ADOPTION AND WARDSHIP (*KAFĀLA*)
IN MOROCCO *

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It is commonly believed that Islam forbids adoption, but while textually and legally this is correct, the practice of adoption, and similarly related phenomena, do exist in those parts of the world structured by Islamic facts. In this paper, the focus will be on those "intricacies" of adoption in the Muslim context that Morocco happens to be. I start with a set of semantic defining moves of what "adoption" is in Arabic and the Moroccan vernacular; then I offer a critical reading of the current Moroccan legislation in effect while tracing its roots to those founding moment of Muslim revelation and the Qur'ānic prohibition against adoption. I close this paper then with a brief presentation and discussion of what it is that welds, and also dismembers, adopting families in terms of the lived-relationship and affect; issues that occur outside the boundaries of both the legislative and religious realms. The kind of language and vision they produce is equally part of the intricacies of adoption.

1   Semantic Definition

Adoption, in terms of the primary Saussurean distinction of concept and image-sound, molds/glosses a given meaning. To think of the English word adoption is to primarily evoke the fiction of parenthood in which a filial relationship outside the biological bond emulates and enacts the latter by the order of law. Arabic offers, as a matter of fact,

an array of "signs" each one of which encapsulates-describes practices and beliefs that are quite nuanced in their differences. The choice of the "sign" itself performs a shift in the very understanding and implication of the enunciation. To illustrate these enunciative choices here, the following is a presentation of those linguistic referents and practices as deployed and defined within various social, affective, and legal realms.

Formally, the practice of what is understood as plain adoption in the Euro-American context is strongly prohibited in Morocco. Due to this legal interdiction, Jack Goody affirms that *"Arabs forbid adoption"*[1] (emphasis added); but such a reading is accurate only when containing one's inquiry to the realm of orthodox Sunni legality and jurisprudence for, it seems, Jack Goody has in mind the Euro-American understanding of adoption as an erasure of natal identity and the function that it fulfills, that is of giving *parents to a parentless child and a child to childless parents*. Delving, however, within Moroccan cultural formations and social history there is ample evidence contrary as to Goody's assertion. As a matter of fact, various styles of fosterage, exchange, guardianships, even adoptions were, and still are, practiced. So while legally what is implied by a plain adoption is strictly forbidden in Morocco, various *culturally* sanctioned forms of adoption do exist.

There is a family or customary-adoption by which I mean the gift of a child from one family (or individual) to another. The sign employed in Moroccan Arabic is trebi. The scenarios may vary widely, but generally in this kind of what I call *customary-adoption*, a family with no child or one with only boys or only girls may solicit a brother, a cousin, or even a neighbor who may be willing to entrust[2] a child to them. This gift between close kin (agnate or collateral), is an informal transaction that does not require a "legal" procedure.[3] The ties between adopted child and biological family are usually sustained; so for example, the filiation would remain that of the biological family were the names of the families different. This might seem a simple relocation or a transfer of the guardianship of the child to a host family: uncle, aunt, grandmother, sister, or other relatives. If,

outwardly, this seems like a visit, it is from within an "interminable" visit which entails the inevitable development and entanglement of feelings of attachments, anger, love and jealousy between children, siblings and parents, just as if the ties were truly those between natural children and parents.[4]

The second deployment of adoption is an informal, extra-legal, word of mouth, or a secret adoption: when a child is given by its mother, or someone *close*[5] to her, to a family, or an intermediary who then hands the baby to a family or another individual. This family then goes through the process ("fictive", that is) of having given natural birth to this child. This "fictive biological reproduction" takes place through an administrative process of giving the infant the identity of its putative new parents. In other words, this sort of "extra-legal-secret" adoption approximates the Euro-American understanding of plain adoption. But while in the Euro-American context, such a procedure takes place within the accepted and legitimizing frame of legality, in Morocco it is falsely legitimized and justified through and by an administrative procedure, but within a larger legal and religious corpus that denies it existence, and even further, considers it a criminal activity. Given, then, that this sort of adoption is *illegal*, once it takes place, i.e. it is normalized and is subsumed into a context of natural reproduction, its very existence is automatically canceled out. The authenticity (the naturalness of the bond, that is) can be called in question by the adopted persons or extended family members in bitter cases over inheritance for instance, but even in the midst of such questioning or family rivalry, once extra-legal adoption goes into effect, it discursively negates itself by falling into the course of normality. It becomes, hence, an elusive practice caught between the status of being (practiced) and non-being (prohibited). This form is called *tabannī* in classical Arabic, a verbal noun derived from *ibn* "son": *tabannī* is the active process of making someone else's biological son one's own. The act is deliberate and intended. To think of the corroboration of the legal-religious apparatus as endowing it with legitimacy would be to think and to evaluate it solely through the prism of the Euro-American legal body that mediates such a process in

