, *al-Tawḍīḥ*, 2:643.

<sup>104</sup> al-Jundī, *al-Tawḍīḥ*, 2:643.

<sup>105</sup> This is the text by Suḥnūn in which he relates the legal rulings of Imam Mālik according to his student Ibn al-Qāsim.

*makrūh*.<sup>106</sup> The rationale for this ruling is that Mālikī used the phrase, “I don’t like” in reference to eating hyenas, foxes, wolves, wild or domesticated cats, and other predators. Jurists couple this with the verse of the Qur’an, “Say: I do not find in that which was revealed to me any food that is consumed that is *ḥarām* except that it is *maytah*, flowing blood, or the meat of swine,” [6:145], which they take to be general in permitting the consumption of everything not explicitly mentioned in it.<sup>107</sup> As we shall see when examining other schools, this is a somewhat unique reading of the verse by Mālikīs. This position which views eating predatory animals as being only *makrūh* rather than *ḥarām* appears to contradict the hadith in the *Muwaṭṭa’* mentioned above that states eating predatory animals is forbidden. Mālikīs who hold this opinion, however, interpret that hadith as referring not to predatory animals but to animals that have been partially eaten by predatory animals,<sup>108</sup> which corresponds to Qur’ān 5:3. There is also a third opinion held by Mālikīs from Medina related by students of Imām Mālik which is to distinguish between predatory animals that attack human beings and those that do not. These jurists hold that predatory animals that attack humans are *ḥarām* whereas those that do not attack humans are *makrūh*.<sup>109</sup> Those that attack include wolves, leopards, and dogs, while those that do not attack include foxes, bears, and wild and domesticated cats.<sup>110</sup>

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<sup>106</sup> al-Jundī, *al-Tawḍīḥ*, 2:743 and 645. One of the principles of the Mālikī School is that the opinions of the *Mudawwana* are given precedence over the opinions of the *Muwaṭṭa’* since the former is a text that explicitly focuses on legal rulings.

<sup>107</sup> al-Jundī, *al-Tawḍīḥ*, 2:743.

<sup>108</sup> al-Jundī, *al-Tawḍīḥ*, 2:643.

<sup>109</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:372; al-Jundī, *al-Tawḍīḥ*, 2:643.

<sup>110</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:372.

The Ḥanafī position, in contrast, is that it is permissible to hunt and eat wild land animals except for those which have fangs or claws without making a distinction between those that hunt and those that do not.<sup>111</sup> This is based on the hadith that states, “that the Prophet forbade eating all beasts of prey that have canine teeth...”<sup>112</sup> Shāfi‘īs also view eating predator animals that feed themselves with their canines (*mā yataqawwā binābihi min al-sibā`*) as being unequivocally *ḥarām*.<sup>113</sup> Their evidence for this is the Qur’anic verse that states, “And *al-khabā`ith* are forbidden to you,” [7:157] along with the claims that they eat carrion (*al-jīf*) and that the Arabs did not consider them to be *ṭayyib* (*la tastaṭībuhu al-‘arab*),<sup>114</sup> in addition to hadiths that indicate their impermissibility. Such animals include dogs, lions, wolves, tigers, and bears,<sup>115</sup> but also elephants and monkeys.<sup>116</sup> Ḥanbalī jurists similarly rule according to hadiths that state that the Prophet forbade eating (*akl*) every predatory animal with a canine.<sup>117</sup> They interpret these as meaning that all predatory animals with a canine are indeed forbidden for consumption. These include lions, tigers, wolves, dogs, and pigs,<sup>118</sup> but it does not include hyenas, which they consider permissible.<sup>119</sup>

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<sup>111</sup> al-Sarakhsī, *al-Mabsūṭ*, 220; al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:191.

<sup>112</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:191.

<sup>113</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271; al-Anṣārī, *Asnā al-Maṭālib*, 3:402.

<sup>114</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:402.

<sup>115</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271; al-Anṣārī, *Asnā al-Maṭālib*, 3:402–4.

<sup>116</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271.

<sup>117</sup> Ibn Qudāmah, *al-Mughnī*, 9:408; al-Mardāwī, *al-Inṣāf*, 10:355.

<sup>118</sup> Ibn Qudāmah, *al-Mughnī*, 9:408; al-Mardāwī, *al-Inṣāf*, 10:355.

<sup>119</sup> Ibn Qudāmah, *al-Mughnī*, 9:408; al-Mardāwī, *al-Inṣāf*, 10:355.

## *Hyenas*

In his article “Early Islamic Dietary Law,” Michael Cook refers to hyenas, along with foxes, as “the two most controversial beasts of prey.”<sup>120</sup> While Cook is referring specifically to the realm of Islamic jurisprudence, the hyena is an animal that has confused people for generations and regarding whom controversial statements abound.<sup>121</sup> As we shall see, these controversial statements and misconceptions are replicated by Muslim jurists. The controversy in Islamic law is not just because there is a difference of opinion between the schools of law regarding them. This could be true of many of the animals I discuss in this section. What makes the hyena so controversial is the nature of the disagreement in which textual evidence appears to be at odds with textually derived principles regarding animal purity. In order to make sense of this apparent contradiction, jurists present an imaginary description of the hyena that draws on ancient tropes about this long-misunderstood animal. These include the more far-fetched idea that hyenas are hermaphrodites that change gender from year to year, to the apparently banal, but not less false, idea that they do not hunt for their food.

As we have seen above, the majority of Muslim jurists do not allow for the consumption of beasts of prey who hunt for their food with canine teeth. The exception to this general rule is found in the Mālikī school as Mālikī jurists consider eating such animals to be disliked rather

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<sup>120</sup> Michael Cook, “Early Islamic Dietary Law,” *Jerusalem Studies in Arabic and Islam* 7 (1986): 250.

<sup>121</sup> On the hyena in popular imagination including an explanation of many of the myths repeated by Muslim jurists see: Stephen E Glickman, “The Spotted Hyena from Aristotle to the Lion King: Reputation Is Everything,” *Social Research* 62, no. 3 (1995): 501–37.

than prohibited. In this regard, they categorize them as predatory animals that do not attack.<sup>122</sup> While there is a strand of thought in the Mālikī School that considers consuming hyenas to be disliked (*makrūh*),<sup>123</sup> in his commentary on the *Mukhtaṣar* of Ibn Ḥājib, Khalīl states that the apparent ruling (*al-dhāhir*) is that they are permissible based on a hadith that Mālik narrates in the *Muwaṭaʿ*. The hadith in question states that the compensation for killing a hyena while in a state of *iḥrām* is a ram. Although he does not discuss a rationale for this ruling, he does say that it “indicates that it is a hunted animal (*ṣayd*) and not a beast of prey (*sabʿ*),<sup>124</sup> which makes it permissible and not *makrūh*. That being said, there are reports that Mālik considered eating hyenas to be disliked, “even if more than one of the Prophet’s companions ate it.”<sup>125</sup>

Ḥanafī jurists, on the other hand, do not permit the consumption of hyenas at all. Some of this is based on the ways in which they evaluate and compare textual evidence. Al-Kāsānī, for example, explains that they are impermissible based on the *mashhūr* hadith that forbids eating animals that have canines. Shāfiʿī jurists, he says, base their ruling of permissibility on a hadith that is not *mashhūr*, so the *mashhūr* hadith is given more evidentiary weight.<sup>126</sup> In addition to textual evidence, al-Sarakhsī states that hyenas are forbidden because, “They are disgusting (*mustakhbath*) based on their intention to cause harm and their ignorance (*al-balata*).”<sup>127</sup> In connection with this he also provides a principal that says it is impermissible to

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<sup>122</sup> al-Jundī, *al-Tawḍīḥ*, 2:643.

<sup>123</sup> al-Jundī, *al-Tawḍīḥ*, 2:643.

<sup>124</sup> al-Jundī, *al-Tawḍīḥ*, 2:643.

<sup>125</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:373.

<sup>126</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 6:193.

<sup>127</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:255.

eat anything that eats corpses,<sup>128</sup> which of course includes the assumption that this is typical hyena behavior.<sup>129</sup>

Shāfi‘īs hold that hyenas are permissible.<sup>130</sup> This is in part based on a hadith found in al-Tirmidhī’s collection in which Jābir reports that the Prophet said that it was a hunted animal which was permissible for consumption.<sup>131</sup> Some Shāfi‘īs try to make sense of these apparently contradictory rulings, that predatory animals are forbidden and that hyenas are permissible, by describing hyenas as being weak and not nourishing themselves by way of their canines.<sup>132</sup> This we know is factually false, but it is one of many misconceptions of animals, and hyenas in particular, that we find amongst Muslim scholars. Shāfi‘īs place foxes in the same category of hyenas<sup>133</sup> also stating that they do not nourish themselves by way of their canines and that they are *ṭayyib*.<sup>134</sup> Ḥanbalī jurists similarly exclude hyenas from the prohibition of animals that hunt with canines and they consider them to be permissible.<sup>135</sup> Ḥanbalī jurists similarly permit eating hyenas.<sup>136</sup> Ibn Qudāmah resolves the apparent contradiction between traditions by offering the opinion that the hadith of Jābir which expressly permits eating hyenas does not contradict the

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<sup>128</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:225.

<sup>129</sup> Jurists from other schools agree that animals that eat corpses are impermissible, but they still allow the consumption of hyenas.

<sup>130</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:211; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:272.

<sup>131</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:211; al-Anṣārī, *Asnā al-Maṭālib*, 3:403.

<sup>132</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:403.

<sup>133</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:211.

<sup>134</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:408.

<sup>135</sup> Ibn Qudāmah, *al-Mughnī*, 9:408; al-Mardāwī, *al-Inṣāf*, 10:355.

<sup>136</sup> Al-Mardāwī, *al-Inṣāf*, 3:355.

hadith that forbids eating animals that have canines and hunt. Instead, he says that it qualifies that hadith and is more specific in its ruling, therefore it takes precedence in this case.<sup>137</sup> At the same time, however, he shares reports that claim hyenas do not have canine teeth, “It is said that they do not have canines and all of their teeth are one bone like a horse’s hoof. Based on this they are not covered by the general prohibition.”<sup>138</sup>

Hyenas then present us with a fascinating case of jurists attempting to make sense of the animal world by placing animals into meaningful categories while at the same time attempting to remain loyal to the textual evidence that is given evidentiary weight in their schools. The case of the hyena reveals the methodological commitments of certain schools, such as the Shāfi‘ī and Ḥanbalī emphasis on prophetic traditions and the Ḥanafī reliance on discursive practices of coming to determinations while still holding fast to evidentiary texts. In the absence of the hadiths that indicate the permissibility of hyenas, they would squarely fall into the category of animals that hunt for prey and would take the same ruling as animals that are similarly categorized. The hadiths, however, generate a need for jurists of certain schools to reimagine hyenas in a way that would make sense of their being considered edible. It just so happens that hyenas have been perennially maligned in the sources, which provided a wealth of information for jurists to rely on when categorizing them. The question remains whether historically prevalent misconceptions about hyenas contributed to the ambiguity of their ruling or if it played a solely post-facto role in justifying that ambiguity. As Michael Cook stated, the hyena is indeed controversial and it is one of the few land animals regarding which there is such a significant debate oscillating between permissibility and prohibition.

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<sup>137</sup> Ibn Qudāmah, *al-Mughnī*, 9:423.

<sup>138</sup> Ibn Qudāmah, *al-Mughnī*, 9:423.

## *Elephants*

Elephants are another whose nature Muslim jurists misunderstood and which influenced their ruling on it. Elephants are not nearly as controversial as hyenas because jurists generally agree that they are at least disliked if not impermissible. Although they are herbivorous, Muslim jurists categorize them as being beasts of prey and therefore do not allow for their consumption. This is an interesting case in that the rulings regarding them are based on particular ways of thinking about animals. Jurists of the different schools agree that eating elephants is not permitted, but they justify this ruling by placing them in the category of beasts of prey who hunt for their food<sup>139</sup> and considering their tusks to be canines.

One of the principles adopted by Ḥanafī jurists is that wild animals that have fangs or claws are impermissible<sup>140</sup> and they include elephants in this category.<sup>141</sup> Shāfi‘ī also include elephants in the category of animals that hunt with canines and therefore consider them impermissible.<sup>142</sup> Al-Nawawī does mention that the Shāfi‘ī jurists Abū ‘Abdillāh al-Būshanjī adopted the position of Mālik and considered elephants permissible saying that they do not attack unless they are *al-faḥl al-mughtalam*.<sup>143</sup> It should be noted that even here, the issue is not about the dictates of Islamic law but about how elephants are conceptualized.

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<sup>139</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:209.

<sup>140</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:220.

<sup>141</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:193.

<sup>142</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271–72; al-Anṣārī, *Asnā al-Maṭālib*, 3:403.

<sup>143</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271–72.

Elephants are also impermissible according to Ḥanbalīs because they are beasts of prey that have canines,<sup>144</sup> and Ibn Qudāmah relates that Imām Ahmad said that they are not from the food of Muslims.<sup>145</sup> Ibn Qudāmah is also clear that he considers elephant tusks to be the same as the canines (*nāb*) that are mentioned in the hadith that prohibits eating predators with canines. On this point, Ibn Qudāmah says, “And the elephant has the largest canine (*nāb*) among them.”<sup>146</sup> In this regard it appears that Muslim jurists are unaware that elephants are herbivorous and therefore should probably not be categorized as predators. Should contemporary Muslim jurists be encouraged to reevaluate this ruling? The absence of such revised rulings on elephants may reflect the on the ground reality that making elephants permissible would likely not result in any benefit but could possible bring about more harm.

Mālikī, however, jurists place elephants in different category. Instead of basing their ruling on whether or not they are predatory beasts that have canines, Mālikī jurists consider whether it matters that there are reports that elephants, along with monkeys, underwent a process of transubstantiation in which God punished particular human communities by transforming them into these animals.<sup>147</sup> For some jurists, this report of substantiation is enough to make the animals impermissible, while other Mālikīs hold that they it has no effect as it was specific animals that were transformed, not the entire species. On this understanding, elephants would be permissible.<sup>148</sup>

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<sup>144</sup> Ibn Qudāmah, *al-Mughnī*, 9:409; al-Mardāwī, *al-Inṣāf*, 10:356.

<sup>145</sup> Ibn Qudāmah, *al-Mughnī*, 9:409.

<sup>146</sup> Ibn Qudāmah, *al-Mughnī*, 9:409.

<sup>147</sup> al-Jundī, *al-Tawdīh*, 2:643.

<sup>148</sup> al-Jundī, *al-Tawdīh*, 2:643–44.

## *Lizards*

The horn-tailed lizard (*dabb*) is another animal regarding which there is significant debate. In this case, the debate is not related to the nature of the animals itself, rather it is the result of differing interpretations of the relevant hadiths and ideas regarding which animals are *tayyib* and which are *khābīth*. For Shāfi'ī jurists the hadith in which the Prophet refrains from explicitly forbidding the *dabb* is sufficient evidence that it is permissible.<sup>149</sup> Thus they permit the horn-tailed lizard because some of the companions reportedly ate it in the presence of the Prophet. Although he did not eat it himself saying that it was not found in his homeland so he found himself disliking it.<sup>150</sup> Mālikīs also consider eating the horn-tailed lizard to be permissible.<sup>151</sup> The context for this ruling is the hadith related by Bukhārī and Muslim according to Ibn 'Abbās in which he states, “Khālīd b. Wālīd and I entered Maymūna’s house with the Messenger of God and a grilled horn-tailed lizard was brought. The Messenger of God extended his hand so one of the women who was in Maymūna’s house said, ‘Tell the Messenger of God what he is trying to eat.’ The Messenger of God lifted his hand so I said, ‘Is it *ḥarām* Messenger of God?’ He said, ‘No but it was not in the land of my people so I find that I don’t like it.’ Khālīd said, ‘So I pulled it towards myself and ate it while the Prophet watched.’”<sup>152</sup> Ḥanbalī jurists also permit eating the horn-tailed lizard<sup>153</sup> and provide a similar rationale based on the tradition

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<sup>149</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:212; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:272; al-Anṣārī, *Asnā al-Maṭālib*, 3:403.

<sup>150</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:403.

<sup>151</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:373; al-Jundī, *al-Tawḍīḥ*, 2:644–45.

<sup>152</sup> al-Jundī, *al-Tawḍīḥ*, 2:644.

<sup>153</sup> al-Mardāwī, *al-Inṣāf*, 10:374.

mentioned above.<sup>154</sup> Ibn Qudāmah further explains that the ruling is relate to the definition of animals that have a canine with which they hunt. “If the horn-tailed lizard has a canine with which it hunts,” he writes, “then it would be forbidden. Otherwise, it would be permissible.”<sup>155</sup>

For Ḥanafīs however, the *dabb* falls into the category of *al-khabā'ith* and they apply general principles to consider it impermissible. They also address the hadiths that the Shāfi'īs cite and contextualize them saying that since the Prophet refrained from eating it, this is evidence that it is *makrūh* and that one should be repelled by it. For the Ḥanafīs the *dabb* lizard is impermissible<sup>156</sup>. Al-Sarakhsī debates the meaning of a few hadiths that variously appear to indicate the permissibility and the impermissibility of eating such lizards.<sup>157</sup> In addition to this textual discussion, al-Sarakhsī engages the question of transubstantiation (*al-mamsūkh*). He states that some of the later scholars have said that lizard is impermissible because it is among the animals that have been transubstantiated, based on the report that there were two groups of Israelites, one of whom took the path of the sea, and the other took the path of the land, and one of the groups were transformed into lizards, monkeys, and pigs. He says that this has been

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<sup>154</sup> Ibn Qudāmah, *al-Mughnī*, 9:422.

<sup>155</sup> Ibn Qudāmah, *al-Mughnī*, 9:409–10.

<sup>156</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:231.

<sup>157</sup> E.g. reports that 'Ā'isha was gifted a lizard and when she asked the Prophet about it he said that he disliked it (*karahahu*). Someone came asking [for charity] and she wanted to give them the lizard and he asked her, “Are you going to feed them what you won't eat yourself?” This is the position that al-Sarakhsī adopts (*wa bihi na' khudh*). According to al-Sarakhsī the Shāfi'īs rely on different hadiths including one in which the Prophet states, “It is not eaten by my people and I find that I am repulsed by it so I do not make it permissible or impermissible,” and another in which it is reported that lizard was eaten at the table of the Prophet and amongst those who ate it was Abū Bakr and the Prophet was looking at him and laughing. Al-Sarakhsī explains why he interprets the hadith of 'Ā'isha as indicating that eating the lizard is impermissible and argues that the other narrations must have occurred before lizard was declared to be impermissible. Additionally, al-Sarakhsī reiterates a principle that holds that if there are two contradicting pieces of evidence, one of which requires permissibility and the other requires impermissibility, the one that requires impermissibility takes precedence (al-Sarakhsī, *al-Mabsūṭ*, 11:231).

ascribed to the Prophet but that it is not well-known (*mashhūr*). More importantly, he argues that animals that are transubstantiated humans have no offspring and do not remain. As a result, the animals that exist today are not transubstantiated humans, even if members of their species once were.<sup>158</sup> This is similar to the argument we saw presented above regarding the ruling on elephants in the Mālikī school.

### *Birds*

The ruling against eating animals that hunt other animals for food is not limited to land animals but it can include birds of prey as well. Ḥanafī, Shāfi‘ī, and Ḥanbalī jurists state that it is not permitted to eat animals that feed themselves by way of their talons<sup>159</sup>, which includes falcons, eagles, hawks, vultures, and certain kinds of crows. There is an expansive view amongst Mālikī jurists regarding birds in that the widespread opinion (*al-mashhūr*) is that all birds are permissible,<sup>160</sup> although there is some difference of opinion due to the hadith that states that the Prophet forbade eating birds that have talons.<sup>161</sup> Mālikī jurists do not, however, seem to distinguish between birds that eat corpses and birds that do not in their ruling of whether they are permissible.<sup>162</sup> In this sense, they are the outliers with regards to their rulings on birds.

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<sup>158</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:232.

<sup>159</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:193; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:211; al-Nawawī, *Rawḍat al-Ṭalībīn*, 3:271; al-Anṣārī, *Asnā al-Maṭālib*, 3:403; Ibn Qudāmah, *al-Mughnī*, 9:410.

<sup>160</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:372; al-Jundī, *al-Tawḍīḥ*, 2:648.

<sup>161</sup> al-Jundī, *al-Tawḍīḥ*, 2:648–49.

<sup>162</sup> al-Jundī, *al-Mughnī*, 2:648.

Ḥanafī jurists, on the other hand also explicit in highlighting that the birds that are forbidden are those that eat carrion.<sup>163</sup> Explaining why animals that eat carrion are not permissible, al-Sarakhsī says that the flesh of those animals grows out of that which is forbidden, so it is usually filthy (*khabiṭh*), but this is not present in that which alternates between eating food that is pure and eating things that are filthy (*al-mukhalat*), such as chickens.<sup>164</sup> This is the reason that Ḥanafīs distinguish between different kinds of crows, the kind that eats carrion, which are not permissible, and the kind that eats grain, which are permissible.<sup>165</sup> Al-Sarakhsī refers to the latter as an agricultural crow (*al-ghurāb al-zaraʿī*), which he likens it to *al-ʿaqʿaq* (a kind of corvid) which is permissible.<sup>166</sup>

Similarly to predatory beasts, Shāfiʿīs prohibit eating predatory birds<sup>167</sup> or, “birds that nourish themselves by way of their talons,”<sup>168</sup> such as falcons, hawks, and eagles.<sup>169</sup> Al-Anṣārī lists a number of birds that are forbidden,<sup>170</sup> including various kinds of crows, all predatory birds,<sup>171</sup> and all birds that tear at flesh with their beaks (*tanhash*).<sup>172</sup> Other birds that are not

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<sup>163</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 6:193–94.

<sup>164</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:226. This is again relevant for contemporary debates regarding animal feed that include elements deemed impure. A chief difference, of course, is that in the latter case the animals are not freely choosing that food, whereas they are in the former.

<sup>165</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 6:194.

<sup>166</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:226.

<sup>167</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271.

<sup>168</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:403.

<sup>169</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:271.

<sup>170</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:403–5.

<sup>171</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:404–5.

<sup>172</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:404–5.

allowed include parrots, peacocks, and owls.<sup>173</sup> All kinds of pigeons are permitted<sup>174</sup> as are other birds that do not hunt<sup>175</sup> or eat carrion, including water fowl.<sup>176</sup> A general principle that al-Anṣārī and others endorse is that all birds that glean for their food (*laqqāʾ*) and all birds that feed themselves on pure foods are permitted.<sup>177</sup> This is one of the reasons why they differentiate between different kinds of crows.<sup>178</sup> Ḥanbalī jurists have similar rulings on the impermissibility of birds with talons and they also emphasize that birds that eat corpses, such as certain kinds of crows, are forbidden.<sup>179</sup> Also not allowed are bats and other birds that are considered *khabīth*.<sup>180</sup> All birds that are not explicitly mentioned as being forbidden, however, are permitted including poultry, crows that feed off of grain, and all kinds of small sparrow-like birds (*ʿaṣāfīr*).<sup>181</sup> Also permitted are all water fowl as well as the various kinds of pigeon.<sup>182</sup> Ibn Qudāmah cites a principle that any bird that does not hunt with talons, does not eat carrion, and is not deemed *khabīth* is permissible.<sup>183</sup>

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<sup>173</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:406.

<sup>174</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:405.

<sup>175</sup> Hunting for fish is not taken into consideration for this ruling.

<sup>176</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:405.

<sup>177</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:406.

<sup>178</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:272–72.

<sup>179</sup> Ibn Qudāmah, *al-Mughnī*, 9:410.

<sup>180</sup> Ibn Qudāmah, *al-Mughnī*, 9:410–11.

<sup>181</sup> Ibn Qudāmah, *al-Mughnī*, 9:413.

<sup>182</sup> Ibn Qudāmah, *al-Mughnī*, 9:413.

<sup>183</sup> Ibn Qudāmah, *al-Mughnī*, 9:413.

### *Water-Dwelling Animals*

Water-dwelling animals are given special consideration because many of them do not need to be ritually slaughtered in order for them to be permissible for consumption. I use the broad category of “water-dwelling animals” because the schools of law differ in regards to which water-dwelling animals they permit for consumption. All agree, however, that fish do not have to be slaughtered in order for them to be permissible. Ḥanafī jurists are the most restrictive and limit permitted water-dwelling animals to fish. Mālikī jurists have the most expansive view on the permissibility of water-dwelling animals holding that it is permissible to eat water-dwelling animals even if they can live out of the water for up to four days.<sup>184</sup> This ruling explicitly includes frogs<sup>185</sup> and all other water-dwelling animals<sup>186</sup> as well as fish that have died and floated to the surface of the water (*al-ṭāfi*).<sup>187</sup> There is a debate in the Mālikī School regarding the porpoise because it has been referred to as “sea swine” (*khanzīr al-mā*) in Arabic with some Mālikī jurists holding that they are impermissible for this reason. Khalīl states that the nearest position (*al-aqrab*) is that they are permissible.<sup>188</sup> Imām Mālik, however, refrained from giving a ruling (*waqafa*) regarding the porpoise and disliked it being called “sea swine.”<sup>189</sup> Some Mālikī scholars interpreted Mālik’s reaction as indicating that porpoise is impermissible, while others

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<sup>184</sup> al-Jundī, *al-Mughnī*, 2:647.

<sup>185</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:357; al-Jundī, *al-Tawdīh*, 2:647.

<sup>186</sup> al-Jundī, *al-Mughnī*, 2:649.

<sup>187</sup> al-Jundī, *al-Mughnī*, 2:649.

<sup>188</sup> al-Jundī, *al-Mughnī*, 2:649.

<sup>189</sup> al-Jundī, *al-Mughnī*, 2:649.

determined that they are permissible and that Mālik's response was an indication that he disapproved of its name and that the Arabs did not call it that.<sup>190</sup>

The position of the Ḥanafī school is that the only sea creatures that are permitted are fish.<sup>191</sup> Al-Sarakhsī distinguishes this from the position of al-Shāfi'ī who, according to him, holds that all sea creatures are permitted for consumption, although he has two positions on frogs.<sup>192</sup> Ḥanafī jurists explain that al-Shāfi'ī's opinion is based on the saying of the Prophet regarding the ocean<sup>193</sup> and the Qur'anic verse<sup>194</sup> which do not specify fish over other sea creatures. Al-Kāsānī invokes another tradition of the Prophet which he claims limits the first statement to only permitting fish.<sup>195</sup> Ḥanafī jurists also invoke the Qur'anic verse "Forbidden to you is carrion (*maytah*), blood, and the meat of swine,"<sup>196</sup> which statement, they say, is not confined to land swine (pig) or sea (porpoise).<sup>197</sup> Whereas we saw that Mālikī jurists were uncomfortable with naming porpoises "sea swine," they did not forbid them for this reason. This idea of shared characteristics between land and sea animals, however, allows Ḥanafī jurists to extend the ruling of pigs to porpoises and to further rule that all non-fish sea creatures are

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<sup>190</sup> al-Jundī, *al-Mughnī*, 2:650. See also Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:358.

<sup>191</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:248; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:173.

<sup>192</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:248. It is interesting to note that although Mālik held more expansive views regarding the permissibility of water-dwelling creatures, al-Sarakhsī tends to see al-Shāfi'ī and his followers as his primary interlocutors.

<sup>193</sup> "Its water is pure and its dead are permissible," (al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:177).

<sup>194</sup> "Permitted for you are the hunted animals of the sea," Qur'an 5:96.

<sup>195</sup> "Permitted to us are two corpses (*maytahtān*) and two bloods. The two corpses are fish and locusts. The two bloods are the liver and the spleen." (al-Sarakhsī, *al-Mabsūṭ*, 11:229; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:178).

<sup>196</sup> Qur'an 5:3.

<sup>197</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:248; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:177.

impermissible. Al-Sarakhsī argues that if all sea creatures were deemed permissible, then the sea swine would be permissible, and this goes against the verse, “Or the meat of swine.”<sup>198</sup> Al-Sarakhsī also takes the example of frogs as a basis for ruling non-fish sea creatures impermissible. After presenting a hadith which indicates that frogs are filthy (*mustakhbath*)<sup>199</sup> he says that one can make an analogy (*105iyas*) that extends this ruling of filthiness to all non-fish sea creatures.<sup>200</sup> Al-Sarakhsī takes his argument one step further saying, “Something ugly (*qabīh*) imposes itself (*dakhala ‘alayhi*) on whoever says that all sea creatures can be eaten, since they would then have to say that mermaids (*insān al-mā’*) can be eaten, and this is repugnant. So, we know then that the only sea creatures that can be eaten are fish.”<sup>201</sup>

Whereas the issue of the similarity between sea and land creatures contributed to the ruling that Ḥanafī jurists assigned to porpoises, when discussing the case of the donkey and the wild ass, al-Sarakhsī rejects the idea that the similarity between these two animals should have an effect on their ruling. In the case of certain water-dwelling animals, he considers apparent similarities to be relevant for their legal assessment, and this similarity is one of the reasons why al-Sarakhsī argues that non-fish sea creatures are not allowed based on their similarities to land animals that are not permitted, such as *khanzīr al-baḥr* (porpoise). The difference between these two cases, that of the porpoise and that of the wild ass, may be that there is an explicit statement in the Qur’an regarding *khanzīr* while there is not one regarding *himār*. Al-Sarakhsī draws directly on verses from the Qur’an to establish the ruling of porpoises stating, “Our proof is

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<sup>198</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:248.

<sup>199</sup> One the ruling that frogs are *khābīth*, see also al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:177.

<sup>200</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:248.

<sup>201</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:248.

God’s saying, ‘or the flesh of swine’ without differentiating between swine of the land and swine of the sea.”<sup>202</sup> These two examples are striking in that there appears to be much more similarity between a domestic donkey and a wild ass than there is between a pig and a porpoise, however al-Sarakhsī discounts the former and affirms the latter. We may conclude then, that for al-Sarakhsī, as well as other jurists who adopt similar rulings, the ways that animals are categorized were part of a world view informed by religious texts as well as systems of animal classification. In this case, it is ultimately adherence to the text that takes precedence and the similarity that is noted is more of a linguistic similarity than one of physical traits.

While Ḥanafīs adopt the position that is shared in all of the schools that fish do not need to be slaughtered in order for them to be permissible, Ḥanafīs are of the view that they have to have died due to some external cause.<sup>203</sup> This means that fish that have died in the water and risen to the surface (*al-ṭāfi*) are not permissible in the Ḥanafī school.<sup>204</sup> What we see here then is that Ḥanafī jurists limit the understanding of *maytah*, to those fish that have died by means other than ritual slaughter, not that any dead fish is permissible. Al-Kāsānī acknowledges that one might think that it would be appropriate for “*maytah*” to refer to the *ṭāfi* fish since it is “truly dead” and since the Prophetic tradition does not distinguish between fish that have died through some external cause and fish that have not. In response to this, however, he cites another hadith that reports that the Prophet forbade eating *ṭāfi* fish.<sup>205</sup> He also interprets that verse of the Qur’an

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<sup>202</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:248.

<sup>203</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:247–48.

<sup>204</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:248; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:178–79.

<sup>205</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:178.

that states, “It’s [the ocean] food is sustenance for you,”<sup>206</sup> as meaning, “What the ocean throws up on shore and dies. This is what the people of interpretation have said, and this is permissible for us because it is not *ṭāfi*. The *ṭāfi* fish is only what dies in the water without cause, and this died through a cause, which is the ocean throwing it ashore, so it is not *ṭāfi*. The intended meaning of the two hadiths is other than the *ṭāfi* due to what we have mentioned. The *ṭāfi* fish that, according to us, is impermissible for consumption, is the one that dies in the water on its own accord (*hatf ’anfihī*) without an external cause that has occurred to it. This is so regardless of whether it is on the face of the water or if it does not rise after dying on its own accord without an external cause.”<sup>207</sup>

The opinions in the Shāfi‘ī School regarding water-dwelling animals fall somewhere between the blanket permissibility of the Mālikīs and the restriction to “fish” of the Ḥanafīs. Not only do the Shāfi‘īs allow for the consumption of more water-dwelling animals than the Ḥanafīs, they also permit the consumption of fish regardless of how they die, including the *al-ṭāfi*.<sup>208</sup> They permit the consumption of fish as well as animals that are not classified as fish, although Shāfi‘ī are more restrictive in this than Mālikīs. Shāfi‘ī jurists place water-dwelling animals into two categories: animals that can survive outside of the water and animals that will die if they are taken out of the water.<sup>209</sup> It is in regards to this second category, animals that can live both in the water and outside of the water, that Shāfi‘īs are more restrictive than Mālikīs since they consider

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<sup>206</sup> Qur’an 5:96

<sup>207</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:178.

<sup>208</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:157; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:274.

<sup>209</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:158–60; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:274–75.

such animals to be forbidden.<sup>210</sup> These include frogs, and crabs,<sup>211</sup> which al-Juwaynī states the Arabs considered *khabīth*.<sup>212</sup> Although al-Nawawī says that the most correct opinion is that all animals that can only survive in the water are permissible,<sup>213</sup> there are other opinions within the school that take into consideration whether or not they resemble land animals. According to this alternate opinion, if the water-dwelling animal is similar to a land animal that is permissible, then the water-dwelling animal is also permissible. If, however, it is similar to an animal that is impermissible, then it is also impermissible.<sup>214</sup> This idea of a correspondence between land-dwelling and water-dwelling animals provides some insight into the ways in which Muslim jurists conceptualized the animal world. Al-Juwaynī does discuss “water dogs” and “water pigs” and he states that some jurists consider them impermissible, but only if it is established that they resemble dogs and pigs in their physical form (*al-khilqa*), while others state that they are permissible because they are not in fact dogs or pigs.<sup>215</sup> At stake in this debate is an epistemological question of the referent of scriptural texts. When the Qur’an mentions pigs, for example, is the referent only the pig that dwells on land, or any other animal that shares its name or physical characteristics even if it is from an unrelated species?

In permitting the consumption of water-dwelling animals that are not fish,<sup>216</sup> Shāfi‘ī jurists open the question of how such animals should be killed and whether or not they are

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<sup>210</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 1160; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:275.

<sup>211</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:275.

<sup>212</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:160.

<sup>213</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:274.

<sup>214</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:158–59; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:275.

<sup>215</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:159.

<sup>216</sup> It should be noted that some Shāfi‘ī jurists consider all of these animals to fall into the category of

included in the exemption from ritual slaughter. Shāfi‘ī jurists hold that none of the water-dwelling animals that are permitted for consumption have to undergo ritual slaughter.<sup>217</sup> That being said, some Shāfi‘ī jurists consider it to be preferable (*mustahabb*) to slaughter large fish in order to provide them some ease, although slaughtering small fish is seen as a foolish effort without benefit and is therefore disliked (*makrūh*).<sup>218</sup> In this regard, jurists explicitly address the question of fish experiencing pain. Al-Juwaynī, for example, says that if a person were to cut off a part of a fish while it was alive, “There is no doubt that this is not allowed (*ghayr sā’igh*) because it has the meaning of torture (*ta’dhīb*). But if it were done, the ruling in the school is that the cut off part would be permissible.”<sup>219</sup> In a similar vein, Ibn Qudāmah relates that Imām Aḥmad disliked placing a fish on the fire while it is still alive. “He did not dislike eating such a fish,” he explains, “but he disliked torturing it in the fire.”<sup>220</sup> Ḥanbalī scholars also agree that fish do not need to be ritually slaughtered,<sup>221</sup> and they permit all water-dwelling animals<sup>222</sup> except for frogs,<sup>223</sup> snakes, and crocodiles.<sup>224</sup> Ḥanbalīs also permit animals that can live both in the water and out of it, but they apply special rules to the latter. Specifically, if an animal that lives both in

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“fish” (al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:274).

<sup>217</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:159; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:275.

<sup>218</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:376.

<sup>219</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:157.

<sup>220</sup> Ibn Qudāmah, *al-Mughnī*, 9:395.

<sup>221</sup> Ibn Qudāmah, *al-Mughnī*, 9:392

<sup>222</sup> Ibn Qudāmah, *al-Mughnī*, 9:394.

<sup>223</sup> Ibn Qudāmah, *al-Mughnī*, 9:425.

<sup>224</sup> al-Mardāwī, *al-Inṣāf*, 10:364–66.

and out of the water had blood, then it must be slaughtered.<sup>225</sup> This category includes turtles, although it does not include crabs as they are considered not to have blood.<sup>226</sup> These subtle distinctions reveal a concern for animal pain that goes beyond the strict rules of ritual performance as well as the important role that classification plays in determining whether or not the ritual even applies.

### *Locusts*

Locusts, alongside fish, are the other exemption to ritual slaughter that is explicitly mentioned a hadith of the Prophet.<sup>227</sup> Even so, while there is no debate regarding the exemption for fish, there is some difference of opinion, particularly in the Mālikī school, regarding slaughtering locusts. There is an opinion in the Mālikī School that holds that locusts do not have to be slaughtered based on the narration of Ka‘b that states they are originally fish.<sup>228</sup> According to the dominant position, however, this idea that locusts come from fish has no basis except in this statement of Ka‘b’s based on Hebrew teachings, and there is no obligation to follow these. Additionally, regardless of what may have been, they now dwell exclusively on land.<sup>229</sup> The unique position that is adopted by Mālikī jurists is that locusts must be slaughtered in order for

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<sup>225</sup> Ibn Qudāmah, *al-Mughnī*, 9:424.

<sup>226</sup> Ibn Qudāmah, *al-Mughnī*, 9:424.

<sup>227</sup> See the hadith that reads, “Permitted to us are two corpses (*maytahtān*) and two bloods. The two corpses are fish and locusts. The two bloods are the liver and the spleen.” (al-Sarakhsī, *al-Mabsūt*, 11:229; al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:178).

<sup>228</sup> al-Jundī, *al-Tawdīh*, 2:647.

<sup>229</sup> al-Jundī, *al-Tawdīh*, 2:648.

them to be permissible.<sup>230</sup> The slaughter that Mālikīs refer to when they discuss locusts and other animals that take their ruling, however, is not the ritual slaughter that we will be discussing below. Rather, it is comprised of any action that causes the death of the animal.<sup>231</sup> This includes cutting off their heads, burning them, boiling them alive, or removing their limbs.<sup>232</sup> Although this form of slaughter does not involve all of the elements that are present in other forms of ritual slaughter that are discussed below, it still retains ritual elements such as the invocation of God’s name at the time of slaughter,<sup>233</sup> and the impermissibility of eating locusts killed by Magians.<sup>234</sup> This view is unique to the Mālikī School as jurists from other schools permit the consumption of locusts even if they are *maytah* and they do not mandate a form of killing them, much the same as the case with edible water-dwelling animals.

Ḥanafī jurists include locusts in the category of animals that do not have blood, such as flies and spiders. The exception being that all of these other animals are impermissible whereas locusts are permitted for consumption. Because they do not have blood, however, they do not have to be slaughtered and, according to the hadith, they are permissible if they are *maytah*.<sup>235</sup> This means that even if locusts are killed by a Magian they are permissible.<sup>236</sup> Shāfi‘ī and

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<sup>230</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:357; al-Jundī, *al-Tawḍīḥ*, 2:648.

<sup>231</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:357; al-Jundī, *al-Tawḍīḥ*, 2:648.

<sup>232</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:357; Ibn Abī Zayd al-Qayrawānī, 2:648.

<sup>233</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:357; al-Jundī, *al-Tawḍīḥ*, 2:648.

<sup>234</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:357.

<sup>235</sup> al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 6:179–82.

<sup>236</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:229.

Ḥanbalī jurists also permit the consumption of locusts without requiring them to be slaughtered or killed in any particular way or by any particular person.<sup>237</sup>

### *Ḥasharāt*

There is not real English equivalent of the category of animals referred to in Arabic as *ḥasharāt*. I use the phrase “pests and vermin” as an approximation to capture the variety of animals that fall into this category since it can include everything ranging from insects to rats and snakes. *Ḥasharāt* are generally prohibited in Sunni schools of law with the exception of the Mālikī school where again we find the most expansive and permissive rulings when it comes to questions of which animals may be eaten. Many Mālikī jurists, for example, permit the consumption of bugs and worms (*khashāsh al-ʿarḍ wa hawāmuḥā*).<sup>238</sup> Although this is the position found in the *Mudawwanah*, some Mālikīs considered them to be *makrūh*.<sup>239</sup> Those who do permit them, however, say that they should be slaughtered in the same way that locusts are slaughtered.<sup>240</sup> In addition to bugs and worms, Mālikī jurists also include snails in this category of *ḥasharāt* that are permitted and apply the same ruling to them as locusts.<sup>241</sup>

Ḥanafī jurists consider all pests and vermin impermissible and place them in the category of *khabāʾith*.<sup>242</sup> This is similar to the rulings found in the Shāfiʿī school except that Shāfiʿīs

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<sup>237</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:213; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:279; Ibn Qudāmah, *al-Mughnī*, 9:395; al-Mardāwī, *al-Inṣāf*, 10:384.

<sup>238</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:371; al-Jundī, *al-Tawḍīḥ*, 2:646.

<sup>239</sup> al-Jundī, *al-Tawḍīḥ*, 2:646.

<sup>240</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:371; al-Jundī, *al-Tawḍīḥ*, 2:646.

<sup>241</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:357; al-Jundī, *al-Tawḍīḥ*, 2:647.

<sup>242</sup> al-Kāsānī, *Badāʾiʿ al-Ṣanāʾiʿ*, 179-83

permit a number of animals that Ḥanafīs classify as *khābīth*, such as the jerboa, the horn-tailed lizard, and the hedgehog.<sup>243</sup> Ḥanbalī jurists also classify *ḥasharāt* as *khābīth* and forbidden.<sup>244</sup> Ḥanbalīs also permit the jerboa,<sup>245</sup> but they do not permit the consumption of hedgehogs.<sup>246</sup>

### *Al-Jalālah*

The *jalālah* refers to animals that have eaten filth (*najāsah*). In this case, the legal ruling of eating such animals is not based on their species, but rather on their behavior. Most jurists agree that an animal only takes the ruling of *jalālah* if the effects of its eating filth are apparent, such that they impact the smell or taste of the animal’s meat. This ruling can also impact other ways animals are used, such as riding them, as their sweat can be affected by what they eat. In regards to the question of the *jalālah*, we again find that Mālikīs hold the most expansive opinion in that they allow for the consumption of animals that are considered *jalālah* without considering them to be disliked.<sup>247</sup> Other schools, however, agree that eating the meat of the *jalālah* is either disliked or forbidden.

Al-Sarakhsī defines *al-jalālah* as an animal that “customarily eats corpses (*jīf*) while not mixing [other foods], such that their meat becomes designated and is rotten.”<sup>248</sup> Al-Kāsānī says a

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<sup>243</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:212–13; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:277; al-Anṣārī, *Asnā al-Maṭālib*, 3:409.

<sup>244</sup> Ibn Qudāmah, *al-Mughnī*, 9:406.

<sup>245</sup> Ibn Qudāmah, *al-Mughnī*, 9:412.

<sup>246</sup> Ibn Qudāmah, *al-Mughnī*, 9:406.

<sup>247</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:372; al-Jundī, *al-Tawḍīh*, 2:642.

<sup>248</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:255.

camel is *jalālah* camel when most of its food is filth (*al-najāsah*).<sup>249</sup> This definition reveals the ways in which Ḥanafī jurists think of the *jalālah*. In this case, when the meat is designated as being filthy, eating the meat of such an animal is disliked,<sup>250</sup> as is drinking its milk<sup>251</sup> and using it for work.<sup>252</sup> This ruling, however, is not permanent and it can change if the animal is confined for a period of time so that it can be fed pure food and the impurities can leave its system.<sup>253</sup> This is because the ruling does not apply to the animal itself but to the state it is in and the perception that the animal's meat will take on qualities of what it eats. Ḥanafī jurists have different opinions regarding how long such an animal should be confined. Some hold that it should be three days and others hold that it should be ten days.<sup>254</sup> Al-Sarakhsī adopts the opinion that it cannot be defined by a set number of days but that the animal should be confined for as long as it takes for the rotten smell to leave it.<sup>255</sup> Al-Sarakhsī clarifies that this ruling applies to animals that only eat corpses and not to those which alternate between eating pure and impure food, which is why eating chickens is permitted.<sup>256</sup>

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<sup>249</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:194.

<sup>250</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:255; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:194.

<sup>251</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:196.

