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**HISBA: RELIGIOUS DUTY OR PRACTICAL JOB?**
SOME CONSIDERATIONS ON AN ISLAMIC INSTITUTION BETWEEN MORALS AND MARKETS *

In 1836 Alexander Burnes, an Englishman traveling in Central Asia, was in Afghanistan. One evening he went to a famous resort North of Kabul because «our escort [...] declared that Istalif had at all times been the abode of pleasure

* * I publish here the paper I presented to the 31st Middle Eastern Studies Association (MESA) of North America meeting held in San Francisco from November 22 to 24, 1997. The text I actually read on Monday 24 was just a short summary of this one, which was yet circulating (even if without notes) during the MESA itself, as requested by the organizers. I decided to publish in the Annali di Ca' Foscari this draft version because I think that in any case a research is useful if it can circulate widely among scholars interested in the issue, even when only at an initial stage as this one. Indeed I hope to continue it, as I indicate often in the text itself. Let me add here that after October 15, 1997 (the day I had to send the paper to the MESA) I continued the research, in particular in New York libraries where I was for one month as a visiting scholar on an exchange agreement between Ca' Foscari and New York University. While there I found more material that anyhow I have not used for this article. For instance I could finally read the relevant pages of Izutzu's book (see note 25), which appear very rich in suggestions for my topic; I discovered as well many very important considerations regarding the question of *urf in the section by Clifford Geertz on “Suq, The Bazar Economy in Sefrou” in the volume ed. by Clifford Geertz, Hildred Geertz and Lawrence Rosen, Meaning and Order in Moroccan Society. Three Essays in Cultural Analysis, Cambridge University Press, Cambridge 1979. More on, before going to press with this article I found in a catalogue that was just published the book by Izzi Dién M. (ed.) The theory and practice of hisba in Medieval Islam: A study of Kitab Nisab by Umar b. Muhammad al-Sunami (Warminster, 1997). All these texts as well as the many other materials I have collected (the articles and books listed in the notes here are just a small part of a larger bibliography on hisba and relevant matters) will be used in my future approaches to the hisba questions.

This research was made possible thanks to the contribution of the Fondi 60% and 40% of the Italian Ministero per l'Università e la Ricerca Scientifica.
and that, without wine, not only would the illumination [prepared by local people in honour of the visitors, G.V.] lose its value, but Nature herself would be worth nothing. We accordingly sent a few bottles of wine, to which they did the amolest justice, although the “Moohtussib”, a chief constable of Cabool, was of the party. On the following day I taxed him with this departure from the rule of his sect [i.e., the Islamic faith, G.V.]. He bore my bantering with great equanimity, and replied with mock heroic dignity: “Who, my lord, suspects me – me, the ‘Moohtussib’ – of indulging in wine? My duty is to reform the morals of others”.\(^1\)

Some fifty years later, at another border of the dār al-islām, the Moroccan society was adapting itself to modern technologies, in particular to the introduction of printing. Indeed, as there were no standards regarding how this activity should be done, the execution of the relevant regulations was given to the muhtasibs. These officials consequently had also to visit the bookshops the way they visited other stalls in the traditional sūq. But quite surprisingly their principal duty was not to check the texts or the contents of the books for possible moral or religious infractions. On the contrary, their task was to control that the newly printed items were up to the graphic standards in regard to the quality of paper, ink and legibility.\(^2\)

Many other examples can be added to these two, showing how complex the issue of hisba is. This Islamic institution seems to sway continually between religious considerations and practical jobs, «between morals and markets», as I suggest in the title of my paper. This same uncertainty is reflect-

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2 Fawzi Abdulrazak, *The Kingdom of the Book: The History of Printing as an Agency of Change in Morocco between 1865 and 1912*, unp. diss., Boston University, 1990, 19, 135, as quoted in Thomas Glick, «New perspectives on the hisba and its Hispanic derivatives», *al-Qantara*, 1992, 8, 2, pp. 479-80. Abdulrazak says that towards the end of the century the Moroccan government shifted the relevant authority from the muhtasib to the qādi of Fez, to whom application had to be made for printing a book, although the decree establishing this new regulation in 1897 specified that Islamic texts required inspection by the muhtasib. This time, I presume, it was for “religious” matters, not for quality of paper...

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ed in the literature on the subject, both original and scientific. To mention once again only two very recent articles, on one hand R.P. Buckley’s essay entitled «The muhtasib» stresses “market control”⁴, while the other approach is perfectly represented by Cl. Gilliot, «Islam et pouvoir: la commanderie du bien et l’interdiction du mal».⁵

These titles introduce here two of the expressions that identify my problem: that is muhtasib, or hisba and ihtisāb, vs. the Qur’anic formula usually rendered in English as «enjoining what is good, or proper, or right and forbidding what is evil, or reprehensible or wrong», as run the traditional translations of the expression al-amr bi ’l-ma‘ruf wa ’l-nabiya ‘an al-munkar⁶. This sentence summarizes one of the principal

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³ «La dualité du sens de la hisba est cause de la diversité des sources qui nous renseignent sur elle»: CAHEN & TALBI, in EP², cit. below.

⁴ R.P. BUCKLEY, «The muhtasib», Arabica, XXXIX, 1992, p. 59-117. To substantiate my statement, let me quote the first sentence of this article: «There is no mention of any official charged solely with responsibilities over the market during the jāhiliyya despite the fact that there were some very large markets in pre-Islamic Arabia». No hint, at least at the very start, is made at the double identity or function of the muhtasib, even if later on Buckley writes that «The implication is, however, that the old āmil al-sūq had no religious duties. Indeed it may be suggested that the very fact of renaming this official as muhtasib, was intended to indicate a change in function and in spirit – an Islamicizing of the post. The point of the new terminology was to indicate the new function» [p. 65 and see also pp. 97 and ff.]. As I shall return very often to this article, which is the best mise à point of the “market-oriented” approach to the issue, I leave aside any appraisal of Buckley’s division. On the contrary, regarding the existence of a muhtasib in Mecca fi ’l-jāhiliyyati, I refer the reader to a passage quoted by M.J. KISTER, «Some reports concerning Mecca from Jahiliyya to Islam», JESHO, 1972, XV, 61-93: 83, note 1 and Addenda in p. 93 (and see also Buckley himself, p. 59-60) which I will discuss below, and see also my note 58. Buckley’s path of analysis is the one followed on the entry hisba in EP (divided, as usual, in many sections: «Généralités: sources, origines, fonctions»), by Cl. CAHEN and M. TALBI; «Sous les Ottomans», by R. MANTRAN; «Persé», by A.K.S. LAMBTON and «Sous-continent Indien» by A.S. BAZMEE ANSARI).

⁵ Claude GILLIOT, «Islam et pouvoir: la commanderie du bien et l’interdiction du mal», Communio, Revue catholique internationale, 1991, XVI, n. 5-6, pp. 127-147. In this direction see also Madelung’s entry in EnLr mentioned below in note 7.

⁶ Qur’an, III, 100/104, 106/110, 114; IV, 110/114; VII, 156/157; IX, 67; 72/71, 113/112; XXII, 42/41; XXXI, 16/17; LXV, 6. At this stage of my research I referred always to Yusuf Ali’s translation as it is available on CDROM and then more quickly accessible. The CDROM is Alim. The world’s most useful Islamic software, Multimedia edition.
duties regarding every Muslim, bound «to induce [his or her] fellow Muslims to live and act in accordance with the Qur’an and the religious law and to refrain from acts objectionable under the shari‘a».

The Qur’an itself lists such a duty on the same level as other “religious” obligations, such as the salāt and the zakāt: «(They are) those who if We establish them in the land establish regular prayer and give regular charity, enjoin the right and forbid wrong: with Allah rests the end (and decision) of (all) affairs» (XXII, 41).

This obligation was deemed important and binding to such a level, that al-Ghazālī called it «the most important pivot in religion», and many other Muslim ‘ulamā deal with it, up to the point of arguing (as did the Andalusian Zahrite Ibn Hazm) that amr bi ‘l ma‘rūf was «el principio justificativo del derecho del pueblo a la insurrección contra el princep tiránico y injusto».

7 The wording is W. Madelung’s in the entry «Amr be ma‘rūf» in EnIr.
9 The list, very long, is to be found in all the scientific essays mentioned in the preceding notes, to which one can add the relevant indications in Alfred Morabia, Le ghābd dans l’islam médiéval. Le “combat sacré” des origines au xii siècle. Préface de Roger Arnaud, Paris, Albin Michel, 1993, pp. 567, in particular pp. 315-324 and related notes, and in Syed Jalaluddin Ansar, Maroof & Munkar, translated by Syed Amin Ashraf, Kuwait, Al Faisal Press, 1410/1989, pp. 301. Michael Cook told me that he has quite finished «an extensive research on the doctrine of al amr bi ‘l ma‘rūf wa ‘l naby ‘an al munkar [in which he will be] tracing the meaning of the doctrine as it is spelled out in various juristic and theological discussions, beginning with ninth-century schools of Islamic thought to the present» (this summary sentence is from Florence Eid, «Studies of Islam. Economics and governance. A survey of some recent developments», in American Journals of Islamic Social Sciences, 11, 1994, 1, pp. 62-63). Obviously Cook’s research will also contain the best up-to-date bibliography on the topic. For an annotated list of the works by Muslim authors of bisba as a “practical job”, the best reference remains Pedro Chalméta Gendron, El Señor del Zoco en España: edades media y moderna. Contribución al estudio de la historia del mercado. Préface de Maxime Rodinson, Madrid, Instituto hispano-arabe de cultura, 1973, pp. 761, in particular pp. 299-321.
The questions I am trying to formulate and hopefully to answer through the research I am presenting here are very simple: how did amr bi 'l-ma'rūf became hisba? And eventually why? What are the real links between them? Is there a connection between “morals” and “markets”? Is the muhtasib a “religious” or a “civil” official? And – to introduce some

l’organisation judiciaire en pays d’Islam, Paris-Lyon, 1938-46 (Revised edition: Leiden: E.J. Brill, 1960): vol. II, 439. For another passage from Ibn Ḥazm, see MARDELING, entry cit., referring to al-Muhalla [ed. M. Kh. Harrās, Cairo, 1964, XI, pp. 119-20] (the Andalusian Zahirite Ibn Ḥazm, argued that anyone inviting to fulfill the duty of amr be ma'rūf and acting in accordance with the Koran, Sunna, and justice cannot be considered a rebel (bāghi), and that every Muslim is entitled to offer armed resistance to transgressions of the ruler against himself, particularly in respect to his lawful property).