the West. The discursive (and sometimes non-discursive) mediating process here takes places in other realms as I will proceed to show (and I would like to keep this in mind as the conclusion will stop at this specific kind of adoption).

A third form of "adoption" is legal guardianship, *kafāla* of a minor, which I translate as wardship, the gift of care, or tutelage depending on the cases. Within *kafāla* there are two genres. One is called *kafāla ittifāqiyya*, a consensual *kafāla*, whereby parents or a mother gives her *legal* [6] or natural child to a family or an individual after drafting a binding legal contract; in other words, this *kafāla* takes place between two private parties mediated by a legal contract. The second *kafāla* is effected when an abandoned child, technically considered a ward of the state, is taken into an equally consensual *kafāla* by a family after, once again, drafting a legally binding document. In this case, the contract is between the State as a *walī-parens patriae* and a private party.

Contemporary family-law in effect in Morocco since 1957, called *al-Mudawwana* (in classical Arabic meaning a register, also what is written, composed, committed to paper, *mudawwan*, and hence implying an aspiration to a-temporality) is the matrix of rules and symbols which founds the ideational family-type. The legislative text stipulates that "adoption [*tabannī*] does not have any judicial value and does not engender any of the lineal descent consequences. However, testamentary adoption [through which a non-biologically related person can be written down as a partial inheritor] does not produce lineage and this follows the rules of inheritance" (*al-Mudawwana*, stipulation number 83). *Kafāla*, on the other hand, does not appear at all in this text, which is the organizational core of the family, and the rights of succession and inheritance. The legal concept of *kafāla* finds its root in Morocco's *Law of Contracts and Obligations*.

The verb *kafala* has two distinct meanings in classical Arabic: "to guarantee" and "to take care of". In its first meaning of guaranteeing, the word *kafāla* has been mainly employed in the realm of commerce and business transactions. Legal *kafāla* stands close to the Western establishment of surety-bond; *kafāla* in this context is analyzed in great detail by the *fuqahā'* (jurists) in order to determine and set the correct parameters given that Islam strongly forbids usury that may happen with the surety-bond establishment.[7] The Moroccan legislator has equally chosen the concept of *kafāla* in its commerce/business quality to be part of *The Law of Contracts and Obligations* which derives only a few of its laws from the body of Islamic law. But the meaning of *kafāla* as implying a partial or consensual adoption, bestowing a gift and taking charge of, is predicated on the semantic implications of the Qur'ānic verse 3:37, "And her Lord accepted her with full acceptance and vouchsafed to her a goodly growth; and made Zachariah her guardian" (*wa-kaffalahā Zakariyyā'*).

The semantic field of *kafāla* being diffused between these two realms, contract and a guarantee, it is then employed to describe, in part, the behavior of the adopting adults towards a minor. Unlike the Euro-American understanding of plain-adoption, *kafāla* does not automatically imply the living of the person taken into *kafāla* with those who offer the *kafāla*, for it may enact only a select number of provisions, such as a financial protection, a moral or physical guardianship, or a combination of some of them. It is a gift of care, however one chooses to implement it. Such details are usually drafted in the contract, called *iltizām*, which binds the party that bestows the gift. The label of the contract, *iltizām* itself is telling: it comes from classical Arabic root of *l-z-m*, which means to be consistent, to take it upon oneself, or to be faithful and unchanging towards one's own utterances. In effect, the adopting party is taking it upon itself to fulfill one or a number of those roles of the family, but only in its function as an educative cell, and not as a matter of descent. The legislation clearly contains the flow of actions as originating from the adults towards the children. The children, minors, can only be recipients and are denied all agency in this light. These distinctions remain, however, legalistic in essence and, in any particular social context, might only be evoked for strategic reasons.