<sup>252</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:255.

<sup>253</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:255.

<sup>254</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:196–97.

<sup>255</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:256.

<sup>256</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:255.

The meat of the *jalālah* is *mukrūh* in the Shāfi‘ī School as well,<sup>257</sup> although al-Juwaynī relates the opinion that it is forbidden.<sup>258</sup> While for some jurists in the school whether and animal is considered *jalālah* is determined by how much of its food is filth versus how much is pure, al-Juwaynī, al-Nawawī, and others state that what is relevant is only if the filth has an effect, such as the animal smelling like filth.<sup>259</sup> If this effect is not present, then the animal is not considered a *jalālah* regardless of what it eats and if it is fed pure food and the signs of filth go away, then it is no longer disliked.<sup>260</sup> It is also disliked to ride the *jalālah* without something between the person and the animal itself because its sweat could also carry the effects of the filth that it consumed.<sup>261</sup>

In the Ḥanbalī School, the strongest position seems to be that eating and animal that is considered *jalālah* is *ḥarām*.<sup>262</sup> This ruling can be removed if the animal is confined for a period of time (either three or forty days depending on the kind of animal) so that it can only eat pure food before being slaughtered.<sup>263</sup> Ḥanbalī jurists also consider it *makrūh* to ride an animal that is a *jalālah* because its sweat will be soiled.<sup>264</sup> The main distinction that we find in this school is

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<sup>257</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:278; al-Anṣārī, *Asnā al-Maṭālib*, 3:411.

<sup>258</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:214.

<sup>259</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:214; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:278; al-Anṣārī, *Asnā al-Maṭālib*, 3:411.

<sup>260</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:214; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:278; al-Anṣārī, *Asnā al-Maṭālib*, 3:411.

<sup>261</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:278; al-Anṣārī, *Asnā al-Maṭālib*, 3:411.

<sup>262</sup> Ibn Qudāmah, *al-Mughnī*, 9:413–14; al-Mardāwī, *al-Inṣāf*, 10:366.

<sup>263</sup> Ibn Qudāmah, *al-Mughnī*, 9:414; al-Mardāwī, *al-Inṣāf*, 10:367.

<sup>264</sup> Ibn Qudāmah, *al-Mughnī*, 9:414.

that the dominant opinion is that the animal should be confined for a set period of time in order to it to no longer be considered *jalālah* as well as the opinion that it is *ḥarām* rather than *makrūh*.

The above discussion attempted to clarify the first and most essential ritual element in Islamic practices of hunting and slaughter, namely the animal who serves as the site of the ritual. An animal's species and characteristics do not only impact whether it can be eaten or not and whether it needs to be ritually slaughtered, it also influences they specific way in which the ritual is performed. Here we will be discussing the ritual of slaughter and the different forms that it takes depending on the kind of namely that is being killed. A further section addresses practices of hunting.

## **Slaughter**

### *Forms of Slaughter*

Muslim jurists use a number of terms to discuss ritual practices of killing animals including *ṣayd*, *dhabḥ*, and *naḥr*. Each of these terms refer to different practices depending on the kind of animal that is being killed or the state that it is in. Additionally, *dhakāh* is a term that is used to refer to all of these practices which fall under the framework of ritualized killing that produces pure meat. *Ṣayd* refers to hunting, including both hunting with a trained animal and hunting with a weapon, such as bow and arrow. When discussing hunting jurists refer to inflicting a wound (‘*aqr* and *jarḥ*) in any place one is able. *Dhabḥ* and *naḥr* are different ways of slaughtering domesticated animals depending on their species. Translating these terms into English presents something of a challenge as some of them have overlapping meanings and others refer to detailed practices for which there is no English equivalent. In the pages that follow I will translate *ṣayd* as hunting and ‘*aqr* and *jarḥ* as wounding. I will translate *dhakāh*,

*dhabh*, and *nahr* generically as slaughter and use the Arabic terms to distinguish between practices when necessary. While this vocabulary is fairly standard across Sunni schools of law, jurists have differing opinions when it comes to some of the details of the practices that they describe. In this chapter I hope to identify both the areas of broad agreement among scholars as well as the points of significant difference. The result will be an understanding of hunting and slaughter as represented in works of Islamic law from the classical period. In presenting this material some of the key questions that I will focus on are: what role does ritual play in these conceptions of animal slaughter and hunting? What are the goals of these practices? What meaning or function, if any, can be read into them? In what ways do these practices engender and support particular conceptions of non-human animals, the ways in which humans relate to them, and humans' own self-conception? In light of this, we may also ask to what extent these practices are subject to change and what risks being lost along with such a transformation?

Al-Sarakhsī discusses the linguistic meaning of *al-dhakāh* as referring to sharpness, hence the relationship to words referring to intelligence and to the intense heat of the sun. He understands this as indicating that in *al-dhakāh* there is an aspect of increase or development (*nudj*) and he states that this is why properly slaughtered meat is better (*atyab*) than carrion and is less spoiled.<sup>265</sup> He also relates a definition of the term *al-dhakāh* as “Shedding the filthy blood.”<sup>266</sup> He explains the importance of this in Qur’anic terms stating that what is impermissible in an animal is “flowing blood” (*damm masfūh*) so that slaughter is “The removal of filth (*al-khabath*), purification (*taṭyīb*), and a differentiation between the pure and the filthy.”<sup>267</sup> This

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<sup>265</sup> al-Sarakhsī, *al-Mabsūt*, 11:221.

<sup>266</sup> al-Sarakhsī, *al-Mabsūt*, 11:221.

<sup>267</sup> al-Sarakhsī, *al-Mabsūt*, 11:221.

explanation of the value of slaughter is similar to a statement that al-Nawawī makes in his commentary on Ṣaḥīḥ Muslim quoted by al-Anṣārī, “Some of the scholars said that the wisdom in requiring slaughter is to drain blood (*inhār al-damm*) and differentiate between the permissible (*ḥalāl*) meat and fat and the impermissible (*ḥarām*) as well as to call attention to the impermissibility of dead animals (*maytah*) due to their blood remaining in them.”<sup>268</sup> The Mālikī jurists al-Khalīl describes the purpose or wisdom behind slaughter (*al-dhabḥ*) as being to bring about death quickly and to remove residue (*al-faḍalāt*).<sup>269</sup> He further provides a rationale for why slaughter is permissible explaining, “When God determined that His creation would not subsist, and honored human beings with intellect, He made animals permitted to them to strengthen their bodies, to cleanse the mirror of their intellects, to demonstrate the perfection of God’s power (*qudrah*) through the goodness of their meat (*ṭīb laḥmihā*), and for them realize that the Lord cares for them in that He placed their lives above others (*ātharahum bil-hayā ‘alā ghayrihim*).”<sup>270</sup> The rationales provided here are physical and material in nature and do not make explicit reference to ritual. When we look at the detailed rulings, however, we will find that, when taken together, they only make sense if we think of them as part of a ritual complex.

Al-Sarakhsī defines *dhabḥ* as “The slaughter of an animal in the proper place of slaughter (*al-madhbaḥ*) when it is possible.”<sup>271</sup> When it is not possible to slaughter the animal by cutting its throat, namely when it is a wild animal not in one’s control, slaughter occurs through

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<sup>268</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:375.

<sup>269</sup> al-Jundī, *al-Tawḍīḥ*, 2:635.

<sup>270</sup> al-Jundī, *al-Tawḍīḥ*, 2:635.

<sup>271</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

inflicting a wound (*jarh*) in any place on the animal that one can hit.<sup>272</sup> It is important to note that the distinction made here between slaughter and hunting in the Ḥanafī school is as much related to the species of animal as it is to the state the animal is in. If a wild animal, such as a zebra, is in one’s control, then it must be slaughtered.<sup>273</sup> Similarly, if a domesticated animal, such as a bull, escapes and is no longer in one’s control, it can be killed through hunting according to some of the legal schools. He further explains that some of the blood that would be shed by cutting the animal’s throat is shed by the infliction of a wound.<sup>274</sup> The fact that there is a discrepancy in the quantity of blood that is shed in hunting and slaughtering may suggest that blood has a symbolic weight in addition to possessing a physical property that must be avoided. Al-Sarakhsī explains that one of the principles which allows for the practice of slaughter by hunting is that moral responsibility (*al-taklīf*) is in accordance with capacity (*al-wusʿ*), “So in every situation in which it is possible to slaughter the animal in the proper place of slaughter, it is not permissible except by doing so. In every situation in which it is not possible, the infliction of a wound takes its place.”<sup>275</sup> An important point here is that al-Sarakhsī does not view hunting and slaughter as two completely distinct practices, rather they are two different forms of the same practice, the one standing in for the other, and both falling under the larger category of *dhakāh*.

In his chapter on hunting, Al-Juwaynī provides a summary of the different legislated ways of killing animals according to the Shāfiʿī School of law. In describing these different forms of killing animals, al-Juwaynī explains that there are three levels (*marātib*) of killing

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<sup>272</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

<sup>273</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:335.

<sup>274</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

<sup>275</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

animals. His choice of this term “levels” seems to indicate that the three actions he is going to describe are all essentially the same action of slaughter with one taking the place of the other in various circumstances. The first level he describes is related to an animal that is within one’s reach (*al-maḡdūr ‘alayh*) in which case “worship in the law (*ta‘bbud al-shar‘*) is done well (*yuḥsin*) through making the animal feel at ease and choosing the quickest means.”<sup>276</sup> The second level involves fleeing animals (*al-shawārid*) when using a projectile weapon is possible, in which case the requirement to aim for the place of slaughter (*al-madhbaḥ*)<sup>277</sup> does not apply. In the third level, a dog or other trained hunting animal takes the place of the projectile weapon.<sup>278</sup> One of the rationales that al-Juwaynī provides for the use of hunting animals is that hunting with a projectile weapon requires specialist expertise in order to ensure that the kill is performed well.<sup>279</sup> While al-Juwaynī emphasizes the importance of shedding blood in the process of rendering animals pure, there is one particular situation in which this is not required.<sup>280</sup> In discussing this issue, al-Juwaynī appears to emphasize the importance of the correct performance of the process of killing over the shedding of blood. In practice, this means that there is a situation in which an animal may be pure even if none of its blood was shed, just as there are other situations in which one may shed the blood of an animal in such a way that does not render it pure.

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<sup>276</sup> al-Juwaynī, *Nihāyat al-Maḡlab*, 18:108.

<sup>277</sup> i.e. the animal’s throat.

<sup>278</sup> al-Juwaynī, *Nihāyat al-Maḡlab*, 18:108.

<sup>279</sup> al-Juwaynī, *Nihāyat al-Maḡlab*, 18:107–8.

<sup>280</sup> For details on this issue see the section on hunting below where we discuss the case of a hunting animal crushing its prey. Here we can note a difference with al-Sarakhsī’s understanding in which shedding blood is always a requirement for the purity of a slaughtered animal.

While the bulk of our discussion will focus on practices of killing animals that are performed in specific ways, there are some acts of killing that do not need adhere to those guidelines. An example of this is killing snakes and scorpions, which can even be done while someone is in a state of prayer provided they do not engage in too much movement.<sup>281</sup> In this regard, al-Sarakhsī invokes a hadith that states, "Kill the two blacks even if you are in prayer." He also relates that the Prophet crushed a scorpion while he was praying by putting this sandal over it and pressing down (*ghamazahu*) until it was dead. When he finished his prayer he said, "May God curse the scorpion. Do not be concerned whether you are a Prophet (or praying)<sup>282</sup> or not." He also asserts that this is permissible because a person who is praying is allowed to do what they need to in order to ward off things that would distract them from their prayer. He says that this act of killing must be done in one motion otherwise it invalidates the prayer.<sup>283</sup> Here the main concern is that the actions be minimal such that an observer would think that the person was praying rather than doing something else. It is not the killing, the taking of life, that invalidates the prayer, but rather the amount of movements that it takes to do the killing. This, however, is one of a very few number of examples of killing that do not have a particular form that must be followed in order for their desired consequences to be achieved. This is one of the key differentiators between killing (*al-qatl*) and slaughter (*al-dhakāh*) with the performance of the latter following a specific form and obtaining ends additional to the death of the animal.<sup>284</sup>

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<sup>281</sup> al-Sarakhsī, *al-Mabsūṭ*, 1:194.

<sup>282</sup> This is an alternate reading of the hadith that al-Sarakhsī provides.

<sup>283</sup> al-Sarakhsī, *al-Mabsūṭ*, 1:194.

<sup>284</sup> i.e. purification of the meat and hide.

When these guidelines of how slaughter should be performed are not followed correctly, the act is considered an act of killing rather than slaughter, and the effects of slaughter are not obtained.

As we have just noted, when used to discuss animals, killing (*al-qatl*) refers to the taking of life in a way that does not conform with legislated forms of taking animal life which produce specific effects. There are some situations, as in the case of snakes and scorpions above, or killing wild animals of prey that are a threat to people, where this kind of killing is not frowned upon. In cases where there is a legislated form for taking the life of an animal, ignoring the form, or performing the act incorrectly, places the act in a different category. As we shall see, however, there are some aspects of these practices that are essential, and others which are recommended, and the absence of these recommended practices does not have the same impact as the absence of required elements. In fact, this is one of the places where we might argue that there is a distinction between law and ethics in the literature of Islamic jurisprudence in that there are actions that are understood as being frowned upon because of the unnecessary pain that they cause, but which do not impact the validity of the ritual performance.

### *Dhabḥ/Naḥr*

When applied to animals under one's control, slaughter can take the form of either *al-naḥr* or *al-dhabḥ*. *Al-Naḥr* refers to the act of killing an animal by cutting it in the place where the neck meets the chest and *dhabḥ* refers to cutting the middle of the animal's throat. Generally speaking, *al-naḥr* applies to camels and *al-dhabḥ* applies to other domesticated animals.<sup>285</sup> One of the questions that jurists debate in regards to these forms of slaughter is whether they must be

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<sup>285</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:201; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:206–7; Ibn Qudāmah, *al-Mughnī*, 9:397–98; al-Mardāwī, *al-Inṣāf*, 10:393–94.

applied to these specific animals or if they can be switched. Is it valid, for example, to perform *naḥr* on cattle or *dhabḥ* on a camel? Jurists from the Ḥanafī, Shāfi‘ī, and Ḥanbalī schools agree that if one performs *naḥr* on cattle or *dhabḥ* on camels, it is a valid slaughter,<sup>286</sup> although it is classified as being *makrūh* in the Ḥanafī school.<sup>287</sup> Mālikī jurists debate whether it is a valid slaughter if one performs *dhabḥ* on an animal for which *naḥr* is more appropriate, or vice versa, without an exceptional need,<sup>288</sup> and Imām Mālik’s opinion in the *Mudawwanah* is that such an animal cannot be eaten.<sup>289</sup> Some Mālikī jurists interpret this as meaning that it is *makrūh* while others consider it *ḥarām*, and yet others consider it permissible.<sup>290</sup> Their discussion of this question highlights some of the physical aspects of the ritual. Their main concern seems to be whether all of the vessels that are severed when *dhabḥ* is performed are also severed when *naḥr* is performed.<sup>291</sup> One of the further implications of this is that according to Mālikī scholars, if a domesticated animal flees or falls down a well, one cannot kill it with a projectile weapon because it is not a hunted animal, but one could perform *naḥr*.<sup>292</sup> According to other schools of law, however, it would be valid and permissible to kill such an animal by wounding it as in hunting.<sup>293</sup>

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<sup>286</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:203; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:206–7; al-Anṣārī, *Asnā al-Maṭālib*, 3:341; Ibn Qudāmah, *al-Mughnī*, 9:398–99; al-Mardāwī, *al-Inṣāf*, 10:393.

<sup>287</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:203.

<sup>288</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:363; al-Jundī, *al-Tawḍīḥ*, 2:653.

<sup>289</sup> al-Jundī, *al-Tawḍīḥ*, 2:653.

<sup>290</sup> al-Jundī, *al-Tawḍīḥ*, 2:653.

<sup>291</sup> al-Jundī, *al-Tawḍīḥ*, 2:653.

<sup>292</sup> al-Jundī, *al-Tawḍīḥ*, 2:653.

<sup>293</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:229; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:130–31; Ibn Qudāmah, *al-Mughnī*,

We can look to al-Sarakhsī for an example of some of the reasoning that jurists employ to explain and justify these practices. This discussion comes after al-Sarakhsī has mentioned a tradition that states that if a camel were to fall into a well and it is not possible to slaughter it (*yanḥaruhu*), then wounding it in any part of its body counts as its slaughter (*dhakāh*).<sup>294</sup> Al-Sarakhsī interprets this tradition as evidence that the proper way to slaughter a camel is through *al-naḥr*. He goes on to provide additional evidence from the Qur’an stating that the verse “So pray to your Lord and sacrifice (*fa ṣalli lirabbika w-anḥar*)”<sup>295</sup> shows that the proper way to slaughter a camel is through *al-naḥr* because it uses that term to refer to the Prophet’s sacrifice of camels. The verses “God commands you to slaughter (*tadhbaḥū*) a cow,”<sup>296</sup> and “We exonerated him with a great sacrifice (*dhabḥ ‘aẓīm*),”<sup>297</sup> however, show that the appropriate way to slaughter cattle and smaller ruminants (i.e. sheep and goats) is through *dhabḥ*.<sup>298</sup> Al-Sarakhsī provides a rationale as to why different practices are recommended for different animals. He explains that it has to do with the physiology of the animals since camels have a lot of meat on their necks except in the place of *al-naḥr*, which makes *al-naḥr* an easier practice to perform on them. The meat distribution on the necks of cattle, sheep, and goats, on the other hand, is equal so *al-dhabḥ* is easier.<sup>299</sup> So while al-Sarakhsī provides textual evidence for which form of

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9:389; al-Mardāwī, *al-Inṣāf*, 10:394.

<sup>294</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:229.

<sup>295</sup> 108:2

<sup>296</sup> 2:67

<sup>297</sup> 37:107

<sup>298</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:229.

<sup>299</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3.

slaughter is best for different kinds of animals, he also provides a non-textual rationale based on ease and efficiency. This ease and efficiency, however, is not just for the person performing the slaughter. A few lines down al-Sarakhsī states that performing *al-nahr* on cattle is disliked because, “Not doing that which is easier is disliked in all kinds [of animals] because of the increase in unnecessary pain that it involves.”<sup>300</sup> The reason that a cow that has undergone *al-nahr* is permissible, even though the practice is disliked, is that “The purpose [of slaughter] is draining blood, and the vessels are present at the base of the throat and at the top of it, so the purpose is fulfilled by cutting at any place on the throat.”<sup>301</sup>

There are other significant differences related to the position of the animal when it is slaughtered, although these are generally recommended rather than required. Camels, for example, are slaughtered while they are standing, while *dhabḥ* is performed on cattle, sheep, and goats with the animal lying on its left side.<sup>302</sup> In the chapter on hunting, al-Sarakhsī clarifies the place on an animal’s throat where *dhabḥ* is performed quoting a hadith that states “Slaughter (*al-dhakāh*) is between the upper and the lower parts of the throat (*al-lubbah* and *al-laḥbayn*).”<sup>303</sup> He mentions this same hadith later in the chapter and expands on it saying that it means that whether one cuts at the top, middle, or bottom of the throat it is all the same.<sup>304</sup>

Jurists also address certain kinds of mistakes that may occur during slaughter and the ways that they impact the validity of the practice and its outcomes. According to Mālikī scholars,

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<sup>300</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3.

<sup>301</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3.

<sup>302</sup> al-Jundī, *al-Tawḍīḥ*, 2:653.

<sup>303</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

<sup>304</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:228.

slaughter cannot be performed from the back of the neck.<sup>305</sup> There are allowances made for mistakes, however, such that if a person intended to slaughter the animal properly makes a mistake and misses, then it may be eaten.<sup>306</sup> Shāfi‘ī, on the other hand consider a slaughter from the back of the neck valid as long as the required vessels are severed while the animal is alive.<sup>307</sup> This is also the position that is adopted by Ibn Qudāmah who emphasized the importance of the animal still being alive at the time that the vessels are severed, although he relates that Imām Aḥmad considered it an invalid slaughter if it was done in this way intentionally.<sup>308</sup> Al-Sarakhsī emphasizes that the animal’s permissibility is a function of its dying as the result of having particular vessels cut when he discusses the issue of slaughtering an animal by cutting from the back of its neck rather than from the front. Al-Sarakhsī explains that such an animal would be permissible as long as the majority of the vessels are severed before the animal dies because slaughter (*dhakāh*) would have taken place. If, however, the animal was to die before the vessels were severed, then it would not be permissible because the animal would have died due to the wound and not as a result of being slaughtered in the appropriate place of slaughter. He goes on to say that even though the animal would be permissible for consumption, slaughtering in this way would be disliked (*makrūh*) because of the unnecessary pain that it would cause the animal.<sup>309</sup>

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<sup>305</sup> al-Jundī, *al-Tawḍīḥ*, 2:660.

<sup>306</sup> al-Jundī, *al-Tawḍīḥ*, 2:660.

<sup>307</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:181–82; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:202.

<sup>308</sup> Ibn Qudāmah, *al-Mughnī*, 9:400; al-Mardāwī relates similar rulings (al-Mardāwī, *al-Inṣāf*, 10:394-396).

<sup>309</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3; see also al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:207.

One of the elements of slaughter that Mālikī jurists in particular discuss is the idea that the person performing the slaughter should not lift the knife from the animal's neck and then return it to continue slaughtering.<sup>310</sup> Mālikī jurists discuss different scenarios regarding this which help to get at the essential element involved, which is that the slaughter should be performed quickly and in one go. They discuss a number of factors that impact the permissibility of eating an animal when the person performing slaughter lifted the blade before slaughter was complete. If, for example, they wait a long time before returning the knife to the animal's neck, then it cannot be eaten.<sup>311</sup> If they do not wait a long time to return the blade to the animal's throat, then Mālikī jurists disagree regarding the ruling of the animal with some holding that such an animal may be eaten and some that it may not be eaten.<sup>312</sup> Among the issues raised is whether the person lifted the knife thinking that they had completed the slaughter or if they were testing to see if they had completed the slaughter. Some jurists argue that if they thought the animal had been slaughtered, then this case is permissible, while others argued the opposite, that if they were testing then it is permissible.<sup>313</sup> At stake in all of these scenarios is whether the slaughter was performed in one united and continuous action such that it results in a speedy death for the animal.

As we have mentioned, animals that die for reasons other than slaughter are impermissible, but performing slaughter can make permitted. Cases that fall into this category include an animal that has suffered a fatal fall (*al-mutaraddīyah*), an animal that has been fatally

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<sup>310</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:359; al-Jundī, *al-Tawdīh*, 2:759

<sup>311</sup> al-Jundī, *al-Tawdīh*, 2:659

<sup>312</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:361; al-Jundī, *al-Tawdīh*, 2:659

<sup>313</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:361; al-Jundī, *al-Tawdīh*, 2:659-660

struck by another animal (*al-naṭīḥah*) and animals that have been partially consumed by predators. Here, according to some opinions, if a person is able to slaughter the animal before it dies, it counts as a valid slaughter. Al-Sarakhsī discusses a difference of opinion between Abū Hanīfa, Abū Yūsuf, and Muḥammad al-Shaybānī regarding this issue and whether it matters if the animal is already dying from its wounds. In Abū Hanīfa’s opinion, it does not matter if it is conceivable that the animal would continue to live if not slaughtered since the purpose of slaughter is to drain the impure blood, which occurs whether the animal would live or die from its wounds. According to Abū Yūsuf, however, it is only permissible to slaughter the animal if one thinks that the animal would continue to live for a day or more (in another narration Abū Yūsuf’s position is that the animal must be able to live for at least half a day). Muḥammad al-Shaybānī holds a position that if a wolf were to eviscerate a sheep such that its entrails spilled out and then it was slaughtered, it would not be permissible because that would not count as life (*hayāh mustaqirrah*) since it is inconceivable that the animal would continue to live after that.<sup>314</sup> Importantly, al-Sarakhsī does not adopt one of these positions as his own or state which is the position of the school, but the issue highlights that what is at stake is whether it matters that the animal die solely as a result of the ritual. According to the Mālikī jurists, animals that have suffered a severe injury may be slaughtered only if one is confident that they can continue to live.<sup>315</sup> If their injury is to vital organs or parts,<sup>316</sup> then many Mālikī jurists are of the opinion that

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<sup>314</sup> al-Sarakhsī, *al-Mabsūt*, 12:5.

<sup>315</sup> al-Jundī, *al-Tawdīḥ*, 2:662.

<sup>316</sup> Khalīl reports that al-Bājī defines these as: severing the spine, exposing the brain, severing the arteries, evisceration, and dispersal of the guts (al-Jundī, *al-Tawdīḥ*, 2:664).

slaughtering it cannot have an effect.<sup>317</sup> There is a difference of opinion, however, if its vitals are intact but one nonetheless does not have any hope that it would survive.<sup>318</sup> According to Shāfi‘ī and Ḥanbalī scholars, however, as long as the animal is alive, it may be slaughtered, even if one would not expect for it to continue to live for much longer.<sup>319</sup>

One of the cases that indicates that rituals of slaughter are not just about the physical effects of cutting the animal’s throat is that of the unborn fetus. Most jurists address the question of the effects of slaughtering a pregnant animal. Does the slaughter of the mother suffice as slaughter of its unborn fetus as well or does the fetus need to be slaughtered individually? Mālikīs consider the slaughter of an animal to be sufficient and count as the slaughter of its unborn child as well. This is true as long as the fetus is completely formed and has hair. If, however, the fetus emerges from the slaughtered animal and it is alive and then dies, then it cannot be eaten.<sup>320</sup> Even though the slaughter counts, some jurists recommend that one cuts the fetal animal’s throat so as to drain its blood.<sup>321</sup> This is similar to the rulings found in the Shāfi‘ī and Ḥanbalī school<sup>322</sup> except that they do not endorse the condition that the fetus has to have hair.<sup>323</sup> In explaining this ruling, al-Juwaynī mentions a hadith in which the Prophet is reported to have said that the slaughter of the fetus is its mother’s slaughter. He additionally reasons that

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<sup>317</sup> al-Jundī, *al-Tawḍīḥ*, 2:662.

<sup>318</sup> al-Jundī, *al-Tawḍīḥ*, 2:662–63.

<sup>319</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:183–85; Ibn Qudāmah, *al-Mughnī*, 9:404–5; al-Mardāwī, *al-Inṣāf*, 10:396–98.

<sup>320</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:363; al-Jundī, *al-Tawḍīḥ*, 2:666.

<sup>321</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:363.

<sup>322</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:218.

<sup>323</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:279; Ibn Qudāmah, *al-Mughnī*, 9:400–401.

if this were not the case, it would not be permissible to slaughter a pregnant animal to begin with.<sup>324</sup> Ibn Qudāmah relates the same hadith but adds a different rationale. “Slaughter differs,” he writes, “depending on possibility and capacity (*al-imbkān wa al-qudrah*), which is evidenced by [the cases of] the hunted animal, the animal in one’s control, and the animal that has fallen. The fetus cannot be reached in order to be slaughtered in a manner additional to slaughtering its mother, so that serves as its slaughter.”<sup>325</sup> There is an extensive difference of opinion on this issue within the Ḥanafī School with Abū Ḥanīfah and Zufar holding that the slaughter of the mother does not count as the slaughter of the fetus, and Muḥammad along with Abū Yūsuf holding that it does.<sup>326</sup> Al-Kāsānī notes that the difference of opinion within the school is regards to an animal that is fully formed and that they all agree that the slaughter of the mother does not count for a fetus that is not fully formed.<sup>327</sup> While al-Sarakhsī relates textual evidence that indicates that the unborn animal would be permissible, he eventually sides with the opinion of Abū Ḥanīfa. He discusses a number of arguments in favor of this position and ends by reemphasizing the importance of draining blood and saying that this does not occur to the unborn animal when its mother is slaughtered.<sup>328</sup> He does say that it is permissible to eat unborn animals, but only on the condition that it is alive at the time of its mother’s death and is then slaughtered.<sup>329</sup> This shows that, at least in this case, Ḥanafī jurists like al-Sarakhsī are more

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<sup>324</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:218–19.

<sup>325</sup> Ibn Qudāmah, *al-Mughnī*, 9:401.

<sup>326</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:6; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:212.

<sup>327</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:211.

<sup>328</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:7.

<sup>329</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:8.

committed to the physical element of draining blood than they are to the capacity of the ritual to purify the meat even if the blood is not drained.

### *Vessels to Be Cut*

There are four vessels that one may sever when performing slaughter: the trachea, the esophagus, and the carotid arteries running up each side of the neck. While jurists from the four Sunni schools agree that slaughter is performed by severing these vessels and that severing all of them is best, they disagree on which ones are required in order for the slaughter to be considered valid. For some schools of law, it is a requirement that the blood vessels be severed as draining blood is seen as the point of slaughter. Other schools of law seem to give more importance to severing the trachea and the esophagus. In the pages that follow, I briefly discuss the different positions that Muslim jurists adopt in regards to this question.

Mālikī jurists emphasize the necessity of shedding the animal's blood as a part of the slaughter process. In this school, the requirement for slaughter to be valid is to sever the trachea and the carotid arteries, but not necessarily the esophagus.<sup>330</sup> This means that if one were to refrain from severing the esophagus, but severed the trachea and the carotid arteries, the slaughter would be valid. If the carotid arteries are not severed at all, however, then the animal may not be eaten. Al-Khalīl explains that the reason for this is that the main point (*al-maqṣūd al-'a'zam*) of slaughter is shedding blood.<sup>331</sup> If the arteries are partially severed, or if only one of them is severed, then Mālikī scholars differ regarding its permissibility.<sup>332</sup> If the esophagus is not

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<sup>330</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:361; al-Jundī, *al-Tawdīh*, 2:656.

<sup>331</sup> al-Jundī, *al-Tawdīh*, 2:656.

<sup>332</sup> al-Jundī, *al-Tawdīh*, 2:656–57.

severed, then the slaughter is also invalid.<sup>333</sup> As with the carotid arteries, there is a similar difference of opinion in the school if one only partially severs the trachea,<sup>334</sup> although Ibn Abī Zayd says that what is required is for at least half of it to be severed.<sup>335</sup>

al-Sarakhsī explains the process of slaughter in the Ḥanafī school stating, “Complete slaughter (*tamām al-dhakāh*) is through severing the esophagus, the trachea, and the two blood vessels.<sup>336</sup> If one were to cut most of them it would be as if one had cut all of them because it fulfills the purpose.”<sup>337</sup> While “complete slaughter” involves severing all of the main vessels in the throat, Ḥanafī jurists discuss different opinions on this that were held by Abū Ḥanīfah and his students regarding which specific vessels are required. Abū Ḥanīfah’s opinion was that most of them needed to be severed and it does not matter which three out of the four are cut.<sup>338</sup> This means that one could sever the two carotid arteries and either the esophagus or the trachea and the slaughter would be valid. According to Abū Yusūf however, one must sever both the esophagus and the trachea and one of the arteries.<sup>339</sup> Muḥammad, on the other hand, considered cutting most of them to refer to the idea that cutting most of each of the four vessels takes the place of cutting them in their entirety.<sup>340</sup> Al-Sarakhsī goes on to explain the reason for requiring

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<sup>333</sup> al-Jundī, *al-Tawḍīḥ*, 2:657–58.

<sup>334</sup> al-Jundī, *al-Tawḍīḥ*, 2:658.

<sup>335</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:361.

<sup>336</sup> ie the carotid arteries.

<sup>337</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:2.

<sup>338</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:205.

<sup>339</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:205.

<sup>340</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:205.

these three be cut, “The esophagus is the pathway of food, the trachea is the pathway of breath, and the arteries are the pathway of blood. The purpose (*al-maqṣūd*) [of slaughter], which is shedding blood, is achieved by severing one of the arteries. As for cutting the pathway of air, this is necessary and nothing else can take its place.”<sup>341</sup> While there is disagreement on some of these particulars, we find that Ḥanafī scholars agree on the importance of severing at least one of the carotid arteries during the process of slaughter. This becomes apparent when they address the position of al-Shāfi‘ī covered below which states that severing the arteries is not required. In this context, both al-Sarakhsī and al-Kāsānī state that the purpose of slaughter is to remove blood, which is only accomplished by severing the arteries.<sup>342</sup>

Shāfi‘ī and Ḥanbalī jurists require that the trachea and the esophagus be severed in order for the slaughter to be valid, but not the arteries.<sup>343</sup> Shāfi‘ī jurists acknowledge that if one were to perform slaughter normally, then severing the trachea and the esophagus would naturally include severing the arteries, but they do not make it a requirement.<sup>344</sup> Although not required, it is preferred (*yustaḥabb*) to sever the arteries as well,<sup>345</sup> and Ibn Qudāmah notes that the most

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<sup>341</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3. Al-Kāsānī makes a similar statement when explaining the position of Abū Yūsuf (al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:207).

<sup>342</sup> “The purpose [of slaughter] is draining the impure blood, and without fulfilling its purpose, it is not permissible,” (al-Sarakhsī, *al-Mabsūṭ*, 12:3). “The purpose of slaughter is removing that which is impermissible, which is flowing blood, and this is not achieved except by severing the arteries,” (al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:206).

<sup>343</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:179–80; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:201–2; Ibn Qudāmah, *al-Mughnī*, 9:397; al-Mardāwī, *al-Inṣāf*, 10:392.

<sup>344</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:180; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:202. This means that if a person intentionally took care to avoid severing the arteries, the slaughter would still be valid.

<sup>345</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:202.

complete slaughter (*al-akmal*) occurs when all of the vessels are severed.<sup>346</sup> There also appears to be some disagreement within the Ḥanbalī school with some narrations indicating that one must also sever one of the arteries.<sup>347</sup> For Shāfi‘īs, it is also necessary that the trachea and esophagus be completely severed such that if even the slightest part of it remains intact the animal would be considered *maytah*,<sup>348</sup> which is also an opinion found among Ḥanbalī jurists.<sup>349</sup> Al-Juwaynī makes a revealing comment in this context when he states, “Permissibility is not obtained except by severing it entirely since *ta‘bud* (i.e. rulings that do not have an apparent rationale) takes precedence in this area of jurisprudence, which means that adhering to the inherited practice (*al-ittibā‘*) is required.”<sup>350</sup>

This difference of opinion between the Mālikī and Hanafī position on the one hand, and that of Shāfi‘ī and Ḥanbalī jurists on the other, shows that the understanding of draining impure blood may not be universal, and that it may have more of a symbolic value in some conceptualizations of animal slaughter than others.<sup>351</sup> While the physical draining of blood does seem to be a fundamental aspect of slaughter for Ḥanafīs like al-Sarakhsī, there are ways that even for them we might say that it takes on a symbolic as well as a physical meaning. This is evident in the difference between hunting and slaughter where the amount of blood that is

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<sup>346</sup> Ibn Qudāmah, *al-Mughnī*, 9:397.

<sup>347</sup> Ibn Qudāmah, 9:397; al-Mardāwī, *al-Inṣāf*, 10:392–93.

<sup>348</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:202.

<sup>349</sup> Mardāwī, *al-Inṣāf*, 10:393.

<sup>350</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:180.

<sup>351</sup> We saw this above in al-Sarakhsī’s ruling that the slaughter of the mother does not count as the slaughter of the unborn fetus because the fetus’s blood was not shed, and it is a distinction that we will encounter again in the section on hunting when we consider the case of the hunting animal killing prey by slamming into them.

drained from the animal is significantly different; even though the amount of blood that is drained from a hunted animal is less than that of a slaughtered animal, they are equally considered permissible and both count as a fulfillment of the ritual act. In spite of this, it is noteworthy that both Ḥanafī and Mālikī jurists use the language of the purpose (*maqṣūd*) of the ruling when discussing shedding the animal's blood, and it is significant to note that al-Juwaynī makes a similar statement regarding the Shāfī'ī school when he discusses hunting with a trained animal.<sup>352</sup> On the one hand, this emphasis on the purpose of the ruling is an aspect of the ways in which Islamic law was developing in the era in which these authors were writing. At the same time, the focus on draining blood, which is considered impure, highlights the very physical aspect of purification even though we see cases where it is treated more symbolically.

### *Slaughter Implement*

The implement that is used is another important element of the ritual. While this section is dominated by practical considerations, namely that the implement be sharp enough to cut the animal quickly, there are considerations regarding material that seem to have a more ritual aspect to them. In particular, jurists debate whether or not tools made of bone, tooth, or nail may be used to perform slaughter because there are scriptural sources that indicate that this would be impermissible. Even in this case, however, many of the arguments that jurists present have to do with the practicalities of slaughter. In addition to this question, jurists in the Mālikī School debate whether or not the implement needs to be made out of metal.<sup>353</sup> Imām Mālik has an

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<sup>352</sup> See page 158 below where he refers to draining the animal's blood as the *maqṣūd* of the practice.

<sup>353</sup> al-Jundī, *al-Tawdīh*, 2:650.

opinion that it is only permissible to use a non-metal implement if one does not have a metal knife readily available.<sup>354</sup> There are other opinions, however, that hold that as long as the implement is able to cut well and efficiently, then it does not matter what it is made of.<sup>355</sup>

Al-Sarakhsī begins his chapter on slaughter in *al-Mabsūṭ* with a discussion of the kind of tool one should use to perform a slaughter. He explains that it is impermissible to kill an animal with one's own teeth or nails because slaughter involves cutting with the sharp edge of a tool, whereas in this case it is the result of force and pressure rather than the tool's sharpness.<sup>356</sup> Ḥanafī jurists explain that if the tooth or nail are not connected to the person (meaning that they are using a blade made of tooth or nail) then it is acceptable (*lā ba's*) to eat from it.<sup>357</sup> They juxtapose this position with that of al-Shāfi'ī who they say adheres to the apparent meaning of the hadith which reads, "Eat [animals slaughtered with] whatever sheds blood and severs the vessels except for tooth and nail, for the latter is the practice of the Abyssinians."<sup>358</sup> Ḥanafīs base their opinion on an interpretation of this hadith which holds that the Abyssinian practice referred to is the use of one's own teeth and nails to kill an animal. Severed teeth and nail, however, are sharp implements that can cause the shedding of the impure blood in an animal just like a knife.<sup>359</sup> Al-Sarakhsī does mention, however, that using implements fashioned from teeth and nail to slaughter is disliked (*makrūh*) since doing so involves increased pain and suffering for the

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<sup>354</sup> al-Jundī, *al-Tawḍīḥ*, 2:650.

<sup>355</sup> al-Jundī, *al-Tawḍīḥ*, 2:650.

<sup>356</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:2.

<sup>357</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:2; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:208.

<sup>358</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:227; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:208.

<sup>359</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:209.

animal.<sup>360</sup> Other than Ḥanafīs consider the material that the implement is made out of as being unimportant as long as it has a sharpened edge that can sever the necessary vessels. In support of this they quote a hadith in which the Prophet Muḥammad states, “Shed blood with whatever you like and eat,” in response to a question of whether it is permissible to use a sharpened stick or flint to perform slaughter.<sup>361</sup> Al-Sarakhsī also explains that the reason for this being permissible is that the point of slaughter is, “to distinguish the pure from the impure, which occurs using any sharpened tool.”<sup>362</sup> The upshot of the discussion is that Ḥanafīs understands the question of the tool for slaughter to be more about the tool’s capacity to have a sharp edge than about the specific material that it is made of.

Some Mālikī jurists hold that it is never allowed and some hold that it is allowed as long as it is a knife made of bone or nail and not a person’s own teeth and nails that they are using.<sup>363</sup> Ibn Abī Zayd relates the opinion that using bone or nail is permitted if one is in a state of need, but if one does so when there is no need, the act is forbidden, although the slaughter is valid.<sup>364</sup> Shāfi‘ī and Ḥanbalī jurists allow for any sharp object to be used as long as it is not bone or nail.<sup>365</sup> These jurists do not make a distinction between attached or detached and base their rulings on adherence to traditions of the Prophet which forbid slaughter with those materials.<sup>366</sup>

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<sup>360</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:2.

<sup>361</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:2; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:207.

<sup>362</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:2.

<sup>363</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:362; al-Jundī, *al-Tawḍīḥ*, 2:651–52.

<sup>364</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:362.

<sup>365</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:181; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:201; Ibn Qudāmah, *al-Mughnī*, 9:396; al-Mardāwī, *al-Inṣāf*, 10:390.

<sup>366</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 181; Ibn Qudāmah, *al-Mughnī*, 396. Juwayni 18:181; Mughni 9:396

In either case, we can see that the kind of implement used has ritual relevance. That being said, many Ḥanbalī jurists, such as Ibn Qudāmah, allow for slaughter with bone and limit the prohibition to tooth and nail,<sup>367</sup> while some others, including Ibn Taymīyyah, do not.<sup>368</sup>

### **Ritual Elements**

One of the evidences of the importance of the ritual in practices of slaughter and hunting is that jurists did not hesitate in declaring animals to be impermissible if they were killed improperly. This means that the correct performance of the ritual is so important that doing so incorrectly can warrant wasting the animal's life. In some sense, all of the elements of slaughter can be seen as having ritual aspects. In this section, I focus on elements of Islamic slaughter that I consider to be purely ritual in nature in that they do not have a clear physical effect that is additional to their spiritual or ritual effect.

#### *Invoking God's Name*

Muslim jurists all include the invocation of God's name as one of the elements of Islamic ritual slaughter. This goes for both slaughtering domesticated animals and hunting wild animals. There are significant differences, however, between the schools of law regarding their understanding of the invocation. Some schools consider it obligatory, others consider it a recommendation, and still others fall somewhere in between these two poles. This produces a stark contrast in the way in which slaughter is conceptualized; making the invocation a requirement for the validity of the slaughter seems to emphasize the ritual nature of the practice

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<sup>367</sup> Ibn Qudāmah, *al-Mughnī*, 9:396–97; al-Mardāwī, *al-Inṣāf*, 10:391.

<sup>368</sup> Al-Mardāwī, *al-Inṣāf*, 10:391–92.

while having it as a recommended practice gives it less ritual weight as neglecting it has fewer consequences. In either case, the invocation of God at the time of slaughter is one of the elements of the ritual that does not have a physical effect. It is not unique in this respect, however it is the only non-physical practice that at least some jurists make an essential part of the ritual. That being said, even jurists who hold that it is required allow for slaughter to be valid if the invocation was omitted out of heedlessness or forgetfulness.<sup>369</sup>

Ḥanafī and Ḥanbalī jurists make the strongest case for the invocation of God being an obligatory element of Islamic ritual slaughter and hunting. Unlike Ḥanafīs, Ḥanbalī jurists distinguish between hunting and slaughter in an important way. For Ḥanbalī jurists, if a person forgets to invoke the name of God when hunting, then the hunt is invalid and the animal cannot be eaten.<sup>370</sup> Ḥanafīs hold that the invocation of God is necessary as long as one remembers it.<sup>371</sup> Discussing the invocation, al-Marwazī states, “If one were to intentionally neglect the invocation of God’s name, then the animal that was slaughtered or hunted would be impermissible in our School. It would not be impermissible according to al-Shāfi‘ī. Muslims and non-Muslim People of the Book are the same in regards to this ruling.”<sup>372</sup> Al-Sarakhsī comments on this saying that if a person were to neglect to invoke the name of God because they forgot to, then it would be permissible, although he notes that Mālik<sup>373</sup> and the Dhāhirīs hold that it would still be

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<sup>369</sup> al-Jundī, *al-Tawḍīḥ*, 2:607–8; al-Sarakhsī, *al-Mabsūṭ*, 11:236; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:241–43; Ibn Qudāmah, *al-Mughnī*, 9:388; al-Mardāwī, *al-Inṣāf*, 10:400–401.

<sup>370</sup> Ibn Qudāmah, *al-Mughnī*, 9:367–68; al-Mardāwī, *al-Inṣāf*, 10:441.

<sup>371</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:233.

<sup>372</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:236.