11 One very clear-cut position is that taken by J. Schacht who, discussing the jurisdiction of the “inspector of the market” whose office had continued into Islam from Byzantine times, wrote: «The early ‘Abbasids, while maintaining his functions, superficially Islamicized the office by entrusting his holder with discharging the collective obligation, enjoined in the Koran, to “encourage good and discourage evil”, making him responsible for enforcing Islamic morals and behavior in the community of Muslims, and giving him the Islamic title of muhtasib (his office called hisba)» (Joseph SCHACHT, An introduction to Islamic law, Oxford, Clarendon Press, 1964 (reprint 1984), p. 51). For an opposite opinion see LEVI PROVENCE, «L’institution de la hisba dans l’Islam eut, on le sait, à l’origine, un caractère spécifiquement religieux» (E. LEVI PROVENCE, «Un manuel hispanique de hisba», Publication de l’Institut des Hautes Etudes Marocaines, XXI, Paris, 1931, pp. i-ii). Obviously it is possible also to suppose a dynamic, diachronic approach: «The position of the muhtasib was no longer [in the Ottoman period] regarded as a “religious duty”, but rather had a strictly economic secular character. Those who performed the function were merchants and other professional people who occasionally held the title of al-mu‘allim, i.e. ‘the expert’ in their particular field.»: A. COHEN, Economic Life in Ottoman Jerusalem, Cambridge, 1989, p. 13, as quoted by GLICK, New Perspectives, p. 478.

12 Again, just two examples from native sources (even if mentioned here from European translations): «Le contrôle des marchés (hisba) est aussi une fonction religieuse. Elle fait partie des obligations religieuses de la “commanderie du bien et de l’interdiction du mal”», IBN KHALDUN, Discours sur l’histoire universelle, (al-Muqaddima). Traduction nouvelle, préface et notes par VINCENT MONTEIL, Beirouth, Commission internationale pour la traduction des chefs-d’oeuvre, 1967-68, III vols: 1448. On the contrary in the Tazkīrat al-mulāk, a Safavid manual of state administration the muhtasib is not classed among the religious officers (ed. V. MINORSKI, London, 1943, p. 83 of the translation and p. 149 of his commentary). No scholar seems to have noted that in this same text there is another official in charge with the ṣAMN (on this abbreviation see below n. 22): the shaykh al-islām (see p. 43 of the English translation)! By the way, I believe that an analytical survey of the different labels used by the scholars (Muslims
new elements connected with the global issues – what is meant when speaking of “ethics” or “morals” in Islam: ḥisba or akhlāq or adab or something else?\textsuperscript{13} Why was the muhtasib in charge only of the bazaar and not of the dwelling quarters of the “Islamic towns”? What about villages? Why was he not in charge of the behavior of the tribal people? What about fairs?\textsuperscript{14} Why were the big merchants, the tujjār, beyond his authority? Why has Nizām al-Mulk a chapter in his Siyāsat-nāme on the importance of the activity of the muhtasib who «must take particular care in regard to goods which are kept true and that moral and religious principles are observed» and then presents many stories mentioning parties where Muslim people drank wine?\textsuperscript{15} And so on.

and Western) in defining this duty and this officer will offer an interesting panorama both of their approaches to the topic and of their Weltschauungen.

\textsuperscript{13} For a very introductory indication, keep in mind this passage from the section «Histoire de l’éthique musulmane» of the entry «Akkūs» in \textit{EP}, mentioned below in note 26: «L’éthique musulmane apparaît, à son stade le plus évolué, comme un amalgame intéressant, et somme toute réussi, de traditions arables préislamiques et d’enseignements coraniques, avec des éléments non arabes, surtout d’origine persane et grecque, intégrés dans une structure islamique générale».

\textsuperscript{14} The question of fairs or “temporary bazaar” in the Muslim world is not so much discussed; for an introduction limited to a particular region, see entry «Bāzār», V. «Temporary bazaars in Iran and Afghanistan» (by Marcel Bazin), quoted below note 103, pp. 45-51.

\textsuperscript{15} The English sentence mentioned is from NIZAM AL-MULK, \textit{The Book of Governors or Rules for Kings}, trans. H. Darke (London, 1960), pp. 46-47; for stories mentioning drinking parties see, for only one instance, chapter XXIX: «Concerning the rules and arrangements for drinking parties» (Persian original: \textit{Andar tartib-e majles-e sharāb wa sharāyet-e ānāb} see Abu ‘Ali Hasan ebn ‘Ali Khwājeh NEZĀM OL-MULK, \textit{Siyāsat-nāme}, ed. Mohammad Qazwini, Tehrān, Ent. Zowwār, 2536). And see also Kai Kā’us b. Iskandar b. QABUS B. \textit{WASHMGIR}, \textit{The Nasihat-nāma known as Qabus-namē}, ed. with critical notes by Reuben LEVY, London, 1951, cap. xi (\textit{Dar tartib-e sharāb khowordani}). Let me say immediately – to forestall a possible objection to some of my final hypotheses – that these meetings were “private”. Anyhow is it necessary to mention the importance of wine and wine-drinking both in the literature in all the Muslim languages (see for instance EHSAN YARSHATER, «The Theme of Winedrinking and the Concept of Beloving in Early Persian Poetry», \textit{Studia Islamica}, xiii, 1960, pp. 43-53) or in Islamic eschatology (for this see JANE D. MCAULIFFE, «The Wines of Earth and Paradise: Qur’ānic Proscriptions and Promises», in Roger M. SAVORY and DIONISIUS A. AGIUS, \textit{Logos Islamkos: Studia Islamica in honorem Georgii Michaelis Wickens}, Toronto, Pontifical Istitute of Medieval Studies, 1984, pp. 159-174 – Paper in Medieval studies, 6)? Worth recalling in this
To answer these and other similar questions will take a long time, and I am still very far away from a complete solution to the puzzle. Notwithstanding this situation I will propose here some of the ideas I am elaborating on, in order to have the opportunity to discuss them at the MESA. This also because the issue of hisba is not only an historical, bygone matter. A few years ago in Egypt there was a big judicial, social and political debate in connection with the famous «Abu Zeyd case». He was an University professor whose writings were blamed by Islamic activists for questioning the divine nature of the Qur'an. Thus – to be very short – a much discussed application of a «hisba law» persuaded a court to rule that Abu Zeyd had became an apostate and to order that he should divorce his wife since a Muslim woman cannot be married to a non-Muslim. The issue went on and Abu Zeyd was successively acquitted, but now he lives in the Netherlands\textsuperscript{16}. And in Iran every year there is an «amr be context is rather the “drinking ceremony” held at the court of the Ash-tarkhanid ruler of Balkh in XVII century. Indeed «the place of highest honor in such ceremonial gatherings is assigned to a figure called the naqib, a term most commonly understood as referring to the leader of a particular community’s sayyids (that is, descendants of the Prophet Muhammad through ‘Ali)». I found traces of this “drinking ceremony” in Devin DE WEESE, «The Descendants of Sayyid Ata and the Rank of naqib in Central Asia», \textit{IAOS}, 115, n. 4, Oct-Dec 1995, pp. 612 and notes 1 and 2 (with references to other works on the issue).

\textsuperscript{16} See «A propos de l’Affaire Abu Zayd, universitaire poursuivi pour apostasie» in \textit{Monde arabe Maghreb-Machreq}, 151, janvier-mars 1996, a set of article comprising an «Introduction» (p. 18), Badouin DUPRET, «Le procès: l’argumentation des tribunaux» (pp. 19-22), BAYAZET, «La tradition?... Quelle tradition?» (pp. 23-31). The episode has been presented also by the MESA Committee on Academic Freedom in the Middle East and North Africa (CAFMA), see \textit{MESA Newsletter}, 17, 3, August 1995, p. 17. For mass-media and newspaper articles, see for instance the very equlibrated and documented article by Anthony SHADID, «Barrel of a Pen: Cairo Artists Must Profess Faith in God» in \textit{Fort Worth Star-Telegram}, Friday, February 2, 1996 or Alexandre BUCGIANTI, «La justice égyptienne légalise le divorce pour apostasie», in \textit{Le Monde}, 7 août 1996 or also the commentary by Tahar BEN JELLOUN (I have read the Italian version of his article, published in the weekly \textit{Panorama}, April 26, 1996). I have found the three preceding documents in Internet, together with other related materials such as \textit{US DEPARTMENT OF STATE, Egypt Country Report on Human Rights Practices for 1996}, Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1997, or the «Center for Human Rights Legal Aid’s (CHRLA) Comments on the Court of Cassation Ruling Regarding the Case of Professor Nasr Hamed Abu Zeid» (in \textit{Civil Society},

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ma'rūf week"\textsuperscript{17}, and in Saudi Arabia there is a \textit{Hay'at al-amr bi 'l-ma'rūf wa 'l-nahy 'an al-munkar}, and in Morocco the \textit{muhtasib} is discussed as a "protector of the consumer"\textsuperscript{18} and so on\textsuperscript{19}.