The fact that the legal concept of *kafāla* finds its root and general currency in the *Law of Contracts and Obligations* necessarily invites a number of questions, namely, why is its nature likened to that of a

business transaction? If in its capacity as a gift of care, it creates and perhaps fulfills the terms of the relationship between donor and minor, why do the *fuqahā'* clearly see it as a commercial transaction even while it is inscribed in a rather humane domain? Answers had it that one is indeed "buying a place in paradise" (Fqih Amraoui, personal communication, Qarawiyyīn, Fes, May 1997) by engaging herself to the physical upkeep of an orphan or a foundling and expecting a heavenly return it is, thus, similar to a business transaction. The Moroccan legislature, like those of many other Arab-Muslim countries (except Tunisia), has chosen this concept for the act of "adoption" since it is a contract and an obligation towards the self, the adult male-self exclusively as has been amended through the latest laws concerning *kafāla* as I proceed to discuss. The question then is: If there are so many possible legal relations, what is the kind of relation and what kind of moral authority (that is, theoretically and legally) is there between the *kafīl* (noun form, the adult engaging himself to the act of *kafāla*) and the minor since it cannot be one creating/emulating the family? Some answers had it equally that such behavior is to be guided by the Islamic code of ethics. But this frame of charity, of idealized notions of behavior are ones that oftentimes do not satisfy the *kafīl* parents who express their wish to exercise a full parental presence and agency, however elusive and problematic this might be. The laws are, however, crystal clear that a *kafāla* is only an act of charity, by stressing its transaction-business aspect, and by excluding it from *al-Mudawwana* its space is thus firmly delimited: the engagement to physical needs (food, clothing), moral needs (education), but not the name.[8]

A synthesizing reading of the entries found in *Lisān al-'Arab* under the root *k-f-l* shows how the meanings and definitions revolve around three main semantic axes: protection, guarantee and the fulfilling of one's promises. These are noble stands highly reminiscent of those values so much admired and chanted in pre-Islamic poetry, for instance. These usually would go hand in hand with the other virtues of courage and generosity. But this definition of *k-f-l* and its derivations, sending us thus to an idealized value-system, cannot be

understood or implemented in the same way seven centuries later. The foray of this concept within just three decades in Morocco, exemplifies, in part, how values and value systems may themselves be textually altered, circumvented and contested from the bottom-up and from the margins.

2   Legislation

From independence in 1956 up to 1993, only administrative circulars (*dā'irāt idāriyya*) were in effect for legislating the act of *kafāla*; this legal process in place being rather "simple" and "inconspicuous" in keeping with the rules of silence concerning illegitimate children, which is a highly taboo topic. An important date, however, is that of 1993 when a law was finally voted in the parliament legally homogenizing the procedure of *kafāla* through the nation-state. Symbolically the advent of this law can be seen as remarkable when considering that it not only acquiesced to the existence of a social category where there formally was a blank spot, but also gave it legal existence where it was invisible. Yet placed in a larger legal, administrative, and social context, the law remains a rather shy step. In addition to being quite limited as a legal idea, it is a legislative text that is replete with flaws. Moreover, and within the rigid and hierarchized set of rules, a law needs to be supplemented by a decree of application (*décret d'application, lā'iḥa tanfīdhiyya*) that explains it and turns it into an applicable "reality." Eight years after its publication in *Moroccan Official Bulletin*, the law concerning abandoned children still lacks a decree.