<sup>373</sup> As we note in this section, the position adopted in the Mālikī School is that the slaughter is valid if the invocation was neglected out of forgetfulness. Al-Kāsānī similarly states that the Mālikī school considers slaughter invalid if the invocation is neglected out of forgetfulness (al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:233).

impermissible.<sup>374</sup> In explaining why it is still valid if the person forgets to invoke God, al-Kāsānī engages in a discussion of the difference between leaving the invocation and forgetting it.<sup>375</sup> “The person who forgets (*al-nāsī*),” he writes, “did not actually leave (*yatrūk*) the invocation of God’s name, rather they have invoked God’s name because the invocation can be either with the tongue or with the heart. God says, ‘Do not obey those whose hearts We have made to forget our remembrance.’<sup>376</sup> The person who forgets remembers with their heart based on the statement of Ibn ‘Abbās when he was asked about a man who slaughters an animal and forgets to invoke God’s name over it. He responded, ‘The name of God is in the heart of every Muslim, so he should eat [the animal].’<sup>377</sup> This indicates that, while the invocation of God’s name at slaughter is an external ritual act that is required in order for the slaughter to be valid, it is really the internal state, of which the invocation of God’s name is an expression, that is essential. In this sense, intentionally abandoning the invocation of God’s name would be a sign that this internal state is not present, whereas forgetfulness does not negate it. This further means that, somewhat paradoxically, a state of forgetfulness and remembrance can be present at the same time.

Al-Sarakhsī spends two and a half pages discussing the evidence for the Ḥanafī and the Shāfi‘ī opinions regarding invoking God’s name. This is one of the issues on which al-Sarakhsī takes a strong stand. He reports that Ibn ‘Umar held the opinion that Mālik adopted,<sup>378</sup> while ‘Alī

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<sup>374</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:236.

<sup>375</sup> I generally translate *dhikr* as “to invoke,” although in this context it is worth noting that the word *dhikr* also has the meaning of “to remember,” so that al-Kāsānī is saying that the person who forgets to remember God has actually remembered Him.

<sup>376</sup> Qur’an (18:28)

<sup>377</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:242.

<sup>378</sup> i.e. that slaughter is invalid if one forgets to invoke God’s name.

and Ibn ‘Abbās differentiated between neglecting to invoke God’s name intentionally or out of forgetfulness as the Ḥanafī position does. Al-Sarakhsī calls attention to the fact that they are in agreement regarding the impermissibility of the animal if a person neglected to invoke God’s name intentionally and he says that their consensus (*ijmā’*) is sufficient evidence. He also cites a report that Abū Yūsuf held that there is no place for legal reasoning (*ijtihād*) regarding the case of neglecting to invoke God’s name intentionally such that if a judge were to rule that selling such meat were permissible, his judgment would not be allowed because it would contravene consensus.<sup>379</sup> Both al-Sarakhsī and al-Kāsānī go into great detail explaining the Ḥanafī opinion beginning with citing the Qur’anic verses, “Do not eat from that over which God’s name was not mentioned; it is iniquity (*fisq*),” [6:121]<sup>380</sup> and “Or iniquity which was done (*uhilla*) under other than God’s name,” [6:145].<sup>381</sup> Al-Sarakhsī interprets these verses as indicating that the reason for such food being forbidden is that God’s name was not mentioned over it, which for him is evidence that the verses are not referring to carrion or to the slaughtered animals of polytheists, since it is not the absence of invoking God that makes those impermissible. To drive this point home, he says that even if a polytheist were to invoke God’s name, the animal would still be impermissible.<sup>382</sup> He also cites the verse, “And invoke the name of God over it as they are lined up,” [22:36] which he interprets as meaning at the time of slaughter based on what follows in the verse, “and when they are down on their sides eat of them,” [22:36]. He further explains the meaning of invoking the name of God by citing Ibn ‘Abbās as saying, “Invoking the name of

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<sup>379</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:236.

<sup>380</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:236.

<sup>381</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:237.

<sup>382</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:237.

God means saying ‘In the name of God, God is greatest’ when you are cutting.”<sup>383</sup> He cites an additional verse to show that invoking God’s name is also obligatory when hunting at the time of sending one’s animal, “So eat what they refrain from...” [5:4] Based on these verses, he concludes that invoking the name of God is a commandment, and he cites the principle that a general commandment indicates obligation.<sup>384</sup> He also relies on traditions of the Prophet Muḥammad that he interprets as indicating that invoking God when performing slaughter is a condition for meat to be permissible. These include the hadith which reads, “If you send out your trained dog, having invoked God’s name, then eat, but if another person’s dog joins your dog, do not eat, for you invoked the name of God over your dog and not the other person’s dog.”<sup>385</sup> He also sees evidence for the obligation of invoking God in the fact that it is permissible to eat animals slaughtered by People of the Book but not by Magians, “And there is no reasonable difference between them except that the invocation of God performed by those who claim the oneness of God (*tawḥīd*) is valid, and it is not valid when performed by those who claim duality. So, it is clear that invoking God’s name is a condition [for permissibility.]”<sup>386</sup> He also argues that one of the reasons that Muslims are commanded to invoke God when slaughtering is to distinguish themselves from the polytheists who would invoke their gods. He explains, “Distinguishing ourselves from them is obligatory, so we know that it is obligatory to invoke God.”<sup>387</sup> He differentiates, however, between the case of slaughter and of other forms of food

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<sup>383</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:237.

<sup>384</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:237.

<sup>385</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:237.

<sup>386</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:237.

<sup>387</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:238.

preparation arguing that, since the polytheists did not invoke their gods when eating, it is only recommended that Muslims invoke God when eating, and not obligatory.<sup>388</sup>

Because of the great weight that Ḥanafī jurists place on invoking the name of God while performing slaughter, al-Sarakhsī explains a number of additional details related to it. First, the timing of the invocation is important, and al-Sarakhsī explains that it must be done while cutting the animal’s throat in the case of slaughter, and at the time of sending the hunting animal or firing a projectile weapon in the case of hunting. He explains that the reason the hunter invokes when sending his animal or firing his weapon is that he is unable to invoke at the moment that the piercing occurs, and because the invocation should coincide with the action of the human.<sup>389</sup> Al-Sarakhsī emphasizes that the person slaughtering should not mention anything else besides God at the time of slaughter, which includes making supplications for the sacrifice to be accepted. If a person wants to add a prayer when slaughtering, they should do it before the actual slaughter itself. He states that when the Prophet sacrificed his *udḥiyyah* he prayed “O God, this is from you and to you. My prayer, my devotional rites, my life, and my death are all for God, Lord of the Worlds, who has no partner. This is what I have been commanded and I am the first Muslim. In the name of God, God is greatest,” then he performed the slaughter.<sup>390</sup> The reason for this is that the invocation must be pure and sincere (*‘alā al-khulūṣ*). The capacity to invoke God in this way is what makes it permissible for women, members of *ahl al-kitāb*, and youths in possession of their rational faculties to perform slaughter.<sup>391</sup> Ḥanafīs address the issue of a mute

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<sup>388</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:238.

<sup>389</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:238.

<sup>390</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:5.

<sup>391</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:5.

person performing slaughter and state that it is permissible regardless of whether they are Muslim or a member of *ahl al-kitāb*.<sup>392</sup> Al-Sarakhsī explains this ruling in terms of the mute person having a valid excuse (‘*udhr*’) because if a person forgets to invoke God, they are excused, and the excuse of the mute person is even more deserving of consideration than this.<sup>393</sup> This is a point that he discusses in more detail in the chapter on hunting where he states that the essential characteristic of the person performing the slaughter is that they believe in the oneness of God (*tawḥīd*).<sup>394</sup>

In the chapter on slaughter, al-Sarakhsī discusses a number of additional issues related to invoking God’s name when slaughtering animals. The first issue has to do with the question of whether a person has to invoke the name of God over every animal that they are slaughtering or if they can slaughter a number of animals under the same invocation. The text states, “If someone wants to slaughter a number of animals, invoking the name of God over the first one does not cover the rest.”<sup>395</sup> In his explanation of this ruling, al-Sarakhsī indicates that each act of slaughtering an animal is unique, and one of the conditions for it being a valid slaughter is that the person performing the act invoke the name of God over it.<sup>396</sup> Similarly he says that if a person gets a sheep and lays it down, invokes God, then leaves that sheep and gets another one and slaughters it without invoking, it is not permissible,<sup>397</sup> and if a person slaughtered the sheep,

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<sup>392</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:5.

<sup>393</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:5.

<sup>394</sup> See below on the characteristics of the person performing the slaughter.

<sup>395</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:4.

<sup>396</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:4.

<sup>397</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:238.

then got another one and slaughtered it thinking that the first invocation sufficed, it is also not permissible.<sup>398</sup> He clarifies a similar point in discussing the original text, “If a person lays down an animal for slaughter, invokes God’s name, then puts down his knife and picks up another one and slaughters with it, the meat is eaten.”<sup>399</sup> This shows that there is a significant difference between changing the tool of slaughter and changing the animal that is being slaughtered, such that it is the animal over which the invocation is made, not the tool. When it comes to hunting, however, Al-Sarakhsī says that the invocation is made on the act of firing or releasing the hunting implement, which has to do with the specific arrow or other weapon. Because of this, if a person invokes over one arrow, and then exchanges it for another, he would have to repeat his invocation in order for the hunt to be valid.

Ḥanbalī jurists also hold that it is necessary to invoke God when one moves one’s hand in slaughter by saying, “*bismillah*,” (in the Name of Allah)<sup>400</sup> even if it is not in Arabic.<sup>401</sup> It is also sunna to add the phrase, “*Allahu Akbar*” (God is the Greatest).<sup>402</sup> Ḥanbalī jurists do not consider it preferable (*mustahabb*) to invoke blessings on the Prophet at the time of slaughter.<sup>403</sup> Slaughter performed by a mute person is valid. In this case the mute person makes a sign, such as raising their head to the sky, that indicates the invocation of God’s name.<sup>404</sup> If a person performing

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<sup>398</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:239.

<sup>399</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:4.

<sup>400</sup> Ibn Qudāmah, *al-Mughnī*, 9:388; al-Mardāwī, *al-Inṣāf*, 10:399.

<sup>401</sup> Ibn Qudāmah, *al-Mughnī*, 9:368; al-Mardāwī, *al-Inṣāf*, 10:400.

<sup>402</sup> Ibn Qudāmah, *al-Mughnī*, 9:368; al-Mardāwī, *al-Inṣāf*, 10:402.

<sup>403</sup> Ibn Qudāmah, *al-Mughnī*, 368; al-Mardāwī, *al-Inṣāf*, 10:402.

<sup>404</sup> al-Mardāwī, *al-Inṣāf*, 10:400.

slaughter omits the invocation of God's name the slaughter is invalid regardless of whether they did so intentionally or because they did not know that it was required.<sup>405</sup> If, however, they omit the invocation out of heedlessness, then the slaughter is valid.<sup>406</sup> As was mentioned above, the Ḥanbalī school is unique in differentiating between slaughter and hunting in this regard. If the hunter omits the invocation out of heedlessness, then the slaughter is invalid.<sup>407</sup> The invocation has to be over the specific animal that is being slaughtered. If, for example, one invoked the Name of God over a specific animal and then slaughtered a different animal, the slaughter would not be valid.<sup>408</sup> There is some leeway in the timing of the invocation in the Ḥanbalī School. According to Ḥanbalī jurists, as long as the invocation closely preceded the slaughter, it is valid.<sup>409</sup> This is true even if the person invokes God then gets a different knife, or responds to someone's greeting, or speaks to someone, it is still valid as long as there is not a long interval between the invocation and the slaughter.<sup>410</sup> In the case of hunting, the invocation is made when firing a projectile weapon or when sending a trained hunting animal<sup>411</sup> and it can precede the firing of the projectile by a few moments.<sup>412</sup> In the case of hunting, the invocation of God's name is applied to the projectile weapon, not the prey so that if they shot a prey other than the one they

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<sup>405</sup> Ibn Qudāmah, *al-Mughnī*, 9:388–89; al-Mardāwī, *al-Inṣāf*, 10:400–402.

<sup>406</sup> Ibn Qudāmah, *al-Mughnī*, 9:388; al-Mardāwī, *al-Inṣāf*, 10:400–401.

<sup>407</sup> Ibn Qudāmah, *al-Mughnī*, 9:367–68; al-Mardāwī, *al-Inṣāf*, 10:441.

<sup>408</sup> Ibn Qudāmah, *al-Mughnī*, 9:389; al-Mardāwī, *al-Inṣāf*, 10:401–2.

<sup>409</sup> Ibn Qudāmah, *al-Mughnī*, 9:388; al-Mardāwī, *al-Inṣāf*, 10:399.

<sup>410</sup> Ibn Qudāmah, *al-Mughnī*, 9:389.

<sup>411</sup> Ibn Qudāmah, *al-Mughnī*, 9:368 and 377; al-Mardāwī, *al-Inṣāf*, 10:441.

<sup>412</sup> Ibn Qudāmah, *al-Mughnī*, 9:377.

invoked God’s name over it would be permissible, but if they invoked God’s name and then changed arrows, it would not be permissible.<sup>413</sup>

Mālikī jurists fall somewhere in the middle of the spectrum. Contrary to what al-Sarakhsī reports, Mālikīs similarly differentiate between a person neglecting to invoke God’s name at the time of slaughter or when they are hunting intentionally or out of forgetfulness such that if a person omitted the invocation out of forgetfulness, then the slaughter is valid. If they did so intentionally making little of it, however, then the slaughter is invalid.<sup>414</sup> There is disagreement within the school, however, regarding whether this means that the invocation is obligatory or recommended (*sunna*). But even those who held that it was a *sunna* rather than a requirement considered an animal inedible if the invocation was omitted on purpose in order to prevent people from making little of the *sunna*.<sup>415</sup> It is preferred to add to the invocation of God’s name the phrase that aggrandizes God, “Allahu Akbar.”<sup>416</sup> Some Maliki jurists also mention that the person slaughtering may say, after “bismillah Allahu akbar,” “God accept from me,” (“*Allahumma taqabal minī*”).<sup>417</sup>

The Shāfi‘ī School is the outlier in regards to this issue because they hold that the invocation is not required and that omitting it does not invalidate the slaughter regardless of whether it is intentional or out of heedlessness.<sup>418</sup> Omitting it intentionally, however, is disliked

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<sup>413</sup> Ibn Qudāmah, *al-Mughnī*, 9:389.

<sup>414</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:360; al-Jundī, *al-Tawḍīḥ*, 2:607–8.

<sup>415</sup> al-Jundī, *al-Tawḍīḥ*, 2:607–8.

<sup>416</sup> al-Jundī, *al-Tawḍīḥ*, 2:655–56.

<sup>417</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:360; al-Jundī, *al-Tawḍīḥ*, 2:603.

<sup>418</sup> Significantly, in his *Nihāyat al-Maṭlab*, which is over twenty volumes in the print addition, al-Juwaynī devotes less than a page to a discussion of invoking God’s name during slaughter (al-Juwaynī, *Nihāyat al-*

(*makrūh*).<sup>419</sup> Rather, according to Shāfi'ī jurists, it is a sunna to invoke God's name at the time of slaughter by saying, "In the Name of God."<sup>420</sup> The invocation is done as one makes the cut in the case of slaughter and as one launches a projectile weapon or releases a trained hunting animal in the case of hunting,<sup>421</sup> however it can also be said when the projectile weapon strikes the animal or when the hunting animal bites, particularly if one neglected to do so when releasing them.<sup>422</sup>

### *Facing the Qiblah*

Although none of the Sunni legal schools consider it a requirement, turning towards the direction of the *qiblah* is another important ritual element of slaughter. Along with the invocation of God's name and the requirement that the person performing slaughter be a Muslim or a member of *ahl al-kitāb*, facing the *qiblah* is one of the elements of the ritual that provide it with a semi-devotional nature. Although I argue that slaughter does not belong among the strictly devotional activities categorized as *'ibādāt*, it should be clear by now that it does share some elements with devotional practices and it must be acknowledged that the language used by some jurists to describe it lends it a devotional aspect. This is particularly the case with some of the ways in which the practice of facing the *qiblah* is explained and rationalized. For example, the nineteenth century Shāfi'ī jurist Ibrahīm al-Bājūrī states that one cannot object to facing the *qiblah* when performing slaughter by saying that it involves facing the *qiblah* with filth

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*Maṭlab*, 18:186).

<sup>419</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:205.

<sup>420</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:186; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:205.

<sup>421</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:205.

<sup>422</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:205.

(*najāsah*), “Because worship (*al-ta‘bud*) is preponderant (*mughallib*) and the person draws near to God through the whole practice (*bil-jumlah*).”<sup>423</sup>

All four of the Sunni schools consider it to be a sunna to face the *qiblah* when performing slaughter.<sup>424</sup> There is a minority position in the Mālikī school however that considers the slaughter invalid if the person carrying it out did not face the *qiblah* intentionally.<sup>425</sup> Other jurists view it as being disliked to face a direction other than the *qiblah* when slaughtering but they state that it does not invalidate the slaughter. In his commentary, al-Sarakhsī explains that facing the *qiblah* while slaughtering an animal is a sunna because it is reported that the Prophet Muḥammad faced the *qiblah* with his sacrificial animal when he performed the *udḥiyyah* sacrifice, and the same is related concerning ‘Alī. Additionally, he says that it may be that in the *jāhiliyyah* people would turn animals towards idols when slaughtering them.<sup>426</sup> This is consistent with his view that one of the reasons it is required to invoke God’s name during slaughter is to distinguish Islamic slaughter from the slaughter of the polytheists who would invoke their gods when slaughtering animals. Al-Sarakhsī distinguishes between facing the *qiblah* and invoking the name of God while slaughtering by explaining that the purpose of the first is to aggrandize (*ta‘dīm*) the direction, which is recommended (*mandūb*) whereas invoking the name of God is to aggrandize God, which is obligatory (*farḍ*).<sup>427</sup>

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<sup>423</sup> Ibrahīm al-Bājūrī, *Ḥāshiyat Al-Bājūrī ‘alā Sharḥ Ibn Qāsim Al-Ghazzī* (Cairo, Egypt: Īsā al-Bābī al-Ḥalabī, 1880), 2:284.

<sup>424</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:359; al-Jundī, *al-Tawḍīḥ*, 2:654–55; al-Sarakhsī, *al-Mabsūṭ*, 12:3; al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:281; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:204; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:186; Ibn Qudāmah, *al-Mughnī*, 9:398; Mardāwī, *al-Inṣāf*, 10:404.

<sup>425</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:360; al-Jundī, *al-Tawḍīḥ*, 2:655.

<sup>426</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3.

<sup>427</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:3.

## Hunting

Hunting is considered a separate but related ritual in that it shares a number of similarities with slaughter as well as differences. Hunting can be seen as a stand-in for slaughter, but it is also an independent ritual in its own right. As we shall see in this section, the differences between slaughter and hunting involve the kinds of animals upon whom it is performed, the implement that is used, the activity itself, and, for at least some jurists, who may carry it out. The similarities are associated primarily with the ritual effect of producing pure meat that is permissible for consumption as well as the devotional element of invoking God's name. Hunting also has a number of additional rules and stipulations that I will cover in this section. While these rules cover a diverse range of issues, including the need to pursue a wounded hunting animal and descriptions of what allows a hunting animal to be considered trained, nearly all of them are related to a concern that the hunted animal die as the direct result of a human being's intentional action.

In all of the schools of law hunting is considered permissible, particularly when it has the purpose of acquiring food.<sup>428</sup> Al-Mardāwī even relates a statement that hunted animals are the best food (*aṭyab al-ma'kūl*).<sup>429</sup> If it is done for sport (*lahw*), however, a number of jurists explicitly mention that it is disliked.<sup>430</sup> Ibn Abī Zayd relates a statement ascribed to al-Layth in which he says, "I have not seen anything that is right which is closer to being wrong than it

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<sup>428</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:341; al-Jundī, *al-Tawdīh*, 2:604; al-Sarakhsī, *al-Mabsūṭ*, 11:220; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:274; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:103; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:237; Ibn Qudāmah, *al-Mughnī*, 9:366; al-Mardāwī, *al-Inṣāf*, 10:411.

<sup>429</sup> Al-Mardāwī, *al-Inṣāf*, 10:411.

<sup>430</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:341; al-Jundī, *al-Tawdīh*, 2:604; al-Mardāwī, *al-Inṣāf*, 10:411.

[hunting for sport].”<sup>431</sup> Some jurists also explicitly state that hunting is to achieve a specific end. In the Ḥanafī school this means benefiting from the meat of edible animals and from the hides or bones of inedible animals, or to protect people from their harm.<sup>432</sup> Hunting, then, is the legislated way of benefitting from animals that cannot be killed through the process of slaughter either because they are wild animals or, according to some schools of law, because they are domesticated animals that have run away or fallen into a well such that one is no longer in control of them to perform slaughter.

There is some disagreement between the schools regarding which animals may be killed through hunting. While all agree that wild edible animals may be hunted, according to the Hanafī school, hunting is permissible whether the animal is edible or not. The rationale that they provide for this goes back to the question of whether slaughtering an inedible animal serves to purify it. According to them, through hunting one can benefit from the animal’s hide, or one can benefit from protecting people from the possibility of the animal harming them.<sup>433</sup> According to Mālikī jurists, however, only edible wild animals are purified through hunting, thus excluding both inedible wild animals and domesticated animals that flee from one’s control.<sup>434</sup> In addition to wild animals, Shāfi‘ī jurists allow for domesticated animals that have run away and whom it would be difficult to recapture, to be killed by hunting.<sup>435</sup> This is also the opinion of Ḥanbalī jurists who allow for a domesticated animal that has run away or become inaccessible by

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<sup>431</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:341.

<sup>432</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:220; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:274.

<sup>433</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:220; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:274.

<sup>434</sup> al-Jundī, *al-Tawdīh*, 2:613.

<sup>435</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:130–31; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:240.

falling in a well or the like to be killed through hunting.<sup>436</sup> Thus one of the main differences here is whether jurists solely take the animals' species into consideration or if they are more concerned with the state that the animal is in when it is killed.

One of the main differences between slaughter and hunting is that in the case of slaughter, as we have seen, the animal must be cut on a specific part of the body. In contrast, when it comes to hunting, a wound inflicted on any part of the animal's body suffices.<sup>437</sup> This is only the case, however, if the wound is lethal. If the animal is wounded in the hunt, the hunter must pursue the animal and, if they find it while it is still alive, they must perform slaughter for it to be permissible. This is a ruling that is shared across the schools and many jurists are explicit in stating that if a person neglects to slaughter a wounded animal, and it dies, then it is not permissible to eat it.<sup>438</sup> If, however, they pursue the animal diligently and find it dead, then it is permissible to eat as long as there isn't an indication that it died from a cause other than the wound inflicted by the hunter. In order to fulfill this requirement, the hunter must pursue a wounded animal after shooting it. Many jurists emphasize that it is the hunter's responsibility to diligently pursue the animal. This means that jurists hold that if the hunter delays pursuing the animal and then finds it dead, it may not be eaten because there is the possibility that if they had pursued it, they would have been able to perform the slaughter.<sup>439</sup> Additionally, the hunter must be prepared to perform the slaughter when they find the animal. If the hunter comes upon the

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<sup>436</sup> Ibn Qudāmah, *al-Mughnī*, 9:389.

<sup>437</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:343; al-Jundī, *al-Tawdīh*, 2:620; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:108; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:240.

<sup>438</sup> al-Jundī, *al-Tawdīh*, 2:620–21; al-Sarakhsī, *al-Mabsūṭ*, 11:222; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:241; Ibn Qudāmah, *al-Mughnī*, 9:373.

<sup>439</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:222 and 241.

wounded animal and does not have a knife with them, the animal is impermissible if it dies without being slaughtered.<sup>440</sup> Some Ḥanbalī jurists such as al-Khiraqī, however, take another view of this situation. In the case that the hunter does not have a knife with them and they come upon the prey while it is still alive, they are to encourage the training hunting animal to attack the prey until it is dead.<sup>441</sup> Even so, Ibn Qudāmah appears not to endorse this position and considers it necessary to kill such an animal by slaughtering it with a knife.<sup>442</sup>

As I mentioned above, it is important that the animal dies from a direct action of the hunter or the hunting animal. One of the things that sets hunting apart from slaughter in that the hunter is not entirely in control of all of the variables that make up the hunt, so jurists discuss a series of situations in which it would be impermissible to eat the animal killed by hunting due to some ambiguity regarding the cause of its death. These include the animal falling off of a cliff after it has been shot or chased by a trained hunting animal,<sup>443</sup> with there being some difference of opinion regarding the case of a bird being shot out of the air and falling to the ground. According to Mālikī jurists, if a person shoots a bird out of the sky and finds it dead on the ground, but the wound inflicted by the shot was not a lethal wound, then it is impermissible to eat it because it may have died from the fall.<sup>444</sup> Other jurists, however, distinguish between the

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<sup>440</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:241; al-Jundī, *al-Tawḍīḥ*, 2:625.

<sup>441</sup> Ibn Qudāmah, *al-Mughnī*, 9:374.

<sup>442</sup> Ibn Qudāmah, *al-Mughnī*, 9:374.

<sup>443</sup> al-Jundī, *al-Tawḍīḥ*, 2:624; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:266–67; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:379–80; al-Mardāwī, *al-Inṣāf*, 10:422–24.

<sup>444</sup> In both this instance and the previous case of a land animal falling off a cliff, Mālikī jurists consider the hunt valid if the wound inflicted by the hunter is lethal (Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:354; al-Jundī, *al-Tawḍīḥ*, 2:624).

case of a land animal falling off of a cliff after being shot and a bird falling from the sky and hitting the ground after being shot because the latter cannot be avoided.<sup>445</sup>

A key element that ensures that the animal died as the result of the hunter's action is that the hunter have the intention to kill the animal. While intention is discussed in all the four schools,<sup>446</sup> there are some important distinctions regarding how specific the intention needs to be. The Mālikī school may be the most restrictive in this regard. It is important that the intention not just be to kill the specific animal, but that the intention be to hunt the animal as a performance of *dhakāh*.<sup>447</sup> This requires that the animal one is shooting be an animal that one is allowed to eat or benefit from. Even forbidden animals may be hunted, however, if one is in a state of need that would make eating them permissible. In such a case one may even intend *dhakāh* when shooting a pig.<sup>448</sup> If one is hunting an animal that is considered *makrūh*, such as lions or tigers in the Mālikī School, then one can intend *dhakāh* in order to benefit from its hide or even to eat it.<sup>449</sup> One may also just intend to kill the animal, in which case it would not count as *dhakāh* and one could not eat it.<sup>450</sup> The importance of intention in the Mālikī school is such that if one shoots an animal thinking that it is an animal that is *ḥarām*, and then it turns out to be

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<sup>445</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:224–25; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:267; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:149–50; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:244–45; Ibn Qudāmah, *al-Mughnī*, 9:380; al-Mardāwī, *al-Inṣāf*, 10:424.

<sup>446</sup> al-Jundī, *al-Tawḍīḥ*, 2:612; al-Sarakhsī, *al-Mabsūṭ*, 11:240–41; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:118; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:250–51; Ibn Qudāmah, *al-Mughnī*, 9:377.

<sup>447</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:348; al-Jundī, *al-Tawḍīḥ*, 2:616.

<sup>448</sup> al-Jundī, *al-Tawḍīḥ*, 2:616.

<sup>449</sup> al-Jundī, *al-Tawḍīḥ*, 2:616. In this case eating it would be disliked, but using its hide would not be.

<sup>450</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:348; al-Jundī, *al-Tawḍīḥ*, 2:616.

an animal that is permissible, then the hunt is invalid.<sup>451</sup> That being said, if one shoots an animal knowing that it is permissible but not knowing specifically what kind of animal it is, then it is a valid hunt.<sup>452</sup> Ḥanbalī scholars hold similar opinions such that if a person sees a shadow or hears something and thinks it is a person or a rock or an animal and they shoot it and it turns out to be prey that can be hunted, it would not be permissible because of the lack of proper intention.<sup>453</sup>

Shāfi‘īs are less stringent in their requirements for intention when it comes to hunting. They address a number of incidents that are permissible even though there is some ambiguity regarding the hunter’s intention. These include instances when the hunter shoots what they think is a rock, a human, a pig or other forbidden animal, but it turns out to be an edible hunted animal.<sup>454</sup> Ḥanafīs are similarly less restrictive in this regard. While al-Sarakhsī, for example, holds that it is important for the hunter to have the intention of hunting when he fires or sends his hunting-animal, he also states that it is not necessary to specify the particular target.<sup>455</sup> Al-Sarakhsī’s opinion is that even if the hunting-animal kills more than one animal, it is acceptable, but only if it does not pause for an extended period of time in between killings, in which case the second animal would not be permitted.<sup>456</sup>

As we saw in the section on slaughter, one of the essential aspects of the ritual is that it causes the animal to bleed and that some jurists refer to this as the purpose of the practice. This is

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<sup>451</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:347; al-Jundī, *al-Tawḍīḥ*, 2:617.

<sup>452</sup> al-Jundī, *al-Tawḍīḥ*, 2:618.

<sup>453</sup> Ibn Qudāmah, *al-Mughnī*, 9:377–78.

<sup>454</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:120–22; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:251.

<sup>455</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:240–41. See also: al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:266–67.

<sup>456</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:241.

relevant not only because it brings about the animal's death, but because blood is considered to be ritually impure, so it is through shedding the animal's blood that it is purified. One of the differences between hunting and slaughter is that blood is not drained in the same way. While this is generally overlooked and hunting and slaughter are considered equivalent practices in purifying the meat of the animals, there are circumstances in which the animal may die without having shed any blood at all. This is the case when the trained hunting animal runs into the prey and slams it against a rock or a wall killing it through the force of the blow. The schools of law are divided in their opinions regarding whether or not an animal killed in this way would be permissible for consumption. At stake is the question of whether it is sufficient for the hunter to engage in the ritual in good faith, or if certain physical effects must be obtained. On first glance, this situation may appear to be similar to the case of an animal being shot and falling off a cliff, which I noted above all of the schools agree is an invalid hunt. Jurists consider that to be the case of an animal dying from a secondary cause additional to the act of the hunter, whereas in the case of the trained animal slamming into the animal, it dies as a result of the trained animal's direct action. Ḥanafī jurists take the strongest stance against this holding that an animal that dies in this way cannot be eaten. Al-Sarakhsī emphasizes the importance of shedding blood in making animals pure saying, "We have clarified that permissibility is out of consideration for the shedding of the filthy blood, and this occurs through inflicting a piercing wound, not through a blow which hits the animal but does not pierce it. Such an animal would fall into the category of *al-mawqūdhah* which is forbidden based on textual evidence."<sup>457</sup> Ḥanbalī jurists also agree that blood must be shed in order for the hunt to be valid.<sup>458</sup> While the widespread opinion of the

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<sup>457</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:222.

<sup>458</sup> Al-Mardāwī, *al-Inṣāf*, 10:432–33.

Mālikī School is that the wound inflicted by hunting must draw blood,<sup>459</sup> some Mālikī jurists, such as al-Ashhab, hold that the animal may be permissible even if it does not shed blood, as in the case of it dying because the hunting animal slammed into it with its body.<sup>460</sup> The more accepted position in the Shāfi‘ī school is that an animal that is killed by a trained hunting animal is permissible even if the hunting animal does not inflict a wound that draws blood.<sup>461</sup> Al-Juwaynī explains the reasoning for this as being that while one can train a dog to obey commands and to refrain from eating the hunted animal, it cannot be trained to inflict a piercing wound. Although he endorses this ruling, al-Juwaynī is also careful to explain that bleeding the animal is one of the goals of the law (*min maqāṣid al-sharī‘ah*) and that this is the only exception from that requirement due to the limitations of what one can do with a trained hunting animal.<sup>462</sup>

### *Hunting Tools*

As was the case with slaughtering domesticated animals, there are certain stipulations that must be met in order for a tool or a weapon to be used for hunting. In this context, one may hunt either with a projectile weapon that has a sharp point that can pierce, or with a trained hunting animal. Many of the concerns that I have already discussed show up in questions related to hunting weapons. Principle among these is that the weapon be able to kill by piercing so that it draws blood and that the hunting animal be trained so that it acts as a proxy for the hunter. This final point ensures that the hunted animal is killed through an action that can be attributed to the

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<sup>459</sup> al-Jundī, *al-Tawḍīḥ*, 2:620.

<sup>460</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:343; al-Jundī, *al-Tawḍīḥ*, 2:620–21.

<sup>461</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:111; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:244.

<sup>462</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:111.

human hunter. The requirements for projectile weapons are fairly straight forward; the only stipulation is that it has a sharp point so that it kills the animal by piercing it rather than through the blunt force of a blow.<sup>463</sup> Because of this, jurists allow for spears and arrows to be used, but they do not allow for an animal to be killed with the broad side of a spear or for hunters to use stones or other dull objects.

### *Trained Animal*

When it comes to the question of hunting with a trained hunting animal, there are considerably more issues to consider than with the case of projectile weapons. These include which kinds of animals may be trained for hunting purposes, what it means for them to be trained, and other additional conditions for their hunt to be considered valid. Al- Juwaynī provides an explanation for why using a trained animal to hunt is permissible which centers the treatment of animals as one of the foundational principles underlying all of the practices we are discussing:

Because the tools of the slaughterer cannot reach hunted animals, the law has prepared tools that will reach them when they are fleeing, such as arrows and the like. It is as if the secret of this is that seeking out the appropriate place of slaughter (i.e. the animal's throat) is interpreted as shedding blood in the easiest, quickest, and most complete way, out of care for the animal (*rifqan bil-dhabīḥah*). If it flees, missing it does not cancel out seeking to be gentle and kind (*rifq*) in slaughtering it. At the same time, still being able to benefit from it is more aligned with the excellences of the law (*maḥāsīn al-sharī'ah*) than letting it go until one is able to be in control of the animal. Further, shooting (*al-ramī*) is appropriate for those who are good at it, and that is only a few people. For this reason, God has affirmed hunting with trained animals in His decisive book. Even though such animals have free choice (*ikhtiyār*) if they follow their master in going after the prey and does not eat from it, the hunting animal is treated as a tool that is used for slaughter.<sup>464</sup>

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<sup>463</sup> al-Jundī, *al-Tawdīḥ*, 2:608; Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:345; al-Sarakhsī, *al-Mabsūṭ*, 11:222; al-Nawawī, *Rawḍat al-Tālibīn*, 3:243; Ibn Qudāmah, *al-Mughnī*, 9:383.

<sup>464</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:107–8.

This passage reveals a number of concerns that are central to the issue of hunting with trained animals. Embedded in this statement is the idea that hunting is an important way for humans to benefit from non-human animals, which is an assumed good in al-Juwaynī's thinking. While humans are permitted to kill animals, however, it is important that it is done in a way that involves kindness, which is what opens the door for hunting with projectile weapons. This, however, according to al-Juwaynī, is something that only a few people can do well, which is the rationale for why using a trained animal is allowed since that is available to people without the specialized skill set of being a marksman. Presenting the matter in this way makes the analogy between the hunting animal and the projectile weapon plane and allows al-Juwaynī to consider the trained animal to be a tool of the hunter even while endorsing that animal's own will and capacity for choice. This raises a question for further study focused on the nature of relationships between humans and non-human animals and what kind of partnerships can be formed between them.

Jurists list a number of different animals that can be trained and used to hunt. Unlike the question of which animals are edible or which may be eaten, the question of which animals maybe trained and used for hunting is more an issue of function rather than ritual law. While purity and impurity, for example, are major concerns when determining which animals may be eaten as food, this is not a factor when examining animals that are trained for hunting. In fact, we have seen that dogs, which are often presented as the emblematic hunting animal, are considered impure by the majority of the schools of law. Their ability to be trained however, combined with their hunting skills, make them ideal animals for hunting and Muslim jurists endorse using

them.<sup>465</sup> There are still some special ways in which they need to be treated, even when used to hunt. For example, because they consider the saliva of dogs to be impure, Shāfi‘ī jurists require the place where a dog bit an animal to be washed or even to be cut out because that part of the animal would have been tainted. For Shāfi‘īs this is a ritual washing that must be performed seven times with one of the washings being with earth.<sup>466</sup> Ḥanbalī relate two positions on this issue. One is that the area must be washed and the other that is it not necessary since the Prophet permitted eating what dogs kill and did not mention the requirement of washing the place where they bit the animal.<sup>467</sup> Ḥanbalī scholars are also unique in that while they allow for dogs to be used to hunt, they do not permit the use of black dogs because of hadiths that indicate that dogs that are completely black are demons and should be killed.<sup>468</sup> This last point highlights the controversial nature of dogs in Islamic traditions as well as the ritual aspect of hunting.

In addition to dogs, jurists permit hunting with a number of other animals. These include large cats such as leopards and tigers as well as birds of prey such as falcons and hawks.<sup>469</sup> The key elements required are that the animal can be trained and that it can hunt. Al-Sarakhsī of the Ḥanafī school explains this in terms of the Qur’anic verse that reads, “And those wounding animals that you have trained,” [5:4]. He provides two possible interpretations of this. The first is

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<sup>465</sup> On dogs in Islamic traditions see: Khaled Abou El Fadl, “Dogs in the Islamic Tradition,” in *The Encyclopedia of Religion and Nature* (Continuum, 2006).

<sup>466</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:110–11; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:248.

<sup>467</sup> Ibn Qudāmah, *al-Mughnī*, 9:372; al-Mardāwī, *al-Inṣāf*, 10:433.

<sup>468</sup> Ibn Qudāmah, *al-Mughnī*, 9:372–73; al-Mardāwī, *al-Inṣāf*, 10:427–29.

<sup>469</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:341–42; al-Jundī, *al-Tawḍīḥ*, 2:608–9; al-Sarakhsī, *al-Mabsūṭ*, 11:221; al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:252; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:104–5; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:249; Ibn Qudāmah, *al-Mughnī*, 9:371; al-Mardāwī, *al-Inṣāf*, 10:430–32.

that the animal be actually able pierce with fangs or talons, and the second is that it be an animal that hunts (*kawāsib*).<sup>470</sup> As we shall see, however, jurists take into consideration the different temperaments of these animals when discussing the definition of training and what can be reasonably expected of them.

As was mentioned above, the trained animal serves as a tool or extension of the hunter and the key element that allows for this is that the hunting animal be trained. Some jurists explicitly state that the trained animal functions like a tool. “The dog is a tool (*ālah*),” writes al-Khalīl, “with the same standing as a knife. A Magian hunting with a Muslim’s dog is the same as a Magian slaughtering an animal with a Muslim’s knife.”<sup>471</sup> Thus we find that all of the schools of law endorse training as being one of the requirements for hunting with an animal.<sup>472</sup> Jurists discuss different ways to tell if an animal is trained such as its obeying when it is sent after prey, its responding when it is called, and its restraining itself when commanded to hold back.<sup>473</sup> Another behavior that jurists endorse as necessary for the trained hunting animal to have is that it refrains from eating the animal it has killed for the hunter.<sup>474</sup> The exception to this is found in the

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<sup>470</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:221.

<sup>471</sup> al-Jundī, *al-Tawḍīḥ*, 2:608.

<sup>472</sup> al-Jundī, *al-Tawḍīḥ*, 2:234 and 2:608; al-Sarakhsī, *al-Mabsūṭ*, 11:221; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:253; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:103–4; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:246; Ibn Qudāmah, *al-Mughnī*, 9:369; al-Mardāwī, *al-Inṣāf*, 10:427.

<sup>473</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:341–42; al-Jundī, *al-Tawḍīḥ*, 2:609–11; al-Sarakhsī, *al-Mabsūṭ*, 11:221; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:253; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:104; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:247; Ibn Qudāmah, *al-Mughnī*, 9:368–71; al-Mardāwī, *al-Inṣāf*, 10:430.

<sup>474</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:223; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:253; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:104; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:249; Ibn Qudāmah, *al-Mughnī*, 9:370–71; al-Mardāwī, *al-Inṣāf*, 10:430.

Mālikī School which does not require that the animal refrains from eating the prey.<sup>475</sup> Al-Sarakhsī explains this requirement in terms of the animal acting as a proxy for the hunter. “We have clarified,” he says, “that the prey’s consumption being permissible is established through the hunting-animal’s actions in light of it being a proxy for its owner, and this is nullified if the animal eats from the prey.”<sup>476</sup> Eating the prey would show that the animal was actually acting on its own behalf rather than on behalf of the hunter.

These stipulations all apply to trained land animals, but some exceptions are made for trained birds used for hunting depending on the legal school. Shāfi‘ī jurists, for example, hold trained birds to the same standard such that they also have to refrain from eating the prey,<sup>477</sup> although al-Juwaynī says that he thinks this is a farfetched expectation and relates an additional opinion in the school that birds do not have to refrain from eating the prey.<sup>478</sup> So for them, if the hunting animal kills the prey and then eats some of it, the prey is not permissible, regardless of whether the hunting animal was a bird or a land animal. Mālikī, Ḥanafī, and Ḥanbalī jurists, on the other hand, view birds in a different light and do not consider their eating from the prey an invalidating action.<sup>479</sup> Both al-Sarakhsī and Ibn Qudāmah state that it is allowed if a falcon eats from the prey because it cannot be trained to refrain from doing so the way that a dog can. This is because body of a dog can be hit to make it stop eating, whereas you cannot hit a falcon.<sup>480</sup>

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<sup>475</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:343; al-Jundī, *al-Tawdīh*, 2:611–12.

<sup>476</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:222.

<sup>477</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:246; Ibn Qudāmah, *al-Mughnī*, 9:370–71.

<sup>478</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:105.

<sup>479</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:343; al-Jundī, *al-Tawdīh*, 2:611–12; al-Sarakhsī, *al-Mabsūṭ*, 11:222; Ibn Qudāmah, *al-Mughnī*, 9:372; al-Mardāwī, *al-Inṣāf*, 10:432.

<sup>480</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:222; Ibn Qudāmah, *al-Mughnī*, 9:372.

Another difference that al-Sarakhsī points out is that dogs are familiar with people, so their going and coming at command is not contrary to their nature, but not eating the dead animal is contrary to their nature, so this is a sign of its being trained. As for the falcon, coming when it is called is already contrary to its nature, so this alone serves as evidence for its being trained.<sup>481</sup>

Jurists address the question of what it means if the hunting animal eats the prey after its training has been established. Mālikī jurists do not specify a number of times that an animal must disobey in order to cease to be considered trained, but it must be more than once.<sup>482</sup> For Ḥanafīs, however, one time is sufficient for the animal to be no longer considered trained.<sup>483</sup> There are two opinions in the school regarding the ramifications of a trained dog eating from the prey. According to Abu Ḥanīfa, whatever that animal previously killed is considered to be forbidden.<sup>484</sup> Here we find a case where something that was previously understood to be permissible becomes impermissible because the status of the animal that killed it has changed. One of the things this shows is that rulings of permissibility and impermissibility, as well as the related concepts of purity and impurity, can at times be fluid; what was once pure and permitted becomes impure and impermissible, although nothing about the thing itself has changed. Muḥammad and Abū Yūsuf, however, hold the opinion that the animals that the dog previously killed remain permissible.<sup>485</sup> Some other Ḥanafīs take a nuanced position that holds that if they were recently killed by the dog in question Abū Ḥanīfa's ruling applies, but if a period of time

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<sup>481</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:222.

<sup>482</sup> al-Jundī, *al-Tawḍīḥ*, 2:610.

<sup>483</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:243; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:258.

<sup>484</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:243. See also: al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:257.

<sup>485</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:243; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:257.

has passed, such as a month, then they would remain permissible since it is possible for the dog to have been considered trained at the time it killed those animals having since forgotten its training.<sup>486</sup> For Shāfi‘ī jurists, if the trained hunting animal eats a hunted animal twice, then it can no longer be considered trained and the second animal it ate from is considered impermissible. There is a difference of opinion, however, regarding the permissibility of the animals that it killed before it broke its training.<sup>487</sup> For Ḥanbalī jurists, if the trained animal eats from the prey, that animal is not permissible, but it does not have an impact on subsequent animals that it kills.<sup>488</sup> It also does not have a retroactive effect and any animals it killed previously remain permissible.<sup>489</sup>

Being trained is a status that the animal achieves after repeatedly demonstrating that they possess these traits of a trained animal. Mālikīs do not specify how many times an animal must show obedience in order to be considered trained, but it is not enough that the animal obeys only once.<sup>490</sup> Shāfi‘ī jurists also state that the trained behavior must occur at least twice to the point that one would think that it is trained, but they leave the specific number of times up to those who have expertise in animal training.<sup>491</sup> Ḥanbalī jurists say they behavior has to be repeated such that the animal would typically be considered trained, with the least amount of repetitions

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<sup>486</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:243; al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:257.

<sup>487</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:247.

<sup>488</sup> Ibn Qudāmah, *al-Mughnī*, 9:371; al-Mardāwī, *al-Inṣāf*, 10:432.

<sup>489</sup> Mardāwī, *al-Inṣāf*, 10430–31.