Briefly, everywhere in today's Muslim world the word \textit{hisba}, even if it has apparently disappeared as "market-control", is still used, both in the "simple" meaning of our, Western "censorship"\textsuperscript{20} and/or in the wider Islamic sense of the duty to oblige people to «respecter les règles de la bien-séance musulmane en raison du principe que la pratique de l'Islam ne consiste pas seulement à éviter de commettre des actes dits \textit{haraâm} [...] et à faire ce qui est "obligatoire" mais aussi à faire tout ce qui est considéré comme "recommandé" et à éviter tout ce qui est "blamable" ou "répréhensible", en arabe \textit{munkar}»\textsuperscript{21}.

The first step of my paper then will be to discuss the terminology of my topic\textsuperscript{22}. The Qur'an refers many times to

\textit{5, 57, September 1996}. For a sociological analysis of the case see Badouin Dupret and Jean-Noël Ferrié, «For intérieur et ordre public. Ou comment la problématique de l'\textit{Aufklärung} peut permettre de décrire un debat égyptien», to be published in Boetsch, G., Dupret, B. and Ferrié, J.-N. (eds.), \textit{Droits et société dans le monde arabe}, Aix-en-Provence, Presse universitaire de Aix-en-Provence (I thank the Authors who let me read the proofs of their paper).

\textsuperscript{17} Setrag Manoukian, personal communication.


\textsuperscript{19} I am preparing a tentative survey of contemporary situations of \textit{hisba} issues in the Muslim countries (including, obviously, Taleban's Afghanistan...).

\textsuperscript{20} Which anyhow is something far from be uniformly defined and globally accepted in the different cultures and regions of the so called Western world. For an introduction to the problematic see G[eorge] An[aStaplo], «Censorship», in \textit{The New Encyclopedia Britannica}, vol. 15 (Macropaedia, Knowledge in depth), pp. 634-641. By the way, in the section on «History of censorships» of this entry the reader finds paragraphs on «Ancient Greece and Rome», «Ancient Israel and early Christianity», «Ancient China», «Medieval Christendom», «The 17th and 18th centuries», «Modern practices», but nothing on Islam or on the Muslim world and societies.


\textsuperscript{22} In reality the terminological problem pertains also to the scientific analysis of the issue. I am really not always completely at ease when speaking of \textit{hisba} instead of \textit{amr bi 'l-ma'rūf} or viceversa, as each of them has nowadays inevitably a great deal of socio-cultural connotations behind it. In order to try to be as clear as possible, I will use \textit{hisba} when privileging the “market approach”, \textit{amr bi 'l-ma'rūf} when following the “moral path”
the duty for the believer to AMNM. I feel that a detail must be taken into account first of all: in the original Arabic formula (al-amr bi 'l-ma'rūf wa 'l-nābi 'an al-munkar) there is absolutely neither the idea of “good”, “proper”, “right” nor of “evil”, “reprehensible”, “wrong”. On the contrary, in one of the most celebrated āya among those connected with the topic I am discussing we read23: «Let there arise out of you a band of people inviting to all that is good [yadu’ūna ilā 'l-khayr], enjoining what is right and forbidding what is wrong; they are the ones to attain felicity» (III, 104). Indeed, we have here, in one and the same verse, both khayr, i.e. one of the terms normally used in Arabic to indicate “good”, “right”, and the adjectives we are discussing, ma'rūf (and munkar)24.

Then one question arises: which are, if any, the conceptual and semantical affinities and/or differences between khayr and ma'rūf in the Qur'an and, generally speaking, in Islam? To the best of my knowledge such a question has never been dealt with by scholars, even if it is crucial not only to the issue I am studying but to the understanding of the Muslim societies as a whole25. Indeed, entering this domain we face one of the great background issues: what has amr bi 'l-ma'rūf to do with what can be called Muslim “ethics” or “morals”? And furthermore, and again, what are the “Islamic morals”?26

and the abbreviation AMNM when discussing the general issue, whereas I will avoid, as far as possible, any English rendering.

23 As yet said, at this stage of my research I use always and only Yusuf Ali's translation.

24 The usual Arabic antonyms of khayr are principally sbarr or sū' or darar, never munkar.

25 Unfortunately I have not yet been able to see the work by T. Izutzu, Ethico-religious Concepts in the Qur'an, (Montreal, 1966) where at pp. 213-217 there are some “suggestives réflexions [...] sur le substrat des concepts ma'rūf et munkar” [Morabia, Le ḥādīth, p. 513 note 200]. Equally I was unable to get the older volume on The Structure of the Ethical Terms in the Koran (Tokyo, 1959) by this same Author. At my knowledge one of the few essays on the topic is Gustav E. von Grunebaum, «Observations on the Muslim Concept of Evil», Studia Islamica, 31, 1970, pp. 117-134, now also in his Islam and Medieval Hellenism: Social and Cultural Perspectives, ed. with a foreword by Dunning S. Wilson. Preface by Speros Vryonis, Jr., London, Variorum Reprint, 1976. See also the texts mentioned in the following note.

26 One is tempted to refer to G.H. Bosquet who opens his book L'Ethique sexuelle de l'Islam (Paris, Maisonneuve et Larose, 1966, pp. VIII, 244: 9) with the following sentences: «Il n'y a pas de morale dans l'Islam.
Accepting for the moment being a probable, even if not yet exactly defined, connection between AMNM and “morals”\textsuperscript{27} and leaving aside the other elements of the formula (i.e. \textit{amr}, \textit{naby} and \textit{munkar}\textsuperscript{28}), I wish to draw the attention to the word \textit{ma’ruf}. It derives from the root ‘\textit{ara}f\textit{a}, a very productive one in Arabic: just think about ‘\textit{irfân}, \textit{ma’rîf}, \textit{ta’arruf}, and, most important in the actual context, ‘\textit{urf}, ‘\textit{arîf} and ‘\textit{arîf}\textsuperscript{29}.

For time’s sake, I must pass over a wider analysis of the ‘\textit{ara}f\textit{a} root itself. I note here only two facts: first, ‘\textit{urf} is the

\textit{Cette affirmation n’est pas un paradoxe, comme il le semble à première vue. J’ajoute qu’avant moi, Snouck Hurgronje avait fort bien montré qu’il n’y a pas de droit en Islam, et Tor Andrae avait écrit qu’il n’y a point de culte}” (Italics are Bosquet’s). Indeed this paradoxical statement can result very useful, as it reminds that to understand Islam and the Muslim world we must follow also other paths, different from the “traditional”, Christian, Western ones. Obviously it is possible to find quite a lot of books dealing with what are deemed to be “Islamic morals” following a “normal approach”: see for instance M.A. Draz, \textit{La morale du Koran. Etude comparée de la morale théorique du Koran, suivie d’une classification des versets chosits, formant le code complet de la morale pratique}, Paris, \textit{PUF}, 1951, pp. 717. Of greater interest for my approach is the volume collecting the papers presented to the Ninth Giorgio Levi della Vida Biennial Conference on \textit{Ethics in Islam} (Richard G. Hovannisian (ed.), Malibu, Undena Publ., 1985). But numerous are the books on this general field: a computerized search made in the Library of Congress using as queries “Islam” and/or “Muslim” together with “ethic” and/or “moral” gave me back a list of some 15 titles. More on, to have the best picture of this side of my topic one has also to consider researches as Charles-Henry de FoucheCours, \textit{Moralia, Les notions morales dans la littérature persane du 3e/9e au 7e/13e siècle}, Paris, Editions Recherches sur les Civilizations, 1986, pp. 514 or Jean-Claude Vade, \textit{Les idées morales dans l’Islam}, Paris, \textit{PUF}, 1995, not forgetting obviously all the works on the so-called “mirrors for princes”. In this last direction see the entry “\textit{Adâb}” and “\textit{Akhlaq}” in \textit{EI\textsuperscript{2}} (respectively by F. Gabrieli and by R. Walzer and H.A.R. Gibb, section “Histoire de l’éthique en Islam”; and R. Walzer, section on “Éthique philosophique”) and \textit{Enl}r (respectively by Dr. Khaleqi-Motlagh the section “\textit{Adâb in Iran}”, by Ch. Pellat the one on “\textit{Adâb in Arabic literature}”, and by F. Rahman the entry “\textit{Aklâq}”).

\textsuperscript{27} And we must never forget that “morals” too are an historical, social and cultural phenomenon that needs to be preliminary defined in any scientific analysis. See for instance Peggy Morgan and Clive Lawton, \textit{Ethical issues in six religious traditions}, Edinburgh, 1997 or Signe Howell (ed.), \textit{The Ethnography of Moralities}, London & New York, Routledge, 1997.