The flaws of this law are many and can be located at different levels: that of organization, unity, applicability or even its formulation. Given the social, cultural, religious, judicial implications of openly and straightforwardly recognizing the existence of abandoned children supposed to be mostly bastards, the legislators diluted this poignant reality by blurring the linguistic boundary between an abandoned and an orphaned child. Playing *with and on* this possibility of meaning cast

more legitimacy on a reality that runs against the idealized and codified version of normative procreation. So in the law's first section (*Dispositions Générales*), an abandoned child can be anyone under eighteen years old who falls into one of the following categories: (1) an orphan without any legal means of subsistence; (2) a child whose parents are incapable of insuring protection and education due to major forces outside their control; (3) a child whose parents are not assuming their moral responsibility to guide their children onto the right path.

The definition of "abandoned" is clearly broad, thus purposefully ambiguous, if not elusive. The definition itself is not contained or limited as much as it is open for further interpretations. The criteria for judging are lacking: what is this "right path" for instance? What are the reasons for setting the limit of age to eighteen years old while the minimum legal age for marriage is still fourteen for girls? In other words, there are serious discrepancies between this law and the existing family law. The most important question that this text invites: are all the children enumerated in these four clusters to be taken up for *kafāla*? Of course, the law does not address this question. In effect, it cannot answer this question because it is a law, and not a decree, while details of this order are usually addressed in decrees.

These and other questions have remained since then unanswered as the decree is still lacking. The situation of having a ratified law without its decree, however familiar, has placed all individuals who work for and with abandoned children in a precarious situation: neither are they totally free to utilize the pre-existing procedures of *kafāla*, nor can they totally ignore the new 1993 law. It is for the social worker (at least the ethically committed ones) a continual dilemma, and a process of negotiation, sometimes challenge, between families wishing to take *kafāla* and the administration which mediates this process.

An additional problem inherent in this law is situated in its second procedural chapter. The text stipulates that within each province and prefectoral district there be created an administrative commission to evaluate the files requesting the *kafāla*. Although the text briefly describes who is to sit on this commission, it remains too vague, nor does it set the parameters of the methodology for the evaluation, selection or refusal of the requests the commission receives. An additional issue, for instance, is that the attorney-general be present in his capacity of representing the interests of the people and the families; the role of the notaries is not, however, defined and may have the potential of creating conflict since the notaries (*'udūl*) work under the aegis of a different branch of the judicial system.

The section of the statute describing the content of the file is, perhaps, its most controversial aspect. The legislature has made it imperative that, for the so-called family commission to consider the requests it receives, the files include a court order clearly testifying that the infant or child has been *legally* abandoned. Prior to this edict, a generic certificate signed (or thumbed) by the mother was sufficient. If a woman comes to deliver in the hospital and declares her intention to relinquish her infant, the hospital authorities are forced to notify the police. The police then write a report and a court case is launched against the mother. The mother must go to the court as an offender, where she is judged on two counts: adultery, and intention to abandon an infant. Going through the Moroccan judicial system is a long and tedious process; and the words of judge Bennis here (although not addressing specifically the issue at hand) speak of the general condition of Morocco's judicial system as one where "...a court case is never closed; it may die with the death of the person provided his or her inheritors decide not to continue it. The solutions of today are tomorrow's problems" (personal communication, Rabat, June 1997). This court order, as social workers and some lawyers explained, is aimed at giving a sense of *security* to the family assuming the *kafāla* that the biological mother, parents, or a related relative will not appear one day claiming their child back. Such a presupposition is at best problematic, if not genuinely suspicious: can a court order erase the natural-biological ties when they are known and are believed to be an everlasting seal? Can it inhibit extended family members from holding this truth as a time-bomb over these new parents and the adopted person when the latter does not know? Socially and culturally, such

legal security is preceded by the natural bond between natural parents and their children. This is reinforced by a general distrust of the judicial system. In the words of this one judge "...the institution of law is detached-divorced from reality" (judge Abdouni, personal communication, Rabat, July 1997). Those are essential questions which structure all kinds of legal decisions taken by those wishing to become parents by the force of law, which, in religious-legal terms, is an oxymoron since a parent can only be so within the established parameters of blood and marriage.