<sup>490</sup> al-Jundī, *al-Tawḍīḥ*, 2:610.

<sup>491</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:105; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:247.

being three times.<sup>492</sup> Ḥanafī scholars say that training requires that the animal hunts three times successfully and does not eat from the hunted animal. Accomplishing this means that the fourth animal that it hunts would be permissible. There is a difference of opinion between Muḥammad and Abū Yūsuf and Abū Ḥanīfah regarding the number of repetitions required for an animal to be trained with the former two holding the opinion that it is three times and Abū Ḥanīfah holding that there is no specific number of times for an animal to be considered trained, rather it is the result of an expert's declaration.<sup>493</sup> There is a narration of an opinion of Abū Ḥanīfah that holds to the three times rule, but here Abū Ḥanīfah has the third animal hunted being permitted rather than the fourth. According to this opinion the third successful hunt shows that the hunting-animal is trained, so the animal that it killed would have been killed by a trained animal, and therefore it would be permissible, whereas for Muḥammad and Abū Yūsuf it is not clear that the animal was trained until after the third kill, so the third is not permissible.<sup>494</sup> Notably, neither al-Sarakhsī nor al-Kāsānī weigh in on which of these positions they adopt, but the disagreement highlights how subtle the distinction between something being pure and permissible versus impure and impermissible can be. Jurists do not address the question of what is to be done with the animals that the dog kills while it is being trained to hunt. We may infer that they consider training the dog to be a worthwhile activity which justifies the death of the animals being hunted even if they cannot be consumed.

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<sup>492</sup> Ibn Qudāmah, *al-Mughnī*, 9:369; al-Mardāwī, *al-Inṣāf*, 10:430–31.

<sup>493</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:244; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:256–57.

<sup>494</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:244.

## Who May Perform Slaughter and Hunting?

The final ritual element of Islamic slaughter and hunting that we will consider has to do with who may perform them. Just as the way in which the performance of the ritual is carried out determines whether the act of slaughter or hunting is valid, certain characteristics of the person carrying it out similarly determine its validity. Jurists address a number of different characteristics that a person might have and their impact on the validity of slaughter and hunting. These include questions of gender, age, and mental state. Most importantly, however, is the question of religious affiliation, regarding which there is the most discussion in Islamic legal texts. This issue taps into larger questions regarding inter-religious engagement and the ways in which different communities relate to each other's food. David Freidenreich has written extensively on this question as it relates to Jews, Christians, and Muslims in his book *Foreigners and the Food* as well as in a series of articles that touch on some of the issues we are discussing here.<sup>495</sup> The discussion in Islamic literatures is centered on the Qur'an verse that sates, "The food of the people who were given the book is permitted to you," [5:5]. Jurists take this verse to be evidence that Muslims are allowed to eat meat that comes from animals that were killed by Jews and Christians,<sup>496</sup> but they engage in a number of debates regarding what stipulations, if any, might accompany this permission.

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<sup>495</sup> See: David Freidenreich, *Foreigners and Their Food: Constructing Otherness in Jewish, Christian, and Islamic Law* (Berkeley: University of California Press, 2011); David Freidenreich, "Five Questions about Non-Muslim Meat: Toward a New Appreciation of Ibn Qayyim Al-Jawziyyah's Contribution to Islamic Law" *Oriente Moderno* 90, no. 1 (2010): 89–110; David Freidenreich, "The Implications of Unbelief: Tracing the Emergence of Distinctively Shi'ī Notions Regarding the Food and Impurity of Non-Muslims," *Islamic Law and Society* 18, no. 1 (2011): 53–84; and David Freidenreich, "Food-Related Interaction Among Christians, Muslims, and Jews in High and Late Medieval Latin Christendom," *History Compass* 11, no. 11 (2013): 957–966.

<sup>496</sup> The exception to this is found in the Shi'ī schools of law where the verse is viewed as applying to non-meat foods. See: Freidenreich, "The Implications of Unbelief."

Aside from religious affiliation, however, there are a number of issues regarding which Muslim jurists generally agree. Many of them have to do with the capacity to intend an action that is being performed or to be capable of sincerely and purely invoking God. So a person who has reached the age of discernment but not puberty can perform slaughter or hunt.<sup>497</sup> Mālikī jurists, however, consider it disliked for a prepubescent youth who has discernment to perform slaughter, although it is valid if they do.<sup>498</sup> According to Mālikī, Ḥanafī, and Ḥanbalī jurists, a person also must be in a state of mental lucidity and sobriety for their slaughter to be valid, so someone who is insane (*majnūn*) or intoxicated (*sakrān*) cannot perform slaughter or hunt.<sup>499</sup> There is a difference of opinion on this within the Shāfi‘ī school with some jurists, such as al-Juwaynī and al-Ghazālī considering it invalid, and others, such as al-Nawawī and holding that it is valid.<sup>500</sup> This emphasis on the role of intention in slaughter supports my argument that in order to make sense of the rules of slaughter we have to think of them in light of ritual. It is not just the physical activity that is relevant here; without the intention to perform slaughter, even if all of the outward acts are completed, slaughter cannot have occurred. Further, this role of intent is one of the hallmarks of Islamic legal discussions of ritual performance.<sup>501</sup> Muslim jurists also

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<sup>497</sup> al-Jundī, *al-Tawḍīḥ*, 2:604–5 and 2:635; al-Sarakhsī, *al-Mabsūṭ*, 12:5; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:224; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:129; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:238; Ibn Qudāmah, *al-Mughnī*, 9:402; al-Mardāwī, *al-Inṣāf*, 10:389.

<sup>498</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:364; al-Jundī, *al-Tawḍīḥ*, 2:636–37.

<sup>499</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:364; al-Jundī, *al-Tawḍīḥ*, 2:605 and 2:636; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:224; Ibn Qudāmah, *al-Mughnī*, 9:402; al-Mardāwī, *al-Inṣāf*, 10:389.

<sup>500</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:224; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:238.

<sup>501</sup> On the role that intent plays in Islamic law see: Paul Powers, *Intent in Islamic Law: Motive and Meaning in Medieval Sunnī Fiqh* (Leiden: Brill, 2006).

introduce the question of gender. While all four schools consider slaughter performed by women to be valid, Mālikī jurists consider it disliked if there is no need for it (*darūrah*).<sup>502</sup>

Religious affiliation is a major factor that determines whether or not a person's slaughter is considered valid. Sunni jurists agree that slaughter is valid if performed by a Muslim or by a non-Muslim who is a member of the People of the Book (Jews and Christians),<sup>503</sup> although there are a number of caveats that go along with this which I will discuss in this section. The primary evidence for the permissibility of animals slaughtered by People of the Books is Qur'an 5:5, "The food of those who have been given the book is permitted to you," along with the commentary ascribed to Ibn 'Abbās that "food" refers to their slaughtered animals.<sup>504</sup> Shāfi'ī jurists make a direct correspondence between slaughter and marriage in that they say that you can eat animals slaughtered by someone if a Muslim man would be allowed to marry a woman from their religion.<sup>505</sup> While the majority of jurists consider slaughter and hunting in the same light, there is a difference of opinion in the Mālikī school regarding hunting. The widespread opinion (*al-mashhūr*) in the Mālikī School is that it is not valid for non-Muslims to hunt, meaning that it is impermissible for Muslims to eat animals that non-Muslims kill through hunting, regardless of whether they are members of People of the Book. Some Mālikī jurists, however, do consider non-Muslim hunting valid, while others consider it disliked.<sup>506</sup>

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<sup>502</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:365; al-Jundī, *al-Tawdīh*, 2:636–37.

<sup>503</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:365; al-Jundī, *al-Tawdīh*, 2:637; al-Sarakhsī, *al-Mabsūt*, 11:246; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:224; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:127; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:237; Ibn Qudāmah, *al-Mughnī*, 9:390; al-Mardāwī, *al-Inṣāf*, 10:386.

<sup>504</sup> Ibn Qudāmah, *al-Mughnī*, 9:390.

<sup>505</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:127; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:237.

<sup>506</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:352; al-Jundī, *al-Tawdīh*, 2:604.

When discussing the religious affiliation requirement, Muslim jurists note that the important factor be that they are a member of a specific religious group. We should not think that this implies that Muslim jurists wholly accepted Jewish or Christian theologies. When discussing evidence for the obligation of invoking God’s name, al-Sarakhsī explains that when it comes to the slaughter of the People of the Book, “We are commanded to base the ruling on what they manifest outwardly, rather than what they conceal. Do you not see that invoking other than God in a way that aggrandizes them requires that it be forbidden based on the verse, ‘And that which is done (*uhilla*) in other than God’s Name,?’”<sup>507</sup> This indicates that al-Sarakhsī considers the true beliefs of the People of the Book to be antithetical to the theology of Islam, but his understanding of the law takes into consideration outward appearances rather than inward realities.

Some jurists also debate whether the species of animal is a factor in determining the permissibility of animals slaughtered by non-Muslims. This refers to the idea that there are some animals that are permitted to Muslims but which are not considered permissible in other religions. This question is complicated because there are some foods whose impermissibility is confirmed in Islamic scripture and others that Muslims jurists believe are illegitimate prohibitions that religious communities imposed on their own selves. Mālikī jurists hold various opinions regarding whether animals which Jews or Christians slaughter must be considered permissible for them according to Islamic sacred law.<sup>508</sup> This includes the prohibition of animals

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<sup>507</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:237.

<sup>508</sup> al-Jundī, *al-Tawdīh*, 2:638.

that have nails (*dhī al-dhufar*),<sup>509</sup> which is found in Qur’an 6:146, “For those that have been guided we have forbidden animals with nails and of cattle, sheep, and goats their fat...” This is generally taken by exegetes to refer specifically to Jews and the prohibition of animals that do not have a cloven hoof, such as camels and ostrich, both of which are permissible for Muslims according to Islamic law. Mālikī jurists are divided on this issue with some holding that it is impermissible, some that it is permissible, and some making a distinction between foods that Islamic law confirms are prohibited for Jews and cases where Islamic law does not confirm the rulings adopted by Jews.<sup>510</sup> There is also the question of Muslims consuming parts of an animal slaughtered by a Jewish person which Jews do not consume themselves. In this case, the same difference of opinion noted above applies with the addition that some jurists say that it is permissible since the act of slaughter cannot be divided to apply to some parts of the animal and exclude others.<sup>511</sup> Among the justifications given for the ruling that it would be impermissible is that slaughter requires intention, and Jews cannot intend to slaughter that which is impermissible to them.

In the Shāfi‘ī and Ḥanbalī Schools, animals slaughtered by Jews and Christians are permissible regardless of whether they considered those animals to be permissible for their own consumption,<sup>512</sup> although some Ḥanbalī jurists held that they would be impermissible if they are not permitted to them.<sup>513</sup> One of the curiosities of this discussion is that they list animals such as

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<sup>509</sup> al-Jundī, *al-Tawḍīḥ*, 2:338.

<sup>510</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:367–68; al-Jundī, *al-Tawḍīḥ*, 2:638.

<sup>511</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:367–68; al-Jundī, *al-Tawḍīḥ*, 2:638.

<sup>512</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:373; Ibn Qudāmah, *al-Mughnī*, 9:403; al-Mardāwī, *al-Inṣāf*, 10:406.

<sup>513</sup> Al-Mardāwī, *al-Inṣāf*, 10:406–7.

camels and ostrich, which are considered not Kosher, but they also list duck which is considered permissible in Jewish law. David Freidenreich points out that the prohibition of animals without a cloven hoof in Jewish law does not include water fowl and that duck is generally considered permissible. Although he is referring to Ibn al-Qayyim, his comments apply to most or even all classical Muslim jurists when he writes, “Ibn al-Qayyim addresses what Jeremy Cohen dubs “the hermeneutical Jew,” a construct derived by non-Jewish authorities through the interpretation of their own sacred texts in the service of advancing their own definitional agenda. Ibn al-Qayyim does not describe the dietary laws observed by Jews or, for that matter, the invocations offered by Christians; rather, he defines foreign religious norms by means of Islamic sources.”<sup>514</sup> Freidenreich’s mention to “the invocations offered by Christians” is likely a reference Muslims jurists’ prohibitions of animals slaughtered by Christians if they invoke Jesus while they are slaughtering.<sup>515</sup>

Another factor that Mālikī jurists consider regarding People of the Book performing slaughter is whether they consider *maytah* to be permissible, but this only becomes relevant if they are performing the slaughter outside of the sight of Muslims.<sup>516</sup> Khalīl raises the question of intention here again. If a person were to consider *maytah* to be permissible, it calls into question whether they can even intend to perform slaughter and, if they say that they do intend slaughter, how can they be trusted?<sup>517</sup> In light of these restrictions that Mālikī jurists impose on animals slaughtered by Jews and Christians, it may surprise us to find that al-Qāḍī Abū Bakr Ibn al-

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<sup>514</sup> Freidenreich, “Five Questions about Non-Muslim Meat,” 94.

<sup>515</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:246; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:230.

<sup>516</sup> al-Jundī, *al-Tawḍīḥ*, 2:639.

<sup>517</sup> al-Jundī, *al-Tawḍīḥ*, 2:639.

‘Arabī, a leading Mālikī jurists of the 12<sup>th</sup> century CE, allowed for Muslims to eat animals slaughtered by People of the Book even if they kill them in ways that are not considered slaughter (*dhabh*) according to Islamic Law.<sup>518</sup> This position hinges on what is defined as “their food (*t’āmahum*)” which is mentioned as being permissible for Muslims in the Qur’an. When al-Khalīl says that Ibn al-‘Arabī’s position is far-fetched, for example, he does so because he says that “their food” refers to that which is permissible for them and, “The people of their law (*ahl shar’him*) agree that this is impermissible.”<sup>519</sup> Al-Qādī Abū Bakr, however, took this into consideration when establishing his ruling as he stated that this is “their food and the food of their scholars and monks (*aḥbārihim wa ruhbānihim*).”<sup>520</sup> It is worth noting that although Mālikī jurists like al-Khalīl reject this opinion, it was later included in the collection of fatwas compiled by the 15<sup>th</sup> century Mālikī jurist al-Wansharīsī titled *al-Mi’yār al-Mu’rab*.<sup>521</sup> Ibn al-‘Arabī’s position was later adopted at the turn the 20<sup>th</sup> century by Muḥammad ‘Abduh in his famous “Transvaal Fatwa”<sup>522</sup> in which he ruled that it was permissible for Muslims in the Transvaal to eat animals slaughtered by Christians who struck them on the head with an ax before slaughtering them.<sup>523</sup> Yūsuf al-Qaraḍāwī also referenced Ibn al-‘Arabī’s position in his book *al-*

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<sup>518</sup> al-Jundī, *al-Tawḍīḥ*, 2:639.

<sup>519</sup> al-Jundī, *al-Tawḍīḥ*, 2:639.

<sup>520</sup> Muḥammad ibn ‘Abd Allāh Ibn al-‘Arabī, *Aḥkām al-Qur’ān* (Cairo: ‘Īsā al-Bābī al-Ḥalabī, 1967), 2:554.

<sup>521</sup> Aḥmad ibn Yaḥyā Wansharīsī, *al-Mi’yār al-Mu’rib wa-al-Jāmi’ al-Mughrib* (Rabat: Nashr Wizārat al-Awqāf wa-al-Shu’ūn al-Islāmīyah, 1981), 8–10.

<sup>522</sup> On the Transvaal Fatwa see: Charles C. Adams, “Muḥammad ‘Abduh and the Transvaal Fatwā,” in *The Macdonald Presentation Volume: A Tribute to Duncan Black Macdonald* (Princeton, N.J.: Princeton University Press, 1933); and John Voll, “Abduh and the Transvaal Fatwa: The Neglected Question,” in *Islam and the Question of Minorities*, ed. Tamara Sonn (Atlanta: Scholars Press, 1996).

<sup>523</sup> The full original text of the fatwa can be found in *Al-Fatāwā Al-Islāmīyah min Dār Al-Iftā’ Al-*

*Ḥalāl wa al-Ḥarām* where he argues that it is permissible for Muslims to eat meat that is imported from People of the Book even if it was killed through electrocution.<sup>524</sup> While there appears to be broad agreement amongst Sunni jurists in the post-formative period regarding animals slaughtered by non-Muslims, this is an issue that continued to be debated all the way up to the current day. One of the major aspects of these debates is the question of animal pain and suffering and whether strict adherence to Islamic rituals ensures that such pain is minimized.

### **The Ethical Treatment of Animals**

#### *Avoiding Unnecessary Pain*

As we saw in Chapter One, pain and suffering are major concerns that Muslim theologians addressed when considering the permissibility of killing animals. Although they ultimately concluded that killing animals in the manner legislated by the *sharīʿah* is ethically good, the pain that is allowable is limited to that which is a necessary part of the process of slaughter. This is why we see Muslim jurists emphasizing that actions that would unnecessarily increase the animal’s experience of pain are at the very least disliked, if not forbidden for that reason. This principle of avoiding unnecessary pain shows up in jurists’ discussions of animals even outside of the sphere of animal slaughter. Sarra Tlili notes the example of al-Juwaynī’s prohibiting the sale of wool while it is still on the sheep “because the nature of such contract presupposes that the buyer would own all the wool on the sheep’s skin, yet cutting the wool down to the skin would cause the sheep to suffer. Thus, the conflict between the buyer’s rights

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*Miṣrīyah*, 4:1299.

<sup>524</sup> Yūsuf al-Qaraḍāwī, *al-Ḥalāl wa-al-Ḥarām fī al-Islām* (Cairo: Dār al-I’tiṣām, 1974), 66–67.

and the sheep's interest, founded on the assumption that the sheep is sentient, precludes the validity of such a contract."<sup>525</sup> While jurists discuss specific practices as being disliked due to the pain that they cause, the concept of avoiding unnecessary pain is also a principle that can be applied to practices that the jurists we are reading may not cover explicitly.

Al-Sarakhsī, for example, discusses a number of traditions of the Prophet Muḥammad and his companions which elucidate this principle, chief among them being the hadith from which the title of this dissertation is taken, "God has made excellence (*iḥsān*) obligatory in everything, so if you slaughter, slaughter well, and if you kill, kill well. Sharpen your knife and put the animal at ease."<sup>526</sup> Al-Kāsānī explains the importance of this in terms of animal pain saying, "It is disliked [to slaughter] with other than metal or with a metal blade that is dull, because the *sunna* in slaughtering animals is that it be the easiest on the animal and the closest to their being at ease."<sup>527</sup> This sentiment is similarly found in other schools as well,<sup>528</sup> and it is one of the places where the theme of animal pain shows up in jurists' discussions. Given the technologies available at the time, the best way that Muslim jurists saw to ensure that slaughter was as pain free as possible, was to use a sharp blade and make a quick cut. Muslim jurists and theologians also consider what we might term the neurological complexity of non-human animals, and they take into consideration both their experiences of physical pain as well as their ability to experience psychological pain and suffering. So, one of the reasons that al-Kāsānī provides for it being disliked to slaughter an animal at night is that "night is a time of safety,

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<sup>525</sup> Tlili, "Animals Would Follow Shāfi'ism," 4.

<sup>526</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:226; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:270.

<sup>527</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:270.

<sup>528</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:359; Ibn Qudāmah, *al-Mughnī*, 9:398.

repose, and relaxation, so inflicting pain at the time of relaxation is more severe (*ashadd*).<sup>529</sup> Here it seems that al-Kāsānī is referring to the shock that an animal might experience by being roused from its slumber and sense of security and taken to slaughter. The violation here is not physical in nature since the actual practice of slaughter at night might be the same as it is during the day; rather the violation lies in the infliction of the psychological distress de facto involved in disturbing the natural rhythms of the animal’s life. Another example of this principle is the idea that one should not slaughter an animal within sight of other animals.<sup>530</sup> In the Mālikī School there is some discussion regarding conflicting evidence on this issue. Rabī‘ah is reported to have considered it *makrūh* to slaughter an animal in front of another animal,<sup>531</sup> but there are reports that Imām Mālik was more lenient in this regard based on the reported practice of the Prophet wherein he lined up camels to slaughter them.<sup>532</sup> Ibn Ḥabīb makes sense of this by adopting the position of Rabī‘ah and considering the lining up of camels to be one of the sunnas of performing *naḥr* on them and holding that it does not apply to *dhabḥ*.<sup>533</sup>

Another example of avoiding psychological pain has to do with sharpening a knife in front of an animal that is about to be slaughtered, which is discouraged. Al-Sarakhsī addresses this issue when he quotes the hadith that states that the Prophet Muḥammad saw someone sharpening their knife in front of an animal that they were going to slaughter and said, “Do you

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<sup>529</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:270.

<sup>530</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:207; Ibn Qudāmah, *al-Mughnī*, 9:398.

<sup>531</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:359

<sup>532</sup> al-Jundī, *al-Tawḍīḥ*, 2:651

<sup>533</sup> al-Jundī, *al-Tawḍīḥ*, 2:651

want to kill it twice?”<sup>534</sup> Based on this hadith and others, jurists hold that it is disliked (*makrūh*) to sharpen a knife in front of an animal that is to be slaughtered.<sup>535</sup> Al-Sarakhsī also relates a tradition that states that ‘Umar beat up a man whom he saw sharpening a knife in front of an animal he was going to slaughter to the point that the man ran away and the sheep escaped.<sup>536</sup> He also narrates a hadith that states that the Prophet saw someone who had taken a sheep by its ear and was dragging it to the place of slaughter. He said to him, “Lead it to death gently.” In another narration that al-Sarakhsī mentions he says, “Take it by its leg, for God has mercy on His merciful servants.”<sup>537</sup> Al-Sarakhsī interprets these hadiths as endorsing the concept that animals experience psychological pain saying, “The meaning of this is that the animal knows what the person is intending to do, as has been related in the tradition: ‘Animals are ignorant<sup>538</sup> except concerning four things: their creator, their sustainer, their death, and their mate.’ So, if they know all of these things, and the slaughterer is sharpening his knife in front of them, this would produce increased unnecessary pain, similar to if the knife had not been sharpened.”<sup>539</sup> The comparison between sharpening a knife in front of an animal that one is about to slaughter, and slaughtering an animal with a dull blade, shows that al-Sarakhsī gives equal weight to both the physical and the psychological pain that animals experience during slaughter.

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<sup>534</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:266

<sup>535</sup> Sarakhsī, *al-Mabsūṭ*, 12:5; Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:359; al-Nawawī, *Rawḍat al-Ṭālibīn* 3:207; Ibn Qudāmāh, *al-Mughnī*, 9:398

<sup>536</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:226

<sup>537</sup> Sarakhsī, *al-Mabsūṭ*, 11:227. Ibn Abī Zayd similarly recommends taking the animal to slaughter by its leg (Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:359).

<sup>538</sup> Reading *abhamat* for *abhabat*.

<sup>539</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:227.

There are a number of practices that are discouraged because they cause unnecessary physical pain. These include *al-nikhā'*, which al-Sarakhsī explains involves cutting with such force that the blade penetrates to the spinal cord.<sup>540</sup> He cites a hadith in which the Prophet Muḥammad forbids *al-nikhā'*, and after citing the hadith about excellence he says, “*al-nikhā'* is not from excellence at all.”<sup>541</sup> Regarding the same issue, he cites another hadith that states that the Prophet would not do *al-nikhā'* or begin to skin a sheep until it had cooled.<sup>542</sup> Similarly, it is disliked to skin it, move it somewhere else, or prevent it from moving itself, break any of its bones, or cut off a limb until it is fully deceased.<sup>543</sup> This expresses an understanding that it may take a little time for the animal to die after it is slaughtered and one should be careful not to inflict any excess pain on it at that time.

Al-Sarakhsī adds an important point regarding practices that are disliked because of the pain that they cause the animal, which is that a slaughter carried out in this way still produces meat that is permitted for consumption. “But none of this,” he says, referring to practices that are disliked, “makes the sheep impermissible, because that which is required (*al-maṭlūb*) in slaughtering, namely draining impure blood, has occurred. The prohibition [of these acts] is for one aspect of something that is not forbidden itself, so it does not make the thing impermissible if it is present.”<sup>544</sup> This is echoed by other scholars such as Ibn Abī Zayd who says that if a

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<sup>540</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:226. He discusses this issue again on 12:4 where he adds the important point that even though this action is disliked, the animal may still be eaten because the goal of draining blood was achieved.

<sup>541</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:226.

<sup>542</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:226.

<sup>543</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:362; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:207; Ibn Qudāmah, *al-Mughnī*, 9:401–2.

<sup>544</sup> al-Sarakhsī, *al-Mabsūṭ*, 11:227.

person were to skin or dismember the animal before it had completely died, it would still be permissible to eat it.<sup>545</sup>

## Conclusion

In this chapter I have presented the detailed discussions that Muslim jurists engaged in with regards to practices of hunting and slaughter. By framing these practices as ritual activity, I highlighted the ways in which their various elements come together to form a set of fixed practices that must be adhered to by divine sanction or decree in order to achieve their desired outcome, which is the production of meat that is considered pure and permissible for human consumption. This involves the transformation of something immoral, killing animals, into something good by way of ritual action. As we have seen, there are essential physical aspects to the rituals that contribute to this outcome, but without certain spiritual elements, it is unattainable. The major elements that I covered were the kinds of animals that one may slaughter, who may perform the slaughter, precisely how the practices are carried out, as well as explicitly ritual aspects such as the invocation of God and the recommendation to face in the direction of the *qiblah*. While discussions of who may perform slaughter have aspects related to a person's ability to carry out the physical actions that the practice demands, they also address ways in which the person performing the action impacts its validity: namely, the person must be able to intend slaughter and be able to invoke God's name with sincerity. I began the chapter with a discussion of the animal that is being slaughtered in order to draw attention to the central role that they play in the ritual, not just as objects upon which slaughter is carried out, but as subjects who have experiences of the practice that demand the attention and concern of jurists. I

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<sup>545</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:362.

returned to this theme at the end of the chapter in the discussion of the kind treatment of animals. There I examined the ways that jurists considered animal pain and suffering when evaluating various practices associated with slaughter. This focus on animal experience also links the jurisprudential discussions in this chapter to the theological debates of Chapter One and invites us to look forward to future work that can be done on the topic of the humane treatment of animals in Islamic traditions.

This chapter's discussion of slaughter serves as a foundation for the following chapter, which focuses on Islamic sacrifice. As we shall see, Islamic sacrifice involves many of the same practices and has similar requirements as slaughter, with the addition of elements that make sacrifice explicitly devotional in nature. Chapter Three again takes up the theme of ritual and examines legal and ethical discussions of practices through which Muslims draw nearer to the divine by killing non-human animals.

## Chapter 3: Islamic Sacrifice

### Introduction

The Islamic sacrifices that are performed on the 10<sup>th</sup> of Dhu al-Hijja, the final month in the Islamic lunar calendar, represent one of the largest examples of sacrifice practiced in the world today. Every year, while pilgrims complete the hajj in Mecca, Muslims in nearly every part of the world slaughter sheep, goats, bovine cattle, and camels in events that are both festive and gruesome, at one time celebrations of life through feasting, and intimate encounters with death through shedding an animal's blood. The spectacle of numerous animals being slaughtered is often highlighted, but this is in fact part of a larger ritual event that involves the selection of an appropriate animal and the distribution and consumption of its meat once it has been killed; without these elements, the sacrifice is at best deficient and at worst invalid. For pilgrims on hajj, the sacrifice can serve various purposes. Sacrifice can be a rite that is performed voluntarily, or it can serve as expiation for some act of wrongdoing or a mistake committed while on the pilgrimage. Many Muslims not performing the pilgrimage also sacrifice animals in a ritual practice that jurists consider to be either highly recommended or religiously mandated, depending on the legal school to which they adhere. While this is the primary time of year when Muslims perform sacrifices, as we shall see below, there are additional Islamic sacrificial events that take place on other occasions.

There have been a number of ethnographic and anthropological studies conducted on these sacrifices and the festivals that they are a part of. Some of these works were revolutionary at the time they were written as they served to give voice to the actual practitioners of these rituals and to prioritize native understandings of them. One of the most significant works in this genre is that of Abdullah Hammoudi in which he studied the sacrifice and the masquerade that

follows it as performed by the Ait Mizane in Morocco.<sup>1</sup> Hammoudi's book is important as it questioned many of the assumptions made by previous scholars who studied the same rituals. Hammoudi's work eschewed functionalist approaches to the study of ritual in favor of a description of the rituals that presents them as a narrative. His analysis attempts to uncover what the rituals might mean for their participants rather than imposing upon them an externally developed theory or a fabricated history. What is also important about Hammoudi's work is that he goes beyond what might be considered officially sanctioned Islamic practices and discusses the regional practices that surround them, which had previously been ignored by Muslim authors and historians.<sup>2</sup> Further, and in contrast to European scholars who wrote about the same rituals, Hammoudi reveals ways in which the sacrifice and the masquerade are intimately linked and come together as commentary on the society in which they are performed.

In her 1989 book, *Sacred Performances: Islam, Sexuality, and Sacrifice* M.E. Combs-Schilling examined the role that rituals, including the sacrifice of the 'Īd al-Aḍḥā, play in the reconstruction of the Moroccan monarchy.<sup>3</sup> Her analysis pays particular attention to the roles of power, gender, and sexuality. She focuses on how these rituals are performed in the particular context of political power in Morocco across centuries and she rejects a mind/body dichotomy instead seeing these rituals as meaningfully embodied practices. Sacrifice, for her, is closely

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<sup>1</sup> Abdellah Hammoudi, *The Victim and Its Masks: An Essay on Sacrifice and Masquerade in the Maghreb* trans. Paula Wissing (Chicago: University of Chicago Press, 1993).

<sup>2</sup> His description of the sacrifice is faithful to those descriptions found in legal manuals with the addition of customs related to which parts of the animal are eaten first and how it is prepared (Hammoudi, *The Victim and Its Masks*, 49–56).

<sup>3</sup> M.E Combs-Schilling, *Sacred Performances: Islam, Sexuality, and Sacrifice* (New York: Columbia University Press, 1989).

linked with a patriarchy that is sanctified by Islam and preserved in the patrilineal connections between the king and the Prophet Muhammad. John Bowen engages in a rich comparison between Hammoudi's and Combs-Schilling's descriptions of sacrifice in Morocco and adds his own reflections based on field work conducted among the Goya in Indonesia.<sup>4</sup> Through the examples he provides, Bowen questions whether Combs-Schillings' thesis regarding sacrifice and patriarchy can be applied beyond the specific example of Morocco. More recently, Bowen has continued to build on this foundation comparing sacrificial practices in different parts of Indonesia and in France. His section on France shows some of the ways in which Muslims have adapted rituals of sacrifice in order to accommodate new settings. These include paying for a sacrifice to be performed elsewhere on one's behalf or making special arrangements with local butchers.<sup>5</sup> Sacrifice in France has also been studied by Anne-Marie Brisebarre<sup>6</sup> who focused on attempts by Muslims in France to carry out the sacrifice in the 1990's and the ways in which it got relegated to slaughterhouses and removed from public sight. This ethnographic work is an important contribution to the study of Islamic sacrifice that highlights both the diversity found in the ways in which rituals of sacrifice are performed by Muslims throughout the world as well as clarifying where some of the commonalities between these different cultural manifestations lie. What is commendable about the studies that I mention here is their use of thick description and their efforts to ground whatever conclusions they make in authentic presentations of the rituals as

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<sup>4</sup> John R. Bowen, "On Scriptural Essentialism and Ritual Variation: Muslim Sacrifice in Sumatra and Morocco," *American Ethnologist* 19, no. 4 (1992).

<sup>5</sup> John R. Bowen, *A New Anthropology of Islam* (Cambridge: Cambridge University Press, 2012), 99.

<sup>6</sup> Anne-Marie Brisebarre, "The Sacrifice of 'Id Al-Kabir: Islam in the French Suburbs," *Anthropology Today* 9, no. 1 (February 1993): 9–12.

they encountered them. Examining legal discussions of these rituals provides yet another vantage point from which to view them. Legal texts, functioning as ritual manuals, present an ideal of ritual performance that includes ways in which the ritual can go wrong and what this would entail. We should not think that this means we will encounter uniformity in the rituals that the jurists describe. There is a great variety to be found in the jurists' discussions and some of those differences and similarities will help us in determining the character of these practices and what they might mean.

In addition to this ethnographic work, there have been a number of articles and books that look at the question of Islamic sacrifice in more abstract terms. The most extensive of these in English is Gerd Marie Ådna's *Muhammad and the Formation of Sacrifice*. Relying on early Muslim historical works, Ådna examines practices of sacrifice in the early years of Islam as well as the influence of pre-Islamic Arabian practices. She focuses on two sacrificial events that had an impact on the development of an Islamic conception of sacrifice. The first of these is the sacrifice of Abraham, and the second is the sacrifice of 'Abd al-Muṭṭalib, the grandfather of the Prophet Muhammad.<sup>7</sup> She includes a thorough review of the literature on Islamic sacrifice,<sup>8</sup> and I am indebted to her work for identifying a number of important texts that I reference in this chapter. In addition to the ethnographic works I mentioned above, a few of these works are worth singling out for mention here, either because of the important contribution that they have made to

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<sup>7</sup> This occurred when 'Abd al-Muṭṭalib vowed that if he were given ten sons, he would sacrifice one of them at the Kaaba. When the time came to offer the sacrifice, other members of the Quraysh tribe objected, so he cast lots to see if he could replace this human sacrifice with an animal sacrifice. Through this process of divination, he arrived at the sacrifice of one hundred camels in place of his son. For versions of this story found in Ibn Ishāq, Ibn Hishām, and al-Ṭabarī, see: Ådna, *Muhammad and the Formation of Sacrifice*, 147–55.

<sup>8</sup> Gerd Marie Ådna, *Muhammad and the Formation of Sacrifice* (Frankfurt: PL Academic Research, 2014), 33–43.

the field, or because of the ways in which they have mistaken the nature of sacrifice in Islam. Gustav Von Grunebaum wrote a brief but influential account of various Islamic festivals under the title *Muhammedan Festivals*.<sup>9</sup> Although he does not engage in an in-depth discussion of sacrifice, his approach to studying Islamic festivals has been followed by other scholars. These include Hava Lazarus-Yafeh, who makes a number of striking comments regarding Islamic sacrifice that expose the need for serious studies of the topic. Regarding sacrifices performed at hajj she writes, “Actually, this is not a sacrifice at all, but rather a family offering, of which at least one third is devoted to charity.”<sup>10</sup> She repeats this sentiment in another article in which she writes, “As a matter of fact Islam does not really know of sacrificial rites and the sacrifice is more of a family meal.”<sup>11</sup> Lazarus-Yafeh may be influenced here by a view of sacrifice that considers the destruction of the victim and the offering of it to God an essential characteristic of the ritual. Additionally, she seems to adopt a superficial view of Islamic sacrifices that does not take into account the full scope of these rituals. Rather than rejecting the label of sacrifice for these rites, we can think of them as Islamic iterations of practices that can help us expand our view of sacrifice and add to our understanding of these rituals. Some ethnographic evidence may suggest that a family meal is an important aspect of Islamic sacrifice in some times and places, and considerations of these local customs and practices is an important part of understanding the way Muslims approach sacrifice as a whole. This reductionists view, however, ignores much of what makes Islamic sacrifice unique, and it sidelines practices that jurists have considered to be

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<sup>9</sup> Gustave E. von Grunebaum, *Muhammadan Festivals* (London: Curzon, 1976).

<sup>10</sup> Hava Lazarus-Yafeh, *Some Religious Aspects of Islam, : A Collection of Articles* (Leiden: Brill, 1981), 20.

<sup>11</sup> Hava Lazarus-Yafeh, “Muslim Festivals,” *Numen* 25, no. 1 (1978), 56.

essential parts of sacrificial rituals. This is apparent in her statement that separates the family meal that occurs at the time of sacrifice from the practice of sacrifice itself. Alternatively, she even does away with the family meal and focuses on general charitable giving: “In our time,” she says, “the sacrifice is usually replaced by almsgiving, though no official permission for this substitution has been given by religious scholars.”<sup>12</sup> It is unfortunate that she does not provide ethnographic or other data to back up the claim that the sacrifice is usually replaced by almsgiving as it would have helped identify the specific practices that she is referring to. These ideas do have resonance, however, with some contemporary Muslim scholars. Khaled Abou El-Fadl, for example, holds the opinion that Muslims can, and even should, give charity instead of perform a sacrifice. While he states that this position is broadly allowed by Muslim jurists, he does not provide specific citations, and I have not come across this opinion in the works of Muslim jurisprudence that I have studied.<sup>13</sup> What Lazarus-Yafeh and Abu al-Fadl have in common is that both of them deemphasize the act of killing a sacrificial animal and focus on other elements of sacrificial rituals. The one focuses on a meal that is limited to the family, and the other on the act of charitable giving, which extends beyond the family. As we shall see, classical Muslim jurists describe sacrifice as the combination of these various ritual activities, and many of them explicitly state that sacrificing an animal is preferable to giving its value as charity, which indicates that sacrifice and charitable giving not associated with sacrifice are two distinct practices in their minds.

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<sup>12</sup> Lazarus-Yafeh, “Muslim Festivals,” 56.

<sup>13</sup> Khaled Abou El Fadl, “Fatwa: On the Sacrifice of Eid Al-Adha.” *The Search for Beauty*, June 15, 2016, <https://www.searchforbeauty.org/2016/06/15/fatwa-on-the-sacrifice-of-eid-al-adha/>.

While there have been a number of studies that address aspects of sacrifice, there has not yet been a comprehensive study of the Islamic legal literature on sacrifice in English. In this regard, sacrifice is not unique amongst other Islamic rituals. In her chapter on ritual in *Key Themes for the Study of Islam*, published in 2010, Amina Steinfels writes, “bearing in mind that the law cannot stand alone as the sole representative of Islam, it is still disappointing to note how little work has been done on the vast amounts of ritual legal material.”<sup>14</sup> Later in the chapter she goes on to say,

Given the primary position of ritual discussion in the Islamic legal tradition, the lack of attention paid to it by Islamicists is striking. Several reasons for this inattention have been proposed: a dismissal of Islamic ritual as merely the preservation of Jewish or other pre-Islamic forms, a discomfort with the body, and a concomitant bias toward the ‘spiritual.’ I would also suspect that much of the scholarship on Islamic law is constrained by the common-sense Western understanding of the category of law as excluding religious ritual. Thus, commerce, war, slavery, jurisprudential reasoning, and, above all, personal status receives the lion’s share of scholarly interest. The laws of marriage and divorce and, in general, the issue of gender relations and the rights and status of Muslim women are highlighted not only because of the rise of gender as a central analytic category, but also because of ongoing contemporary developments in the interpretation and application of these laws. By comparison, ritual law is entrenched and stable and not as obviously a subject of contemporary political debates, especially at the national state level.<sup>15</sup>

Much of her commentary is, in my opinion, spot on and serves as a good explanation for why we don’t have more studies like the present one. At the same time, I must note that the claim that ritual law is stable and entrenched is not borne out in the case of animal sacrifice. Although it does not feature prominently in this dissertation, there are a number of significant changes in the modern period that have impacted the conceptualization of sacrifice and, more significantly, the ways in which it is carried out. This is particularly the case in regards to

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<sup>14</sup> Amina Steinfels, “Ritual,” in *Key Themes for the Study of Islam*, ed. Jamal J. Elias (Oxford: Oneworld, 2010), 308.

<sup>15</sup> Steinfels, “Ritual,” 309.

sacrifice during hajj, which is now overwhelmingly performed through the use of a proxy. Steinfel's comments are similar to what Richard Gauvain wrote in a 2005 essay in which he attempted to raise interest in the legal literature on Islamic rituals by examining three recent works that addressed Islamic ritual law. At the time he wrote, "There is still no study that comprehensively lays out what the jurists have to say about a Muslim's ritual obligations."<sup>16</sup> All of this does not mean, however, that there have not been studies of what the jurists have to say about specific Islamic rituals. Gauvain's essay highlights three important works that address questions of ritual impurity in Islamic law and the rituals that serve to bring about states of purity.<sup>17</sup> The authors of those works, Kevin Reinhart, Ze'ev Maghen, and Marion Katz have each served as inspiration for my writing on Islamic jurisprudence related to ritual, and their work on purity and impurity was foundational in introducing me to the value of studying Islamic ritual law. Additionally, Katz's more recent book, in which she provides a fairly comprehensive examination of prayer, with a focus on legal discussions, has gone a long way towards filling in this gap in the literature on Islamic rituals.<sup>18</sup>

Another author who has been important in creating this shift in thinking about Islamic rituals is William Graham. In his 1983 essay "Islam in the Mirror of Ritual," Graham posed a number of key challenges to scholars in the field of Islamic studies and religionists that involved moving away from the search for origins of Islamic ritual practices and calling attention to the ways in which earlier theorists of ritual, from the "myth and ritual" school of interpretation to

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<sup>16</sup> Richard Gauvain, "Ritual Rewards: A Consideration of Three Recent Approaches to Sunni Purity Law," *Islamic Law and Society* 12, no. 3 (2005), 334.

<sup>17</sup> Steinfel's mentions these same works as well as Gauvain's (Steinfel, "Ritual," 309)..

<sup>18</sup> Marion Katz, *Prayer in Islamic Thought and Practice* (Cambridge: Cambridge University Press, 2013).

phenomenologists and comparativists, failed to take Islamic rituals into consideration when developing their theories.<sup>19</sup> Graham proposes a reframing of how scholars approach Muslim rituals.

I presuppose here that such ritual practice is a valid self-expression of Islam, a symbolic articulation of Muslim ideals and values, a kind of ‘discourse’ in which it should be possible to ‘hear’ the ways in which Islam a way of living ‘speaks’ intelligibly and presumably eloquently the Muslim. Thus rites are not to be seen merely as products of a particular religiocultural substrate out of which old practices repeatedly appear in new garb, but much more as the enactments of religious convictions and ideals, the embodiments as well as the results of conscious or unconscious sentiments.<sup>20</sup>

Key to this reframing is Graham’s acknowledgement that there is no equivalent translation for ritual in Arabic.<sup>21</sup> Graham’s project involves uncovering what he refers to as Islamic “orthopraxy” and is similar in many ways to the efforts of Reinhart, Maghen, and Katz in that all of them attempt to take seriously Islamic legal discourses as ways to meaningfully understand Islamic rituals, although they do not always arrive at the same conclusions or begin with identical theoretical and methodological assumptions.

While I am not taking up Gauvain’s challenge and attempting to develop a comprehensive explanation of what jurists have to say about ritual obligations in Islam, my aim is to continue in the vein of the above-mentioned scholars by adding sacrifice to the list of particular rituals that have been studied from the vantage point of Islamic law. There is still much value to be found in ethnographic encounters with particular instantiations of sacrifice in various contexts, but I believe that those encounters will be even more meaningful if we are able to analyze them against the backdrop of the normative traditions that are represented in Islamic

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<sup>19</sup> Graham, “Islam in the Mirror of Ritual,” 56–58.

<sup>20</sup> Graham, “Islam in the Mirror of Ritual,” 59.

<sup>21</sup> Graham, “Islam in the Mirror of Ritual,” 61.

legal literature. In short, this literature, found in works of jurisprudence, is an important way for us to better understand Islamic rituals. It is in works of jurisprudence that we find detailed descriptions of their correct performance as well as explanations of their purpose. While they may serve many other purposes for those who perform them, which ethnographic research can shed light on, the normative backdrop provided in the literatures of Islamic jurisprudence provides important context for those studies. Works of Islamic jurisprudence are not just collections of law, they also serve as ritual manuals guiding the practices of Muslims who perform the ritual.

### **The Language of Sacrifice**

It must be said that there is no chapter on “sacrifice” that covers all forms of the practice in works of Islamic law. Because of this, one might be tempted to find sympathy with those who have claimed that there is no sacrifice in Islam. While there is no grand category of sacrifice, and no single term in Arabic that captures that practice in isolation from specific rituals, there are a number of Islamic rituals that are clearly sacrificial in nature.<sup>22</sup> In this chapter, and in the context of Islamic practices, I use the term “sacrifice” to refer to ritual practices involving the killing of animals that jurists describe as being primarily devotional in nature. This definition helps distinguish sacrifice from hunting and slaughtering animals for food, which are forms of ritualized killing that are not primarily devotional. As we saw in the previous chapter, while

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<sup>22</sup> In some ways, this is similar to the case of prayer. There is no Arabic term that refers to prayer in its generic form. Instead, *ṣalāt* refers to the ritual prayer that is composed of standing, bowing, and prostrating, whereas *du‘a* refers to the more informal personal supplications in which the worshipper uses their own language. The absence of a term that brings these two forms of worship together, however, does not prevent us from referring to both of these activities as prayer since they share in key elements that define that practice.

there are devotional aspects to these rituals, such as the invocation of God at the moment of slaughter, the primary motivation for non-sacrificial slaughter and hunting is to procure food. Although all sacrificial animals are eaten by people who receive the meat of the sacrificed animal, and the charitable donation of that meat to the poor can be an indispensable component of sacrifice, the physical nourishment that the meat provides is secondary to the spiritual role that the sacrifice plays in a Muslim's devotional life, at least as it is framed by Muslim jurists.