\textsuperscript{28} For \textit{amr}, a very rich although complicated notion in Islam, see the relevant entry in \textit{EI\textsuperscript{2}} (by S. Pines). \textit{Naby} and \textit{munkar} on the contrary are simply the antonyms of \textit{amr} and \textit{ma’ruf}.

\textsuperscript{29} Why in the Qur’an there is the mount ‘\textit{Arafat} and the angels \textit{Nakîr} and \textit{Munkir} and also \textit{husbân} in the meaning of “darts or lightning” in \textit{XVIII}, 38, connected with the roots ‘\textit{ara}f\textit{a}, \textit{nakîra} and \textit{hasaba}?
Arabic word used for the «traditional law», the «customary law»\(^{30}\), something which «entered in tension» with the *ṣbara*\(^{31}\) throughout all the stages of the Muslim societies. Secondly, the ‘*arif* (I will not dealt here with the “vocalization nuances” between the two variants) is «the one who [is] acquainted with the affairs», «the manager or supervisor of the affairs, who acquaints himself with the circumstances»\(^{32}\).

In both cases we are moving into a context semantically closed to that of “knowledge”, that is in a context broadly similar to those covered by roots such as ‘*alima, faqiba* or *naqaba*\(^{33}\). Let me say that if we could delineate the differences

\(^{30}\) And as such it has as synonyms *ādat* and ‘*amal*. But “customary laws” are also the *yasa* and the *yosun* of the Mongols or the *pashtünwālī* of the Pashtun nomads, and so on (including, probably, the Ottoman *qānun*: see Douglas A. Howard, «Historical Scholarship and the Classical Ottoman Kanunnames», *Abhirmum Ottomanicum*, 14, 1995-96, pp. 81: «The validity of the *qānūn*names rested on the principle of ‘*urf, a legal category with a long and complicated history in Islamic jurisprudence. This principle asserted the authority of the temporal Muslim ruler to regulate the affairs of state which fell outside the explicit jurisdictional boundaries of the *sberiya*»). Anyhow, every one of those materials represents a (different kind of) traditional set of “codes and customs” that «were in tension» with the *ṣbara* (which saw also another “tension” – see following note – in the dialectics existing between its four *uṣul* and the *mażabbs*). Regarding the concept of ‘*urf as “customs” see also note 43.


\(^{33}\) Let me just hint to the fact that «the difference between ‘*arafa* and ‘*alima* is that the former refers to distinct and specific knowledge, while the latter is more general; hence the opposite to ‘*arafa* is ankara “To deny”, and to ‘*alima, jabila, “To be ignorant”» (John Penrice, *Dictionary
between these terms this would help us make a further step toward the understanding of AMNM. Also because «on trouve mention du ‘arif en ce sens\textsuperscript{34}, semble-t-il, dès les temps ummayades, en relation directe avec le kādi, antérieurement à l’apparition de l’office du muhtasib [...]. Mais c’est surtout à partir du VIe/XIIe siècle que les mentions des ‘urafā’ deviennent fréquentes, dans les traités à l’usage des muhtasibs, dont ils sont maintenant les auxiliaires»\textsuperscript{35}. A precise, typological connection between the ‘arif and the muhtasib then exists, and not only at a level of linguistic roots or of semantic meanings, but also in their practical, daily jobs. Not to mention the widely assessed role of the ‘arif as chief of the guilds in the sūq, and then – very schematically speaking – as an official under the control of the muhtasib.\textsuperscript{36} Unfortunately, due to the shortage of time, I can’t go further for the moment into these promising fields.

Also because restricting myself to ma‘rūf as deriving from the root ‘arafa meaning «to know, to be acquainted», I have another, very strange detail that is worth mentioning. It is something that still puzzles me very much, something that today I dare to call just a “philological-institutional coincidence”.

The strange coincidence that makes me wonder is the following: in the first centuries of the Muslim world ‘arif was

\textit{and Glossary of the Kor-an, with grammatical references and explanations of the text. Arabic English, London, King and Co, 1873 (reprint Beirut, Librairie du Liban and Lebanon Bookshop, n.d.), p. 96}. Regarding the root naqiba, it is important for my discussion because of its meaning «to search and investigate» and of the existence of the Muslim official called naqib: see BLIGH-ABRAMSKI, \textit{The judiciary, loc. cit.} and Michael WINTER, «The ashrāf and the Neqābat al-ashrāf in Egypt in Ottoman and Modern Times», \textit{Asian and African Studies} (Jerusalem), 19, 1985, 17-45 (I could not see it yet) and the other essays mentioned in DE WEESE, \textit{The descendant}, p. 615 notes 16 and 17.

\textsuperscript{34} That is as «chef d’un métier, bien que le terme [‘arif] soit en concurrence (ou en rapports hiérarchiques variables) avec d’autres, tels que naqib, ra‘ī, ou simplement shaykh, qu’il tombe en désuetude à l’époque ottomane, et enfin soit le plus souvent en Occident remplacé par amin». \textit{Loc. cit.} in following note.

\textsuperscript{35} Saleh A. EL-ALI et Cl. CAHEN, entry «‘Arif» in EP\textsuperscript{2}.

\textsuperscript{36} This wide aspect, connected to the social and institutional organization of the sūq and of the guilds in the Muslim world, has been the topic of many discussions and of many researches in the academical arena. To mention only one reference tool, see the relevant indications in Haneda & Miura’s book mentioned in note 99.
also the name of an official specially appointed in each tribe
with as yet not well-known responsibilities. What cares here
is the fact that «the sources report that the armies of Kufa
were divided into numerous units (‘irāfa), each headed by an
‘arif who would distribute the stipend, and probably collect
blood money as well».

In the ancient Roman world there was an official called
censor which later on gave its name to our “censor” (of
morals). But in the origins this officer was in charge of the
recording (census) of Roman citizens, an operation which,
according to the traditions, was introduced by King Servius
Tullius (VI century B.C.) in order to divide the Roman peo-
ple – still organized in familiae (i.e. tribes) – into different
classes of income for military reasons. Census derives from an
Indo-European root *kens, which is at the basis of English
“census” in the meaning of «official numbering of population
or of a class of things, with various statistics [L. (censere,
assess)]». In all the Neolatin languages there are still in use
also the similar words “censo” (Italian) or “cens” (French),
or “censo” (Spanish). But going back again to Roman censor,
this same man had «a sort of jurisdiction on the cus-
toms for what concerned the offences of the mores maiorum.
Such a regimen morum (cura morum) of a censor type punished
any behavior juridically admissible but morally not ap-
proved».

38 Bligh-Abramski, The judiciary, cit., p. 48 and cfr. El-Ali & Cahen,
entry ‘Arif, cit.
39 The Concise Oxford English Dictionary, under entry “census”.
40 «Patrimonio, o reddito accertato a fini fiscali [...]. Complesso di beni
e di ricchezze posseduti», G. Devoto & G.G. Oli, Dizionario della Lingua
italiana, Firenze, Le Monnier, 1986, sub entry “censo”.
41 «Quotité d'imposition nécessaire pour être électeur en certain pays»,
Petit Larousse, Paris, 1964, sub entry “cens”.
42 «Hist. padrón de personas y bienes que hacían los romanos cada
quinquenio, [patrimonio, bienes gravados de impuestos | renta, rédito,
propiedad, fortuna», Lucio Ambruozzi, Nuovo dizionario spagnolo-italiano e
italiano-spagnolo. vol. II. Italiano spagnolo, Torino, Paravia, VI ed., 1967,
sub entry “censo”.
43 By the way, «custom in English means: 1. usual way of behaving or
acting; (Law) established usage having the force of law; 2. (in pl.) duty
levied upon imports from foreign countries, area at port etc., where goods
are examined [and hence counted!, G.V.] for this purpose» (Concise Ox-
ford English Dictionary, cit., under entry “custom”).
44 «In Zusammenhang damit üben die censors eine Art Sittengerichts-
Strange, isn’t it, this “philologico-institutional coincidence” between the ancient Roman censor and the Muslim ‘arif, both of them being officials acquainted with tribal affairs and with people counting for military reasons and also with control of public behavior?

But even stranger if you remember that hisba too derives from an Arab root meaning precisely «to compute, to reckon, to take s.th. or s.o. into account or into consideration»45. So probably you can understand why these coincidences are puzzling me46: must we suppose that both the censor and the ‘arif and/or the muhtasib were first connected with reckoning and only later had to deal with public morality? Or were the two activities intertwined since their beginnings?

I know that the question of the relations between Roman and Muslim laws and institutions is a very much disputed one47. Notwithstanding this, I cannot help thinking that a

barkeit hinsichtlich Verletzungen der mores maiorum aus. Dieses zensorische regimen morum (cura morum) ahndet rechtlich zulässiges, sittlich aber mißbilligtes Verhalten...» (entry «Censores» in Die Kleine Pauly. Lexikon der Antike... bearbeitet und herausgegeben von Konrat Ziegler und Walter Sontheimer, Stuttgart, A. Druckenmüller Verlag, 1964-1975; Italics in the English translation are mine, G.V.). For a very short introduction to this topic, see also the connected entries Censuales and Census in this same Encyclopedia. I had to leave for the hoped, future, developments of this research the analysis of these same entries in the Grosse Pauli Wissowa, old and new edition and other relevant literature. Anyhow, for a short introduction see also the entries under «Censor» in the The New Encyclopedia Britannica, vol. 10 (Micropaedia. Ready reference), pp. 21 (in particular the first one, on the ancient Roman censors, as the second one deals with the «traditional East Asia governmental officials»).