3   Religious genesis

In traditional exegetical reading it is customary to cite the episode of Zayd ibn Ḥārith, formally known as Zayd ibn Muḥammad, as the *sabab al-nuzūl*, reason of the revelation,[9] for the Medinan *sūra* 33 (*al-Aḥzāb*), vv. 4-5. These are interpreted as a clear injunction against adoption:

> (4) Allah hath not assigned unto any man two hearts within his body, nor hath He made your wives whom ye declare (to be your mothers) your mothers, nor hath He made those whom ye claim (to be your sons) your sons. This is but a saying of your mouths. But Allah saith the truth and He showeth the way.
> (5) Proclaim their real parentage. That will be more equitable in the sight of Allah. And if ye know not their fathers, then (they are) your brethren in the faith, and your clients. And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you). Allah is ever Forgiving, Merciful.[10]

To explain the revelation of this verse as being exclusively the outcome of a lusting Prophet is to "tie the verses to circumstances, is to give credit, as was done, to the positivist idea of an opportunist Revelation of a Prophet calling on God during his moments of need, it is to freeze in contingency the breadth of a text whose primary

intention is the activation of history. It is about time to change this mortal attitude of an essentialist theology inbred during the Middle Ages."[11] Rather, reasons for revelation are first to be approached as historical cues of the cultural and affective make-up of Arabia during that time, and second as having various levels of meanings. If the causes for the revelation of this verse may be attributed to a historically documented event, the need is to probe beyond this straightforward causality. This incident being that on one of the Prophet's visits, Zaynab bint Jaḥsh (his paternal cousin and wife of his then adopted son Zayd) hurriedly opened the door in her eagerness not to let the Prophet wait while she was still inappropriately dressed. Upon seeing her, the Prophet hastily left, declining her invitation to enter and wait for Zayd. When Zaynab reported the incident of the Prophet's hasty leaving to her husband, the latter went to his adopted father saying that he was ready to divorce Zaynab if the Prophet wanted to marry her. The Prophet declined Zayd's offer. Revelation then came in which a divine sanction was given to his marriage with Zaynab.[12]

As I will later argue beyond this causal and literal reading that may easily support the interpretation of a Prophet sanctioning his lasciviousness, are vital issues of succession, of incest prohibition, of social organization and mostly relating to questions of faith as any in-depth analysis of these Qur'ānic facts would clearly reveal. A first cue being that *sura* 33 is Medinan, the journey to Medina having been a time during which the small group of Muslim were gaining momentum and undertaking social and military changes, and for these to be effective, the "new faith" that brought them together needed to become an absolute value that one dare not even question.[13]

In Qur'ānic commentary (*tafsīr*),[14] the consensus is that these verses (33:4-5) draw attention to the very unnaturalness of certain "givens": a woman cannot be a mother and a wife to a man; a man cannot have two hearts[15]; and a man cannot be a father if he is not so naturally. Sonhood is only the product of a biological tie and not a set of binding words. God only utters words of truth and God does not punish mistakes committed unintentionally, but rather one's sinful intentions,

these *fuqahā'* argue. In the aftermath of this Qur'ānic fact, creating the Islamic fact that bonds of sonhood and parenthood through the fiction of adoption were no longer acknowledged (*but not necessarily and automatically no longer practiced*). The op-cited interpretations qualify as classical exegetical reading in Arkounian terminology. In this regard the classical exegetical reading construe the unnaturalness of those "givens" as enacting the idea that God's words says all about my life; that what it says is the only Truth; that I will be able to determine this reality only by going back to the generation-witness during the life-time of the Prophet; and that grammar, logic and rhetoric teach me how to access the literal sense of the Text, which is the Truth that directs both my will and actions. Let's consider this verse now using the Arkounian heuristic prism away from the classical exegetical reading.

(a) "Allah hath not assigned unto any man two hearts within his body, nor hath He made your wives whom ye declare (to be your mothers) your mothers, nor hath He made those whom ye claim (to be your sons) your sons. This is but a saying of your mouths." The enunciation establishes the speaking subject as an all-cognizant who consequently dismisses arguments and views uttered by those to whom the message is intended, and who are designated as incognizant. A privileged order is thus revealed to them. To have two hearts, to claim that a wife becomes as forbidden to one as one's mother, and to establish bonds of sonhood through words is a false order denied and dismissed by this enunciation. Such an order is, however, replaced by a true one, built on those certitudes delineated by the all-cognizant, who is the enunciator.