It should be clear that this is a narrow definition of sacrifice which does not include many things that we might commonly think of in sacrificial terms. My definition does not cover the sacrifices that a parent might make by forgoing some pleasure for themselves in order to provide for their children, the sacrifices that soldiers make when they go to war to fight for their nations, or the sacrifices of time and effort a student makes to gain knowledge.<sup>23</sup> In part, this is because the focus of this project is on the ethics of killing non-human animals, so it is helpful to work with a narrower conception of sacrifice. This is also supported by the language of sacrifice employed by Islamic scripture and Muslim authors. The Qur'an and the traditions of the Prophet Muhammad use a number of terms to refer to sacrifice which are more or less laden with symbolic meaning. The most plain and straightforward of them are *dhabh* and *nahr* which refer to the physical processes of slaughtering different animals, the first applying to cattle, sheep, and goats, and the second applying to camels.<sup>24</sup> While there are technical differences indicated by these terms, they both refer to the act of killing animals and either one could be applied in a sacrifice or in a non-sacrificial act of killing for food. Notably, it is *dhabh* that appears in the

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<sup>23</sup> This is similar to the distinction that Moshe Halbertal makes between "sacrificing to" and "sacrificing for". Moshe Halbertal, *On Sacrifice* (Princeton: Princeton University Press, 2012).

<sup>24</sup> See Chapter 2 for the technical distinction between *dhabh* and *nahr*.

Qur'anic narrative of Abraham's sacrifice where Abraham tells his son, "I see myself in a dream sacrificing you (*innī arā nafsī fī al-manām adhbahuka*)," (37:102) and again when the Qur'an says, "We ransomed him through a great sacrifice (*dhabhin 'adhīm*)" (37:107). *Nahr* also appears in reference to sacrifice in the Qur'anic verse, "Pray to your Lord and sacrifice (*wa anhur*)" (108:2).

*Qurbān* is another term that Islamic scripture uses to refer to sacrifice. The term is derived from the Arabic root *q-r-b*, which indicates the act of drawing near. In a sense, *qurbān* does not refer explicitly to the act of killing, but it refers to the effect of sacrificial killing, namely that it brings the practitioner closer to God, and it explicitly calls attention to the transcendent element of sacrifice. Unlike *dhabh* and *nahr*, *qurbān* does not refer to how an animal was killed but to the explicitly sacrificial purpose of the killing. The term *qurbān* occurs twice in the Qur'an to refer to sacrifice,<sup>25</sup> and in each case, it references pre-Islamic rituals. Qur'an 3:183<sup>26</sup> cites claims made by some of the Prophet Muhammad's contemporaries who demanded he perform certain miracles, specifically sacrificing an animal that would be consumed by fire. The other occurrence is a reference to the sacrifices offered by Adam's sons Cain and Abel. Qur'an 5:27 reads, "And truthfully recite for them the news of Adam's two sons. When they each offered a sacrifice (*qarrabā qurbānan*) it was accepted from one of them and not from the other. The one said, 'I will kill you.' The other replied, 'God only accepts from the pious.'" Significantly here the Qur'an uses the term *qurbān* to refer to both animal and vegetal sacrifice, even though it is only the former that is endorsed by Islamic legal traditions.<sup>27</sup>

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<sup>25</sup> It occurs a third time in 46:28 where it refers to false deities.

<sup>26</sup> "Those who say God has made a pact with us that we not believe a messenger unless they bring a sacrifice (*qurbān*) which is consumed by fire..."

<sup>27</sup> While the charitable distribution of food, usually in the form of grain, can take the place of certain

Although the jurists I study do not use the term *qurbān*, they retain the concept of drawing near to God through discussions of *taqarrub* (acts of drawing near) as an aspect of Islamic rituals and as a way of distinguishing devotional acts, such as sacrifice, from acts that don't have the explicit primary purpose of drawing a person nearer to God, such as animals slaughtered to procure meat.

*Hadī* is a scriptural term for sacrifice that refers to the specific sacrifice that is offered at the Kaaba, and it is mentioned in the context of the rites of the hajj pilgrimage.<sup>28</sup> There are two additional scriptural terms used for sacrifice which are not found in the Qur'an but which appear in a number of traditions of the Prophet. The first is the verbal form *ḍahā*, which is to the sacrifice performed on *'īd al-aḍḥā* (The Feast of the Sacrifice). The second term is *'aq* which indicates the sacrifice performed on the occasion of the birth of a child. It will be noted that the last two terms, *ḍahā* and *'aq*, are the most specific of the terms that indicate sacrifice in that they refer to specific sacrifices performed on specific occasions. It is curious, then, that in modern usage *ḍahā* has come to bear the meaning of sacrifice more generally and is used to refer to self-sacrifice, sacrificing one's property for a cause, or sacrificing one's life. Such definitions for *ḍahā* are not found in pre-modern Arabic dictionaries, but they have entered into and been embraced in modern Arabic. In the middle of the twentieth century, 'Abd al-Qādir al-Maghrabī, a member of the Academy of Arabic Language (*majma' al-lughah al-'arabiyah*) noted that this usage of *ḍahā* is not authentic (*faṣīḥ*) or eloquent. At the same time, he acknowledged its widespread use and usefulness and suggested that we should consider *ḍahā*'s reference to self-sacrifice as a form of figurative speech which he attributed to a borrowing from French.<sup>29</sup> It is

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forms of Islamic sacrifice, I will argue that these should be considered substitutions for sacrifice rather than alternative forms of sacrifice that do not involve animal slaughter.

<sup>28</sup> 2:196

<sup>29</sup> 'Abd al-Qādir al-Maghrabī, "Al-Taḍḥīyah Fī Ma'nayhā al-Faṣīḥ Wa al-'Āmī," *Majalat Majma' al-*

still unclear to me precisely why *ḍahā* became the translation for sacrifice instead of a more neutral *qurbān*, but by the middle of the twentieth century it was common usage. My hypothesis is that it was part of the new and emerging discourse of pan-Arab nationalism in which citizens were expected to sacrifice for the nation, and a number of the examples that al-Maghrabī cites in his brief article seem to bear this out. One possible explanation is that even though it originally referred to a religiously motivated animal sacrifice, it refers less explicitly to transcendence than *qurbān*, which may have made it easier to transition to a secular nationalistic meaning of sacrifice. If it were not for this, *qurbān* may have been a better candidate for sacrifice in the more general sense.

The closest thing there is to a generic term for sacrifice in books of jurisprudence is *damm*, which translates literally as blood. This term can be used in isolation, as when a jurist states that if a person on hajj omits a certain right, blood is obligated (*‘alayhi damm*). *Damm* can also be combined with an adjective to refer to a specific form of sacrifice, such as expiatory sacrifice (*damm jabr*), sacrifice that expresses gratitude (*damm shukr*), or sacrificial rites (*damm nusuk*). Although there are other key elements that make up Islamic sacrificial events, this use of the term “blood” as a stand in for “sacrifice” highlights the central role that slaughtering an animal plays in these rituals.

There are other Islamic devotional practices that we might think share some common traits with sacrifice, but which I do not place in this category of ritual activity because they do not involve killing an animal. Here I am thinking primarily of *zakāt*, the percentage of a wealthy person’s property that they must give to the poor. The similarities with sacrifice here are important enough to spend some time reflecting on. *Zakāt* has a linguistic meaning of

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*Lughah al-‘Arabīyah* 12 (1960): 47-50.

purification, and many Muslims have explained the practice of *zakāt* as having the effect of purifying one's income, so there is a spiritual ritual effect of paying *zakāt* which shares some similarity with the purification of the animal through the ritual of slaughter. *Zakāt* comes even closer to practices of sacrifice when we examine the *zakāt* that is paid on livestock. Here we find considerations of the age and well-being of animals that are similar to those we will encounter when we study the requirements of the sacrificial animals. But more strikingly, the *zakāt* is paid on livestock in the form of livestock. In this case, one selects a certain number of animals from the herd and gives them to the poor. This may remind us of the practice of giving a portion or all of the meat of a sacrificed animal to the poor, the same category or persons who receive the payments of *zakāt*. Here, however, the animals are given while they are alive and those who receive them are free to do with them whatever they like. Since they are fully their property, they may slaughter them for food, keep them for dairy or labor, rent them out, or engage in any other permissible transaction that involves the animals.<sup>30</sup>

Although *zakāt* shares in the general sense of sacrifice as giving something up that one values, and thinking of *zakāt* in terms of sacrifice may shed light on both practices, that investigation falls outside the scope of this present study. Here I am concerned with practices that involve killing animals, which jurists, theologians, and others, judged bring a person closer to the divine. This restrictive meaning of sacrifice serves the driving questions behind this chapter: how do we meaningfully understand the practice of a person drawing closer to God by harming an innocent creature? What role does ritual play in such a practice? And what are the

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<sup>30</sup> On *zakāt* see: Aron Zysow, "Zakāt," in *The Encyclopaedia of Islam, Second Edition*, ed. P. J. Bearman, Thierry Bianquis, E. J. van Donzel, and Wolfhart Heinrichs (Leiden, The Netherlands: Brill Academic Publishers, 2012).

various ends such a practice serves? The answer to the third question will become clearer through our examination of the various kinds of sacrifice sanctioned, encouraged, and mandated by Muslim jurists. The second question is more complex. My answer for this involves the argument that ritual serves in part to transform an act of inflicting pain and suffering into an act of obedient service and drawing near to God by ensuring that its performance adheres to divinely sanctioned processes and that it has a meaningful end. While the ritual overrides the animal's interest to exist, it still maintains a baseline of seeking to reduce the pain it experiences and provides an element of the transcendent to what might otherwise be a mundane and even grotesque act. Highlighting the role played by ritual may offer a partial answer to the first question, but the challenge to make sense of these practices still stands and at the end of the chapter we will have to decide whether the ethical challenges they pose have been sufficiently met and grappled with.

### **Theories of Sacrifice**

Many scholars of religion who have written about sacrifice have developed grand theories of sacrifice that they hope to apply to all forms of sacrifice across traditions. While some of these theories can help us better understand Islamic forms of sacrifice, the scholars who developed them generally did not incorporate examples of sacrifice in Islam, and when they did, their reflections were often cursory.<sup>31</sup> When Islamic sacrifice has been studied, examples have

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<sup>31</sup> For example, when discussing abnegation-theory, which he understands as being derived from gift-theory, Tylor writes, "Taking our own feelings again for a guide, we know how it satisfies us to have done our part in giving, even if the gift be ineffectual, and how we scruple to take it back if not received, but rather get rid of it in some other way - it is corona. Thus we may enter into the feelings of...the modern Moslems sacrificing sheep, oxen, and camels in the valley of Muna on their return from Mecca, it being a meritorious act to give away a victim without eating any of it, while parties of Takruri watch around like vultures, ready to pounce upon the carcasses." (Edward B. Tylor, *Primitive Culture*, London: John Murray, 1903: 2:396–97). Tylor bases his analysis on Burton's account of his journey to Mecca and

frequently been taken from ethnographic research that examines the performance of sacrifice in various settings. This literature is helpful in showing the ways in which sacrifice has been implemented in different communities and attempting to understand it in those contexts. These studies, however, usually ignore the Islamic literature on sacrifice prioritizing the lived experience of some Muslims over the literature that prescriptively describes their performance. While studying the ways in which different Muslim communities enact these rituals will give us much insight into the role those rituals play in those communities and the ways in which they are interpreted, reinterpreted, and reimagined in different contexts, the approach that I take here is one that is focussed on Islamic legal literature. It is in works of Islamic jurisprudence that we find detailed descriptions of how rituals of sacrifice should be performed as well as why they are performed. This “why” however, may be a different kind of “why” than the “why” that scholars of religion attempt to answer when they develop theories of sacrifice. The “why” of Islamic jurisprudence emerges from within the particular theological and ritual context of Islamic practice as envisioned by Muslim jurists. While there are social considerations, and elements of the rituals can be determined by the context in which they are performed, generally speaking, jurists are concerned with rationalizing ritual practices in terms of the internal cohesiveness of Islamic legal traditions. This is not to say that jurists all agree on each and every point, but that they are working with similar material as they attempt to make sense of, and make sensible, rituals and traditions that they have inherited.

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Medina as well as Lane, so some of the deficiencies may not be wholly his own. What is noteworthy here is a lack of distinction between different kinds of sacrifice performed at Mina and the recommendation to consume at least part of some of them. The neglect of the recommendation that the person offering the sacrifice eat some of it themselves supports the gift and abnegation theories of sacrifice, but this does not take into consideration the fullness of Islamic sacrifices.

Sacrifice has been a major concern for scholars of religion since the inception of the field. Many of the works that are foundational of the field, particularly of the subfield of ritual studies, investigate the meaning of sacrifice. Sacrifice in Islam, however, has not yet been given full consideration, which has led to a somewhat skewed vision of sacrifice in which it is viewed as either being performed by followers of indigenous religions, something enshrined in classical texts, or a relic from antiquity that has been transcended in the “Judeo-Christian” tradition which has left behind the actual practice of animal sacrifice. In her article, “Sacrifice” in *Critical Terms for the Study of Religion*, for example, Jill Robbins asserts, “the West’s discourse on sacrifice would seem to rest on a foundation in which sacrifice has been surmounted and gone beyond.”<sup>32</sup> After a brief discussion of the New Testament’s framing of Jesus’ death as sacrifice, which she compares to Socrates drinking hemlock saying, “Both the figure of Christ and of Socrates propose a transfiguration and a transcendence of sacrifice,” she concludes, “That is why in the West, the movement of going beyond, or the transcendence of sacrifice, is foundational.”<sup>33</sup> These statements and trends involve a reification of the concept of “the West” that locates Islam outside of its bounds and privileges the transcending of animal sacrifice over performing it, not because of concerns over animal welfare, but from a sense of spiritual and civilizational superiority. In response to this distinction of sacrifice in “the West,” it is worth noting that Islamic sacrifice has always been in conversation with other forms of sacrifice, both by distinguishing itself from them and by drawing on similar narratives to establish the meaning and basis of sacrificial practices. Most significant in this regard is the story of the Abraham’s sacrifice, which has

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<sup>32</sup> Jill Robbins, “Sacrifice,” in *Critical Terms for Religious Studies*, ed. Mark C. Taylor. (University of Chicago Press, 1998), 288.

<sup>33</sup> Robbins, “Sacrifice,” 288.

functioned as a foundational narrative for both Jewish and Christian conceptions of sacrifice,<sup>34</sup> as well as a conundrum confronted by early post-enlightenment philosophers like Soren Kierkegaard.<sup>35</sup> By studying practices of Islamic sacrifice, we have the opportunity to explore an important element that contributes to a broader conception of sacrifice and, more narrowly, one with a heritage going back to the story of Abraham that links it to Jewish, and Christian thinking on sacrifice.

Much of the early literature on sacrifice was produced by anthropologists, ethnographers, and scholars working with the concepts of myth and ritual. This trend continues with respect to Islam in works that examine sacrifice in places as different and distant as Morocco and France. Gerd Marie Ådna's recent work *Muhammad and the Formation of Sacrifice* is a welcome contribution to the field that roots itself in Islamic historical sources while engaging with contemporary theories of sacrifice and ritual. This is probably the most extensive work on sacrifice in Islam written in English that interrogates Islamic texts and attempts to draw conclusions about the role and meaning of sacrifice in Islam.<sup>36</sup> While much of her book is focused on historical literature, she does include a chapter on Malik b. Anas's hadith collection *al-Muwāṭa*, in which she considers questions of Islamic law. In her study, Ådna points out a number of what she considers flawed explanations of Islamic sacrifice. These include the statements made by Hava Lazarus-Yafeh mentioned above, such as, "As a matter of fact, Islam

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<sup>34</sup> For a comparison of versions of Abraham's sacrifice found in Jewish, Christian, and Muslim scriptures see: Reuven Firestone, *Journeys in Holy Lands* (Albany, N.Y.: State University of New York Press, 1990).

<sup>35</sup> See his *Fear and Trembling*.

<sup>36</sup> Other works that take a text based approach to Islamic sacrifice include Brannon Wheeler's article *Gift of the Body in Islam* which examines reports of the Prophet Muhammad performing sacrifice during his hajj pilgrimage: (Brannon Wheeler, "Gift of the Body in Islam: The Prophet Muhammad's Camel Sacrifice and Distribution of Hair and Nails at His Farewell Pilgrimage," *Numen* 57, no. 3–4 (2010)).

does not really know of sacrificial rites and the sacrifice is more of a family meal.”<sup>37</sup> Such statements are surprising when considering how widespread Islamic sacrificial rituals are as well as how many of them do not necessarily involve a “family meal,”<sup>38</sup> but they also speak to the very real way in which Islamic sacrifice has been ignored and misrepresented in academic discourses. Additionally, such matter of fact assertions are reminiscent of the tendency, noted by Baber Johansen, of some scholars of Islamic studies to outright deny the existence of a cult in Islam, as well as the existence of law and ethics.<sup>39</sup> It is my hope that this chapter will make some headway in demonstrating the centrality of sacrifice in Islamic legal works, which are major repositories for ritual instruction, as well as expanding the ways in which we conceptualize sacrifice in the study of religion.

There are three main sections of their works where Muslim jurists discuss animal sacrifice. The first that a reader will encounter is in the chapter on hajj where jurists address questions related to sacrificing animals during the pilgrimage. This includes sacrifices associated with performing different forms of the pilgrimage, sacrifices performed as expiation for committing forbidden acts during the pilgrimage, and sacrifices that are performed as recompense for killing a hunted animal while on pilgrimage. The second is the chapter on *al-udhīyah* (sacrifice at the time of *Īd al-Adhā*). A third, and shorter section, often combined with the chapter on *al-udhīyah*, is the section on animals sacrificed when a child is born (*al-‘aqīqah*).

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<sup>37</sup> Hava Lazarus-Yafeh, "Muslim Festivals", *Numen* 25 (1978): 52-64. quoted in Ådna, *Muhammad and the Formation of Sacrifice*, 219.

<sup>38</sup> Here I am thinking specifically of sacrifices performed during hajj today where the meat produced by sacrificial rituals is frozen and distributed throughout the world. The Islamic Development Bank provides a useful chart describing where meat from animals sacrificed on hajj is distributed: “Distribution of Hady Meat During Hajj.” Also, as we will see below, the sacrificial activity of killing is sometimes more central to Islamic rituals of sacrifice than the consumption and distribution of the meat is.

<sup>39</sup> Johansen, “Changing Limits of Contingency in the History of Muslim Law,” 11–14.

Additionally, as with many topics in Islamic law, the reader will find references to animal sacrifice spread throughout a work of Islamic jurisprudence. While jurists mention sacrifice in those other contexts in order to elucidate some other kind of ruling, they can, at times, be helpful in gaining a better understanding of sacrifice as well.

### *Sacrifice and the Study of Religion*

Many scholars of religion have developed theories that attempt to make sense of sacrificial phenomena. Some of these are more ambitious than others seeking not just a theory of sacrifice but, through theorizing about sacrifice, a general theory of ritual or even of religion. At times, language plays a role in the aspects of sacrifice that can theorists emphasize. For example some focus on the distinction between the sacred and the mundane that the word “sacrifice” seems to imply, or they emphasize the aspect of gift-giving that is present in the German “opfer.”<sup>40</sup> In the following pages I will highlight some of the theories of sacrifice that I consider to be most relevant to the study of sacrifice in Islam, either because they offer insights that may assist us in better understanding Islamic sacrifice, or because Islamic sacrifices provide data that contradicts or complicates them.<sup>41</sup> Chief among these are the gift theory of sacrifice, the communication theory of sacrifice, the abnegation theory of sacrifice and the role of consumption/cuisine in rituals of sacrifice. I will also reflect on Kathryn McClymond’s efforts to move away from essentialist understandings of sacrifice and towards a view of sacrifice as

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<sup>40</sup> Jeffrey Carter, *Understanding Religious Sacrifice: A Reader* (Bloomsbury Publishing, 2003), 2–3.

<sup>41</sup> For a concise overview of theories of sacrifice see the introduction to Kathryn McClymond’s *Beyond Sacrifice* (Kathryn McClymond, *Beyond Sacred Violence*, Baltimore: Johns Hopkins University Press, 2008, 3–17). Those who would like to take a deeper look at theories of sacrifice will benefit from Jeffrey Carter’s edited reader *Understanding Religious Sacrifice*.

polythetic events that are comprised of various activities that make them either more or less sacrificial. I will also look at some attempts to define and describe Islamic sacrifice specifically. Ultimately, I consider sacrifice in terms of ritual and as a subset of the larger category of ritual killing. As Carter notes in his introduction, for some scholars, “Understanding sacrifice becomes a matter of seeing it as a particular form of ritual. A more general position on ritual makes it possible to understand the more particular features of sacrifice such as the use of animals, the presence of distinct phases, and so forth.”<sup>42</sup> I would add that understanding sacrifice in Islam will also help us develop nuanced ways of thinking about ritual that will allow us to distinguish sacrifice from non-sacrificial ritual killing through the concept of drawing near to God (*al-taqarrub*), as well as the particular circumstances that serve as occasions for sacrifice distinguishing between the two modes of action.

One of the frameworks that has been developed to think about sacrifice is that of the gift or exchange. According to this theory, sacrifice is based on understandings of how humans relate to each other with gift-giving playing the role of securing favors from a person with power or authority. This practice is then transferred to the relationship between humans and non-human spiritual beings such as ancestors, spirits, or gods.<sup>43</sup> Some of the scholars who discussed the gift theory of sacrifice relegate it to what they termed a more “primitive” stage in the development of

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<sup>42</sup> Carter, *Understanding Religious Sacrifice*, 9.

<sup>43</sup> E.B. Tylor expresses this concept in the following way: “As prayer is a request made to a deity as if he were a man, so sacrifice is a gift to a deity as if he were a man.” (Tylor, *Primitive Culture*, 2:375). Tylor elaborates on this further stating, “If the main proposition of animistic natural religion be granted, that the idea of the human soul is the model of the idea of deity, then the analogy of man’s dealing with man, ought, *inter alia*, to explain his motives in sacrifice. It does so, and very fully. The proposition may be maintained in wide generality, that the common man’s present to the great man, to gain good or avert evil, to ask aid or condone offense, needs only substitution of deity for chief, and proper adaptation of the means of conveying the gift to him, to produce a logical doctrine of sacrificial rites, in great measure explaining their purpose directly as they stand, and elsewhere suggesting what was the original meaning which has passed into changed shape in the course of ages.” (Tylor, *Primitive Culture*, 2:393).

sacrificial rituals. In his evolutionary schema of the development of sacrificial rituals, Tylor imagines a progression from gift-giving, to homage, and finally to abnegation, in which the emphasis is on the person giving something precious to themselves rather than the deity receiving any benefit.<sup>44</sup> When thinking about Islamic sacrifice, it should be noted that the idea that God benefits from the sacrifice, or any other human act of devotion, is anathema to Islamic theology. Regarding sacrifice, The Qur'an specifically states, "Their meat and blood do not reach God, but your piety does," (22:37). There is a striking resemblance between this and Durkheim's statement, "What the worshipper really gives his god is not the food he places on the altar, or the blood he spills from his veins, but his thought."<sup>45</sup> The difference, of course, is that for Durkheim this represents the fiction of sacrifice and the cycle through which the gods are given existence by the cult. The idea of sacrifice as gift-giving or exchange, often framed in terms of *du et des*, is fairly common amongst theorists and, while Islamic scriptures and literature are replete with economic metaphors that frame the relationship between God and human beings as one that involves trade and exchange,<sup>46</sup> the gift theory of sacrifice only offers a partial explanation of Islamic sacrificial activities. It is also important to note that one of the principle terms for sacrifice in Islamic literature which is mentioned in the Quran, is *hadī*, which is semantically related to the Arabic word for gift (*hadīyah*). Muslim jurists explain that *hadī* refers to the animals that are sent as gifts to the Kaaba. In line with Qur'an 22:37 mentioned above, it is also

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<sup>44</sup> Tylor, *Primitive Culture*, 2:396.

<sup>45</sup> Émile Durkheim, *The Elementary Forms of Religious Life* (Oxford: Oxford University Press, 2001), 257.

<sup>46</sup> e.g. "Who is it that will extend to God a virtuous loan that He may increase it for them many times over?" [2:245]

important to note that all Islamic sacrifices are consumed by humans and there is no concept that God receives the animal itself.

Whereas Tylor considered the idea of sacrifice as a gift to be the original rationale for sacrifice, W. Robertson Smith countered that it was in fact a later development, arguing that sacrifice is essentially an act of communion between the human and the divine. He based this idea in part on the notion that property is a relatively late social development.<sup>47</sup> Robertson Smith was of the opinion that, “A ritual system must always remain materialistic, even if its materialism is disguised under the cloak of mysticism.”<sup>48</sup> As we study examples of Islamic sacrifice, we will have opportunities to examine the extent to which sacrifice is fundamentally materialistic. Looking at it from the outside one might be inclined to agree with Robertson Smith that Islamic and other sacrifices are materialism disguised under the cloak of mysticism; that the entire point of sacrifice is to provide the community with meat to consume. When we read the discussions of Muslim jurists, however, we find that, in their conception, the non-material element of sacrifice is essential, and that without it, the material aspects of the ritual have no meaning. As William Graham points out, a “‘Smithian’ orientation has been characteristic of much work on Islam” and it is often found in the search for pre-Islamic origins of Islamic ritual practices.<sup>49</sup> Graham’s analysis of this phenomenon is worth mentioning. He contends that, “We can discern in the tendency to try to isolate pre-Islamic or extra-Islamic sources for the discrete rites of the hajj a kind of suppressed frustration of the scholar who is confronted here with a series of ritual acts that elude comprehensive, rational systematization under any one interpretive

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<sup>47</sup> W. Robertson Smith, *The Religion of the Semites* (New York: Meridian Books, 1956), 390.

<sup>48</sup> Smith, *The Religion of the Semites*, 440.

<sup>49</sup> Graham, “Islam in the Mirror of Ritual,” 54.

rubric.”<sup>50</sup> While Graham’s comments refer to the hajj as a whole, they apply just as appropriately to Islamic rituals of sacrifice performed on hajj or elsewhere.

Perhaps one of the most influential studies of sacrifice is that of Hubert and Mauss whose emphasis on the distinction between the sacred and the profane allowed them to see sacrifice primarily as a ritual that mediates between those two spheres with the sacrificial victim serving as an intermediary. “In every sacrifice an object passes from the common into the religious domain; it is consecrated.”<sup>51</sup> This consecration, however, is unique in that,

[it] extends beyond the thing consecrated; among other objects, it touches the moral person who bears the expense of the ceremony. The devotee who provides the victim which is the object of the consecration is not, at the completion of the operation, the same as he was at the beginning. He has acquired a religious character which he did not have before, or he has rid himself of an unfavorable character with which he was affected; he has raised himself to a state of grace or has emerged from a state of sin. In either case he has been religiously transformed.<sup>52</sup>

The concepts of the sacred and the profane can help us understand some of the Islamic material on sacrifice in a number of ways. As we shall see, animals that are designated for sacrifice take on a new identity. They have been sacralized such that their association with sacrifice creates a new relationship in which they are no longer commodities in the way that non-sacrificial animals are.<sup>53</sup> We see this in debates regarding whether one can ride or drink the milk of an animal

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<sup>50</sup> Graham, “Islam in the Mirror of Ritual,” 54.

<sup>51</sup> Henri Hubert and Marcel Mauss, *Sacrifice: Its Nature and Function*. Trans. by W.D. Halls (Chicago: University of Chicago Press, 1964), 9.

<sup>52</sup> Hubert and Mauss, *Sacrifice*, 9–10.

<sup>53</sup> On the transcendent identity of the victim in sacrifice Kimberley Patton notes, “The exegesis of any sacrificial system, whether historical or contemporary, obsolete or viable, calls for a complex, internally informed understanding of its premises and ideologies. When this is undertaken with care and without presuppositions, I would argue that it is often the case that far from objectifying animal victims, ‘the logic of sacrifice,’ *on the terms of its own self-presentation*, hallows and empowers them.” (Kimberley Patton, “Animal Sacrifice,” in *A Communion of Subjects*, Kimberley Patton and Paule Waldau eds. New York: Columbia University Press, 2006, 402).

designated for sacrifice, as well as what one should do with such an animal if it becomes lame and cannot complete the journey to the place designated for sacrifice.

It must be noted, however, that much of the way that jurists frame this is concerned with property. The animal designated for sacrifice is technically no longer the property of the person offering it, but the property of God or the poor who will receive it, so their rights to use the animal are curtailed. There are, of course, jurists who do not adopt this position and allow for a person to benefit from the animal or its milk making a distinction between the animal itself and its usufruct and what it produces. The division between the sacred and the profane also appears when we consider one of the main reasons for sacrifice, which is the violation of rules of the *iḥrām*.<sup>54</sup> *Iḥrām* is fundamentally a sanctified state in which actions that are permissible under normal circumstances are no longer permitted, and their violation can be made up for through sacrifice. This is illustrated by the very language that is used to describe this state. *Iḥrām* is linguistically related to words that connote sanctity, including *ḥaram*, the word for the sanctuary at Mecca. Unlike in English, however, the word is linguistically distinct from terms that are used to denote sacrifice.

Hubert and Mauss describe sacrifice as, “any oblation, even of vegetable matter, whenever the offering or part of it is destroyed, although usage seems to limit the word sacrifice to designate only sacrifices where blood is shed.”<sup>55</sup> They also define sacrifice in the following way, “Sacrifice is a religious act which, through the consecration of a victim, modifies the

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<sup>54</sup> *Iḥrām* refers to the state that a pilgrim enters when they embark on the rites of the pilgrimage. This state involves certain restrictions on what the pilgrim may wear, their personal grooming, sexual activity, and hunting. As is discussed below, many of the expiatory sacrifices performed by the pilgrim are occasioned by violating the rules of *iḥrām*. On *iḥrām*, see: A.J. Wensink and J. Jomier, "Iḥrām", *Encyclopaedia of Islam*, ed. E. van Donzel, W.P. Heinrichs, C.E. Bosworth, Th. Bianquis and P Bearman (Leiden: Brill).

<sup>55</sup> Hubert and Mauss, *Sacrifice*, 12.

condition of the moral person who accomplishes it or that of certain objects with which he is concerned.”<sup>56</sup> Although they admit that sacrifice can take many different forms across cultures, Hubert and Mauss ultimately locate the unity of these sacrificial rituals in their shared procedure which, in their view, “consists in establishing a means of communication between the sacred and the profane worlds through the mediation of a victim, that is, of a thing that in the course of the ceremony is destroyed.”<sup>57</sup> While communication seems to be primary in their understanding of sacrifice, they also endorse the concepts of exchange and abnegation. Regarding abnegation, they explain, “In any sacrifice there is an act of abnegation since the sacrificer deprives himself and gives.”<sup>58</sup> It is this giving that leads to the idea of exchange because, “if he gives, it is partly in order to receive. Thus, sacrifice shows itself in a dual light; it is a useful act and an obligation. Disinterestedness is mingled with self-interest. That is why it has so frequently been conceived as a form of contract. Fundamentally, there is perhaps no sacrifice that has not some contractual element. The two parties present exchange their services and each gets his due.”<sup>59</sup>

These ideas are more and less present in various forms of Islamic sacrifice. Exchange is one way to think of sacrifices that serve as expiation on hajj; God restores the wholeness of the pilgrimage in exchange for the sacrifice. Other ways of understanding this, however, have to do with thinking about ritual errors. Kathryn McClymond has recently written about this and examined what ritual error can show us about the nature of ritual.<sup>60</sup> One of the main things that

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<sup>56</sup> Hubert and Mauss, *Sacrifice*, 13.

<sup>57</sup> Hubert and Mauss, *Sacrifice*, 97.

<sup>58</sup> Hubert and Mauss, *Sacrifice*, 100.

<sup>59</sup> Hubert and Mauss, *Sacrifice*, 100.

<sup>60</sup> See: Kathryn McClymond, *Ritual Gone Wrong* (Oxford: Oxford University Press, 2016).

comes out of this study is that rituals are, in practice, less rigid than they may appear when examined in ritual manuals or other prescriptive texts. As we shall see below, in the case of some of the rituals performed on hajj, sacrifice serves to repair the ritual error and allows for a certain flexibility in ritual performance. That being said, the sacrifice itself allows little room for error and, just like the case of non-sacrificial animal slaughter, there are certain errors that cannot be repaired, and which render the sacrifice invalid.

While some scholars have recently taken exception to attempts to propose definitions of sacrifice that identify an essential element,<sup>61</sup> Hubert and Mauss's definition can be helpful when we examine the legal literature on Islamic sacrifice. The language of destruction, however, is one area where some adjustments are needed. In the original definition, this language allows for the inclusion of both animal and vegetal offerings. The destruction of the offering, however, is a more nuanced event in Islamic sacrifice. It involves both the act of killing the animal and the act of consuming it. While there are other important elements of rituals of sacrifice in Islam, they all either lead up to killing the sacrificial animal, or they are made possible by it. Rituals that involve designating an animal for sacrifice only make sense in the context of the eventual killing of the animal. And it is only possible to distribute and consume the meat of a sacrificial animal once it has been killed. Because of this, I give primacy to killing as the ritual element at the heart of Islamic sacrifice. When describing sacrifice, some jurists explain that acts of worship (*'ibādāt*) are either embodied or monetary. Prayer would be an example of an embodied ritual, while giving charity is an example of a monetary act of worship. Sacrifice is somewhat unique in that it combines these two modes of worship: some elements of sacrifice, such as killing, are embodied rituals, whereas other elements, such as the distribution of the meat, are monetary acts

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<sup>61</sup> See: McClymond, *Beyond Sacred Violence*, 25–27.

of devotion. On this understanding, the killing of the animal is the central element of the physical/embodied aspect of sacrifice, and distributing the meat is the essential element of its monetary component. This complicates that idea put forward by some theorists that sacrifice is essentially cuisine. Such theories think of sacrifice not as the killing of the designated animal, but of its consumption in a communal setting. The sacrifice serves to bring the community together, sometimes even including spiritual members of that community, such as gods and ancestors. While consuming the sacrificed animal is an important feature of Islamic sacrifice, and in practice many Muslims may enjoy it as a communal meal, we will see that, beyond the question of who may receive the meat, Muslim jurists were generally unconcerned with how the meat was consumed once it had been appropriately distributed.<sup>62</sup>

The reader of Islamic legal texts is first introduced to the concept of sacrifice early in the text in the chapter on hajj. Generally, however, certain key relevant rulings are not discussed in that chapter, namely details regarding which animals may be sacrificed and the actual procedure of animal slaughter. For the first, the reader will have to turn to the section on the *udhīyah* sacrifice, and for the second, they will have to turn to the section on hunting and slaughter. While a few authors have arranged their works so that these sections follow each other, they are more commonly separated by dozens, or hundreds, of pages. In the absence of an organizing framework, the sheer amount of material in the literature of Islamic jurisprudence related to sacrifice risks being overwhelming. By organizing the material in terms of different elements of sacrificial events, I hope to make Islamic legal discourses on sacrifice more manageable and

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<sup>62</sup> On sacrifice and cuisine see Marcel Detienne, “Culinary Practices and the Spirit of Sacrifice,” in *The Cuisine of Sacrifice Among the Greeks*, ed. Marcel Detienne and Jean-Pierre Vernant, trans. Paula Wissing (Chicago: University of Chicago Press, 1989).

accessible, while allowing for their full complexity and clarifying the meaning of their constituent elements.

In the following sections I address the ways in which jurists have defined various sacrificial rituals, as well as the legal rulings that they have assigned to them. This is the backbone of the chapter where I examine the ways in which different forms of sacrifice have been discussed by Muslim jurists, highlighting both the elements that overlap between them, and the important ways in which they differ from each other. I then discuss what I consider to be the core elements of Islamic rituals of sacrifice as well as the rulings associated with them. I begin with a discussion of the sacrificial animal in order draw attention to the essential role that non-human animals play in these rituals. This section covers the conditions that an animal must fulfill in order to be used in Islamic sacrifice, as well as certain practices that pertain directly to the animals, such as ritually marking them, or bringing them along to accompany a pilgrim during certain rites of the hajj. I then consider questions related to the person who is carrying out the sacrifice. This is followed by a section on particularities of the performance of sacrifice, with a focus on practices that distinguish it from non-sacrificial animal slaughter in Islam. Another important element of Islamic sacrifice is the distribution and the consumption of the meat that results from sacrifice. I put distribution and consumption together because another one of the characteristics that distinguishes different rituals of sacrifice from each other is whether the person offering the sacrifice can consume the meat themselves, and to whom it may be distributed. Finally, I consider practices that can take the place of sacrifice under certain circumstances. While this last category is not a part of sacrifice as such, one of the important ways that rituals of sacrifice are distinguished one from the other is in regards to how, and under what conditions, a person may carry out another action in place of the sacrifice. In each of these

categories, I attempt to show both the areas of broad agreement between jurists of different schools, as well as the places where they differ significantly.

### **Kinds of Islamic Sacrifice**

My working definition for Islamic sacrifice, based on my readings of Islamic legal literature, is that it is an act of devotion that involves the taking of animal life in a ritualized manner. While not perfect, this definition is broad enough to encompass rituals that Sunni Muslim jurists describe as expressing gratitude to God, as well as those that serve to expiate acts of wrongdoing. I have intentionally refrained from referencing what one might call the deeper meaning or significance of sacrifice because this is not the focus of Islamic legal literature, and I have not found there to be one identifiable meaning of Islamic sacrifice that permeates all of its instantiations. At times we might say that sacrifice acts as a form of communication, but at others it serves as a means of expiation or to repair a ritual that suffers from some flaw,<sup>63</sup> while the Qur'anic story of Abraham substituting a ram for the sacrifice of his son is in the background. While I will at times make reference to various possible meanings of these rites, more often my concern is with the elements of the rituals that Muslim jurists focus on, with particular attention to the role that animals play in them, and the ways in which these rituals may shape Muslim understandings of the place of animals, and humans, in the world.

There are three major categories of sacrifice that jurists discuss in manuals of Islamic jurisprudence: the *udḥīyah*, performed during the annual *ʿīd al-aḍḥā* celebration, the *ʿaqīqah*,

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<sup>63</sup> This is not the only place in Islamic jurisprudence where a flawed ritual performance can be remedied through the performance of another ritual. For example, if a person performing prayer commits certain kinds of mistakes, they may make up for those mistakes by offering an extra set of prostrations referred to as prostrations of forgetfulness (*sujūd al-saḥwu*).

performed after the birth of a child, and sacrifices performed during the hajj pilgrimage. Jurists further divide this last category into a number of subcategories depending on the occasion and function of the sacrifice. As a result, sacrifices performed on hajj are the most complex forms of Islamic sacrifice, and some of them contain elements not found in other forms of Islamic sacrifice.<sup>64</sup> The *udhīyah* sacrifice, however, is the broadest category of sacrifice in Islam in that it is accessible to every Muslim who possesses the means to perform a sacrifice. Because of this we could say that it is the most ubiquitous form of Islamic sacrifice. The *‘aqīqah* sacrifice could be considered the narrowest in scope because it is only performed when a child is born, and it is the only form of sacrifice that is not universally endorsed by the four schools of Sunni jurisprudence. Each of these sacrificial events include various sacrificial activities, and there are rulings in addition to the occasions for these sacrifices that distinguish one form of sacrifice from another, namely when and where the sacrifice is performed, how the meat that results from a sacrifice should be consumed and distributed, and whether or not another act of devotion can serve as a substitute for the sacrifice. Some sacrifices must be performed in a certain location, while others may be performed anywhere, and some must be performed at specified times. Distribution and consumption addresses questions of to whom the meat must be distributed and whether the person offering the sacrifice may consume part or all of it themselves. In certain circumstances, fasting or charitably donating food can take the place of a sacrifice.

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<sup>64</sup> Such as physically marking an animal to designate it for sacrifice.

## The Uḍḥīyah Sacrifice

The key characteristic of the *uḍḥīyah* itself refers to time as it sacrifice that distinguishes it from other sacrificial events is the time at which it occurs.<sup>65</sup> The term *uḍḥīyah* is semantically related to *al-duḥā* which is, “The early part of the forenoon, after sunrise: according to some, when the sun is yet low: according to others, when the sun is somewhat high.”<sup>66</sup> The name *uḍḥīyah* is translated as “a sheep or goat etc. that is slaughtered, or sacrificed, at the time called *al-duḥā* on the day called *yawm al-aḍḥā*, the Day of the Victims, which is the tenth of Dhu-l-Hijja.”<sup>67</sup> The descriptions that jurists provide add some helpful details. For example, al-Juwaynī says of the *uḍḥīyah*, “Muslims are in agreement that the *uḍḥīyah* is one of the clear religious signs (*sha ‘ā’ir*) and affirmed ways to draw near to God (*al-qurubāt*).”<sup>68</sup> Al-Juwaynī’s characterization of the *uḍḥīyah* as a means of drawing near to God has corrolaries in other schools as well. When discussing the importance of having the appropriate intention, the Ḥanafī jurist al-Kāsānī writes, “The sacrifice (*al-taḍḥīya*) is not valid without the intention of drawing near to God, because animal slaughter could be for the meat or it could be to draw near to God, and an action does not count as drawing near to God without intention.”<sup>69</sup> All of the rituals that we are examining in this chapter involve some aspect of *taqarrub*, but it is the *uḍḥīyah* sacrifice

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<sup>65</sup> In his article “The Changing Limits of Contingency in the History of Muslim Law,” Baber Johansen points out the role that time and place play in giving cultic acts meaning, “The spatial and temporal sphere of the sacred thus gives its meaning to the cultic acts.” (Johansen, “Changing Limits of Contingency in the History of Muslim Law,” 37).

<sup>66</sup> E. W. Lane, *Arabic - English Lexicon* (Cambridge: The Islamic Texts Society, 1984), 2:1773.

<sup>67</sup> Lane, *Arabic - English Lexicon*, 2:1774.

<sup>68</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:161.

<sup>69</sup> al-Kāsānī, *Badā’i ‘al-Ṣanā’i*, 6:305.

that presents *taqarrub* in its purest form as it is not occasioned by a specific act or experience of the person offering the sacrifice. Again, al-Kāsānī’s description of the *uḍḥīyah* is worth mentioning in detail as it is one of the few examples of jurists referencing Abraham in their discussions of sacrifice. Explaining why the *uḍḥīyah* sacrifice is mandatory, al-Kāsānī says, “It is out of gratitude for the blessing of life, and to revive the inheritance of Abraham (*al-khalīl*) peace be upon him, when God commanded him to sacrifice a ram during these days as a, expiation for his son, and as a riding mount on the *ṣirāt* (*maṭīya ‘alā al-ṣirāt*),<sup>70</sup> to seek forgiveness for sins, and to make up for wrongdoing (*takfīran li-l-khaṭāyā*), according to what the hadiths have stated.”<sup>71</sup> This description indicates that the ritual of the *uḍḥīyah* sacrifice is, in some sense, a way for the person offering it to draw close to God, both by expressing gratitude for everything that they have, and by making up for their sins and mistakes. As such, it is broader than other sacrificial acts that express thanks for a specific blessing or seek to make up for a specific wrong.

Sunni jurists invoke a number of texts as evidentiary sources for the practice of the *uḍḥīyah* sacrifice either in addition to defining the ritual, or in place of a detailed definition. These texts include the Qur’anic verse 108:2, “So pray to your Lord and slaughter,” which jurists interpret as a reference to the *‘īd* prayer and to ritual sacrifice.<sup>72</sup> While the Arabic command in this verse, “*anhur*,” indicates the way in which camels are slaughtered, it is taken as a more

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<sup>70</sup> The *ṣirāt* is the bridge that souls will cross in order to enter into Paradise. Some will make it across, while others will be pulled down into the fires of Hell.

<sup>71</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:276.