45 Hans WEHR, A Dictionary of Modern Written Arabic, ed. by J. Milton COWAN, third printing, Wiesbaden, O. Harrassowitz, 1971, under entry basaba. See also here note 33.


47 Of the few researches I know that follow this comparative approach worth mentioning is Antonio D’EMILIA, «Per una comparazione fra le piae causae nel diritto canonico, il charitable trust nel diritto inglese e il waqf khayri nel diritto musulmano», in Atti del I Congresso di Diritto Comparato, I, Roma, 1953, pagg. 187-230, now also in Antonio D’EMILIA, Scritti di diritto islamico raccolti a cura di Francesco CASTRO, Roma, Istituto per l’Oriente, 1976, pp. 237-276. In my opinion the conclusions of D’Emilia
functional, institutional comparison between those two magistrates will be fruitful, or at least as interesting as the parallel one so often discussed between the muhtasib and some classical Western magistrates such as the agoranomos. But I will discuss this aspect in a short while.

Remaining for one more moment on the root ‘arafa, I must remind first that the exact roles and functions of the ‘arif in its historical and regional evolutions are far from being understood, and, secondly, that in medieval Iran there existed officials called ‘ummāl-i ‘urf, that is «people administering customary law», as translates A.K.S. Lambton, who anyhow adds a question mark between brackets.

But we are been shifting toward the other name identifying the issue I am discussing, that is hisba, with a variant in ihtisāb and a name of agent muhtasib.

Let me begin remembering that hisba is not a Qur’anic word, even if the root itself is far from absent from this text, where it has different meanings, all connected to the idea of


48 Obviously we must never forget that always and everywhere there existed officials in charge of the control of public morality and/or of public spaces, first of all of all the markets in any form.
51 I don’t care now about alternative titles connected to this same root, such as ihtisāb āgbāsī and so on. The problem is different concerning other names of this kind of officers, such as sāhib al-sūq: on this see below. Still another question regards the identification of the umūr-i hisbī, an expression used in Persia (and elsewhere?) to identify “collectively” a set of issues which in the past were dealt with by the muhtasib and then, after the Safavids, were followed by the marja’ al-taglīd. Those issues «comprenaient la perception du kbums et de la zakāt, l’administration des successions et des testaments, la nomination de tuteurs pour les mineurs et autres», briefly «celles de ses [of the muhtasib, G.V.] fonctions concernant l’administration de la justice shari‘a» (Lambton, entry «Hisba, III: Perse», EI).
“counting”. An element is worth being stressed: in all the instances the root *hasaba* is never connected with the roots ‘*arafa* and *nakira*: such an event in fact never occurs. An immediate consequence of this ascertainement is that we have no hints from the Qur’an that can help us understand why AMNM has been connected to the *hisba*. No wonder then if, as far as I know, no scholar has yet proposed a satisfactory explanation regarding the reasons why the AMNM has been afterwards called *hisba*.

To be more explicit: it remains absolutely unclear why and when the Qur’anic injunction of AMNM lost its characteristics of a free, individual, pious obligation (*fard al-*‘*ayn*), and as such absolutely voluntary (*mutatawwir*) to become (?) a *fard kifāya* (and as such satiated on the same level of *imāma* or *jihād* etc.) and/or to pass under the umbrella of the *wilāya*, of a delegation of powers to a particular individual from the leader of the community (*imām*, *khalīfa* or *sulṭān*), becoming the *hisba*, a duty later on limited to the markets.

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52 It appears 108 times in 101 verses.

53 There is only one single occurrence of the roots *nakira* and *hasaba* together in a same verse: «How many populations that insolently opposed the command of their Lord and of His apostles did We not then call to account to severe account [fa-*hasabnāha hisāban shadīdan*]? And We imposed on them an exemplary Punishment [‘*aduban nukran*]» (65,8). The roots *hasaba* and ‘*arafa* never occur together.

54 See for instance D. & S. SOURDEL, *Dictionnaire*, cit., s.v. *hisba*: «...le sens connoté par sa racine, celui de “compte”, ne se laisse pas rattacher de manière satisfaissante à l’obligation susdite [i.e. AMNM, G.V.]. Certes, le *muhtasib*, personnage assumant la *hisba* à titre personnel ou officiel, pourrait être “celui qui obtient une récompense dans l’au-delà en pratiquant la *hisba*”; l’étymologie cependant reste douteuse». As far as I know none has tried to connect the question of the name *hisba* to the *hasab wa nasab*, an element so important in Muslim tribal cultures.

55 Muslim scholars themselves – e.g. al-Mawardi – divide between the “volunteer” *muhtasib*, i.e. the ordinary Muslim believer (only male, or male and female?) who takes it upon himself to fulfill the Qur’anic obligation to AMNM, and the “official” *muhtasib* (again: only male, or male and female?), mandated by the government to undertake it as a public responsibility. See, for an introductory approach, BUCKLEY, *The muhtasib*, cit., p. 67 or TIYAN, *Histoire de l’organisation judiciaire*, cit. II, p. 441 and ff. Regarding the questions I asked in parentheses see as a first indication al-Ghazālī: «il [the *muhtasib*] doit remplir plusieurs conditions: être pleinement capable (*mukallaf*), Musulman, puissant, ce qui exclut le fou, l’impubère, l’infidèle et l’impuissant; mais inclut les individus parmi les sujets du Prince, même s’il ne sont pas autorisés par les pouvoirs publics, le libertin (*fāsiq*), l’esclave et la femme» (BERCHER, L., *L’obligation*, cit., XVIII, p. 66).
Anyhow, as far as I am today able to offer suggestions, no conclusive explanation exists yet. Ideas are a bit more sound regarding the moment of the appearance of the *muhtasib*, that is the officer in charge with this function. All scholars agree that this title, *muhtasib*, was first used with the meaning of “market controller” during the early decades of the ‘Abbasid Caliphate, even if there is no unanimity as to when exactly the institution made its appearance.

Indeed the problem is complicated, because even before Islam in Arabia (and in the lands that would quickly become the *dār al-islām*) there existed both aspects of *hisba*, the “moral duty” and the “market control”. As something more is known about this last aspect, I will deal beforehand shortly with the “moral issue”, or “apostolat moral”, to use the expression of Alfred Morabia.

In his book on the *jihād* this scholar remembered that Ignaz Goldziher «a noté la parenté de la notion islamique avec la formule juive: «celui qui a la possibilité de formuler un reproche et qui ne le formule pas est responsable de cette lacune [...]», et y trouve une frappante analogie avec l’institution chinoise de la juridiction des moeurs, le TuKha-Yuan, en vertu de laquelle l’empereur était considéré comme le censeur suprême. On pourrait également évoquer la fonction

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56. Obviously before reaching a firm conclusion, one has to check carefully classical Arabic dictionaries and also Qur’anic *tafsīr* and so on; a kind of research I have not yet had time to do.

57. But what was born first: the actual officer (i.e. *muhtasib*) or the theoretical function (i.e. *hisba*)? See also above note 11.

58. Anyhow, remember that there is an isolated tradition referring to a certain Ḥākīm b. ‘Umayya stated to have been a *muhtasib* in Mecca during the *jābiliya* «ordering good and forbidding evil». Buckley affirms that «the title is no doubt anachronistic despite one scholar’s [i.e. M.J. Kister, G.V.] use of it as an example of the rank to which a *halīf* could attain in pre-Islam. But perhaps there is a germ of truth contained in the report and it can be taken to indicate that Ḥākīm was in fact a market inspector of sorts» (BUCKLEY, «The *muhtasib*», cit. p. 59-60). See note 4 above. The *halīf* was a member of a clan of the Quraysh, opposer of the *Muṭayyabūn*; see KISTER, Some reports, cit., pp. 81 and ff.

59. «The reigns of Abu Ja’far al-Mansur (reg. 754-75 AD), al-Mahdi (reg. 775-85 AD), and al-Ma’mun (reg. 813-33 AD) are all suggested, but curiously no one offers any argument to back up their claim, but unfortunately the existing evidence is still insufficient to reach a sure date»: BUCKLEY, «The *muhtasib*», cit., p. 65. For another general discussion on the topic see also CAHEN & TALBI, Ḥisba, Généralités, cit.
qu’exerçait à Rome l’édile curule»

But it is not necessary to arrive into China, following the famous hadith, to discover ancient traces of such a duty: the more than probable relation between the muhtasib and some officials of the Roman, Byzantine and Hebrew-Rabbinical worlds, that is to say of the Mediterranean area generally speaking, has been widely discussed first by B. Foster\textsuperscript{61} and then by D. Sperber\textsuperscript{62}. And to the manifold examples proposed by these two scholars one has now to add also those regarding the ancient Iranian world as presented by W. Floor in his «The Office of Muhtasib in Iran»\textsuperscript{63}.

It is true that most, if not all, of the passages quoted by Foster, Sperber and Floor refer to the “market inspector” side of hisba. But here and there it appears that many of those officials had also “moral engagements”\textsuperscript{64}. So this brings us again to one of our background problems, lying exactly around this knot: which were the limits of intervention of these officials in the different cultures? Or, to repeat myself: were the “morals” intertwined with the “markets”? And why? and how?