(b) "But Allah saith the truth and showeth the way." Contrary to human beings, God only utters the truth and shows the path for those willing to follow it. The ethic established here is that of a God knowing all the Truth, an image that is omnipresent in the entirety of the Qur'ān. This stand here prepares for the next important eschatological stage of the enunciation.

(c) "Proclaim their real parentage. That will be more equitable in the sight of Allah." In the first half of the sentence the tone is an

imperative, (*ud'ūhum li-ābā'ihim*). The order is, however, softened in the second half because to carry this order would be merely more "equitable" (*aqsaṭ*) in the eyes of the all-cognizant. The root word of *aqsaṭ* is *qisṭ*, which can be a part, a piece, an element, a component, or an equal division of something. To carry this order is defined in terms of the ethics of equity, but it remains up to the human being to carry such an order. Leaving the enactment of equity to the will of human beings, who throughout the Qur'ān are often portrayed as whimsical, fickle, and hypocrites, the imperative of the order is consequently ruptured.

(d) "And if ye know not their fathers, then (they are) your brethren in the faith, and your clients". Introducing the exception, that is if the parentage is unknown then the commonality between "them" (those of unknown parents) and "you" (the addressee, the perspective and decision being yours) is to be established through the abstracted sense of faith or the more tangible relationship of dependency-clientage (*mawlā* "client", pl. *mawālī*). A critical history of Islam is yet to be written from the perspective of this one word, *mawlā*, derived from *walā* "to be close to, be friends with, have power over",[16] and depending on whether it is used in the active or the passive voice, has a variety of meanings: it can have the reciprocal meanings of "master" or "slave, freedman", patron or client, uncle or nephew and even friend. Non-Arabs who converted to Islam were also required to become *mawālī* of an Arab tribe, the *mawālī* who are often called clients, were persons of advanced age (they were not infants or babies, that is) incorporated into the tribe and treated as belonging to it, but without all the rights of those who were its members by birth. The meaning of *mawlā* itself has shifted following historical periods and permutations. Coming back to the verse in question, other than the fact that a client-patron relationship is defined by this structuring power of the social-hierarchy, the semantic field of *mawlā* is rather expansive because of the historical permutations in its meaning. To reduce it, therefore, to a one contained and transcendent meaning would be counter-productive for linguistic and historical evidence goes to support an opening and not a restriction of possibilities. Which of

these interpretations of *mawlā* is or should we then ascribe to the status of an abandoned child in places structured by Islamic facts? A fixed answer is highly elusive and whatever is written in the contemporary laws, the Moroccan example under discussion here, has more to do with the conditions and circumstances (historical, ontological, imaginary, and ideological) of those composing them than with an "uncorrupted" or "pristine" meaning of *mawlā* in these Qur'ānic facts.

(e) "And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you). Allah is ever Forgiving, Merciful." The logic comes full circle for it is only those sins committed willfully and not those out of ignorance that are bound to be punished. Even if an eschatological warning is detected here (if you know, you should not commit those sins), there is equally an implied anagogic code. The sense of equity and fairness are an intrinsic component in the ethics of faith and the ethics of practicing the faith equitably.

This interpretation here may not radically differ from the exegetical traditional reading, but contrary to the latter explication, it perforates the enunciation in two essential ways. First, if in Qur'ānic commentary the intention is to pin down the sacred meaning while the aim here, akin to Arkoun's reading of *al-Fātiha*, is to substitute the exegetical construction of the "original [by the] cultural, the symbolic [by the] sign, the ideational [by] ideology, and a mythical language [by a] logocentric language."[17] Second, that a meaning is above and beyond history, fixed once and for all times, and that reading it differently would amount to a profane, polluting, and even heretical act. Rather, this is casuistic for there is a plurality of perceptions perpetually changing with times and places.