<sup>72</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:161; Ibn Qudāmah, *al-Mughnī*, 9:435. Ḥanafī jurists also use this verse to support their position that the *uḍḥīyah* sacrifice is mandatory (al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:277).

general reference to animal sacrifice. While the *uḍḥīyah* sacrifice is endorsed as a practice by all of the Sunni Schools of jurisprudence, they differ regarding its ruling. In this respect, Ḥanafī jurists are the outliers. They consider the *uḍḥīyah* to be mandatory (*wājib*),<sup>73</sup> as long as a person has the requisite financial means and is not traveling.<sup>74</sup> Mālikī, Shāfi‘ī and Ḥanbalī jurists, however, generally consider it to be a strongly recommended practice (*sunnah mu`akkadah*).<sup>75</sup>

### **Sacrifices Performed on Hajj**

The forms of Islamic sacrifice that follow are all rituals that occur as part of the hajj pilgrimage. As such, they cannot be separated from the other pilgrimage rites. In fact, many of these sacrifices are directly related to other rites in that they are the result of performing the hajj in a certain way or they make up for some deficiency in the pilgrim’s performance of the rites, or for committing a forbidden act while on the pilgrimage. Multiple sacrificial acts fall under the category of sacrifices performed on hajj making it the most complex category discussed in works

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<sup>73</sup> Here it should be noted that the legal ruling of *wājib* has a particular meaning in the Ḥanafī School that is distinct from its usage by non-Ḥanafī jurists. In his discussion of the ruling that the *uḍḥīyah* is mandatory, Ibn ‘Ābidīn addresses the difference between an action being mandatory (*wājib*) and it being obligatory (*farḍ*). Whereas the ruling that an action is obligatory is based on definitive evidence and must be both acted upon and believed to be an obligation, the ruling that an action is mandatory is based on evidence that is not definitive. Actions that are mandatory must be acted upon, but if a person does not believe them to be mandatory, this does not take them out of Islam. Muḥammad Amīn ibn ‘Umar Ibn ‘Ābidīn, *Hāshiyat Radd al-Muḥtār* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1966), 6:313. For more on the meaning of *wājib* and *farḍ* in Ḥanafī and Shāfi‘ī jurisprudence, see: Kevin Reinhart, “‘Like the Difference Between Heaven and Earth’: Ḥanafī and Shāfi‘ī Discussions of Wājib and Farḍ,” in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: Brill, 2002).

<sup>74</sup> al-Sarakhsī, *al-Mabsūt*, 12:8; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 275–81.

<sup>75</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:309–10; al-Jundī, *al-Tawḍīḥ*, 2:669; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:161; al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:461; Ibn Qudāmah, *al-Mughnī*, 9:435–36; al-Mardāwī, *al-Inṣāf*, 4:105.

of Islamic jurisprudence. Generally, these are referred to as *hadī*, although different Sunni schools of jurisprudence use different language to speak about the specific sacrifices performed on hajj. The definitions that jurists employ for *al-hadī* share some similarities with their definitions of *al-uḍḥīyah*, namely reference to drawing near to God and to the species of the sacrificial animal (*al-naʿm*). The term *hadī* is semantically related to *hadīya*, which means gift,<sup>76</sup> and this meaning comes through in the legal definitions provided by later jurists. The Ḥanafī jurist al-Ḥaskafī, for example, defines *hadī* as, “The *naʿm* animals that are sacrificed/given to the sanctuary (*ḥaram*) in order to draw nearer to God by [sacrificing] them there.”<sup>77</sup> Zakarīya al-Anṣārī’s definition is slightly abbreviated, “The animals that are given (*yuhdā*) to the sanctuary, which count as sacrificial animals for the *uḍḥīyah* sacrifice. It is also used to refer to sacrifices of expiation.”<sup>78</sup> Al-Buhūtī, from the Ḥanbalī School defines the *hadī* saying, “It is (the *naʿm* and other animals that are given to the sanctuary) and Ibn al-Munajā says, ‘It is what is slaughter at Mina.’”<sup>79</sup> Jurists, however, do not always agree on the meaning of terms used to refer to hajj sacrifices. For example, in the Mālikī School, *nusuk* are sacrifices that are made obligatory due to performing certain actions that are forbidden while in a state of *iḥrām*, such as a man covering his head, wearing stitched clothing, or men or women cutting their hair or finger nails.<sup>80</sup> In the Ḥanafī School, however, the sacrifice performed for *qirān* and *tamattuʿ* is referred to as *nusuk*

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<sup>76</sup> Lane, *Arabic - English Lexicon*, 2:3042.

<sup>77</sup> Ibn ʿĀbidīn, *Ḥāshiyat Radd al-Muḥtār*, 2:614.

<sup>78</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:319.

<sup>79</sup> Manṣūr b. Yūnus b. Idrīs al-Buhūtī, *Kashshāf Al-Qināʿ ʿan Matn Al-Iqnāʿ* (Cairo: Maṭbaʿat Anṣār al-Sunnah al-Muḥammadiyah, 1947), 2:475.

<sup>80</sup> al-Jundī, *al-Tawḍīḥ*, 2:563.

precisely because it does not involve making up for a deficiency in one's ritual performance.<sup>81</sup>

While these terminological differences are important, my main concern is with the different ways in which rituals of sacrifice are conceptualized and the effects that conceptualization has on the rules that guide their performance. In the pages that follow I will attempt to describe the kinds of sacrifices that are being discussed, while noting the differences in terminology that scholars from different legal schools employ, and focusing on the legal rulings associated with these rituals and the meanings that jurists assign to them.

### *Voluntary Sacrifices and Vows of Sacrifice*

Perhaps the most straightforward form of sacrifice performed during hajj is the voluntary (*taṭawu'*) sacrifice that any pilgrim may offer. Unlike other forms of sacrifice that are made obligatory by some action that the pilgrim has committed or omitted, this is a supererogatory act that is not preceded by any external cause,<sup>82</sup> and is considered by jurists to be a recommended or good act for those performing a pilgrimage.<sup>83</sup> While a sacrifice that a pilgrim vows they will make is similar to a voluntary sacrifice, in that it lacks a fixed external cause, it is made obligatory due to the person's vow.<sup>84</sup> As we shall see below, however, there are various rulings

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<sup>81</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:26.

<sup>82</sup> Al-Juwaynī does not even discuss voluntary sacrifices in his *Nihāyat al-Maṭlab* because he says such a discussion rightly belongs in the chapter on the *uḍḥīyah* sacrifice (al-Juwaynī, *Nihāyat al-Maṭlab*, 4:446).

<sup>83</sup> Al-Sarakhsī states, "If they voluntarily perform a sacrifice it is good (*ḥasan*)," (al-Sarakhsī, *al-Mabsūṭ*, 4:21). Al-Nawawī begins the section of his *Rawḍat al-Ṭālibīn* on *al-hadī* with the statement, "It is desirable (*yustaḥabb*) for a person heading to Mecca for hajj or 'umrah to offer it an animal (*shay'an min al-na'm*)." (al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:189). Al-Mardāwī states that it is *sunna* to bring a *hadī* with you to hajj (al-Mardāwī, *al-Inṣāf*, 4:100). Some works of *fiqh* appear not to explicitly address the ruling of performing a voluntary *hadī* sacrifice, although they will address associated rulings, such as where the sacrifice is to be performed and how it is to be distributed (Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:443 and 2:451-54); (al-Jundī, *al-Tawḍīh*, 2:566; Ibn Qudāmah, *al-Mughnī*, 9:461-62).

<sup>84</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:296-98; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:446; al-Nawawī, *Rawḍat al-*

associated with the consumption and distribution of the meat of an animal one has vowed to sacrifice that distinguish it from voluntary sacrifices.

### *Sacrifices for al-Tamattu' and al-Qirān*

I place these sacrifices in their own category because there is significant differences of opinion between Sunni jurists regarding whether they should be considered sacrifices of expiation or sacrifices that express gratitude. Regardless of how they are conceived, these sacrifices are made obligatory due to the way in which a pilgrim chooses to perform the rites of hajj beginning when they enter a state of *iḥrām*. There are three different ways that a pilgrim may perform hajj. The first, referred to as *ifrād*, is to perform hajj on its own, separate from a lesser *'umrah* pilgrimage. There is agreement between the four Schools that performing hajj in this way does not require a sacrifice. The two other ways of performing hajj, *qirān* and *tamattu'*, involve performing a lesser *'umrah* pilgrimage along with the hajj, and they both come with the stipulation that the pilgrim perform a sacrifice. *Qirān* involves the pilgrim performing both the lesser *'umrah* pilgrimage as well as the hajj pilgrimage in the same *iḥrām*. *Tamattu'* involves a person getting into a state of *iḥrām* during the months of hajj, performing *'umrah*, then getting into a new state of *iḥrām*<sup>85</sup> to perform hajj without having to go back to the *mīqāt*.<sup>86</sup> While jurists

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*Ṭālibīn*, 3:189; Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:456–58; al-Jundī, *al-Tawḍīḥ*, 2:566; Ibn Qudāmah, *al-Mughnī*, 9:459; al-Mardāwī, *al-Inṣāf*, 4:100.

<sup>85</sup> In most schools the pilgrim may take off the first *iḥrām* before getting into the new one to perform hajj, but Ḥanafīs make this permission contingent on the person not having brought a sacrificial animal with them to the precinct of Mecca. If they did bring an animal with them, then they have to wait until they have completed the hajj in order to get out of the state of *iḥrām* (al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:126 and 3:170).

<sup>86</sup> *Mīqāt* refers to those places that mark the border of the precinct of Mecca where pilgrims enter into a state of *iḥrām* based on where their journey to hajj originated.

from the four Schools of Sunni law agree that performing hajj as *qirān* or *tamattuʿ* requires sacrifice, they differ in how they interpret the meaning of these sacrifices. This difference of opinion is based on the ways that they conceptualize the performance of *qirān* and *tamattuʿ* and which way of making pilgrimage they consider preferable.<sup>87</sup> In addition to influencing how we may understand the meaning of these sacrifices, these different conceptualizations further impact some of the rules of the sacrifice, namely where and when it should be performed and how the meat should be distributed.<sup>88</sup>

There are two major ways in which jurists conceptualize the sacrifices of *qirān* and *tamattuʿ*, which allow us some insight into the possible meanings that sacrifice has in Islam and the various roles that it can play. Jurists either consider these sacrifices to be rituals that make up for a deficiency in the performance of devotional rites, or devotional acts that express gratitude for the ease of being able to combine the rites of hajj and *ʿumrah*. Shāfiʿīs take the former position, holding that sacrifices that are the result of performing hajj as *qirān* or *tamattuʿ* have an expiatory function (*damm jabr*),<sup>89</sup> and placing them in the same category as all obligatory sacrifices that are not the result of swearing an oath.<sup>90</sup> Mālikī jurists adopt a similar position.<sup>91</sup> Ḥanafī jurists, on the other hand, are of the opinion that rather than making up for a deficiency in

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<sup>87</sup> For Mālikīs and Shāfiʿīs the best way to perform hajj is *al-ifrād* (Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:364; al-Jundī, *al-Tawdīh*, 2:358; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:190; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:44). For Ḥanafīs, the best way to perform hajj is *qirān* (al-Sarakhsī, *al-Mabsūṭ*, 4:25; al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 3:183). For Ḥanbalīs the best way to perform hajj is *al-tamattuʿ* (Ibn Qudāmah, *al-Mughnī*, 3:260).

<sup>88</sup> These issues are discussed in the following sections of this chapter.

<sup>89</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:171; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:47.

<sup>90</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:353.

<sup>91</sup> al-Jundī, *al-Tawdīh*, 2:563. Note that Mālikīs refer to these sacrifices as *nusuk* but they give this term a different meaning than Ḥanafī and Ḥanbalī jurists.

ritual performance, the sacrifices of *qirān* and *tamattu'* are sacrifices of gratitude (*damm shukr*) towards God for permitting them to perform hajj in this way.<sup>92</sup> Part of the rationale that Ḥanafī jurists provide for this is that the actions that made this sacrifice obligatory are permissible actions, and deficiency only arises out of doing something that is impermissible.<sup>93</sup> Ḥanafīs refer to these sacrifices as devotional (*damm nusuk*) explicitly differentiating them from sacrifices occasioned by wrongdoing (*damm jināya*).<sup>94</sup> Ḥanbalī jurists also consider sacrifices performed for *qirān* and *tamattu'* to be devotional sacrifices (*damm nusuk*) rather than expiatory sacrifices (*damm jabran*).<sup>95</sup>

These various positions on the sacrifices for *qirān* and *tamattu'* reveal that, in addition to serving the function of fulfilling certain ritual duties associated with the pilgrimage, Muslim jurists ascribe meaning to the performance of sacrifice. In this case, the sacrifice is either an expression and communication of gratitude to God, or an expiatory act to make up for a deficiency in the rituals with which it is associated. According to both of these understandings, sacrifice fulfills an important function in mediating the believer's relationship with the divine and maintaining a particular cosmological order in a way that is less explicit in voluntary sacrifices and *uḍḥīyah* sacrifices.

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<sup>92</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:26; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:182–83 and 3:301.

<sup>93</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:26.

<sup>94</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:26; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:182–83.

<sup>95</sup> Al-Mardāwī, *al-Inṣāf*, 3:439–40.

## Sacrifices of Expiation

Here I use the concept of expiation to refer to any sacrifice associated with hajj that is occasioned by a person committing an act that is forbidden while in a state of *iḥrām*. Although hunting while in a state of *iḥrām* or while in the *ḥaram* sanctuary involves committing an impermissible act, it occasions a sacrifice that serves as recompense for the killed animal rather than as expiation for the wrongdoing, so I consider it in its own section. The actions that do fall into this category include wearing non-*iḥrām* clothing, wearing perfume, cutting one's hair or nails, engaging in sexual activity, and neglecting or incorrectly performing the rites of the hajj. Again, the differences between the ways that legal schools conceptualize these sacrifices make it challenging to categorize them in a meaningful way across school lines. While we may consider all of the forms of sacrifice mentioned above as expiation, in that they make up for some form of wrong-doing on hajj, the legal schools place them into various categories that come with their own rules and guidelines for the performance of the sacrifice. Because my focus is on legal traditions related to killing animals, I will discuss the rules of hajj broadly as context for a discussion of sacrifice without addressing all of the details that jurists consider. I also place these sacrifices into broader categories than those that Muslim jurists utilize so that I can focus on the legal rulings related to the sacrifice rather than the rulings related to the violation that obligated it. So, whereas Muslim jurists often treat sacrifices for wearing perfume as distinct from sacrifices for cutting one's hair, for example, I place them into the broader category of violations of *iḥrām* along with wearing forbidden clothing and having sex.

Although intent is a key element of the performance of Islamic rituals of worship,<sup>96</sup> Shāfi'ī jurists explicitly state that it is not necessary to specify what is being expiated through a

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<sup>96</sup> On intent as an element of Islamic rituals or worship in Islamic law, see: Paul Powers, "Interiors, Intentions, and the 'Spirituality' of Islamic Ritual Practice," *Journal of the American Academy of Religion*

sacrificial act. In fact, one does not even need to know what one is performing a sacrifice for.<sup>97</sup> It appears then that acts of sacrifice that have an expiatory purpose can possess an efficacy that does not need to be further specified by a detailed intention. Here the act of shedding an animal's blood in a ritual manner serves to acknowledge the act of wrong doing and to make up for it, even if one is unaware of its specifications. Intention is also relevant in that if a person commits certain acts because they have forgotten that they are in a state of *iḥrām*, they are not responsible for performing a sacrifice. This goes for wearing perfume and all pleasurable acts that are disallowed while in a state of *iḥrām*,<sup>98</sup> such as wearing forbidden clothing and covering one's head.<sup>99</sup> This ruling is similar to that found in discussions of fasting that hold that if a person forgets that they are fasting and drinks or eats, their fast is not broken. Unlike with fasting, however, where a person is expected to be familiar with the requirement to refrain from food and drink, if a person does not know that wearing perfume while in a state of *iḥrām* is forbidden, then they are not held accountable for committing the infraction.<sup>100</sup>

#### *Wearing Forbidden Clothing, Perfume, and Cutting Hair or Nails*

Many of the sacrifices of expiation that may be required of a pilgrim are due to a violation of the state of *iḥrām*. As was mentioned above, entering into the state of *iḥrām* requires

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72, no. 2 (June 2004): 425–59.

<sup>97</sup> “It does not harm them if they do not know the cause that made the sacrifice incumbent upon them. The analogical reasoning (*qiyās*) in our school regarding expiation (*al-kafārāt*) is that it is not required to specify the intention,” (al-Juwaynī, *Nihāyat al-Maṭlab*, 4:230).

<sup>98</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:267.

<sup>99</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:253.

<sup>100</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:267.

that a person refrain from a number of actions that would otherwise be permissible. While some of these prohibitions apply equally to men and women, some of them, particularly those related to clothing, are gendered in the sense that they are forbidden for men while permitted for women, or vice versa. It is forbidden for both men and women to wear perfume,<sup>101</sup> cut their hair or nails,<sup>102</sup> have sex,<sup>103</sup> or kill hunted animals<sup>104</sup> while in a state of *iḥrām*. Men are specifically not allowed to wear stitched clothing, cover their heads, or wear closed shoes. Women are allowed to cover their heads and wear stitched clothing, but they may not cover their faces with a niqab,<sup>105</sup> although most jurists allow for women to suspend a cloth in front of their faces, as long as it does not touch their face directly.<sup>106</sup> Women are also not allowed to wear gloves according to some jurists.<sup>107</sup> If a person engages in any of these forbidden actions, they must perform an act of

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<sup>101</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:350; al-Jundī, *al-Tawḍīḥ*, 2:495; al-Sarakhsī, *al-Mabsūṭ*, 4:122; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:217; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:259; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:132; Ibn Qudāmah, *al-Mughnī*, 3:293; al-Mardāwī, *al-Inṣāf*, 3:469.

<sup>102</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:353–54; al-Jundī, *al-Tawḍīḥ*, 2:503; al-Sarakhsī, *al-Mabsūṭ*, 4:79; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:227. al-Juwaynī, *Nihāyat al-Maṭlab*, 4:269; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:135; Ibn Qudāmah, *al-Mughnī*, 3:296–97; al-Mardāwī, *al-Inṣāf*, 3:457–59.

<sup>103</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:419–20; al-Jundī, *al-Tawḍīḥ*, 2:466; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:343–44; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:139; Ibn Qudāmah, *al-Mughnī*, 3:308–9; al-Mardāwī, *al-Inṣāf*, 3:495.

<sup>104</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:461–65; al-Jundī, *al-Tawḍīḥ*, 2:513; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:397; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:144; Ibn Qudāmah, *al-Mughnī*, 3:288; al-Mardāwī, *al-Inṣāf*, 3:474.

<sup>105</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:342; al-Jundī, *al-Tawḍīḥ*, 2:493–94; al-Sarakhsī, *al-Mabsūṭ*, 4:128; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:207; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:247–48; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:127; Ibn Qudāmah, *al-Mughnī*, 3:302; al-Mardāwī, *al-Inṣāf*, 3:502.

<sup>106</sup> al-Jundī, *al-Tawḍīḥ*, 2:493–94; al-Sarakhsī, *al-Mabsūṭ*, 4:128; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:207; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:248; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:127; al-Mardāwī, *al-Inṣāf*, 3:502–3.

<sup>107</sup> Ḥanafī jurist allow women to wear gloves as do some Shāfi'īs (al-Sarakhsī, *al-Mabsūṭ*, 4:128; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:211; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:249). Other Shāfi'īs, like al-Nawawī, report that of the two opinions, the one that holds that women are not permitted to wear gloves is the most apparent (al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:127). Mālikī jurists tend to restrict women from wearing gloves. They relate an opinion from Mālik that women need to perform a sacrifice if they wear gloves, but

expiation, which, depending on the extent of the violation, can be either an act of charitable giving or the performance of a sacrifice.<sup>108</sup>

In light of this relationship between the violation of *iḥrām* and sacrifice, it is tempting to think of sacrifice as serving to preserve this sanctified state. For the most part, however, we do not find Muslim jurists discussing sacrifice in this way. In fact, with the exception of sexual intercourse, under certain circumstances, violating the rules of *iḥrām* does not remove a person from that state, or invalidate the rituals they are engaged in performing. The state of *iḥrām* appears to be strong enough to endure these violations on its own.<sup>109</sup> The expiation, then, serves to make up for the violation of the rules of *iḥrām*, rather than preserving the state of *iḥrām*. The exception to this is the case of sexual contact that invalidates the pilgrimage. Here sacrifice makes up for the violation of *iḥrām*, but the person must still repeat the hajj the following year. Some jurists also warn against thinking that just because an act of wrongdoing on hajj can be expiated through sacrifice that these acts can be taken lightly.<sup>110</sup> The requirement to perform an expiatory sacrifice does not, however, always mean that a person has committed a sin. There are cases where a person has an excuse to do something that is forbidden, such as wearing forbidden clothing if they are sick or fear cold weather. In these instances, the act is not sinful because it is

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not all jurists require this sacrifice due to narrations that state that ‘Ā’ishah allowed it (Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 3:342; al-Jundī, *al-Tawdīh*, 2:495). Ḥanbalī jurists similarly restrict women from wearing gloves and require a sacrifice for doing so (Ibn Qudāmah, *al-Mughnī*, 3:304; al-Mardāwī, *al-Inṣāf*, 3:503–4).

<sup>108</sup> As we will see below, one of the areas where jurists disagree concerns when a sacrifice is required and when a smaller act of charity is called for.

<sup>109</sup> Khalīl b. Ishāq of the Mālikī School explicitly states, regarding wearing forbidden clothing, perfume, and removing hair and nails, “There is no dispute that these do not invalidate the *iḥrām* even if they are continuously present.” (al-Jundī, *al-Tawdīh*, 2:480).

<sup>110</sup> al-Jundī, *al-Tawdīh*, 2:513.

excused (*ma' dhūr*), but an act of expiation may still be required.<sup>111</sup> For example, Ḥanafī jurists allows that if a person wears an item of forbidden clothing for an entire day out of some form of necessity, they may choose to either offer a sacrifice, give charity, or fast, whereas if they did so without the need, they would have to perform the sacrifice.<sup>112</sup> This is distinct, however, from the case of a person violating the *iḥrām* due forgetful heedlessness. According to Shāfi'īs, if a person commits certain acts because they have forgotten that they are in a state of *iḥrām*, then they are not responsible for performing a sacrifice.<sup>113</sup> This goes for wearing perfume<sup>114</sup> and all pleasurable acts that are disallowed while in a state of *iḥrām*, such as wearing forbidden clothing and covering one's head.<sup>115</sup> This ruling is similar to that found in discussions of fasting, which hold that if a person forgets that they are fasting and drinks or eats, their fast is not broken. Unlike with fasting, however, where a person is expected to be familiar with the requirement to refrain from food and drink, if a person does not know that wearing perfume while in a state of *iḥrām* is forbidden, then they are not held accountable for committing the infraction.<sup>116</sup> In light of these rulings, we could think of the sacrifice less as an expiation for the sin of violating the *iḥrām*, and more as another part of the complex ritual order of the *iḥrām* that emphasizes it as a state set apart from the ordinary and gives added weight and meaning to the violation of its rules.

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<sup>111</sup> al-Jundī, *al-Tawḍīḥ*, 2:513.

<sup>112</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:128; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 2:213.

<sup>113</sup> An exception to this is cutting hair and nails which, even if a person cuts them out of forgetfulness, still requires an expiatory act (al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:137). This is also the case for killing hunted animals (al-Juwaynī, *Nihāyat al-Maṭlab*, 4:266–67; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:153).

<sup>114</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:132.

<sup>115</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:253.

<sup>116</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:267; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:132.

Sacrifices and other expiatory acts performed in this context are not independent rituals like the *udhīyah* sacrifice, for example, but they are components of the ritual order of *iḥrām*.

While there is broad agreement on these general rules, jurists from the four Sunni legal schools have differing opinions regarding some of the details of what constitutes a violation of *iḥrām* such that an expiatory act is required. Much of these have to do with the quantity of contraband that was used, or the duration for which it was used. In the Mālikī School, for example, shaving one's entire head requires an expiatory sacrifice.<sup>117</sup> Ibn Ishāq states that the sacrifice of expiation also becomes obligatory by removing that which provides comfort and removes harm, such as removing armpit hair or trimming the mustache, but that removing just one or a few hairs only requires an act of charity.<sup>118</sup> If a person cuts the nails on one hand, or one nail from each hand, they must perform a sacrifice,<sup>119</sup> and if a person removes a finger nail to avoid harm, they must also perform a sacrifice.<sup>120</sup> In the Ḥanafī School a full expiation is only required if a person wears a piece of forbidden clothing for an entire day.<sup>121</sup> If, however, they wore a shirt for less than a day, they would be obligated to give charity that is significantly less in amount than the sacrifice.<sup>122</sup> There are similar principles that come into play for cases of wearing perfume,<sup>123</sup> shaving one's head, or cutting one's nails, in which cases a sacrifice is only

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<sup>117</sup> al-Jundī, *al-Tawḍīḥ*, 2:503–4.

<sup>118</sup> al-Jundī, *al-Tawḍīḥ*, 2:506–7.

<sup>119</sup> al-Jundī, *al-Tawḍīḥ*, 2:503.

<sup>120</sup> al-Jundī, *al-Tawḍīḥ*, 2:509.

<sup>121</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:125–26; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:211.

<sup>122</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:125–26; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3: 211.

<sup>123</sup> Such that one only performs a sacrifice if they perfumed an entire limb of their body and anything less requires charity (*ṣadaqah*) rather than sacrifice: al-Sarakhsī, *al-Mabsūṭ*, 4:122; al-Kāsānī, *Badā'i' al-*

required if one shaves a quarter or most of one's head<sup>124</sup> or cuts all of the nails on a hand or foot.<sup>125</sup> Shāfi'īs, however, require a sacrifice just for putting on a piece of forbidden clothing no matter how long the person wears it.<sup>126</sup> Additionally, a person does not have to cover their entire head for expiation to be required; it is enough that they intentionally cover a part of their head.<sup>127</sup> Similarly, merely cutting three hairs requires a full act of expiation.<sup>128</sup> This is similar to rulings found in the Ḥanbalī School.<sup>129</sup> In the Ḥanbalī School, it does not matter if one removes the hair intentionally, by accident, or with an excuse,<sup>130</sup> in all these cases the expiation is made obligatory if a person cuts four or more hairs.<sup>131</sup> This includes hair on one's head and anywhere else on one's body.<sup>132</sup> Also, if one intentionally wears perfume, stitched clothing, or *al-khuff*<sup>133</sup> while they are in possession of sandals, they must remove it and perform a sacrifice and it does not matter how much or little they wear.<sup>134</sup> Again, if they did these things forgetting they were in

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*Ṣanā'i'*, 3:217.

<sup>124</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:73; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:223–24.

<sup>125</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:79; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:227.

<sup>126</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:126.

<sup>127</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:243; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:125.

<sup>128</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:257 and 4:269; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:136.

<sup>129</sup> Ibn Qudāmah, *al-Mughnī*, 3:434.

<sup>130</sup> Ibn Qudāmah, *al-Mughnī*, 3:429.

<sup>131</sup> al-Mardāwī, *al-Inṣāf*, 3:456.

<sup>132</sup> Ibn Qudāmah, *al-Mughnī*, 3:430; al-Mardāwī, *al-Inṣāf*, 3:458–59.

<sup>133</sup> A closed to leather sock that covers the foot up to and including the ankle.

<sup>134</sup> Ibn Qudāmah, *al-Mughnī*, 3:434.

*iḥrām*, they do not have to make an expiation.<sup>135</sup> Additionally, there are some issues that certain schools and jurists take unique positions on. An example of this is that Mālikī jurists generally disallow a person in a state of *iḥrām* from bathing in order to remove dirt<sup>136</sup> from their bodies, and there are positions within that school that require an act of expiation if a person in *iḥrām* merely enters the public bath.<sup>137</sup>

### *Having Sex*

While having sex is also a violation of the state of *iḥrām*, it differs from the other kinds of violations we have looked at in that it can also invalidate the person's entire pilgrimage. Its expiation can also be much higher than that for other violations. Whereas cutting one's hair or nails, wearing forbidden clothing, or wearing perfume all require the sacrifice of a sheep or a goat, depending on the circumstances, sex can require the sacrifice of a camel or a head of bovine cattle. This is based on which rites of the pilgrimage the person had already performed at the time they have sex and it seems to indicate that having sex is a greater violation of the *iḥrām* than the other acts that we have considered. There are important distinctions between the Sunni schools regarding this expiation. For Ḥanafīs, sex that invalidates the hajj requires the sacrifice of a sheep or a goat, whereas sexual activity that does not invalidate the hajj requires the sacrifice of a camel or a head of bovine cattle.<sup>138</sup> Mālikīs, Shāfi'īs, and Ḥanbalīs require the sacrifice of a

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<sup>135</sup> Ibn Qudāmah, *al-Mughnī*, 3:435.

<sup>136</sup> This refers to dirt that is not ritually impure, otherwise it would have to be removed.

<sup>137</sup> al-Jundī, *al-Tawdīh*, 2:501–2.

<sup>138</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:118–19; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:282–84.

camel or a head of bovine cattle for sex that invalidates the hajj.<sup>139</sup> For Mālikī and Ḥanafī jurists, it is sex that occurs before standing at Arafah invalidates the hajj,<sup>140</sup> although there are disagreements within the Mālikī school regarding whether sex that occurs after standing at Arafat invalidates the pilgrimage depending on how many other rites of the pilgrimage remain.<sup>141</sup> In the Shāfi'ī School, however, sexual intercourse invalidates a person's *iḥrām*, and therefore their pilgrimage, regardless of whether it occurs before or after the pilgrim stands at Arafat.<sup>142</sup> For Ḥanbalīs, there is also no difference if sex occurs before or after standing at Arafat.<sup>143</sup> If it occurs after casting stones at the *jamarāt*, however, then it does not invalidate the hajj, but it still requires a sacrifice of a sheep.<sup>144</sup>

There is also the issue of what kind of sexual contact invalidates the hajj and requires sacrifice. For Ḥanafīs, it must involve vaginal penetration to invalidate the hajj, although there is some disagreement regarding anal sex.<sup>145</sup> While sexual contact that does not involve vaginal penetration does not invalidate a person's hajj according to Ḥanafī scholars, any contact between a man and a woman that involves sexual desire requires a sacrifice, regardless of whether the person orgasms.<sup>146</sup> There are positions in the Mālikī School that require the sacrifice of a camel

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<sup>139</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:419–20; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:139; Ibn Qudāmah, *al-Mughnī*, 3:424.

<sup>140</sup> al-Jundī, *al-Tawḍīḥ*, 2:466; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:281.

<sup>141</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:422–24; al-Jundī, *al-Tawḍīḥ*, 2:466–67.

<sup>142</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:343.

<sup>143</sup> Ibn Qudāmah, *al-Mughnī*, 3:308–9.

<sup>144</sup> Ibn Qudāmah, *al-Mughnī*, 3:425.

<sup>145</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:281.

<sup>146</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:229–30.

or a head of bovine cattle if a man merely kisses his wife, although this does not invalidate the hajj, and if he does not ejaculate he only needs to sacrifice a sheep.<sup>147</sup> For Shāfi‘īs, sex while in *iḥrām* requires an expiatory sacrifice<sup>148</sup> even if it does not involve penetrative intercourse.<sup>149</sup> For some Shāfi‘ī jurists, this includes any physical contact between men and women, similar to the contact that invalidates a state of ritual purity in their school.<sup>150</sup> Although such contact does not invalidate the pilgrimage, it still requires a sacrifice, in this case of a sheep.<sup>151</sup> There is, however, some disagreement within the School on this point and Ibn Qāsim, with al-Bājūrī agreeing, explicitly states that men and women touching each other without sexual desire is not forbidden and, therefore, does not require an act of expiation.<sup>152</sup> In the Ḥanbalī school there is no difference between vaginal sex, anal sex, or sex with a non-human animal<sup>153</sup> in that they all invalidate the hajj and require the sacrifice of a camel.<sup>154</sup> In the case of non-penetrative sex in the Ḥanbalī School, if there is ejaculation, then one must sacrifice a camel, but if there is no ejaculation, one must sacrifice a sheep.<sup>155</sup> There is a difference of opinion regarding whether this invalidates the

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<sup>147</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:420; al-Jundī, *al-Tawḍīḥ*, 2:479.

<sup>148</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:344.

<sup>149</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:346.

<sup>150</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 347–48.

<sup>151</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:347.

<sup>152</sup> al-Bājūrī, *Hāshīyat Al-Bājūrī ‘alā Sharḥ Ibn Qāsim al-Ghazzī*, 1:327.

<sup>153</sup> Ibn Qudāmah, *al-Mughnī*, 3:309–10.

<sup>154</sup> Ibn Qudāmah, *al-Mughnī*, 3:308–9.

<sup>155</sup> Ibn Qudāmah, *al-Mughnī*, 3:310.

hajj, and Ibn Qudāmah adopts the position that non-penetrative sex does not invalidate the hajj even if there is ejaculation.<sup>156</sup>

The sacrifice for having sex brings us back to the question of the role that sacrifice plays and whether it preserves the *iḥrām*, or is part of its ritual sphere. There is some evidence in Ḥanafī discussions that the state of *iḥrām* is impacted by some of these infractions, but sacrifice does not remedy it. For example, when discussing a person having sex while on hajj after standing at Arafāt, al-Sarakhsī states that they must sacrifice a camel (*jazūr*). But if they have sex again, after having performed the sacrifice, they only have to sacrifice a sheep for the second violation. The reason al-Sarakhsī gives for this is that in the first instance the *iḥrām* was complete, whereas in the second instance it was deficient, having already been violated once.<sup>157</sup>

#### *Making up for Missing a Ritual*

Sacrifices of expiation can also be mandated if a pilgrim neglects to perform one of the rites of the hajj. In these cases, performing the expiatory act makes up for having neglected the specific element of the hajj, maintains the integrity of the pilgrimage, and restores it to order. Because jurists conceptualize these rites differently, there isn't a uniform position between the schools of jurisprudence regarding which rites require a sacrifice if they are skipped. All of the schools do agree, however, that there are some rituals that are so essential to the pilgrimage that they cannot be made up. Neglecting these rites, which are considered integral (*arkān*) to the hajj, invalidates the pilgrimage and cannot be expiated through sacrifice or other expiatory acts. There are also rites that are not considered obligatory enough to require a sacrifice of expiation if the

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<sup>156</sup> Ibn Qudāmah, *al-Mughnī*, 3:311.

<sup>157</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:119.

pilgrim neglects to perform them. These are usually recommended or *sunnah* actions. Not all jurists agree on which rituals count as integral to the hajj and which require an act of expiation. For example, Shāfi'īs consider performing the *sā'ī*<sup>158</sup> to be an integral rite (*rukṅ*) so if one neglects to perform it, it cannot be made up through performing a sacrifice.<sup>159</sup> This is distinct from the Ḥanafī School in which the *sā'ī* is mandatory (*wājib*),<sup>160</sup> so a sacrifice can make up for its being neglected.<sup>161</sup>

There are various rites that require an expiation if the pilgrim neglects to perform them. These include entering the state of *iḥrām* at the designated place, casting stones at the *jamarāt*, and, in some opinions, spending time at Arafat both during the daytime and the nighttime, spending the night in Mina, spending the night in Muzdalifah, the farewell *ṭawāf*, and the *sā'ī*, although not all jurists agree on all of these. For example, Ḥanbalīs say that if a person leaves Arafat before sunset, they must perform a sacrifice.<sup>162</sup> This is also a position in the Shāfi'ī School (although it is not the only position).<sup>163</sup> Similarly, staying the night at Muzdalifah at least until midnight is *wājib* and requires a sacrifice if one does not do it.<sup>164</sup> Shāfi'ī jurists also hold that one must spend at least an hour of the second half of the night at Muzdalifa.<sup>165</sup> These, along

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<sup>158</sup> This is the ritual in which the pilgrim walks seven times between the mountains of Safa and Marwa.

<sup>159</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:302.

<sup>160</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:81.

<sup>161</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:84.

<sup>162</sup> Ibn Qudāmah, *al-Mughnī*, 3:436–37.

<sup>163</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:334.

<sup>164</sup> Ibn Qudāmah, *al-Mughnī*, 3:437.

<sup>165</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:105.

with numerous other rulings show the important role that time plays in the performance of Islamic rituals. There are also some rites that, if a person neglects to perform them, they can make them up without having to perform a sacrifice or an act of expiation. This is the case with the “farewell *tawāf*” which is meant to be the last ritual that a pilgrim performs before departing Mecca. If a person were to depart Mecca without performing this *tawāf* they could return and make the *tawāf* without having to perform a sacrifice as long as they had not traveled the distance that would make them a traveler before returning to Mecca.<sup>166</sup> The initial *tawāf* that the pilgrim makes is not obligatory in the Shāfi‘ī School and therefore missing it does not require a sacrifice.<sup>167</sup> Similarly, in the Ḥanafī School, if a person passes the *mīqāt* without putting on the *iḥrām*, and then returns and puts it on, they do not have to perform a sacrifice. If, however, they did not return to the *mīqāt*, their hajj would be valid, but they would have to perform a sacrifice of expiation for violating the rights of the *mīqāt*.<sup>168</sup> Some violations require a sacrifice even though they do not make up for the deficiency. Standing at Arafāt, for example, cannot be made up by offering a sacrifice, but if a person misses this integral rite of the hajj, they still have to offer a sacrifice and make up the hajj at another time.<sup>169</sup> Here the sacrifice cannot restore the ritual since the flaw was too great to be mended, but it seems to serve the purpose of making up for the act of neglect.

Examining this material on sacrifices performed for missing a rite of the hajj reveals the complexity of the rulings involved in the pilgrimage. As with other Islamic rituals of devotion,

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<sup>166</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:119.

<sup>167</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:119.

<sup>168</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:170–71.

<sup>169</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:182.

jurists pay attention both to larger questions, as well as to more minute details of the ritual performance. Hajj presents challenges that make it unique among other rituals in that it is a larger ritual complex that is made up of many ritual acts. It is not sufficient for the pilgrim to know the rites of the hajj; they also have to be aware of their legal status in order to determine whether or not a sacrifice is required of them. Here the sacrifice itself is an ancillary ritual that becomes part of the hajj ritual complex in order to rectify a deficiency in ritual performance.

*Al-Iḥṣār: Being Prevented from Completing the Pilgrimage*

*Al-Iḥṣār* refers to situations in which a person has entered into a state of *iḥrām* but is prevented from completing the pilgrimage. This includes the case when someone is unable to complete the hajj because the road is blocked by brigands/enemies, or they have fallen ill, or if they miss the essential rite of standing at Arafat. In all of these cases, the pilgrim must perform a sacrifice to exit the state of *iḥrām* according to the majority of jurists. The exception to this is found among Mālikī jurists who do not require the performance of a sacrifice in order to exit the state of *iḥrām*.<sup>170</sup> Jurists, however, differ in regards to what constitutes a legitimate *iḥṣār*. For the Shāfi‘ī, *iḥṣār* is when an enemy prevents one from reaching Mecca. In this case, one gets out of *iḥrām* and performs a sacrifice.<sup>171</sup> Being unable to complete the hajj due to illness, however, does not count as *iḥṣār* in the Shāfi‘ī School.<sup>172</sup> Ḥanafīs, on the other hand, do consider illness to be a valid condition of *iḥṣār*.<sup>173</sup> If they were unable to complete the hajj due to illness, though,

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<sup>170</sup> al-Jundī, *al-Tawḍīḥ*, 2:546.

<sup>171</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:427; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:172–74.

<sup>172</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:427; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:173–74.

<sup>173</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:107.

they may not exit *iḥrām* through sacrifice, rather they must wait until they are able to perform the actions of an *‘umrah* and exit the *iḥrām* through those rites.<sup>174</sup> Ḥanbalī scholars also allow for a pilgrim to preempt the possibility of *iḥṣār* by explicitly adding a stipulation when they enter *iḥrām* that if they cannot complete the hajj for any reason, they are automatically removed from a state of *iḥrām* in the place that they find themselves. Ḥanbalīs are also of the opinion that if a person is prevented from performing the hajj due to an enemy blocking their way, they must perform a sacrifice where they are in order to exit the state of *iḥrām*.<sup>175</sup> They can perform the sacrifice where they are, but it must be done on the Day of Sacrifice,<sup>176</sup> although Ibn Qudāmah does narrate an opinion in the School that allows for the sacrifice to occur at any time.<sup>177</sup> If a person prevented from completing hajj can sacrifice an animal, then they cannot get out of *iḥrām* before slaughtering it.<sup>178</sup>

One point that sets sacrifices for *iḥṣār* apart from other sacrifices of expiation is that the person offering the sacrifice is, by definition, not physically present in the *ḥaram* sanctuary. Because of this, jurists have different opinions regarding where the sacrifice should be performed and distributed. Ḥanafī jurists hold that the person who cannot complete the hajj must send money to Mecca and have someone procure and slaughter a sacrificial animal there on the Day of Sacrifice on their behalf.<sup>179</sup> Part of the Ḥanafī rationale for this is that slaughtering an animal

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<sup>174</sup> al-Mardāwī, *al-Inṣāf*, 4:71.

<sup>175</sup> Ibn Qudāmah, *al-Mughnī*, 3:327; al-Mardāwī, *al-Inṣāf*, 4:67–68.

<sup>176</sup> Ibn Qudāmah, *al-Mughnī*, 3:328–29; al-Mardāwī, *al-Inṣāf*, 4:68.

<sup>177</sup> Ibn Qudāmah, *al-Mughnī*, 3:328–29.

<sup>178</sup> Ibn Qudāmah, *al-Mughnī*, 3:327.

<sup>179</sup> al-Sarakhsī, *al-Mabsūt*, 4:106; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 3:191–92.

is only a devotional act of drawing near to God (*qurbah*) if it is performed at a specified place (the *ḥaram*) or at a specified time (the Days of Sacrifice), so only when the animal has been sacrificed in the *ḥaram* can the person exit the state of *iḥrām*.<sup>180</sup> Here, the sacrifice is to allow the person to exit *iḥrām*, and they still must perform the hajj at a later date when they are able.<sup>181</sup> These rulings of *iḥṣār* apply to pilgrims who are performing the hajj as well as pilgrims who are performing the *ʿumrah* pilgrimage.<sup>182</sup>

### *Recompense for Hunting*

Jurists agree that the *ḥaram* precinct of Mecca is a sanctuary or safe-haven for wild animals. Nobody is allowed to hunt within the sacred precinct, and a person in a state of *iḥrām* is forbidden to hunt even outside of the sacred precinct. As I discussed in the previous chapter, hunting refers to ritualized practices of killing animals distinct from slaughter both in the ways they are performed and the kinds of animals that they target. While the rules relating to hunting while in *iḥrām* generally apply to animals that would typically be hunted, they can also be extended to non-edible animals that one might encounter. Jurists, however, disagree on some of the stipulations related to this last point. Ḥanbalīs consider it permissible for a person in a state of *iḥrām* to kill certain animals, such as crows, rats, and snakes, without having to perform an expiatory act.<sup>183</sup> Ḥanafī jurists, on the other hand, hold that these animals must be attacking at

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<sup>180</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:106; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:192.

<sup>181</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:107.

<sup>182</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:109.

<sup>183</sup> Ibn Qudāmah, *al-Mughnī*, 4:314–15.

the time for it to be permissible to kill them.<sup>184</sup> If a person kills a hunted animal in the *ḥaram*, or if a person in a state of *iḥrām* kills a hunted animal, then they are liable to perform a sacrifice as recompense for the unlawful taking of animal life. This may appear to be somewhat paradoxical that in order to make up for killing an animal, a person is compelled to kill another animal. One of the elements that this clarifies is the distinction between wild hunted animals and domesticated animals. It is the former that are protected and, since the latter are generally considered to be the property of humans, giving up that property can serve for taking a life that one was not permitted to take.

Al-Juwaynī explains the meaning behind this sacrifice in the following way: “The hunted animals belong to God; He owns them (*huwwa mālik al-a’yān*) and He has prevented (*ḥajar*) the person in a state of *iḥrām* from them. So, the person in the state of *iḥrām* is responsible for their value for the same reasons they would be responsible for the value of another person’s property.”<sup>185</sup> In this view, encroaching upon hunted animals is an encroachment on God’s property, and one must not only make up for the sin of such a violation, but one must also make up for the value of the property that was destroyed. This is why most jurists discuss this sacrifice in terms of recompense (*jazā’*) rather than expiation (*fidya*) as the sacrifice serves to replace the value of the animal. Because of this, one might think that this would be a sacrifice that could not be distributed to be consumed by people since it must go directly to God. There is, however, no form of Islamic sacrifice that is not consumed by humans. Even though the sacrifice is directed towards God, the poor people of the *ḥaram* are the physical recipients of the meat.