I am not yet able to answer completely to these questions, as my hypotheses are still too embrionic. But before shifting decidedly toward the “practical” side of my topic, I wish to introduce some others small tesserae that can be useful to better appreciate the mosaic I am trying to delineate in order to understand the Islamic institution. These tesserae in reality are related to the famous parallel institution of the Byzantine


\textsuperscript{63} Willem Floor, «The office of muhtasib in Iran», \textit{Iranian Studies}, XVIII, 1, winter 1985, pp. 53-74, in particular pp. 57 ff. A German version of this article was published in \textit{Revolution in Iran und Afghanistan}, ed. K. Greussing und J.-H. Grevemeyer (Frankfurt: Syndikat, 1980), pp. 122-139.

\textsuperscript{64} The details would be too long to be exposed here. Consider anyhow the censor above, and below the agoranomos and the episcopos.
world, which some scholars have pointed to as the origin of the *hisba*, that is the *agoranomia*.

I leave aside for the moment any direct answer to the question, as raised for instance by Floor: «Was the *muhtasib* the successor of a Byzantine official with a similar task?»\(^{65}\), because I think that it has to be asked in a relatively different way, and I stress some other details. First of all, it is very important to understand exactly what was the *agora* in the Greek and Byzantine cultures. In fact it was not (or, better: not only) the place where the market was held, but it was «the assembly dedicated to the care of the *agorenein*, one of the most important activities of the life of the Greek state»\(^{66}\).

The *agora*, connected in the Pauli-Wissowa also to such institutions as the Ding of the Germans and the Swiss *Landesgemeinde*, had as a counterpart in the Roman world the *forum*, again the place for the market but also the institution (physical and theoretical) for the public life of the communities.

Here – as probably the reader may realize – flashes one of the crucial turning points of my hypothesis, a knot that can be made explicit through the following questions: were the Greek and Byzantine *agora* and the Roman *forum* culturally and institutionally similar to the *sūq*? And was the *muhtasib* in charge of the *sūq* or was he in charge of the activities and behavior of the public areas of the Muslim towns? This last question is very crucial, as it has often been noted – rightly – that in the Muslim world there was no “communal life”, nor “communal institutions”, so that the *muhtasib* has been proposed as a possible officer (or sometimes as the only officer) in charge of city life and of the contacts between the central power (or powers) and the local population\(^{67}\). I shall return to these aspects at the end of the paper.

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\(^{65}\) Floor, *The office*, cit., p. 57.

\(^{66}\) See entry *Agora* in *Die Kleine Pauli Wissowa*. I have translated with «Greek state» the German «griech. Staatsleben», although this last has a slightly different meaning, less centered on the (modern, Western) notion of “State”.

\(^{67}\) See, for instance, Cahen & Talbi, *Hisba, Généralités*, cit. p. 505: «Toutes obligations [discussed by the Authors in the preceding lines, G.V.] qui ont fait parfois considérer le *muhtasib* comme un (et en Islam le seul) fonctionnaire municipal: il ne l’est pas plus que le *kādi* dans la nature de sa fonction puisqu’il n’émane d’aucune organisation urbaine ni professionnelle, mais le contenu de son activité consiste en effet spécifiquement et exclusivement en affaires urbaines».
For the moment being, another consideration could be fruitful in analyzing the *muhtasib* through the functional lenses offered by the *agoranomos*. Indeed – as it has been mentioned – beside the *agoranomos* himself many other officials of the Byzantine world have been suggested as having duties parallel to those of the *muhtasib*\(^{68}\): the *aedile*, the *logistes* (Foster: «apparently often equivalent to a Roman *curator*»), the *eirenarch*, the *astynomos*, the *eparx* and so on\(^{69}\), to which now one can possibly add also the *censor*, if the “philological-institutional coincidence” I have indicated above could be substantiated.

But there is one last official mentioned by Foster that deserves to be kept in mind. This scholar in fact writes that «One of the most interesting candidates [for the activities of «inspecting the markets, especially at the time of the Arab conquest»], p. 137] is the rather shadowy personage called the “*episcopos*” who seems to be unique to Syria. Like other administrative terms we have discussed, this one could have several meanings. The word can mean “overseer” or “foreman”, a man appointed for a specific building job. […] Waddington, citing Charasius, a jurist who wrote at the time of Constantine, says, «leurs functions... étaient donc analogues à celles des agoranomes, et il est possible que les magistrats appelés agoranome en Grèce et généralement dans les pays helléniques aient porté dans l'intérieur de la Syrie le titre d'épiscopes». On the other hand the *episcopi* are frequently mentioned in conjunction with religious terminology, which is seldom the case with the *agoranomos* except in a few isolated instances in Asia Minor. It appears the *episcopi* may have had some connection with a religious hierarchy under the early empire. Waddington makes the interesting suggestion

\(^{68}\) Quite singular is the fact that at least in the Irano-Muslim world the “market duties” of the *muhtasib* were sometimes dealt with by other public officials variously called, such as *kalāntar*, *dārūgha, ra‘is-e bāzār* and so on; see on this question W.M. Floor, «The Market Police in Qajar Persia. The Office of *dārūghē-yē bāzār* and *muhtasib*», *Die Welt des Islam*, 1971, XIII, pp. 212-229; IDEM, «The police in Qajar Persia», ZDMG, 1973, 123, pp. 293-315, and his yet mentioned essay *The office*, with the relevant bibliography. I have not yet found any discussion on variant names of the officials in charge of *hisba* in the Arab-speaking world, apart such specialized and inscribed titles as *sāhib al-sūq* or *amir al-sūq* or *‘āmil ‘alā l-sūq*.

\(^{69}\) See FOSTER, FLOOR andSPERBER. I don’t mention here the slightly different characteristics of the Hebrew or Sasanian officers suggested by these last two scholars.
that the Christians came to borrow this title for one of their own administrative functions, perhaps because of some similarity of function or role of early bishops and municipal episcopi. Whether the episcopi inspected the markets or not is unclear, for we fail to see how Waddington justifies the statement we have quoted above from the evidence he cites, or indeed from the frustratingly fragmentary information from the inscriptions»70.

Well, now I can positively affirm that it is no longer “unclear” whether «the episcopi inspected the markets or not». Indeed around the V-VI centuries «i vescovi [cristiani] approvavano i pesi e le misure usati nella piazza del mercato, e dovevano curare l’integrità delle mura delle città»71.

However the case of the episcopi is interesting not only as an example of (another) Byzantine official with a two-fold task similar to that of the muhtasib, but inasmuch as it offers once again, and in this case also well into the Christian world, the proof of the existence of a functional connection between the religious (and then, for sure, “moral”) sphere of the life of a community and the market or public area of the activity of this same community. Anyhow this comes absolutely not as a surprise, as «the agoranomos among other things [was] being appointed to check the frauds of the merchants and to maintain control over the temples in the market and make sure that no crimes are committed in them, that is, he was concerned with the religious and secular affairs in the market place»72.

As we are more and more plunging into the analysis of the hisba as the institution devoted to the “market control”, I will now deal principally with the “market approach”73. Let me recall first of all that in the Muslim world we do find, beside the muhtasib, also other officials explicitly in charge of overseeing the market, with titles such as sāhib al-sūq74, wāli

71 Peter Brown, La formazione dell’Europa cristiana. Universalismo e diversità, 200-1000 d.C., Bari, Editori Laterza, 1995, p. 139 (English edition: The rise of Western Christendom, Blackwell, Oxford, 1995). Remember that one of the duties of the Muslim muhtasib was precisely to verify the situation of the urban walls.
72 Buckley, The muhtasib, cit., p. 63.
73 Idem, pp. 83 and ff.
74 Hence “el señor del zoco” of Spain studied by Chalmeta Gendron
'l-sūq, amīr al-sūq, ʿamīl ʿalā 'l-sūq and so on. But this is a
detail for the moment. I would rather examine the “secular
duties” of the muhtasib, to use the definition of R.P. Buckley,
the best and the most recent representative of the “market
approach” side.

Actually, it seems difficult to define them exactly. Buckley
himself begins this part of his article with the following
notation: «The duties attached to the office of hisba may for
convenience be divided into two main categories: those which
would tend to encourage the orderly and equitable running
of the market, and those responsibilities which have as their
aim the censorship of public morals and the correct execu-
tion of the Islamic ritual. In this dichotomy we see the essen-
tially dual nature of the muhtasib».

Anyhow, using as reference tool Buckley’s order of presen-
tation, I shall try to sketch them. First among the “secular
duties” of the muhtasib there is the control of weights and
measures (and, connected with this, the responsibility of the
daʿr al-iyyār, of the mint and of coinage); then the control of
Sawābil, in the sense that the muhtasib «had responsibili-
ties concerning with at least the three [Egyptian] ports of
Qahira and Mistr/Fustat»; the control of aswāq (a term prob-
ably meaning the slave markets); the charge for ensuring the
clear passage of public highways. Then obviously there is the
big chapter of the regulations of trades and professions: «in-
cluded among the trades and professions dealt with by al-


75 I have to underline immediately one detail as it can be very impor-
tant for my future discussion: the Prophet Muhammad is said to have
engaged a woman, Samra bint Nuhayk al-Asadiyya, over the sūq of Medi-
na; more on, she is not the only woman to have been entrusted with this
function, as ʿUmar b. al-Khaṭṭāb is also reported to have employed al-Shīfā
bint ʿAbd Allāh over that same market. Buckley comments «It is not
unlikely that the women had jurisdiction over the women’s section of the
market (a common feature of Muslim markets today [? , G.V.], and no
doubt then also). However, no more women are ever identified in this
role» (Buckley, The muhtasib, cit., p. 60).