This anthropological moment is one that allows us to question the original conception posited as an unchangeable one by the exegetical traditional reading. It makes it equally possible to go beyond the constraints of a mythical frame that denies this verse it both historical relevance and the possibility of multiple interpretations. Arkoun's call for the substitution of a mythical language by a logocentric one is, in

effect, what he defines as engaging into the unthought and the unthinkable. It is a significant gesture which brings attention to the fact that what has become a text was originally a spoken word and is, thus, one that needs to have the centuries worth of orthodox and ossified interpretations shed in order to open up this text for the multiplicity of meanings. If we consider the verses 33:4-5, what is construed and explained by Muslim theologians as being the original model for human existence (being, marriage prohibition and succession) are rather altered cultural norms departing from those prevalent during the pre-Islamic order. In conjunction with the entire *sūra*, entitled incidentally *al-Ahzāb* "the Clans", the purpose is about fostering a unity built on faith (*īmān*) by shaking the foundations of the pre-existing order of the clans and their blood-loyalty. Adoption, as a symbolic enactment of sonhood, was nullified precisely because the sacred status of blood needed to be profaned and replaced by an unwavering allegiance to faith. In other words, the symbols of bond (marriage and adoption) had to be re-articulated to fit the emergent visions of a cultural cohesion built on different parameters of loyalty; thus they are akin to linguistic signs in which the signified (concept-idea) needed to be recast differently. What is projected as ideational (faith and the ethics ensuing from this faith) is, therefore, not devoid from ideology. As a matter of fact, this primal scene is highly charged: the political reason for not only endowing faith with an omnipresent and omnipotent status, but also for making it the driving force of any endeavor or relationship cannot be denied. This was revealed in Medina, a time during which the political negotiations and military maneuvers were imperative for the survival and dissemination of Islam. In order for it to continue, it had to engage into a process of overthrowing and then replacing the prevalent order with its new order. Loyalty is not about blood, but about faith; and to forbid adoption as a practice that emulates the natural bond, is to shake the foundation and potency of the ideology of blood.

Beyond these interpretations and the way they have been interpreted in the contemporary judicial appartus in Morocco, I now turn to the "ethnographic gist" to explore the *cultural imaginaire* concerning how

a family and the relationship between its members are construed, and how an "adoptive" family fits or is deviant from this general family-repertoire.

4   Between the economy of the lie and the economy of fiction

Against both the portrait of the ideal-family-type and key notions of "root" (aṣl) and "environment" (wasaṭ), a secret adoption or the gift of care (not as charity but in its attempt to emulate family) acquire the profile of the deviant and the abnormal. A childless adoptive family cannot pretend to a "real" continuity, for "root" (aṣl) is physically defined and intimately woven in the fabric of the lineage (nasab). In a secret adoption, physical continuity is a "lie"; culturally it cannot even acquire the status of "pretense" for it is morally judged as being wrong, religiously considered a sin, and legally defined as a crime. But adoptive parties, on a more personal level, prefer to describe their activity as creating "fictive or imaginary" (khayālī) relations, not a lie. The difficulty of how to describe and conceptualize one's relationship towards one's adopted child and vice versa (i.e. outside the frame of religious philanthropy and that of moral judgment) reveals the precariousness and vulnerability of these relationships. Whether claiming an imaginary or fictive bond, an adopting family may contest the definition of "untrue" as truth and truth values are themselves subject to social and cultural criteria, but despite the possibility of this negotiation, they are constantly reminded of the "lie" that lies at the very heart of their lives.

The difference between the status of a lie and that of fiction may be considered inconsequential if beheld from the normalizing perspective, but from the viewpoint of those caught in adoption and adoption-like entrails, the distinction could not be more pronounced. "Imagination" (khayāl) is by definition that which is imagined. Its concurrence or rejection of a "factual" body does not make it any less or any more valuable; it is imaginary by virtue of its very being. A lie, on the other hand, is constantly evoked in terms of the Truth, whatever veers from

the body of truth becomes consequently a lie. Parents' and children's attachment to each other is true even when the origin of this truth springs from an imaginary relationship emulating the real one. The economy of fiction then stands by itself by virtue of what it is; it is no less valuable because it is lived and believed to be truthful (ḥaqīqī) even if factually it is not true.