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<sup>184</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:90–92.

<sup>185</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:399.

Recompense for hunting is set apart from other forms of expiatory sacrifice by the kind of animal that is sacrificed. Whereas other sacrifices are generally either a sheep/goat or a camel/head of bovine cattle, in the case of hunting, the sacrifice must correspond to the wild animal that the person killed, so depending on what kind of animal a person killed, they would have to sacrifice a sheep or cattle of varying sizes.<sup>186</sup> This correspondence is evaluated in terms of the species of animal that was killed as well as its size, if one is offering a sacrifice, or its market value if one is substituting sacrifice with giving charity or fasting. Scriptural sources explicitly state what the corresponding sacrifice for some kinds of animals is, whereas others must be determined by identifying animals that are similar in size to the one that was killed. According to the majority of scholars, additional corresponding characteristics are taken into considerations such as gender, age, and wellness/illness.<sup>187</sup> Here, correspondence with the hunted animal is more important than the wholeness or wellness of the sacrificial animal, which makes this category of sacrifice the only one in Muslim traditions in which a lame or otherwise deficient animal can serve as the sacrificial animal in some circumstances.

In the Ḥanafī School, not only is a person liable for an animal that they hunt while in *iḥrām*, but they are also liable for pointing out a hunted animal to another person who kills it.<sup>188</sup> This ruling is based on *istiḥsān* and the agreement of the Prophet Muhammad’s Companions whom Ḥanafīs consider to be jurists. A strict analogy would indicate that there would be no

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<sup>186</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:478–79. al-Jundī, *al-Tawḍīḥ*, 2:580–82; al-Sarakhsī, *al-Mabsūṭ*, 4:82–84; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 3:238–41; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:399; al-Nawawī, *Rawḍat al-Ṭālibīn*, 157–58. Ibn Qudāmah, *al-Mughnī*, 3:437–38; al-Mardāwī, *al-Inṣāf*, 3:536–40.

<sup>187</sup> al-Jundī, *al-Tawḍīḥ*, 2:582; al-Juwaynī, *Nihāyat al-Maṭlab*, 400–402; al-Mardāwī, *al-Inṣāf*, 3:541.

<sup>188</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:79–80; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 3:233. Ḥanbalī jurists also require recompense for indicating a hunting animal under certain circumstances (Ibn Qudāmah, *al-Mughnī*, 3:288–89; al-Mardāwī, *al-Inṣāf*, 3:475).

recompense for the person indicating a hunted animal because doing so does not equal killing, which is what is explicitly forbidden in scripture. Because they do not rely on *istiḥsān*, Shāfi‘īs and Mālikīs do not require recompense for indicating a hunted animal that was not under their control,<sup>189</sup> but they do hold the person accountable for other actions that lead to the animal’s death, such as digging a hole, setting up a net, or taking possession of a wild animal and having it die in one’s possession.<sup>190</sup> In the Mālikī School there is some difference of opinion on this point, and it appears that the dominant position is that it is sinful to point out a hunted animal while in *iḥrām*, but the person is not liable for compensation.<sup>191</sup> For Ḥanafīs, a person is liable for compensation if they kill a hunted animal directly, or indirectly by setting up a net or digging a hole to catch a ferocious animal that it is permissible to kill.<sup>192</sup> This Ḥanafī ruling only applies, however, to the person who is in a state of *iḥrām*; a person not in that state who points out a hunted animal in the sanctuary is not liable for the recompense.<sup>193</sup> According to al-Sarakhsī, this is related to an important difference between hunting in the sanctuary and hunting in a state of *iḥrām*. Hunting in the sanctuary is forbidden because of a quality that is related to the location, which is the safety of animals that live there. Because of this, a forbidden action must be directly connected to removing the safety of the place. Hunting while in *iḥrām*, on the other hand, is related to a quality that is connected to the person, which is that they are not allowed to hunt.<sup>194</sup>

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<sup>189</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:398–99; al-Nawawī, *Rawḍat al-Ṭālibīn*, 149.

<sup>190</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:397–98.

<sup>191</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:467; al-Jundī, *al-Tawḍīḥ*, 2:523–24.

<sup>192</sup> al-Jundī, *al-Tawḍīḥ*, 2:519–23.

<sup>193</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:79.

<sup>194</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:80.

This leads to a further distinction that al-Sarakhsī makes. Hunting while in *iḥrām* necessitates a recompense (*jazā'*), while hunting in the sanctuary requires a fine (*gharāmah*).<sup>195</sup> In practice, however, both the recompense and the fine are usually equivalent, but the difference does appear in some cases. For example, if group of people in *iḥrām* kill a hunted animal together, they are each liable for the recompense and must offer them separately in the Ḥanafī School because they each violated their *iḥrām*.<sup>196</sup> If, however, a group of people who are not in *iḥrām* kill a hunted animal together in the sanctuary, they only need to offer one recompense that they share, since the violation was against the place.<sup>197</sup> Shāfi'īs take a different view and consider both of these cases equal, and they view the recompense for hunting while in *iḥrām* to be related to the animal that was killed more so than the state the person was in.<sup>198</sup> Concluding this section, al-Sarakhsī states that the inviolability of the *iḥrām* is stronger than the inviolability of the sanctuary, since the prohibition of hunting while in *iḥrām* applies to the entire world, whereas the inviolability of the sanctuary only applies to the precinct of Mecca.<sup>199</sup> When the two coincide, they become redundant and the violation of the *iḥrām* dominates.

This idea of replacing the lost property of another is emphasized in the ruling that states that it does not matter whether a person in *iḥrām* killed the wild animal intentionally, by accident, or if they had forgotten that they were in a state of *iḥrām*.<sup>200</sup> Al-Kāsānī elaborates on

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<sup>195</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:80.

<sup>196</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:80–81.

<sup>197</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:81.

<sup>198</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:414–15.

<sup>199</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:82.

<sup>200</sup> al-Jundī, *al-Tawḍīḥ*, 2:529; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:125; Ibn Qudāmah, *al-Mughnī*, 3:437–38; al-Mardāwī, *al-Inṣāf*, 3:527–28.

this saying, “The person in *iḥrām* has made hunted animals safe from trespass and has taken this onto themselves. As a result, hunted animals are like a trust (*amānah*) for them, and any trust that is lost requires compensation whether it was lost intentionally or accidentally.”<sup>201</sup> This distinguishes these sacrifices from those occasioned by wearing perfume or a forbidden article of clothing where a person might be excused if they did so out of forgetfulness. This is because this sacrifice serves the explicit function of making up for the value of the hunted animal, rather than merely making up for the act of wrongdoing. If a person kills a hunted animal while in a state of *iḥrām*, or while in the *ḥaram*, they are responsible for compensating for it, whether they killed the animal intentionally or by accident.<sup>202</sup>

All of this raises the question of whether a hunted animal killed by a person in a state of *iḥrām* is carrion or whether it can be eaten by Muslims. Al-Shāfi‘ī has two opinions. One is that it is carrion, which is also the opinion found in the Ḥanafī school.<sup>203</sup> His second opinion is that it is not carrion and anyone other than the person who killed it may eat it. The first opinion considers the person who killed it to be like a Mājūsī, who may not perform valid slaughter. The second opinion considers it to be like if a person slaughtered an animal that didn’t belong to them.<sup>204</sup> Similarly in the Ḥanbalī School, if a person in *iḥrām* kills a hunted animal, it is considered carrion and nobody may eat it.<sup>205</sup> Ibn Qudāmah, however, relates some positions from

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<sup>201</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 3:247.

<sup>202</sup> Ibn Qudāmah, *al-Mughnī*, 3:398.

<sup>203</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 3:252–53.

<sup>204</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:407. Al-Nawawī explains that the al-Shāfi‘ī’s “old school” is that it is not carrion but that it is only impermissible for the person in *iḥrām* to eat it. The position in the “new school” is that it is carrion (al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:155).

<sup>205</sup> Ibn Qudāmah, *al-Mughnī*, 3:292.

other than the four Schools that consider the animal permissible, just like if a thief slaughters an animal they have stolen.<sup>206</sup>

### **The ‘Aqīqah Sacrifice**

Described in the most general terms, the ‘*aqīqah* refers to the sacrifice that one performs in connection with the birth of a child. There are specific guidelines regarding the best day on which to offer the sacrifice, and how many animals it should be depending on the child’s gender. It is in the section of their works on the ‘*aqīqah* that many jurists also include other rulings related to the birth of a child, such as reciting the call to prayer in its ear when it is born, and shaving its head and giving it a name on the seventh day. This is a sacrifice, however, that jurists from different schools disagree on. While Mālikī, Shāfi‘ī, and Ḥanbalī jurists all endorse the ‘*aqīqah* sacrifice as being a legislated devotional act, Ḥanafī jurists do not. Many Ḥanafī books of jurisprudence do not even include a section on the ‘*aqīqah*, although some mention that the practice is not endorsed by the school. Some jurists note that the origin of the word ‘*aqīqah* comes from a reference to the newborn’s hair, which is shaved on the seventh day, and then it was used to refer to the animal that is sacrificed upon the birth of a child,<sup>207</sup> although others have claimed that this is not the case and it refers to the sacrificial animal originally.<sup>208</sup> Shāfi‘ī and Ḥanbalī jurists consider the ‘*aqīqah* to be a *sunnah*,<sup>209</sup> and Ibn Qudāmah even notes that some

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<sup>206</sup> Ibn Qudāmah, *al-Mughnī*, 3:292.

<sup>207</sup> al-Jundī, *al-Tawdīh*, 2:702; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:205.

<sup>208</sup> al-Jundī, *al-Tawdīh*, 2:702; Ibn Qudāmah, *al-Mughnī*, 9:458–59.

<sup>209</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:205; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:229; Ibn Qudāmah, *al-Mughnī*, 458–59; al-Mardāwī, *al-Inṣāf*, 4:110.

scholars from other than the four schools considered it to be mandatory (*wājib*).<sup>210</sup> For Mālikīs, the *‘aqīqah* sacrifice appears to be more of a recommended (*mustahhab*) sacrifice rather than a *sunnah*, although there are positions related in the school that consider it *sunnah* as well.<sup>211</sup> The animals that are sacrificed for the *‘aqīqah* must meet similar conditions as those prescribed for animals that can serve in an *udhīyah* sacrifice and have similar rulings.<sup>212</sup> One difference is that in the Shāfi‘ī and Ḥanbalī schools, one should sacrifice two sheep for the a male child and one sheep for a female child, although one animal would also suffice for a boy,<sup>213</sup> whereas Mālikī scholars hold that the appropriate *‘aqīqah* sacrifice is one animal for either a boy or a girl.<sup>214</sup>

Like the *udhīyah*, the *‘aqīqah* has a specific time that is appointed for its performance. In this case, the time is linked to when the child was born and the *sunnah* is to perform the sacrifice on the seventh day after the baby’s birth.<sup>215</sup> Some Mālikī jurists are also of the opinion that if they do not perform it on the seventh day, then it has passed. Others hold that one can still perform it on the fourteenth or the twenty-first day, but not after that.<sup>216</sup> Shāfi‘ī and Ḥanbalī jurists also recommend that the sacrifice be performed on the fourteenth or the twenty-first day if they miss performing it on the seventh, but they are of the opinion that the opportunity to

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<sup>210</sup> Ibn Qudāmah, *al-Mughnī*, 9:459.

<sup>211</sup> al-Jundī, *al-Tawdīh*, 2:702–3; Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:332.

<sup>212</sup> al-Jundī, *al-Tawdīh*, 2:702; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:206; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:230; Ibn Qudāmah, *al-Mughnī*, 9:462–63; al-Mardāwī, *al-Inṣāf*, 4:113–14.

<sup>213</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:231. Ibn Qudāmah, *al-Mughnī*, 9:460; al-Mardāwī, *al-Inṣāf*, 4:110.

<sup>214</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:333. al-Jundī, *al-Tawdīh*, 2:703–4.

<sup>215</sup> al-Jundī, *al-Tawdīh*, 2:704; al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:229; Ibn Qudāmah, *al-Mughnī*, 9:461; al-Mardāwī, *al-Inṣāf*, 4:110–13.

<sup>216</sup> al-Jundī, *al-Tawdīh*, 2:705.

perform the *‘aqīqah* does not expire with the passage of time.<sup>217</sup> If a person reaches maturity (*bulūgh*) without having had an *‘aqīqah* performed for them, they may perform it for their own self.<sup>218</sup> Although there is some debate in the Ḥanbalī school regarding a person performing their own *‘aqīqah*.<sup>219</sup>

Calling attention to the sacrificial aspect of the ritual, Ibn Qudāmah explicitly states that performing the sacrifice is better than giving its value away in charity.<sup>220</sup> An additional aspect of the *‘aqīqah* sacrifice that sets it apart from non-sacrificial sacrifice, and even from other performances of sacrifice in Islam, is that jurists in the Shāfi‘ī and Ḥanbalī schools include certain recommendations regarding how the animal should be butchered after it is killed. Chief among these is the recommendation to avoid breaking any of the animal’s bones.<sup>221</sup> It is also recommended to prepare the meat with something sweet out of optimism for the sweetness of the child’s character.<sup>222</sup> Mālikīs, however, say there is nothing against breaking the bones of the animal when butchering it. Some even go so far as saying that it is preferred to do so in order to avoid practices associated with the *jāhilīyah*.<sup>223</sup> Even though they do not endorse this aspect of the explicitly homologous relationship between the child and the animal that is sacrificed on its behalf, Mālikī’s make other claims regarding the spiritual effects of the *‘aqīqah*. These include

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<sup>217</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:229; al-Mardāwī, *al-Inṣāf*, 4:112–13.

<sup>218</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:229; al-Mardāwī, *al-Inṣāf*, 4:113.

<sup>219</sup> al-Mardāwī, *al-Inṣāf*, 4:114.

<sup>220</sup> Ibn Qudāmah, *al-Mughnī*, 9:460.

<sup>221</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:231; Ibn Qudāmah, *al-Mughnī*, 9:463.

<sup>222</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:114; al-Mardāwī, *al-Inṣāf*, 4:114.

<sup>223</sup> al-Jundī, *al-Tawḍīḥ*, 2:706.

the report that Mālik said, “It occurs to my heart that the *‘aqīqah* is an entryway (*madkhal*) for the newborn to draw nearer (*yuqarrab*) to the path (*tarīqah*) of Islam and its law (*sharī‘ah*).”<sup>224</sup>

What is significant about this is that the ritual of sacrifice is performed by someone who is responsible for the child, but the child themselves accrues its spiritual benefits.

### **The Sacrificial Animal**

Unlike some other traditions, in Islamic rituals of sacrifice the offering is always an animal.<sup>225</sup> Since jurists do not define a broad category of sacrifice, instead explaining various individual examples of sacrifice, we might take this as a starting point in developing our understanding of sacrifice in an Islamic context. I attempt to center animals in my discussion of sacrifice because they are physically at the center of these rituals and of all the participants they are impacted the most severely.<sup>226</sup> Additionally, there is evidence that Muslim jurists thought of the sacrificial animal as being at the center of these rituals. Here I have in mind the common practice of naming a sacrifice after the animal that is offered. The term *udḥīyah*, for example, is a noun that originally refers to the animal that is sacrificed at a specific time, not to the act of sacrifice itself.<sup>227</sup> This practice of the sacrificial act borrowing its name from the sacrificial

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<sup>224</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:335.

<sup>225</sup> As we shall see, other practices, such as fasting or feeding the poor, can serve as substitutes for sacrifice, but they are not considered sacrifice proper.

<sup>226</sup> By participants in sacrificial rituals I am referring to the person offering the sacrifice, the person who performs it on their behalf, if they are not performing it themselves, those who receive and consume the meat of the sacrifice, and the animal that is sacrificed. By using the term “participant,” I do not mean to suggest that all of these parties are equally willing participants, but that each of these, with the possible acceptance of the person designated to perform a sacrifice on behalf of another, are impacted by the ritual in some way materially or spiritually.

<sup>227</sup> The verbal noun *al-taḍḥīyah* is used to indicate the act of sacrifice.

victim serves to highlight the essential nature of the role that animals play in the ritual. As I hope this chapter will show, Muslim jurists describe the sacrificial animal in ways that indicate that it is more than just a prop in the ritual, but it is, in many ways, an essential participant as well.

While there are a few sacrificial acts that have unique specifications for the sacrificial animal, all Islamic sacrifices generally require animals meet certain shared criteria. As there appears to be a fair amount of agreement between the different schools of jurisprudence regarding most of these criteria, they serve well as common features of Islamic sacrifice, and they may help us better understand what is at stake for Muslim jurists when discussing the selection of a sacrificial animal. While these criteria are shared by different forms of sacrifice, in-depth discussions of them are generally found in chapters dealing with the *udhīyah* sacrifice.<sup>228</sup> In order to serve as a sacrificial animal, animals must meet criteria related to three aspects: species, age, health, and well-being. If an animal is not the appropriate species, if it is not old enough, or if it has one of the “flaws” discussed below, the sacrifice will not be valid, even if every other aspect of the ritual is performed correctly. In addition to these basic criteria that an animal must meet, there are other issues directly related to the sacrificial animal, such as the question of whether one animal can serve as the sacrificial animal for multiple people, and whether a person may benefit from an animal that has been designated for sacrifice by riding it or drinking its milk

It may be helpful to place these criteria within the context of what Kathryn McClymond refers to as “selection.” In her polythetic model of sacrifice, the ritual extends before and beyond

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<sup>228</sup> I say “generally” because some of these criteria may be mentioned in other sections of works of Islamic law, but the author will usually refer the reader to the section on *al-udhīyah* for more details. Additionally, some authors, such as al-Mardāwī, list these criteria in chapters that combine the rulings for *hadī* and *udhīyah*. There are also criteria that are particular to specific forms of sacrifice and are found in the chapters that discuss them.

the act of killing. As she describes it, “‘Selection’ refers to activities involved in procuring the appropriate sacrificial substance. Selection involves obtaining the correct general type of offering (bull, goat, soma stalk), as well as satisfying specific criteria that determine the suitability of any particular offering (age, gender, unblemished appearance).”<sup>229</sup> In Islamic sacrifices, there are not always ritual practices that accompany selection, but acquiring an appropriate animal is an essential condition for sacrifice. In the section that follows, I will examine what those criteria are that allow an animal to be selected for sacrifice in Islam and what may be at stake in identifying them.

### *Species*

In his essay “The Domestication of Sacrifice,” J.Z. Smith points out that domestication is a key element in considering animals for sacrifice. In fact, he places sacrifice squarely in the realm of domestication seeing it as, “an exaggeration of domestication, a meditation on one cultural process by means of another.”<sup>230</sup> For Smith, domestication serves as a key to understanding sacrifice, and, while Muslim jurists do not name domestication as a process, one of the ways in which they divide the animal world is between domesticated and wild animals, and it is only domesticated animals that can serve in Islamic rituals of sacrifice. Beyond domestication, however, sacrifice is further limited to a small set of specific species of domesticated animals. The first criteria that a sacrificial animal must meet is that it be either a

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<sup>229</sup> McClymond, *Beyond Sacred Violence*, 29.

<sup>230</sup> J.Z. Smith, *Relating Religion* (Chicago: University of Chicago Press, 2004), 152.

camel, bovine cattle, a sheep,<sup>231</sup> or a goat.<sup>232</sup> No other animal can serve in a sacrifice except in some cases of recompense of hunting.<sup>233</sup> Some authors refer to this category of animal as *al-na‘m* or *bahīmat al-an‘ām*,<sup>234</sup> which is a term that has a Qur’anic resonance.<sup>235</sup> These are not, of course, all of the animals that Muslims are permitted to consume. Excluded from serving as sacrificial animals are wild animals (even if they are of the same species of the domesticated animals that may be sacrificed), birds, and all sea creatures, as well as inedible animals. This seems to be the general agreement of jurists from the four Sunni Schools with many of them claiming that there is consensus (*ijmā‘*) on this issue. Ibn Ḥazm of the Zāhirī School, however, takes the apparently unique position that any edible animal may serve as a sacrificial animal, regardless of whether it is domesticated, wild, mammal, or bird. In making this argument he cites traditions that have the Prophet’s companion Bilāl sacrificing a rooster, and Ibn ‘Abbās buying two dirham’s worth of meat and referring to it as his sacrifice.<sup>236</sup> While this opinion is rejected by the majority of jurists from the four Sunni Schools, some of them do mention opinions that allow the sacrifice of poultry, even if they do not adopt it as the standard position of the school.

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<sup>231</sup> Jurists refer to the category *ghanam* and explain that it includes both sheep and goats. This is one of the ways in which we will see that the Islamic legal classification of animals can differ from contemporary zoological classifications in which sheep and goats are classified as being members of different species.

<sup>232</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:315; al-Jundī, *al-Tawdīh*, 2:685; al-Sarakhsī, *al-Mabsūf*, 12:9; al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 6: 298; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:162; al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:462; Ibn Qudāmah, *al-Mughnī*, 9:440; al-Mardāwī, *al-Inṣāf*, 4:73.

<sup>233</sup> Here however the condition that the animal be domesticated still remains.

<sup>234</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:462; Ibn Qudāmah, *al-Mughnī*, 9:440.

<sup>235</sup> Some scholars cite verses of the Qur’an while discussing *al-na‘m* such as 22:34, “And for every community We have established rites that they may mention the name of God over the domesticated animals (*bahīmat al-an‘ām*) with which they have been blessed,” (Ibn Qudāmah, *al-Mughnī*, 9:440).

<sup>236</sup> ‘Alī ibn Aḥmad Ibn Ḥazm, *al-Muḥallā* (Cairo: Idārat al-Ṭibā‘ah al-Munīriyah, 1930), 3:370.

After stating that sacrificial animals must be from *al-na‘m*, Al-Bājūrī writes, “According to Ibn ‘Abbās, it suffices to shed blood, even if it is a chicken or a goose, as has been stated by al-Maydānī. Our shaykh, God have mercy on him, would order poor people to garland (*taqlīd*)<sup>237</sup> poultry for sacrifice, and he would extend this ruling by analogy from the *uḍḥīyah* to the *‘aqīqah* sacrifice as well. He would tell people who had a child, ‘Sacrifice (*‘iq*) a rooster following the school of Ibn ‘Abbās.’”<sup>238</sup> Al-Bājūrī’s own position remains ambiguous, as he seems to both favor reserving sacrifice to *al-na‘m*, while also respecting his teacher’s fatwa. Previous Shāfi‘ī scholars, however, explicitly disagree with this position. Discussing the requirement that the sacrificial animal be from the category of *al-na‘m*, Zakarīya al-Anṣārī cites Qur’an 22:34 and adds, “It has not been related that the Prophet or his companions sacrificed other than these. Further, sacrifice is an act of worship that is related to animals, so it is reserved for *al-na‘m* just as *zakāt* is.”<sup>239</sup> Al-Ḥaskafī and Ibn ‘Ābidīn from the Ḥanafī school also specifically state that sacrificing chickens or roosters is categorically disliked (*makrūh taḥrīmī*) because it is similar to the practice of the Majjians.<sup>240</sup>

Jurists address a related issue of the case of an animal being born of both a domesticated and a wild parent. In this case, Ḥanafīs generally consider the mother to be dominant and so, if the mother is domesticated, then the animal can serve in a sacrificial capacity, but if the father is

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<sup>237</sup> This refers to the practice of tying sandals around the neck of a sacrificial animal during the hajj pilgrimage. As we shall see below, it is usually reserved for camels and bovine cattle.

<sup>238</sup> al-Bājūrī, *Hāshiyat Al-Bājūrī ‘alā Sharḥ Ibn Qāsim al-Ghazzī*, 2:295. In his book on al-Bājūrī, Aaron Spevack cites this as an example of a scholar in the second half of the 19th century engaging in *ijtihād*: Aaron Spevack, *The Archetypal Sunni Scholar: Law, Theology, and Mysticism in the Synthesis of al-Bajuri* (Albany: State University of New York Press, 2014), 87.

<sup>239</sup> al-Anṣārī, *Asnā al-Maṭālib*, 3:325.

<sup>240</sup> Ibn ‘Ābidīn, *Hāshiyat Radd al-Muḥtār*, 6:313.

domesticated and the mother is wild, then it cannot.<sup>241</sup> This is also an opinion found amongst Mālikīs.<sup>242</sup> Ḥanafī jurists also seem to consider the properties of domesticity or wildness, at least in regards to an animal’s capacity to serve in rituals of sacrifice, to be somewhat innate characteristics because they hold that if a wild animal becomes domesticated, it still cannot be sacrificed.<sup>243</sup> For Ḥanbalī jurists, if an animal is of mixed parentage, then it cannot serve as a sacrificial animal at all,<sup>244</sup> whereas the Shāfi‘ī books I am working with do not seem to address this issue.

Some jurists offer explanations of why sacrifice is limited to these specific species. Al-Kāsānī, for example, states, “It is not permissible for wild animals to serve as sacrificial animals (*adāhī*) because the obligation of sacrifice is known through the *sharī‘ah*, and the *sharī‘ah* only mandates sacrificing domesticated animals.”<sup>245</sup> Here we are given a justification that is based on there only being evidence in the sources of the sacred law that supports sacrificing domesticated animals. The absence of evidence indicating the permissibility of sacrificing wild animals is enough to make it impermissible. Although it is something of a circular argument, this justification addresses the question of how jurists arrived at the ruling of sacrifice being limited to these specific species. It does not, however, provide insight into why the *sharī‘ah* only mandates sacrificing domesticated animals. This has partly to do with the ways in which ritual law functions where acts of worship must be performed in the specific ways described by the

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<sup>241</sup> al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 6:298.

<sup>242</sup> al-Jundī, *al-Tawdīh*, 2:684.

<sup>243</sup> al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 6:298.

<sup>244</sup> Ibn Qudāmah, *al-Mughnī*, 9:440.

<sup>245</sup> al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 6:298.

sacred law. This is important because, as was discussed in the first two chapters of this dissertation, the only way it is permissible to kill an animal is in accordance with the guidance of revelation, leaving very little room for people to alter or adapt these practices to changing circumstances. We may also venture some additional conjectures concerning restricting sacrifice to this category of animals, although Muslim jurists do not explicitly address them. In some respects, these animals are those that are physically the nearest to humans, in that in an agrarian or pastoral society these are the animals with whom humans share space and much of their lives. In this sense, they walk a boundary between the human and the animal world. This is relevant since, in many cases, the animal serves as a stand in for the human offering the sacrifice. We find this explicitly expressed in the origins of the *udhīyah* sacrifice in which the ram served as a stand in for Abraham's son.

#### *Age and Well-Being*

In addition to the species of animal, Muslim jurists discuss a number of other characteristics that animals must possess in order to serve in sacrificial rituals. Some of these, such as the requirement that an animal be of a certain age, are positive qualities, while others, such as an animal being free of disease and certain flaws, are negative qualities. Not all animals, however, are equal when it comes to the question of being a sacrificial animal. As a result, Muslim jurists debate which animals are more preferable than others based on their species and other characteristics that they possess.

After species, the most important positive characteristic a sacrificial animal must have has to do with its age. Different species have different age requirements, and jurists engage in some level of disagreement in identifying how old an animal must be in order for it to be

sacrificed. In addressing animal ages, they use terminology that is drawn from pastoral culture and is also employed by jurists when discussing the requirement to pay *zakāt* on domesticated animals. For camels, bovine cattle, and goats they must be considered *thanī*,<sup>246</sup> but sheep may be *jadha*‘,<sup>247</sup> with Ḥanafī jurists adding the additional stipulation that in order for a *jadha*‘ sheep to serve in a sacrifice, it must be large.<sup>248</sup> For Ḥanafīs, a goat or a sheep is *thanī* if it is one year old, camels are *thanī* if they are five years old, and bovine cattle are *thanī* if they two years old and have entered into their third year.<sup>249</sup> A sheep is *jadha*‘ if it is seven months old according to Ḥanafī jurists.<sup>250</sup> Al-Kāsānī clarifies that these terms mark the minimum age an animal has to be in order to be sacrificed, and that older animals are permitted and may even be preferable.<sup>251</sup> Many Mālikī jurists are less explicit about these requirements. The age that *thanī* and *jadha*‘ represent is not specified in Khalīl’s commentary on Ibn Ḥājib, *al-Tawḍīḥ*. According to Ibn Abī Zayd, a camel is *thanī* if it is six years old, bovine cattle are *thanī* if they are four years old, and sheep and goats are *thanī* if they are two years old, while they are *jadha*‘ if they are one year old according to some, and ten months or six months according to others.<sup>252</sup> Shafī‘īs consider a

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<sup>246</sup> *Thanī* and *jadha*‘ are two of a series of terms that jurists use to indicate an animal’s age. They are referenced when discussing sacrificial animals and more extensively in chapters on *zakāt* of livestock where only animals of a certain age may be given in charity. Some jurists consider these terms to be related to developmental milestones, such as losing milk teeth (al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:426).

<sup>247</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:318; al-Jundī, *al-Tawḍīḥ*, 2:686; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:162; al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:462; Ibn Qudāmah, *al-Mughnī*, 9:439–40; al-Mardāwī, *al-Inṣāf*, 2:531.

<sup>248</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:9–10; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:299.

<sup>249</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:9–10; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:301.

<sup>250</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:10.

<sup>251</sup> al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 6:301.

<sup>252</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:318.

sheep to be *jadha*‘ when it is one year old.<sup>253</sup> The *thanī* of camels have completed five years and entered their sixth. Unlike other schools, the *thanī* of goats, and bovine cattle are both two years old having entered into their third year.<sup>254</sup> For Ḥanbalīs sheep are *jadha*‘ if they are six months old and have entered into their seventh month, goats are *thanī* when they are a year old having entered into their second year, bovine cattle are *thanī* when they are two years old having entered into their third, and camels are *thanī* when they are five years old and entered into their sixth.<sup>255</sup> Al-Juwaynī makes a direct comparison between these ages that an animal must reach and the concept of human maturity *bulūgh*. Similar to humans, these markers have to do with sexual maturity, and he says it is at this age that these animals can become pregnant and approach each other sexually.<sup>256</sup> As we will see when we examine other conditions of sacrificial animals, as well as the aspects and features that jurists take into consideration when debating what the best animal to sacrifice is, one of the concerns is that the animal produce a large quantity of meat. While this may be one of the reasons for having a minimal age requirement for sacrificial animals, there seems to be something else at play here in comparing these ages to human maturity. Maturity (*bulūgh*) is the point at which humans become morally and legally responsible in the eyes of Islamic law, and it usually coincides with puberty. In some sense, this serves as a marker of entering fully into personhood, after which one is required to perform rituals of worship and devotion. Similarly, when animals reach a comparable stage of maturation, they are fit to serve in these devotional rituals.

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<sup>253</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:162; al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:462.

<sup>254</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:162; al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:462.

<sup>255</sup> Ibn Qudāmah, *al-Mughnī*, 9:440; al-Mardāwī, *al-Inṣāf*, 4:74–75.

<sup>256</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 18:163.

In order to serve as a sacrificial animal, an animal must also be whole and healthy. Jurists identify a number of flaws, injuries, and specific diseases that make an animal ineligible for sacrifice, and there are a number of conditions that jurists agree preclude an animal from serving as a sacrificial animal.<sup>257</sup> These include an animal only having one eye (*awrā'*), being blind, being emaciated (*'ajfā'*) such that the animal's bones have no marrow, being lame,<sup>258</sup> and being ill with a disease from which there is no hope for recovery.<sup>259</sup> There are other conditions that jurists from different schools disagree about. These include having a partially missing horn or ear, which Ḥanbalīs view as making the animal ineligible for sacrifice.<sup>260</sup> For Ḥanafīs, an animal is ineligible for sacrifice if its ear has been cut off or if it was born without an ear,<sup>261</sup> but the absence of horns, whether they have been broken off or the animal was born without them, is not considered a sufficient deficiency to make an animal ineligible for sacrifice.<sup>262</sup> Ḥanafī jurists also hold that if an animal is missing part of its ear, it cannot serve as a sacrificial animal, although it is allowed if it is only a small part of the ear that is missing, and they debate how much of an

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<sup>257</sup> This agreement is generally based on a tradition of the Prophet Muḥammad that states, “The sacrifice of four animals is invalid: an animal that is clearly missing an eye, an animal that is clearly lame, an animal that is clearly ill, and an emaciated animal.” (al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:312; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:163).

<sup>258</sup> Al-Kāsānī defines this lameness as being such that the animal cannot walk to the place of slaughter (al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:312), while Ibn Qudāmah reasons that a lame animal will not be able to keep up with the herd and won't be able to graze well (Ibn Qudāmah, *al-Mughnī*, 9:441).

<sup>259</sup> al-Jundī, *al-Tawḍīḥ*, 687–88; al-Sarakhsī, *al-Mabsūṭ*, 12:15; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:312; al-Juwaynī, *Nihāyat al-Maṭlab*, 18:163–67; al-Nawawī, *Rawḍat al-Ṭālibīn*, 194–95; Ibn Qudāmah, *al-Mughnī*, 9:440–41; al-Mardāwī, *al-Inṣāf*, 4:77–78.

<sup>260</sup> Ibn Qudāmah, *al-Mughnī*, 9:441.

<sup>261</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:312.

<sup>262</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:316.

animal's ear that can be.<sup>263</sup> Ḥanafīs also mention that an animal without teeth may only serve as a sacrificial animal if its lack of teeth does not prevent it from grazing.<sup>264</sup> This difference between how Ḥanafī jurists treat the case of an animal missing teeth versus an animal missing an ear or part of an ear is illustrative of what is at stake for them in these criteria. It appears that there are two considerations at play. One is that the animal is whole, which is where the debate regarding ears comes in. The other, however, is that the animal is able to feed itself and grow so that the sacrificial offering has sufficient meat. The question of being sighted or having only one eye contributes to both of these issues. On the one hand, eyes are considered organs without which the animal would be incomplete. At the same time, jurists appear to be concerned that a blind animal would have trouble finding food and feeding itself, resulting in an underfed animal. This also illustrates that, while wholeness of the animal is a requirement, only parts of the animal that might fall into the category of meat are taken into consideration. There is, however, at least one example that calls this into question, and that is castrated animals. Jurists from all the schools seem to agree that it is valid to sacrifice a castrated animal. The rationale that they provide for this is that castration improves the quality of the meat, so here the quality of the sacrificial animal is given precedent over its wholeness.

#### *Designation of the Sacrificial Animal*

Before the animal is sacrificed, there are certain practices that can serve to designate it as a sacrificial animal and set it apart from other animals, which make it subject to special rulings. A stated intention to sacrifice a specific animal can serve to designate that animal for sacrifice,

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<sup>263</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:16; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:313–15.

<sup>264</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:315.

but there are additional rituals associated with the designation of animals that are to be sacrificed during the hajj. These rituals, commonly referred to in Islamic legal texts as *al-taqlīd* and *al-ish'ār*, can precede the killing of the animal by days, weeks, or even months, depending on where and when they are performed. *Taqlīd* refers to garlanding the animal by binding or tying something around its neck, usually a pair of sandals. *Ish'ār* refers to the act of making a horizontal incision on the animal's side, generally on its hump. There is some difference of opinion regarding which animals may receive these practices. While the majority of scholars hold that *taqlīd* can be done to any sacrificial animal,<sup>265</sup> Ḥanafīs and some Mālikī scholars reserve it for camels and bovine cattle.<sup>266</sup> *Ish'ār* is only performed on camels or large bovine cattle, although some scholars require that the cattle must have a hump, but it is not performed on sheep or goats.<sup>267</sup> These actions serve the purpose of identifying the animal as one that is designated for sacrifice, which prevents it from getting confused with other animals. Al-Sarakhsī explains *al-taqlīd* in the following way, “The meaning in it is to make it known to people that it has been prepared for obedience (*taṭawa'*) by shedding its blood and that its hide will soon become like this piece of leather.”<sup>268</sup> I also argue that these actions mark the beginning of a particular kind of ritually inscribed relationship between the animal and the person who intends to sacrifice it, a relationship that lasts until the meat of the animal has been distributed or consumed. The recommendation made by some jurists that, when performing *ish'ār*, the person

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<sup>265</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:439–42; al-Jundī, *al-Tawḍīḥ*, 2:568. al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:189; Ibn Qudāmah, *al-Mughnī*, 3:471; al-Mardāwī, *al-Inṣāf*, 4:101.

<sup>266</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:137; al-Jundī, *al-Tawḍīḥ*, 2:568.

<sup>267</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:442; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:447; al-Nawawī, *Rawḍat al-Ṭālibīn*, 189; Ibn Qudāmah, *al-Mughnī*, 3:472; al-Mardāwī, *al-Inṣāf*, 4:101.

<sup>268</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:137.

and the animal both face the *qibla* and the person invoke the name of God, can be seen as further solidifying the relationship between the person and the animal in front of God.<sup>269</sup> One of the effects of this is that, if someone designates an animal, and another person sacrifices it, it can still count as the sacrifice of the person who performed the designation.<sup>270</sup> Additionally, designation has implications for what can be done with the animal if it cannot be brought all the way to the sacrificial site, which differs depending on the kind of sacrifice that was intended. That being said, Abū Ḥanīfah disliked *ish'ār* for all animals because he said it involves mutilation and inflicting unnecessary pain on the animal.<sup>271</sup> His companions, Muḥammad and Abū Yūsuf, however, considered it to be either permissible or a *sunnah*.<sup>272</sup>

The association of the animal with the person offering the sacrifice, which begins with designation, continues until it is killed. In the case of sacrifices that a person is not allowed to eat themselves, we might even say that the association continues after the animal's death, in the sense that the sacrifice has placed limits on the way the person may interact with the sacrificed animal. In many ways, this association is an intimate one. *Taqīd* and *ish'ār* are performed before one crosses the *mīqāt* and can be part of the ritual of getting into a state of *iḥrām*. According to Ḥanafī jurists, for example, performing *taqīd* with the intention of entering into a state of *iḥrām* is sufficient action to enter that state, as long as the animal accompanies the person on hajj rather than it being sent ahead.<sup>273</sup> This is only the case if the animal is a camel, however, since it is not

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<sup>269</sup> In this sense, it is also similar to the practice of invoking God's name and facing the *qiblah* when performing slaughter.

<sup>270</sup> al-Jundī, *al-Tawḍīḥ*, 2:578.

<sup>271</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:155.

<sup>272</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:155–56.

<sup>273</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:154.

a *sunna* to perform *taqlīd* on sheep in the Ḥanafī School.<sup>274</sup> For Shāfi‘īs however, performing *taqlīd* is not sufficient to place one in a state of *ihrām*.<sup>275</sup> According to some jurists, the *hadī* that has been designated for sacrifice should accompany the pilgrim to stand with them on the plain of Arafat.<sup>276</sup> Based on this ruling, designated animals are not just encountered at the time of sacrifice. Rather, they are the pilgrims’ companions as they perform the most essential rite of the hajj.

Although designated animals accompany the pilgrims, there are a number of rules that regulate the extent to which a person may use and benefit from them. One of the indications of these restrictions is that, although the animal is associated with the person, its primary association is with God, which means that there are certain restrictions on what a person may do with the animal. According to scholars from the Ḥanafī School, for example, a person may not benefit from a designated animal in any way. This includes riding them or using them as pack animals, as well as benefiting from their wool or milk.<sup>277</sup> Mālikī jurists also consider drinking a designated animal’s milk to be forbidden, but they allow for them to be ridden out of necessity.<sup>278</sup> Ḥanafī jurists acknowledge that not milking an animal can cause it harm, so they recommend bathing its udders in ice water so that they will stop producing.<sup>279</sup> If one has already milked the animal that has been designated for sacrifice, however, the milk, or its value, should

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<sup>274</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 3:155.

<sup>275</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:191–92.

<sup>276</sup> Ibn Qudāmah, *al-Mughnī*, 3:386; al-Mardāwī, *al-Inṣāf*, 4:100.

<sup>277</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 3:299.

<sup>278</sup> al-Jundī, *al-Tawdīh*, 2:577.

<sup>279</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 3:300.

be given away in charity.<sup>280</sup> Ḥanbalī scholars also acknowledge that an animal could be harmed if it is not milked, or even that its coat could cause it harm. In light of this, they advocate milking the designated animals and they permit one to drink its milk.<sup>281</sup> Wool may also be shorn if it is causing the animal harm, but the wool must be given away in charity, because the wool was present on the animal when it was designated, whereas the milk is renewed little by little. In this sense, the milk is like the usufruct and is akin to riding the animal, which Ḥanbalīs also allow as long as there is a need (*ḥāja*) for it.<sup>282</sup> While their specific rulings differ, there is a sense in both the Ḥanafī and the Ḥanbalī positions that an animal designated for sacrifice enjoys a certain kind of inviolability. While there is a general sense amongst Muslim jurists and theologians that humans are allowed to benefit from animals any way they like, permitted it does not cause the animal undue harm, animals that have been designated for sacrifice are placed outside of this, and the allowance is suspended. While Muslim jurists and theologians might say that animals are created for the service and benefit of humans, the animal's association with God, through designation for sacrifice, shifts that service in another direction.

### *Shared Sacrifice*

It is generally accepted that a sheep or a goat may only serve as the sacrifice of a single person, although there are some rituals in which a sheep or a goat may be sacrificed on behalf of an entire household.<sup>283</sup> There is some discussion, however, regarding sacrificing camels and

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<sup>280</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 3:300.

<sup>281</sup> Ibn Qudāmah, *al-Mughnī*, 3:464.

<sup>282</sup> Ibn Qudāmah, *al-Mughnī*, 3:464.

<sup>283</sup> This is the case with the *uḍḥīyah* sacrifice where the head of a household performs the sacrifice on

bovine cattle for more than one person or for more than one purpose. The majority of scholars hold the opinion that up to seven people can share in the sacrifice of one camel or one head of bovine cattle.<sup>284</sup> A point of contention arises regarding the question of whether all of the individuals participating in a shared sacrifice must have the same intention. Can one person be offering an obligatory sacrifice while another person offers a voluntary one? Can one of the participating individuals have the intention of procuring meat rather than offering a sacrifice? These questions tap into the question of intention, which is of primary concern in works of Islamic law, but they also speak to ideas regarding ritual unity and whether multiple rituals performed by more than one person can take place within the same ritual container. Even while allowing different ritual actors to share in the sacrifice of one animal, jurists differ regarding the extent to which their intentions must be aligned. Ḥanbalī jurists, for example, allow for a group of people with different intentions to slaughter an animal. Some of those participating in the slaughter may intend it as a sacrifice to draw near to God, and others may merely intend slaughter to procure meat for themselves.<sup>285</sup> Ḥanafī jurists, on the other hand, allow for those sharing in the slaughter of a camel or cattle to have different intentions as long as they all intend some form or sacrifice.<sup>286</sup>

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behalf of their dependents (al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:198).

<sup>284</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:11–12; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:301–4; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:447; Ibn Qudāmah, *al-Mughnī*, 9:458; al-Mardāwī, *al-Inṣāf*, 4:76.

<sup>285</sup> Ibn Qudāmah, *al-Mughnī*, 9:458;

<sup>286</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:11–12; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:305–6.

### *Who Performs Sacrifice*

One of the ways in which sacrifice is different from non-sacrificial animal slaughter in Islam has to do with who carries out the ritual. As we saw in Chapter 2, any person who is a member of *ahl al-kitāb* may perform animal slaughter, and there is no special status given to the person who carries it out. When it comes to sacrifice, however, the category of individuals who may carry out the sacrifice is narrower, and there is an emphasis placed on the person who is offering the sacrifice carrying it out themselves. While both sacrifice and non-sacrificial animal slaughter are ritualized practices, sacrifice has the added element of serving as a means by which someone draws closer to God, and it is this aspect of sacrifice that accounts for the different rulings on who may perform it.