76 Idem, pp. 81-82.

77 I.e. «the government office in which the scales, weights and mea-
sures were theoretically to have been produced and periodically exam-
ined», idem, p. 86.

78 Buckley deals only with one specific region of the Muslim world;
however in his article this limitation is never expressly announced, even if
he discusses principally sources related to Egypt and Syria until the Fatimid
and Mamluk epochs.
Shayzari are the following: butchers and slaughters; fryers of fish; makers of harisa; sausage-makers; perfumers; tailors; educators of boys; confectioners; grainsellers and millers; apothecaries; blood-letters; doctors, and so on."

After such a complex set of activities falling under the control of the muhtasib, Buckley mentions his incumbency on the maintenance of the "general welfare". This includes his authority to divide the different trades into their particular areas; to check that the bakers have stored the amount of flour necessary for a period of at least some months, so that a ready supply could allow for epidemics, or a drought, or perhaps even unscrupulous speculations. Indeed one of the muhtasib's general duties was to ensure that none hoarded or withheld from the market any kind of foodstuffs in the hope of a rise in prices.

79 Here the contemporary scholar must raise some questions: which kind of schools were involved? Maktab or madrasa or every kind of teaching institutions? Secondly: why were schools put under the control of the muhtasib: to censor the contents of what was taught in them or to verify that the teachers act correctly toward their pupils? (By the way, this second option seem to be the correct one: see for instance Ishaq Musa Al-Husaini, «Hisba in Islam», The Islamic Quarterly, London, 1966, X, 3 & 4, pp. 75, and also Cahen & Talbi, Hisba, cit., p. 505: «[le muhtasib] pénètre dans les écoles pour prévenir ou châtier les excés de dureté des maitres»). Finally, one last question: what about the "control" of the schools for young girls (if any)?

80 The problems of hisba with the doctors and the people connected to the medical art is a bit complicated, but anyhow it has yet been dealt with. Unfortunately I could not see M. Levey, «Fourteenth-Century Muslim Medicine and the Hisba, Medical History, 7 (1963), pp. 176-182; S. Hamarneh, «Origins and Functions of the Hisbah System in Islam and its Impact on the Health Professions», Sudhoffs Archiv, 48 (1964), pp. 157-173; and Ghada Karmi, «State Control of Physicians in the Middle Ages: an Islamic Model», in A.W. Russell, (ed.), The Town and State Physician in Europe from the Middle Ages to the Enlightenment, Wolfenbuttel, 1981, pp. 63-84, all indicated by Glick, New Perspectives, cit., where two pages (486-87) are devoted to «The hisba and Medicine».

81 Buckley, «The muhtasib», p. 94. Al-Shayzari's text is obviously the Nihayat al-rutba fi talab al-hisba, Cairo, 1946. The list of trades and professions controlled by the muhtasib could be much longer, detailed and diversified, but at the present level of my analysis this short summary is enough complex and articulated. For a practical approach to the issue, see the documents nn. VIII, XVIII, XIX, XX, XXI published in Nicoara Beldiceanu, Recherches sur la ville ottomane au XV® siècle. Étude et actes, Paris, 1973.

82 Remember that there is no unanimous agreement among Western scholars on the issue of «price control». Another point much discussed is whether the muhtasib could or not fix the prices of the commodities.
But the *muḥtasib* also had to verify that the ovens of the bakers had chimneys sufficiently wide to facilitate the dispersal of the smoke, thus causing no harm to the populace. Likewise, he had to order the merchants to sweep the market alleys and keep them clean.

Next to this duties, but always under the general heading of «The *muḥtasib*’s duties: Secular», Buckley adds some “miscellaneous prohibitions” such as «to enforce the ruling of the *shari’ā* concerning the censure of singing and of musical instruments», or «to censure the drinking of alcohol, the chastising of the woman who violates her waiting period (‘idda)», and «the rebuking of anyone who formulates interpretations contrary to the Qur’ān’s obvious meaning»\(^{83}\). And at this point Buckley remembers that al-Mawardi remarks how under certain circumstances the *muḥtasib* is responsible for the collection of the zakāt and the *ṣadaqa*\(^{84}\).

Buckley’s illustration continues with what he calls «The *muḥtasib*’s Duties: Religious and Moral», that is «those aspects of the *muḥtasib*’s jurisdiction which had a more or less direct bearing on the precepts of the *shari’ā* and Islamic ritual». Here he reminds us that this officer «oversees the mosques and orders their attendants to sweep them every day, to clean them of dirt, to shake their mats free of dust, to wipe their walls and to wash their lamps and light them every evening», but also that he «must order the Qur’ān reciters to recite in it the correct manner as God ordered, and forbid them from reciting it like music and with musical voices, as songs or poetry» or finally that «he was also obliged to ensure the correct performance of the prayer»\(^{85}\).

The summary goes on with «another major feature [...] which comes under the general heading of religious duties, [that is] the enforcement of those discriminatory measures which ensured the differentiation between Muslim and non-Muslim»\(^{86}\). Nor obviously are «the sexes» absent, because,

\(^{83}\) Buckley quotes here Al-Mawardi, *al-Aḥkām al-Sultāniyya* (Cairo, 1983), p. 215. For my actual hypotheses is very significant the adjective “obvious”, that is “known”, “public”: *ma’rūf*. Unfortunately I could not yet check the Arabic original.

\(^{84}\) Buckley, *The *muḥtasib*,* cit., p. 103-104.

\(^{85}\) Again, note the adjective “correct”, that is to mean «done following the Islamic known and recognized ortopraxis».

\(^{86}\) Buckley, *The *muḥtasib*,* cit., p. 101. I feel that Buckley as well as other Western scholars miss the real meaning in the classical Islamic world
«leaving aside further examples of the muhtasib’s religious role we may now proceed to examine his sphere of jurisdiction as a censor of public morals»

As I don’t want to go further into this schematic presentation of the muhtasib’s practical job based on Buckley’s exposition, I finish by quoting his following words, worth mentioning as they introduce a very crucial element: «This feature of his duties was, of course, concerned particularly with the public relations between the sexes».

“Public area”, “public relations”, “public morals” (and perhaps also “ritual” as “public manifestation of the faith”): indeed in my opinion the solution of many of the problems I have been exposing all along this paper are implied in this adjective. “Public” means something that is universally known, that is recognized by the people, accepted by human knowledge, become part of a tradition, i.e. something that is ma’ruf.

Obviously also what is ma’lum is “known”, but ‘ilm has another semantic significance, being more directly connected, in Islamic mind and culture, to God. On the contrary ‘arafa is, so to say, a more “mundane”, more “temporal” knowledge of what they call “discriminatory measures”, like the wearing of the zunnār and the ghiyār. In my opinion “discriminatory” was “distinctive” in the sense of serving to identify the various groups: just think about the black turban of the sayyids, or the red conical hat of the Qizilbash and so on. But this question would need a global reappraisal of a topic of zimma that touches on hisba matters only in a marginal way.

87 It is very strange that always and everywhere, not only in the Muslim world, the “public morals” are first of all connected to “the sexes” and in particular to the “female behavior”. But again, this is too wide a topic to be dealt with now.

88 Buckley, The muhtasib, cit., pp. 104-105.

89 Remember that one of the “holy names” of God is ‘alim, very frequent (for instance II, 115, 181, 221, 255; III, 69, 73, 119, 154; IX, 28; XV, 86; XXXIII, 51; XXXVI, 79; LXXVI, 30), while there is none derived from the root ‘ara’af and one occurrence of hāsit from hasaba.

90 Adjectives that do not mean: “separated from the will of God”. I have tried to cope with the knot of the semantical meaning of ‘ilm in my book Istituzioni, cit., 231 ff. A similar possibility of misunderstanding could happen when referring to rituals of the so-called “popular Islam” such as the circumcision, a practice followed by all the member of Islamic umma, rich and poor, educated or illiterate, well-off and common people even if it is not mentioned in the Qur’an. What characterizes such rituals is that they are not sbarī, but only sunnati or ‘urfi. See again my Istituzioni, pp. 213 ff.
edge, more connected with what could be called the "accepted, traditional, secular, general opinion", something derived from and referring to not only God's (or another Superior Entity's) will or word, but also connected to «custom, usage, practice, convention, tradition, habit, legal practice»\textsuperscript{91}: in one word, "urf."

As I don't want to elaborate too much on this issue without wider philological proofs that I am still collecting, let me quote here just a short passage from al-Ghazālī that underlines another aspect of the semantical meaning of 'arafa. In his discussion on the four conditions that make an act of hisba\textsuperscript{92} valid, he puts as third level the fact that «la chose réprouvable soit manifeste pour le censeur, sans qu'il ait besoin de l'épier»\textsuperscript{93}.