Because sacrifice is a devotional ritual that serves to bring a person closer to God, it is recommended in all of the Sunni Schools that the person offering the sacrifice perform the ritual themselves,<sup>287</sup> as long as they are competent and capable of doing so. Some scholars go so far as to say that if they appoint someone else to perform the sacrifice on their behalf without having an excuse to do so, then they have to repeat the sacrifice.<sup>288</sup> If a person does not perform the sacrifice themselves, they may appoint someone else to do it on their behalf. However, while Muslims are permitted to consume meat from animals that have been slaughtered by non-Muslims members of *ahl al-kitāb*, it is not preferred for a non-Muslim to perform a sacrifice on behalf of a Muslim, and some scholars consider it to be forbidden such that the sacrifice is not valid. Ḥanafī, Shāfi'ī, and Ḥanbalī jurists allow for a non-Muslim member of *ahl al-kitāb* to

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<sup>287</sup> al-Jundī, *al-Tawdīh*, 2:694; al-Sarakhsī, *al-Mabsūt*, 12:18; al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:322–23; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:200; Ibn Qudāmah, *al-Mughnī*, 9:455.

<sup>288</sup> al-Jundī, *al-Tawdīh*, 2:694.

perform a sacrifice on behalf of a Muslim but they consider it disliked.<sup>289</sup> Mālikī jurists, however, as well as some Ḥanbalīs, are of the opinion that it is not permissible to appoint a non-Muslim *kitābī* to perform the sacrifice and, if they do, then the sacrifice is invalid and does not count.<sup>290</sup>

### **Ritual Performance**

There are a few elements of rituals of sacrifice that distinguish them from non-sacrificial animal slaughter. Primarily these are the location and the timing of their performance. Whereas there are no specific guidelines for when and where non-sacrificial slaughter takes place, all sacrificial rituals are marked by either a specified place, a specified time, or both.<sup>291</sup> The *uḍḥīyah* and the *‘aqīqah* sacrifices both have specified times, but they may be performed anywhere. Sacrifices performed on hajj, however, take different rulings depending on the purpose that the sacrifice serves, which leads to some disagreement between the schools of jurisprudence.

#### *Timing*

All of the schools agree that the *uḍḥīyah* sacrifice is to be performed during the *‘īd al-adḥā*. The time for the sacrifice is linked to the time of the *‘īd* prayer, which is performed after the sun has risen. In the Shāfi‘ī school, after the time for the *‘īd* prayer has entered, one must wait enough time for someone to pray two cycles of prayer and the length of time it takes to

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<sup>289</sup> al-Sarakhsī, *al-Mabsūṭ*, 12:18; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:200; Ibn Qudāmah, *al-Mughnī*, 9:455–56.

<sup>290</sup> al-Jundī, *al-Tawḍīḥ*, 2:695; al-Mardāwī, *al-Insāf*, 4:107.

<sup>291</sup> The exception for this is the Mālikī ruling regarding *nusuk* sacrifices on hajj, which may be performed at any time or place.

deliver the sermon before performing the sacrifice.<sup>292</sup> In the Ḥanbalī School, however, the time for the sacrifice is associated with the actual *ʿīd* prayer such that one must wait for the imam to complete the prayer before performing the sacrifice,<sup>293</sup> but there is a difference between those in the city where the prayer is performed and those who live in more rural areas; the latter wait the amount of time for prayer rather than waiting for the prayer itself to end.<sup>294</sup> Ḥanafīs also distinguish between those who live in cities and those who live outside of them. For those in rural areas, the time for the *uḍḥīyah* begins at sunrise, whereas those in the city must wait until after the *ʿīd* prayer has been completed.<sup>295</sup> Mālikī Scholars, however, are of the opinion that one must wait until after the imam has performed his sacrifice before one may perform the *uḍḥīyah*.<sup>296</sup> In the Ḥanafī and Mālikī Schools, the time for the *uḍḥīyah* sacrifice ends at sunset on the third day of the *ʿīd*.<sup>297</sup> According to Shāfiʿīs, the time designated for sacrifice ends at sunset of the third day of the days of *tashrīq* (which are the three days that follow the day of the *ʿīd*).<sup>298</sup> If the animal is slaughtered outside of this specified window of time, it is not counted as a sacrifice. In the Ḥanafī and Shāfiʿī schools it is valid to perform the sacrifice at night, but it is always disliked to slaughter animals at nighttime.<sup>299</sup> Mālikīs, however, are of the opinion that,

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<sup>292</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:200.

<sup>293</sup> This is the position adopted by al-Mardāwī (al-Mardāwī, *al-Inṣāf*, 4:83–86), although Ibn Qudāmah seems to consider the time it takes to pray rather than the prayer itself (Ibn Qudāmah, *al-Mughnī*, 9:452–53).

<sup>294</sup> al-Mardāwī, *al-Inṣāf*, 4:84–86.

<sup>295</sup> al-Sarakhsī, *al-Mabsūt*, 12:18–19.

<sup>296</sup> al-Jundī, *al-Tawḍīḥ*, 2:699.

<sup>297</sup> al-Jundī, *al-Tawḍīḥ*, 2:699; al-Sarakhsī, *al-Mabsūt*, 12:19; al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 6:327.

<sup>298</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:200;

<sup>299</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 6:327; al-Sarakhsī, *al-Mabsūt*, 12:19; al-Nawawī, *Rawḍat al-Ṭālibīn*,

with some exceptions, sacrifices such as the *udḥīyah* and the *hadī* must be performed during the daytime and they are invalid if performed at night.<sup>300</sup>

Voluntary sacrifices offered on hajj are also performed on the day of *ʿīd*. Obligatory sacrifices on hajj that result from doing something forbidden can be performed at any time according to Shāfiʿīs.<sup>301</sup> Mālikīs consider wearing forbidden clothing, perfume, and removing hair and nails to be *nusuk* sacrifices.<sup>302</sup> This means that they are substituted by either fasting or giving charity, according to a person's choice (*takhyīr*), and they do not have specified place or time.<sup>303</sup> In the Ḥanbalī School, the sacrifices for *qirān* and *tamattuʿ* are performed on the Day of Sacrifice.<sup>304</sup> This is also the position in the Mālikī and Ḥanafī Schools.<sup>305</sup> In the Ḥanafī School, sacrifices that one has vowed to make, voluntary sacrifices, and sacrifices of expiation, can all be offered before the Day of Sacrifice.<sup>306</sup> Abū Ḥanīfah holds that this is also the case for the sacrifice of *iḥṣār*, but Abū Yūsuf and Muḥammad disagree.<sup>307</sup> The sacrifice that serves as a recompense for hunting may be performed at any time.<sup>308</sup>

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3:200.

<sup>300</sup> al-Jundī, *al-Tawḍīḥ*, 2:597 and 701; Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:315.

<sup>301</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:186.

<sup>302</sup> al-Jundī, *al-Tawḍīḥ*, 2:563.

<sup>303</sup> al-Jundī, *al-Tawḍīḥ*, 2:563.

<sup>304</sup> Ibn Qudāmah, *al-Mughnī*, 3:416.

<sup>305</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:28–29; al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 3:299.

<sup>306</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 3:299.

<sup>307</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 3:299.

<sup>308</sup> Ibn Qudāmah, *al-Mughnī*, 3:449.

## **Distribution and Consumption**

While it takes place after the animal is killed, the distribution and consumption of the sacrificial meat is an important element of Islamic sacrificial events. Unlike some other traditions, all Islamic sacrifices are meant to be consumed by humans. There is no tradition in Islam of the “burnt offering” or of leaving the meat out to be consumed by spiritual entities. As I mentioned at the beginning of the chapter, some contemporary scholars who study Islamic ritual practices have even stated that it is the feast following the sacrifice which is the essential element of Islamic sacrificial events. While this may be the impression given by certain practices among specific Muslim communities, the material I present here shows that this is not the view represented in Islamic legal texts. Often, rather than serving as the staple of a large communal feast, Muslim jurists instruct practitioners to distribute sacrificial meat to individuals for them to consume as they wish. At times, jurists even warn that it is better to distribute meat to the poor than to invite them to partake of a feast. Sacrificial meat is distributed raw or cooked depending on the kind of sacrifice it comes from. For some sacrifices, the person offering the sacrifice is not allowed to consume any of it and it must be distributed to the poor. For others, it is recommended that a person partake of at least some of the meat and distribute the rest among a mix of poor and wealthy people. Still other sacrifices must be distributed to people in a specific location.

### *Uḍḥīyah and ‘Aqīqah*

In regards to consumption and distribution, the most straightforward sacrifices are the *uḍḥīyah* and the *‘aqīqah* because there appears to be general agreement among jurists regarding how their meat should be distributed, even though the *uḍḥīyah* sacrifice is alternatively viewed

as a *wājib* or a *sunnah* practice. Additionally, the *‘aqīqah* conforms to many of the same rulings as the *udhīyah*. Although the person offering an *udhīyah* or an *‘aqīqah* is permitted to consume a portion of its meat, they are not allowed to sell any part of it.<sup>309</sup> In a sense, the meat resulting from a sacrifice loses some of its character as a commodity for trade. Just as the person who offered the sacrifice cannot sell any of its meat, wealthy people cannot take possession of it and sell it either, although it can be given to them to consume.<sup>310</sup> Poor people, on the other hand, once given the sacrificial meat, may dispose of it as they wish, including by selling it, according to Shāfi‘ī scholars.<sup>311</sup> Some jurists go so far as to say that it is impermissible to cook the *udhīyah* meat and invite poor people to eat it because it must be given to them for them to take possession of it raw,<sup>312</sup> although others allow for the meat to be cooked and fed to people as an act of charity.<sup>313</sup> Similar to the meat, other parts of the sacrificial animal, such as its hide, cannot be sold or traded as commodities.<sup>314</sup> They can, however, be used to make things that the person benefits from, such as leather socks, sandals, or a bucket, and Ḥanafī jurists even allow the hide to be traded for such goods.<sup>315</sup>

There is a difference of opinion regarding whether it is obligatory to give at least some of the meat away in charity or if it is permissible for the person offering the sacrifice to consume all

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<sup>309</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 4:326; al-Jundī, *al-Tawdīh*, 2:697–98; al-Sarakhsī, *al-Mabsūt*, 12:15; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:222.

<sup>310</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:222.

<sup>311</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:222.

<sup>312</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:222.

<sup>313</sup> al-Jundī, *al-Tawdīh*, 2:696.

<sup>314</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:225; Ibn Qudāmah, *al-Mughnī*, 9:450.

<sup>315</sup> al-Sarakhsī, *al-Mabsūt*, 12:15; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:225; Ibn Qudāmah, *al-Mughnī*, 9:450.

of it.<sup>316</sup> The most correct (*al-aṣaḥ*) position in the Shāfi‘ī School is that at least a portion of it must be given in charity, and Mālikī scholars say that if a person consumes all of the sacrifice themselves they have neglected doing what is best (*al-afḍal*).<sup>317</sup> These debates get at different ways of conceptualizing the sacrificial event. Those who hold that it is permissible to consume all of it say that the reward for the sacrifice is attained when the animal is slaughtered.<sup>318</sup> Those who hold that some of it must be given in charity consider the point of the sacrifice to benefit the poor.<sup>319</sup> According to Shāfi‘ī jurists, the best thing to do is to give all but one or two bites of the meat away in charity so that one can have the blessing of fulfilling the *sunnah* of eating some of it.<sup>320</sup> As for the minimum that should be given in charity, jurists’ opinions vary saying that they should donate half, or a third, or two thirds.<sup>321</sup> It is reported that al-Shāfi‘ī said that the best thing to do is to eat or keep one third, to gift one third, and to give one third in charity.<sup>322</sup> In the Ḥanafī School it is preferred (*mustaḥabb*) to eat at least some of the meat of the *udḥīyah* sacrifice<sup>323</sup> and it is best to give at least one third away in charity, give a third to one’s friends and relatives, and keep a third for oneself.<sup>324</sup> That being said, it would be permissible to give all of it away or to

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<sup>316</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:222-.

<sup>317</sup> al-Jundī, *al-Tawḍīḥ*, 2:696. al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:222-23.

<sup>318</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:331. al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:222–23.

<sup>319</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:223.

<sup>320</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:223.

<sup>321</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:223–24.

<sup>322</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:224.

<sup>323</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:328-29.

<sup>324</sup> al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘*, 6:329.

keep all of it for oneself.<sup>325</sup> Mālikīs recommend giving a third or a half of the meat away in charity, but the widespread opinion in the school is that the portion that should be donated is undefined.<sup>326</sup> Ḥanbalīs are of the opinion that one should eat a third of the *uḍḥīyah*, gift a third, and give a third in charity,<sup>327</sup> but they also consider it permissible for a person to give all or most of it in charity and they may eat all but a morsel which they give away.<sup>328</sup> Because it is not an obligatory sacrifice, many jurists hold that it is permissible to give some of it to *ahl al-kitāb*,<sup>329</sup> but this point is rejected by some Mālikī scholars who say it cannot be given to non-Muslims unless they are the person's dependents.<sup>330</sup>

As for the *'aqīqah*, it takes the same rulings as the *uḍḥīyah* in regards to distribution and consumption, except that some scholars hold that the *'aqīqah* meat is distributed cooked, whereas the *uḍḥīyah* is distributed raw.<sup>331</sup> There is a difference of opinion amongst Mālikīs regarding whether one can invite people for a feast for the *'aqīqah*. Mālik held that it was disliked because it contradicted the practice of Medina, but some other scholars allowed for it.<sup>332</sup> Some also say that it is better to feed poor people than rich people, and if a person were to

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<sup>325</sup> al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:331.

<sup>326</sup> al-Jundī, *al-Tawḍīḥ*, 2:697.

<sup>327</sup> Ibn Qudāmah, *al-Mughnī*, 9:448.

<sup>328</sup> Ibn Qudāmah, *al-Mughnī*, 9:449.

<sup>329</sup> Ibn Qudāmah, *al-Mughnī*, 9:450.

<sup>330</sup> al-Jundī, *al-Tawḍīḥ*, 2:697.

<sup>331</sup> Ibn Qudāmah, *al-Mughnī*, 9:463.

<sup>332</sup> al-Jundī, *al-Tawḍīḥ*, 2:706.

consume the entire thing it would be valid but they would have disregarded the best practice.<sup>333</sup> The *sunnah*, however, appears to be to give the meat away rather than to invite people to a feast.<sup>334</sup> In the Shāfi‘ī School, the ‘*aqīqah* takes the same rulings as the *udhīyah* in regards to distribution with the only difference being that the meat of the ‘*aqīqah* should be cooked before it is distributed.<sup>335</sup>

### *Sacrifices on Pilgrimage*

When we consider the sacrifices that are offered as part of the rituals of the pilgrimage, we find a major distinction between voluntary and obligatory sacrifices, with some further distinctions made between different kinds of obligatory sacrifices. Generally speaking, a pilgrim is allowed, and even encouraged to consume a voluntary sacrifice that they offer.<sup>336</sup> A person is generally forbidden from consuming meat from a sacrifice that they offered to as expiation for wrongdoing, to make up for a deficit in ritual performance, or as recompense for hunting.<sup>337</sup> While a sacrifice that a pilgrim vows they will make is similar to a voluntary sacrifice in that it lacks an external cause, it is made obligatory due to the person’s vow. This in turn makes it subject to certain rulings that do not apply to the voluntary sacrifice. For example, the person offering a voluntary sacrifice is permitted to eat from it, whereas the person who has vowed to

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<sup>333</sup> al-Jundī, *al-Tawdīh*, 2:706.

<sup>334</sup> al-Jundī, *al-Tawdīh*, 2:706.

<sup>335</sup> al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:230-31.

<sup>336</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:451; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 3:301. al-Juwaynī, *Nihāyat al-Maṭlab*, 4:447; Ibn Qudāmāh, *al-Mughnī*, 3:466; al-Mardāwī, *al-Inṣāf*, 4:103.

<sup>337</sup> al-Jundī, *al-Tawdīh*, 2:571; al-Kāsānī, *Badā’i’ al-Ṣanā’i’*, 3:301; al-Nawawī, *Rawḍat al-Ṭālibīn*, 3:187. Ibn Qudāmāh, *al-Mughnī*, 3:465.

perform a sacrifice may not.<sup>338</sup> In the Mālikī School, however, this is only the case if one has vowed to donate the sacrifice to the poor, otherwise, if one has merely vowed to perform a sacrifice, then they may eat from it.<sup>339</sup> Generally speaking, sacrifices that one is permitted to eat from one is also permitted to gift to wealthy people.<sup>340</sup>

There is a somewhat unique situation if an animal has been designated for sacrifice but becomes incapacitated during the journey and cannot make it to Mecca. In this case, the animal is slaughtered where it is, but the person who was going to offer a voluntary sacrifice may not eat from the meat and must give it away in charity.<sup>341</sup> The reason for this is that since it was a voluntary offering, there is no obligation that the person replace the animal with another. This animal, however, was associated with an act of devotion, and since it cannot be sacrificed, the only option that remains is for it to be used in an act of charity by distributing its meat. Because it is a hardship to distribute the meat oneself while traveling, based on traditions of the Prophet Muḥammad, jurists instruct pilgrims to slaughter the animal, dip their sandal in its blood, and use that to mark its carcass so that other travelers can identify it as charity.<sup>342</sup>

There is a difference of opinion between the schools of jurisprudence regarding the sacrifice for *qirān* and *tamattuʿ*. Although these are obligatory sacrifices, both Mālikī, Ḥanafī, and Ḥanbalī jurists allow the person offering them to partake in their consumption, much like in

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<sup>338</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 3:301.

<sup>339</sup> al-Jundī, *al-Tawḍīḥ*, 2:572.

<sup>340</sup> al-Jundī, *al-Tawḍīḥ*, 2:571; al-Mardāwī, *al-Inṣāf*, 4:104.

<sup>341</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 300–301; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:448; Ibn Qudāmah, *al-Mughnī*, 3:462–63.

<sup>342</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 300–301; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:448; Ibn Qudāmah, *al-Mughnī*, 3:462–63.

the *udḥīyah* sacrifice.<sup>343</sup> One reason for the Ḥanbalī ruling is that this sacrifice, while being obligatory, is not occasioned by an impermissible act, so it is similar to a voluntary sacrifice in that regard.<sup>344</sup> The Ḥanafīs support this opinion through reference to their position that the Prophet Muḥammad performed his hajj as *qirān* and he partook of the sacrificial meat.<sup>345</sup> So, while it is laudable to give some of the meat away in charity, it is not a requirement for these sacrifices.<sup>346</sup> Shāfi‘ī jurists, on the other hand, do not permit a person to consume their own sacrifice for *qirān* and *tamattu‘* because they conceptualize them as making up for a ritual deficiency.<sup>347</sup>

### **Substitution**

Even beyond the question of obligatory and voluntary sacrifices and whether a person may consume the meat generated by the sacrifice, not all sacrificial acts are equivalent. This lack of equivalency is revealed when we look at the conditions that allow other rituals to take the place of sacrifice. In this respect, there are three categories of sacrifice. Sacrifices that cannot be replaced by another ritual, sacrifices that can be replaced by another ritual only if the person is unable to perform the sacrifice, and sacrifices that a person may choose to replace with another ritual even if they are able to perform the sacrifice. The alternatives to sacrifice that are legislated by Muslim jurists are fasting a set number of days, or donating a specified amount of food in

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<sup>343</sup> Ibn Abī Zayd al-Qayrawānī, *al-Nawādir wa al-Ziyādāt*, 2:452; al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 3:301; Ibn Qudāmāh, *al-Mughnī*, 3:465–66; al-Mardāwī, *al-Inṣāf*, 4:104.

<sup>344</sup> Ibn Qudāmāh, *al-Mughnī*, 3:465.

<sup>345</sup> al-Sarakhsī, *al-Mabsūṭ*, 4:26–27.

<sup>346</sup> al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 3:301.

<sup>347</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:195.

charity to the poor people of the *ḥaram*. Because they conceptualize some of these sacrificial rituals differently, jurists have differing opinions regarding how substitution functions. For certain sacrifices, a person may choose whether to offer a sacrifice, give charity, or fast; these are considered to be according to choice (*al-takhyīr*). In regards to other sacrifices, however, a person may only give charity if they are unable to offer a sacrifice, and they may only fast if they are unable to give charity; these are considered to be according to sequence (*taʿdīl*). The amount of fasting or charity that may take the place of the sacrifice varies from one sacrificial ritual to another.

Mālikī jurists are outliers in the case of sacrifices for *qirān* and *tamattuʿ* in not allowing fasting to take their place. If one is unable to offer these sacrifices, only charity can serve as a substitute for them in the Mālikī School.<sup>348</sup> Jurists from other schools, however, consider these sacrifices to be according to *taʿdīl* such that they allow fasting to take their place if a person is unable to perform the sacrifice. In such cases, the person is to fast three days while they are on hajj, and an additional seven days after they have returned home.<sup>349</sup> Some jurists consider it permissible to perform this fast in Mecca after hajj, while other jurists hold that a person must wait until they have returned home to complete the fast.<sup>350</sup> There is also an opinion in the Shāfiʿī School that allows a person to make up the three days outside of the time of hajj if they missed doing it during hajj and some jurists consider it permissible to perform this fast in Mecca after hajj, while others hold that they have to wait until they have returned home to complete the

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<sup>348</sup> al-Jundī, *al-Tawdīh*, 2:563.

<sup>349</sup> al-Kāsānī, *Badāʿiʿ al-Ṣanāʿiʿ*, 3:180; al-Juwaynī, *Nihāyat al-Maṭlab*, 4:196; Ibn Qudāmah, *al-Mughnī*, 3:417.

<sup>350</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:198.

fast.<sup>351</sup> According to Ḥanafīs, if a person misses fasting the three days during hajj, they cannot be made up and the person must perform the original ritual, which is the sacrifice.<sup>352</sup>

Other forms of substitution are not defined in terms of a specific amount of charity or a number of days, but rather in amounts that correspond to the animal that would have been sacrificed. This is particularly the case when the animal to be sacrificed is specified as being other than a sheep or a goat. For example, in the Shāfi‘ī School, if one cannot find the animal that must be sacrificed to make up for sexual intercourse that invalidates the hajj, then one evaluates the value of the camel and gives that value away as charity in the form of food. If one cannot do this, then they must fast one day for each measure of food that would have been charitably donated.<sup>353</sup> There is some disagreement amongst Shāfi‘ī jurists regarding this last point however. Some jurists consider sexual activity while in *iḥrām* to be a pleasurable act (*istimtā‘*), like wearing perfume, so one can choose to either perform a sacrifice, give charity, or fast. Other Shāfi‘īs, however, consider it a destructive act (*istihlāk*), similar to cutting one’s hair or nails, so one can only replace sacrifice with charity if one is unable to perform the sacrifice, and one can only fast if they cannot afford the charity.<sup>354</sup> Another case with this kind of substitution is the recompense for hunting. Since the animal to be sacrificed must correspond to the hunted animal that the person killed, the amount of charity that one gives, or the fasting one performs in its place, has to have a similar correspondence. In the case of recompense for killing a hunted animal, in the Shāfi‘ī School one may choose to either perform a sacrifice, feed the poor

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<sup>351</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:198-9.

<sup>352</sup> al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 3:181.

<sup>353</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:346.

<sup>354</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:346.

according to the value of the animal killed, or fast a certain number of days based on a day for each measure of food.<sup>355</sup> In order to do this, one establishes the corresponding animal, values it, and then buys that value in food and feeds the poor.

Mālikī jurists divide sacrifices on hajj into either *hadī*<sup>356</sup> or *nusuk* sacrifices. For Mālikīs, fasting can never serve as a substitution for *hadī* sacrifices. This is why the sacrifice for *qirān* and *tamattu* cannot be replaced with fasting in the Mālikī School. The exception is recompense for hunting where fasting can be a stand in for giving charity if one is unable to do so. For *nusuk* sacrifices, such as those that are made obligatory due to committing a forbidden action while in *ihrām*, one can choose to either perform a sacrifice, fast, or feed the poor. In these cases, fasting has the same ritual value as performing a sacrifice, and the rituals can be performed at any time and in any location.<sup>357</sup>

## Conclusion

In this chapter, we have seen that rituals of Islamic sacrifice are complex events that are made up of various different ritual activities. The ritualized killing of the sacrificial animal is at the center of these rituals, but it takes on its full meaning as sacrifice when it is combined with activities that precede and follow it. The ritual of killing the animal itself is similar to non-sacrificial Islamic animal slaughter; the main difference is the stipulation that the person performing the slaughter be a Muslim and that they have the intention of offering a sacrifice.

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<sup>355</sup> al-Juwaynī, *Nihāyat al-Maṭlab*, 4:405.

<sup>356</sup> For Mālikīs *hadī* sacrifices are: recompense for hunting, sacrifices made obligatory due to a deficiency in ritual performance, including *qirān* and *tamattu*, the sacrifice for spoiling one's hajj or missing it, and voluntary sacrifices a person intends as *hadī* (al-Jundī, *al-Tawḍīḥ*, 2:563).

<sup>357</sup> al-Jundī, *al-Tawḍīḥ*, 2:563.

Aside from this, sacrifice gets its character from the practices that surround the act of killing. Before the animal is killed, it must be identified as appropriate for the ritual. While the selection of the animal does not necessarily involve specific ritualized activities, it serves the larger ritual complex of sacrifice, and so it is an indispensable element of the ritual. The main activity involved in this is discernment to ensure that only animals that are fit for sacrifice are used; if an inappropriate animal is chosen, the ritual is considered invalid. In some cases related to the hajj, animals set aside for sacrifice may be ritually marked as sacrificial animals, either by having their necks garlanded with sandals or their sides marked with an incision. Animals marked in this way, which a person brings with them on hajj, become a kind of companion for the pilgrim and stand with them at Arafat sharing in the essential rite of the hajj pilgrimage. Here the animal participates in the ritual with the person who intends to sacrifice them, creating an intimate relationship between them before the one takes the other's life. This seems to lend some credence to the idea that there is a correspondence between the person offering the sacrifice and the sacrificial animal, with the animal serving as a kind of substitute for the person, although the nature of this substitution relationship is not explained or articulated in legal manuals.

Following the killing of the animal are practices related to the apportionment, distribution, and consumption of the sacrificial animal. Unlike sacrifice in some other traditions, the sacrificial animal is always consumed by humans in Islamic sacrifices. Again, while there may not be particular ritual practices associated with distribution and consumption of sacrificial animals, I classify this as ritual activity in that it must be carried out in the appropriate way in order to complete the ritual of sacrifice. While some scholars have framed sacrifice as cuisine, the Islamic examples do not completely fit this conceptualization. Yes, consumption is key, but the forms that this consumption takes can be myriad, and it often occurs far removed from the

person offering the sacrifice. In fact, it is only the *'aqīqah* sacrifice that is distributed in a cooked state, with all other sacrifices being distributed as raw meat to be prepared by those who receive it in whatever way they see fit. Meat from the sacrifice can be stored indefinitely before it is consumed, and, in some cases, poor people who take possession of this meat can even sell it to others. In this sense, we might say that the goal of distribution, at least as it is conceived in Islamic legal manuals, is not necessarily to bring community together to share a communal meal, but to serve the goals of charitable activity in alleviating hunger and poverty, much like *zakāt* or other forms of Islamic charity.

As I established in Chapter One, there has been significant anxiety about the morality of killing animals amongst Muslims theologians and legal theorists. This anxiety, however, is generally not present in works of Islamic jurisprudence. One of the key elements of the ethical discussion of killing animals that we can perceive in these legal discourses is the idea that it is only permissible to kill animals in certain circumstances. In light of the question regarding the ethics of killing animals, sacrifice is perhaps the most striking example of the tension between animal suffering and human devotion that we come across in works of Islamic law and in Muslim practice. Although animals that are sacrificed are consumed as food, their consumption is not the primary intention behind killing them. Rather, through the act of killing the sacrificial animal and distributing its meat appropriately, a person intends to draw nearer to God. This chapter has examined scenarios in which Muslim jurists discuss sacrificing animals either as purely devotional acts, as ways to fulfill ritual requirements, and as a means by which to mark momentous occasions. This study reveals that sacrifice, as conceived in Sunni legal traditions, is a multivalent ritual that serves multiple functions depending on the circumstance, but does not concern itself primarily, or even secondarily, with animal suffering or loss of life. Islamic

sacrifices resist simple explanations and ask us to consider the complexities that inhere when blood is shed not only with divine sanction, but in order for a person to draw nearer to God.

It is through the combination of these elements that we arrive at a fuller understanding of rituals of sacrifice, which allows us to identify those aspects that are essential to sacrifice and distinguish it from non-sacrificial ritual animal slaughter. Related to activities of selection and designation, we find that sacrifice has more restrictions when it comes to the sacrificial animal. All animals that are ritually killed in Islam must be from certain species, but the species that are available for sacrifice are more narrowly defined than those that are available for non-sacrificial ritual killing. Not only must they be from certain species, but they must also meet requirements related to age, health, and well-being that do not apply to non-sacrificial slaughter.<sup>358</sup> As a result of these stipulations, many animals that can be ritually slaughtered may not be part of rituals of sacrifice. One of the ways that we might understand this is that it is typically domesticated animals rather than wild animals that are considered property, so it is through sacrificing them that one is able to give of one's own property and wealth for the sake of God and a higher purpose. In order to ensure that such an offering is worthy of this goal, the animal must meet the further requirements of age, health, and well-being.

One of the main concerns of this dissertation is the role that ritual plays in Islamic practices of killing animals. While Muslim jurists address questions of ethics and the law, much of their writing is done in the capacity of ritual experts. It is in Islamic manuals of jurisprudence that we find detailed instructions on the correct performance of various rituals, the various ways they can go wrong, when and how their ritual integrity can be salvaged, and the moral weight of

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<sup>358</sup> As we have seen above, there is the exception of sacrifice that serves as recompense for hunting, in which younger or flawed animals may be sacrificed to compensate for hunting younger or flawed animals.

ritual performance. One of the main arguments I make in this dissertation is that acts of killing animals that result in food these make sense when seen through the lens of ritual, as I have defined it building on Rappaport's definition, even though ritual is not a native concept to Islam. That being said, some of these acts are more ritualized than others. I argue that the most ritualized form of killing animals is sacrifice. While sacrifice shares many of the same ritual elements with other forms of killing animals, it also includes additional ritual elements. These are related to the actual act of killing, restrictions regarding who can perform it, and where and when the ritual should take place. As we have seen there are also additional ritual practices that address the selection of the animal and the distribution of its meat after the animal has been killed. There are also additional ritual effects that are involved in sacrifice. While non-sacrificial slaughter has the effect of rendering the meat of the animal pure and permissible for consumption, sacrifice also has the effect of removing the animal from the sphere of being a trade commodity. Perhaps the most important element of Islamic sacrifice is that it serves as a means for a Muslim to draw closer to God. While I argued in the previous chapter that there are ways in which non-sacrificial animal slaughter includes a transcendent element, it is most clear and apparent in rituals of sacrifice, where it serves as one of its defining characteristics. I would even argue that there are essentially two key elements to Islamic sacrifice. The first is ritual, and the second is *taqarrub*. It is this function of seeking proximity to God (*taqarrub*) that makes sacrifice a devotional act (*ibādah*). While there is overlap between the concept of devotional practices and ritual, it is not complete. The telos of devotional practices is primarily *taqarrub*, whereas other practices have ritualized elements (in the sense that there is a proper form for it to be legitimate) but their primary telos is not *taqarrub*. At the same time, not all devotional practices are ritualized in the way that prayer or sacrifice is. Giving charity can be done in any

number of ways; it remains a devotional act even if we do not categorize it as ritual. On the other end of the spectrum, marriage in Islam has ritual elements, but its primary telos is not *taqarrub*. Sacrifice brings these two together in a practice that involves rituals that seek to bring the practitioner close to God by killing a non-human animal.

## Conclusion

In this dissertation, I have attempted to address questions related to practices of killing animals in Islam with an emphasis on ritual and ethics. This investigation has been driven by a concern for animal welfare and a curiosity about how care for animals informs Islamic practices of killing them. I have approached these questions through a close reading of theological and legal texts not because I undervalue the enacted practices of lived communities, but because it is in those texts that we find particular ideas enshrined which may inform community and individual practice. I begin with the question that frames the first chapter and which animated Muslim theologians: how is the killing of non-human animals, for food or devotion, morally good? What are the principles, guidelines, and practices that allow Muslim theologians, jurists, and ethicists to endorse these practices as ethical? In attempting to answer this question I landed on the framework of ritual as a way to organize these practices in a meaningful way. Although the concept is not native to Islamic traditions, I have found it helpful as a lens that brings into relief the various commitments that are embedded in these practices. I have found that while Muslim theologians and jurists have concern for the well-being of non-human animals, and while they acknowledge animal pain and suffering as a form of harm worthy of moral consideration, they accept certain amounts of pain and suffering as being part of Islamically sanctioned ritualized practices of killing animals. The theologians and jurists that I study hold animal welfare as a guiding principle, but they ultimately endorse a hierarchical view of the world in which humans enjoy a superior standing over non-human animals, which allows them to make use of the latter even when it involves their suffering and death.

When considering ritual as an organizing heuristic for the project, one of my concerns was that, while it would clearly apply to and illuminate practices of sacrifice, such as those performed

during the *ʿīd al-adḥā* or as a part of the hajj rituals, it might not apply to non-sacrificial practices of slaughtering animals for food. In some ways, this depends on the definition of ritual that one adopts. If ritual is defined in terms of devotional practices in which the primary aim is to draw near to the divine, then it is helpful and even essential to understanding sacrifice, but it may not be an appropriate framing for animal slaughter or hunting. I have chosen to use Roy Rappaport's definition of ritual as "*the performance of more or less invariant sequences of formal acts and utterances not entirely encoded by the performers,*"<sup>1</sup> while adding three important elements that help it speak more directly to Islamic practices. The first is that the encoding of the acts and utterances is the result of jurists interpreting scripture, the second is that the ritual seeks an end specified by Islamic law, and the third is intent. It became clear to me that defining ritual in this way could serve as a meaningful interpretive frame for both sacrificial and non-sacrificial practices of killing animals, while avoiding assumptions that some might make about ritual slaughter in Islam if they are not familiar with it, such as removing slaughter and hunting from the sphere of ritual or conceptualizing sacrifice as a family meal.

The dissertation began with a study of theological debates regarding animal pain. Since the suffering that animals endure as part of the processes of hunting, slaughter, and sacrifice, seemed to play a large role in determining which practices jurists accepted, I wanted to begin by seeking out more philosophical considerations of animal pain to determine the extent to which they underpin and inform legal rulings. The question of animal pain entered Islamic theological debates as part of larger discourses on ethics; it is addressed primarily in sections devoted to *ḥusn* and *qubḥ*, the ethical categories of good and bad, and to the question of how Muslim theologians define them. I focused my study on theological arguments found in the *ʿAshʿarī* and

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<sup>1</sup> Rappaport, *Ritual and Religion in the Making of Humanity*, 24.

Mu‘tazilī schools because they present such starkly different justifications for animal pain, and because they are often presented as two major Islamic schools of theology that are in opposition to one another. What I found was that theologians from each school maintained that it is by virtue of the scriptural endorsement of practices of hunting, slaughter, and sacrifice that killing animals can be considered “good” and their pain can be ethically justified. From here, however, their arguments diverge. Mu‘tazilī theologians engage in a complex discourse of retribution and compensation in order to allow for animal suffering within their larger theological context of divine justice. ‘Ash‘arīs, on the other hand, hold that it is by virtue of the divine command that these practices are considered to be good and therefore there is no need for additional arguments to make them acceptable and just.

The awareness and concern for animal pain that animated these theological debates is evident in the discussions of killing animals found in works of Islamic jurisprudence. Many jurists state that the reason slaughter is legislated as having a particular form is because it is the easiest on the animal. This juridical conclusion, however, is not based on knowledge or investigations of animal experiences of slaughter. Rather, it appears to be based on the idea that reduction of harm is a principle of the *sharī‘ah* with which its rulings must accord. On this understanding, Islamically endorsed ritual practices of killing animals are necessarily the kindest to animals. Jurists further explain that many practices associated with slaughter are either recommended or discouraged out of concern for the animal’s well-being. While Muslim jurists endorsed practices of animal slaughter and hunting, they did not take them lightly, and throughout this dissertation I have argued that their emphasis on correct ritual performance is a signifier of the high stakes involved in them. It is only through adherence to the ritual that one is permitted to end the life of another being and benefit from its meat.

Cases of animal sacrifice in Islam raise a number of issues in addition to those addressed in regards to slaughter and hunting. Here we are not just confronted with the prospect of taking an animal's life for food, but we have a set of rituals that jurists purport will bring a person closer to the divine by shedding an animal's blood. While maintaining many of the core elements of animal slaughter, rituals of sacrifice involve additional elements related to the sacrificial animal, the practice itself, and its effects. When examining these cases, we found that although there are certain similarities that unite various instances of sacrifice, they are set apart from one another in significant ways based on distinctions related to the occasion for which they are offered. These include considerations when and where the sacrifice is offered, which animals may serve in the sacrifice, and how the meat that results from the sacrifice may be used and who can benefit from it.

One of the limitations of this study is that in focusing on discourses of Islamic law found in works of jurisprudence, I do not attend to the ways in which lived communities enact these practices. This means that questions regarding the extent to which these practices were and are actually performed as they are described remain open. While there are a number of ethnographic studies of Islamic slaughter and sacrifice, putting them in conversation with the normative descriptions of the jurists would be an important contribution to the field. Additionally, because this dissertation focuses on what might be termed the classical tradition of Islamic law, large swaths of material remain unexamined. While many of the issues discussed by the jurists that I focused on are replicated by later scholars, a number of problems are surfaced in later legal works, particularly in the modern period. My hope is that this dissertation can serve as the foundation upon which studies of these later legal discourses can be established. There are numerous topics that could be covered, and I will close with a brief discussion of what I consider

to be some of the most meaningful avenues for further research both from the perspective of modern Islamic ethical debates as well as with regards to contemporary questions of animal welfare and religious practice.

Modern industrialized agricultural practices present significant challenges to the rituals that I have presented in this dissertation, as do the demands of scale imposed by the increase in population size and the increase in global per capita meat consumption. These societal shifts particularly impact practices slaughter and sacrifice, although there are questions related to hunting that could be addressed as well, including the use of modern weapons, such as rifles or shotguns, as well as trophy hunting. Although we have seen that, by and large, fish are exempted from rituals of slaughter, there are a number of contemporary issues related to large scale fishing operations that Islamic ethics could weigh in on. These include fish farms, genetically modifying fish, issues of by-catch associated with trolling, and the decimation of stock due to overfishing. Because ritual slaughter is not required, many contemporary Muslims in areas where halal meat is not readily available may turn to fish and seafood as a source of protein free of ethical concerns. The many ethical issues related to consuming fish, however, make it imperative for Muslim ethicists to take them into consideration and to develop ways of thinking about contemporary fishing practices in light of Islamic ethics.

In the mid-twentieth century, animal slaughter went through radical changes due to the industrialization of agricultural practices. There are many practices associated with industrialized agriculture that negatively impact the lives of animals raised for food. These include living conditions, feed, and the use of antibiotics. While these are separate from questions of animal slaughter, they are part of the larger system through which animal products, including meat, eggs, and dairy, are produced. One of the most radical transformations, however, has occurred in

the ways in which animals are slaughtered. Modern industrialized animal slaughter has developed in ways that greatly increase the volume of animals that can be killed and processed in a day. Islamic practices of slaughter have not been exempt from these developments, which have raised a number of questions regarding Islamic ritual slaughter. Perhaps chief among the issues is that of pre-slaughter stunning. In U.S. law, for example, animals must be rendered senseless before slaughter is performed, although the humane slaughter act was written to include kosher or other forms of religious slaughter that do not stun animals before slaughter. In Europe, however, religious exemptions are uncommon, and even where they exist there are significant challenges to ritual slaughter that does not use pre-slaughter stunning. At the time of this writing, for example, the EU court of justice had just ruled that halal and kosher meat could not be considered “organic” because they did not involve pre-slaughter stunning.<sup>2</sup> A number of contemporary Muslim jurists have weighed in on this issue, but it still remains an open question whether and which kinds of pre-slaughter stunning can be a part of Islamic rituals of slaughter.

As we have seen, Islamic rituals of slaughter involve a heightened awareness of animal pain and jurists condemn practices that involve excessive or unnecessary suffering for the animal. And yet over the past few years there have been a number of videos released on YouTube that show practices of slaughtering animals in some Muslim majority countries that violate many of the principles embedded in Islamic ritual slaughter.<sup>3</sup> This begs the question of the extent to which the rules and guidelines laid out by the jurists I have studied are followed in contemporary

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<sup>2</sup> Wyatt, “EU Court Rules Non-Stunned Halal and Kosher Meat Cannot Be Marketed As Organic,” *The Independent* (February 26, 2019).

<sup>3</sup> *Animals Australia*, “Stories from Indonesia – Live Export Investigation” May 30, 2011, video, 14:37, [https://www.youtube.com/watch?v=2FssedtU8t8&has\\_verified=1](https://www.youtube.com/watch?v=2FssedtU8t8&has_verified=1)

halal slaughter. While access can be an issue, there is a great need for in ethnographic work on Muslim slaughterhouses similar to Timothy Pachirat's work on slaughterhouses in the U.S. Midwest.<sup>4</sup> This will allow scholars to identify dominant practices on the ground and put them in conversation with Islamic legal and ethical traditions.

Perhaps some of the most radical contemporary shifts in practice have occurred in the realm of sacrifice, particularly sacrifices performed in Mecca. As we have seen above, Muslim jurists emphasized the value of a person performing sacrifice themselves or, if they are not able to, then at least being present to witness it. In the late nineteenth and early twentieth century, reports regarding the site of sacrifice in Mina described unsanitary conditions and large amounts of waste due to spoilage of the sacrificial meat. Towards the end of the twentieth century, new policies and practices were instituted by the Saudi Arabian government to remedy the situation. By organizing the sacrifice through a centralized authority, it has been possible to prevent waste by preserving by freezing sacrificial meat and distributing it to the poor globally. The organization of sacrifice addresses the practice of sacrifice itself as well as the distribution of the meat. Since scale of the sacrifice has dramatically increased along with the increase in the number of pilgrims who perform the hajj every year, most people performing hajj are no longer able to perform their own sacrifices. Instead, the sacrifice is administered by the Islamic Development Bank in Saudi Arabia through "The Kingdom of Saudi Arabia Project for Utilization of Hady and Adahi."<sup>5</sup> Pilgrims now by a ticket from a bank kiosk or online through the project's website and an animal is sacrificed on their behalf and its meat is distributed for

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<sup>4</sup> Pachirat, *Every Twelve Seconds*.

<sup>5</sup> "The Kingdom of Saudi Arabia Project For Utilization of Hady & Adahi Managed by Islamic Development Bank," Accessed December 8, 2019. <https://www.adahi.org/en/Pages/home.aspx>.

them. This represents a significant shift in the way that the ritual is performed with the majority of people being distanced from the sacrifice. This means that the is made invisible to some extent where once visibility was one of its hallmarks.

Similar shifts have occurred to sacrifices performed outside of hajj. While many people in Muslim majority countries continue to engage in rituals of sacrifice themselves, this has been a challenge for Muslims who live as minorities. Similarly to the situation with hajj, a number of international Muslim charities, such as Islamic Relief,<sup>6</sup> offer the service of performing a sacrifice on one's behalf and distributing the meat to needy Muslims in a country of their choosing. Here again a person may enter their information on a website, pay by credit card, and have an animal sacrificed and its meat distributed on their behalf without having had any proximity to the animal or to the ritual performance. While it appears that such practices fulfill the requirements that the jurists I have studied associate with sacrifice, there are important questions to ask about these practices. If these rituals associated with sacrifice served the function, in part, of bringing humans and non-human animals into a particular kind of relationship before God, what is lost when people are distanced from animals as participants in these rituals and lose sight of animal pain? Does the efficiency implied by these new forms of organization ensure that the animals experience humane treatment, or does the invisibility of the ritual make abuse more likely?

It is my hope that this dissertation can serve as a beginning rather than an end of this research project, that I am afforded further opportunities to extend these arguments, and that they are picked up, challenged, and explored by others who are similarly concerned with Islam, ethics, law, and animals. Through this process I have uncovered a wealth of resources the examination

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<sup>6</sup> “Qurbani/Udhiyah,” Islamic Relief, accessed April 4, 2020, <http://irusa.org/qurbani-udhiyah/>.

of which could occupy more than one academic career. But the value of this research does not lie just in the knowledge that we may produce. Like any research that touches on lived experiences of pain, suffering, and death, it derives its value from the positive impact that I hope it can have on how my readers think about violence and the actions they choose to take as a result.

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