Al-Ghazālī discusses this point quite a lot, relating first of all an episode in which the Caliph 'Umar discovered a man in a reprehensible situation after having climbed the wall of this man's house. But the culprit reacted accusing 'Umar of misdeed: "O Commandeur des croyants, si moi j'ai désobéi une foi à Allah, toi, tu lui as triplement désobéi [car] Allah a dit (Cor. XLIX, 12) 'N'épiez point', or tu as épié. Il a dit encore (Cor. II, 185): 'Pénétrez dans les maisons par leurs portes'. Mais toi, tu as grimpé par la terrasse! Et Allah a dit encore (Cor. XXIV, 27): 'N'entrez pas dans les maisons autres que les vôtres, sans en demander la permission et sans adresser le salut à leurs habitants'. Or, toi, tu n'as pas adressé le salut!" 'Umar laissa donc cet homme en paix et se contenta d'exiger de lui qui se repentisse».

Such a position is immediately made clearer: «Sachez donc que quand un homme ferme la porte de sa maison et se cache

\textsuperscript{91} Wehr, A dictionary, cit., entry 'urf.

\textsuperscript{92} Or of amr bi 'l-ma'raf, if you prefer: in al-Ghazālī the two aspects are totally intertwined, as is inevitable for a Muslim 'alim.

\textsuperscript{93} The first necessary condition is that the thing or act involved be "réprouvable" (munkar); secondly that «cette chose réprouvable existe dans le présent». The fourth is that «le caractère réprouvable de la chose soit connu sans qu'il soit besoin de recourir à l'effort de raisonnement personnel (ijtihād)» (Bércher, L'obligation, cit., XX, pp. 21 ff.). This last condition underlined by al-Ghazālī would bring us toward the question of the powers of the muhtasib to detect crimes and to inflict suitable punishments. A topic that I must leave totally untouched for now, even if it is very significant in a global analysis of hisba and of the role of the muhtasib in the life of the Islamic societies, as it will be clearer in a short while.
derrière ses murs, il n’est pas permis de pénétrer chez lui sans son authorization, afin de se rendre compte du péché qu’il commet, à moins que cela ne se manifeste dans la maison d’une façon telle que ceux qui sont à l’extérieur la reconnaissent».

Here all of a sudden another crucial aspect of Muslim culture enters the field: the idea of “inside” vs. “outside”, of “private” vs. (again) “public”, of what in Persian and Ottoman Turkish is called andarûn vs. birûn. That is the idea behind the root harûma or harima which in the Islamic culture means what is “prohibited”, but also what is “sacred”, as it refers in both cases to what is “reserved” for an individual, a group, a community or God Himself.

This becomes really important in my discussion of the muhtasib if we keep in mind that «of the important elements in the creation of the Islamic city […] the determining element is the Islamic legal/political system, which includes (1) spatial segregation by juridical distinction; (2) gender segregation by architecture and space, and (3) spatial segregation between public and private (the residential area as private space and the commercial area as public space). An Islamic city is one where all of these latter three elements functions effectively».

94 Bercher, loc. cit.

95 Remember that in Islam there are two kinds of “holiness” (not to speak of the baraka of the awliyâ), defined one through the root qadusa and the other through the root harûma. See on the question Jacques Jomier, O.P., «Le sacré dans le Coran», in AAVV, L’expression du sacré dans les grandes religions. II: Peuples indo-européens… Islam, Louvain La Neuve, 1983, pp. 339-385 and for an analysis of the root harûma in particular also my Istituzioni, pp. 172 and ff. For a broad survey of the awliyâ and their role see now Henri Chambert-Loir et Claude Gilliot, Le culte des saints dans le monde musulman, Paris, École française d’Extrême Orient, 1995, pp. 391; but many anthropological studies have been published on this topic in the last years.

96 Janet L. Abu-Lughod, «The Islamic City: Historic Myth, Islamic Essence and Contemporary Relevance», in JMES, 19, 1987, as summarized by Masatoshi Kisaichi, «The Maghrib», in Haneda & Miura, Islamic Urban, cit. below note 99, p. 41. Remember that “segregation” can be understood as a two-ways relation between “inside” and “outside”: it is the same problem I mentioned before regarding the notion of “discrimination” (see note 86). Allow me to quote once again my Istituzioni, pp. 22 and ff. where I deal with the importance of the ideas of “inside” vs. “outside” in the Muslim world, also in opposition to the ideas of “superior”, “high” vs. “inferior”, “low” predominant in the Christian culture.
Is the mosaic taking shape? Unfortunately things remain very complicated. It is not by chance that D. & J. Sourdell wrote in the passage I have in part previously mentioned of their *Dictionnaire historique de l’Islam* (see above p. 74) that the *muhtasib* «n’applique pas le droit pénal; il veille à faire respecter les règles de la bienséance musulmane en raison du principe que la pratique de l’Islam ne consiste pas seulement à éviter de commettre des actes dits *harām* [...] et à faire ce qui est “obligatoire” mais aussi à faire tout ce qui est considéré comme “recommandé” et à éviter tout ce qui est “blamable” ou “répréhensible”, en arabe *munkar*». But as everyone knows, the opposite of *harām* in the *shari‘a* is *wājib* or *halal*, not *munkar*!

I am sure that the confusion could be solved through a detailed analyses of the methods and the limitations of intervention of “civil”-“religious” institutions such as the *qādi*, the *muhtasib*, the *shurta* and the *nazar fi ’l-mazālim*. A goal that once again I leave for the follow up of this research. Let me just say at the end of this paper that while I am conscious that I have not answered many of the questions I raised at the beginning (for instance, those regarding the fairs or the *tujjār* or the tribes), I want to add some final considerations about the market and the town in the Islamic world as the places where the *muhtasib* acted.

It is useless to remind that there is a lively debate in the scientific arena regarding the existence and the characteristics of the “Muslim town”. For instance E. Wirth, in a paper

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98 See note 21 above and also the entry *harām* in this same *Dictionnaire*: «... le qualificatif *harām* équivalait à “interdit par la Loi religieuse”. À ce titre il doit être distingué du terme *munkar* ou “répréhensible” qui vient juste au-dessous de lui dans l’échelle des qualifications des actes humains établie par le juriste». By the way, no explication is offered by D. & J. Sourdell about this last “échelle”.

read at a conference in 1982\textsuperscript{100}, categorized five distinctive features of cities in the Islamic period; they were «a) cities founded in the Islamic period were systematic and planned; their labyrinthine and unsystematic nature increased in later centuries; b) blind alleys which riddled the space between the main access routes were consciously planned, not the result of haphazard development; c) houses with an inner courtyard; d) independent quarter; e) sūq. Wirth shows that characteristic 1 to 4 existed in the Orient before Islam and that it was the sūq as the commercial center which existed neither in the ancient Orient nor in Medieval Europe\textsuperscript{101}. Of the five characteristic, the sūq has the weakest connection with Islam as a religion»\textsuperscript{102}.

Quite a strange situation again: while reaffirming that from the point of view of spatial organization, use of the territory and economic functions the “Muslim town” was substantially similar to ancient towns, in particular to Roman and Greek ones, Wirth maintains that the only real innovation in the dār al-islām had been the bāzār o sūq or çarşī. That is to mean that the only Islamic innovation was the one with «the weakest connection with Islam as a religion»!

But the real question is: what has to be meant with «Islam as a religion»? And in our context: is only a chance that the ḥisba acts in the space with the «weakest connection with Islam as a religion»? The stress then shift again towards the analyses of the sūq, «a social institution, comprising religious, commercial, political, and social elements [...] the center par excellence of personal transactions, commerce and communication in urban life». An area which, quoting another expert, «was recognized by Islamic law as designated locus of sociability. The purpose of transactions in the bāzār was beyond a mere exchange of commodities; it was exchange in the context of religious norms and cultural values»\textsuperscript{103}.

\textsuperscript{100} Eugen WIRTH, «Zum Problem des Bazars (sūq, çarşī)» Der Islam, 1974, LI, pp. 203-260 and 1975, LII, p. 6-46.
\textsuperscript{101} By the way, if Wirth is right, it makes no sense to approach the muhtasib to the agoranomos as “market controllers”.
\textsuperscript{103} Entry «Bāzār» in EnIr, divided into the following section: «General»
May I conclude this preliminary paper proposing substituting “religious norms” with the word *shari’a* and “cultural values” with the word *urf*, both with juridical, historical and social realizations that appear through the Muslim institutions and that modify their original meanings? Here lies in my mind the link between “morals” and “markets”, very broadly understood as “individual”, “private” space vs. “public”, “political” space, in the Muslim world. I hope that these hypotheses, even if still only on a sketchy level, could help our understanding of the Islamic societies.

**ABSTRACT**
The Qur’an refers many times to the duty for the believer to “order Good and prohibit Evil”, a duty known as *hisba* for reasons that have not yet been explained by scholars. A first aspect must be analyzed: in the original Arabic formula (*al-amr bi ’l-ma’ruf wa ’l-naby ’an al-munkar*) there is absolutely no idea either of “Good” or of “Evil”. As a consequence an initial point of my article will discuss what *ma’ruf* and *munkar* refer to in this expression. Parallel to this there was in the Arab-Muslim world the ‘āmil al-sūq, an officer in charge of the control of the market that since the ‘Abbasid caliphate was called *muhtasib*. Slowly the role of this *muhtasib* became primarily that of market controller, and this officer became one of the top members of the government, while his duty regarding the *amr bi ’l-ma’ruf wa ’l-naby ’an al-munkar* appears at a first glance to have been reduced. But the “old” *hisba*, intended in a “moral sense”, still works, for instance in today’s Saudi Arabia and in Egypt, with the stress only on the sheer control of the “public morals”.

**KEY WORDS**