The economy of the lie in this context is mainly directed to him or her growing up adopted, while the economy of fiction is one in which everyone partakes but the one growing up adopted who believes it to be the simple reality and truth. To choose to call it a fiction, a scenario, or a pretense, is primarily interpreted as a lie for those who largely know about the origin of the truth. These may include the extended family, the neighbors, and perhaps friends, but as long as their "interests" (inheritance, reputation, the economy of gossip) is not jeopardized, then they equally contribute in and to the economy of fiction in front of the child herself. Thus, it is a pretense predicated on a contract of communal conspiracy and silence. It is, however, a very fragile contract because it could come undone any time. It is threatened from outside and inside alike. Some of these families live in a perpetual state of fear lest the "truth" be revealed, or lest the "imaginary" be faced reality because this "real" assumes that there is only one natural order: that of a sanctioned procreation.

Discussions of adoption as a legal procedure, and as a potential solution to a social ill, references to love-attachment are often denigrated or totally sublimated. Love and desire are essential ingredients in the hidden dimension that fuel adoption. It is a mass-of-love that remains masked because it is ambiguous and deviant; provided it is not a case of rape of forced incest, it is inappropriate sexual-love, denigrated motherly love, unnatural adopting parents' love, and thus is left unspoken. In this case, it is an aporia that cannot be accommodated or explained and is thus simply denied existence. Ironically, it is this messy-unspeakable mass that gives rise to, fuels, and sustains adoption in its many different guises with all its internal ramifications.

It is a social necessity to have children; the finality of all unions is

procreation (both as a religious duty and a social expectation) and so when a couple fails to fulfill this personal/social expectation their status is greatly compromised and even the finality of their lives is questioned. If the decision to adopt is made and carried through, their love for the child can be exceeding. It was their *kebda* "liver" (the liver being the seat of love and affection), meaning here their intense thirst for love and affection, that tortured them and made them opt for adoption. So even in, or because of, their drama and misfortune, these parents' sense of filial love exceeds that of biological parents. In this sense, adoptive parents' love is a more slavish than that of biological parents. It is a common belief that adopted children are more spoiled than biological children as adoptive parents cannot find it within themselves to be too demanding and harsh; hence the axiom that their *kebda* is "more difficult." Their love may incite them to make decisions which could be detrimental to their children and to themselves. Biological parents' *kebda*, on the contrary, is often and supposedly countervailed by an enduring rationalism; they have more freedom in deciding how harsh they may be with their children precisely because their relationship is built on other ties than emotionality. In other words, even while punishing their children, their love and dedication is not to put the test; while adopting parents' care and attachment are the first things to be questioned when an adopted child is corrected. An adopting parent's love is the only explanation they can fall on. Blaming a possible harshness because of lack in love becomes an immediate and automatic reaction, in the case of so many adopted children and of other members of their households. Through this dialectic, it is not necessarily the feelings themselves that are to be evaluated but how they convey and construct a social reality and how the issue of hierarchy and power are construed. Adoptive parents have a crafted love on which alone they can stand — a dangerous entity, thus, because it is the only capital they are believed to possess — biological parents have a greater range in dealing with their children.

Those I call martyrs of love are parents, children, the single mothers and their lovers. They are all to a certain extent martyrs of a love, some emerging as "winners" because they are able to consume

their love, filial or other, and others succumbing because consumed by the burning flame of their passion and ideals. Adopted girls happen to be the ones mostly described as the martyrs of love. While rebellious violent boys metamorphose into assassins of those who nurtured them when the economy of the lie is dissipated, girls commit suicide or often run away. The gender-specific reactions are clearly defined. Adopting parents are also martyrs of love; it is their thirst and yearning to fulfill and bestow love that has incited them, in the first place, to adopt. A combination of love-desire-passion in the biological parents has initially led to the birth of these children (provided it was not a rape situation). All of these loves are similar in being a mass that binds, but equally separates and destroys; but it is a mass that is nuanced in its diversity and its understanding. Commonly people say *l-kebda ka-t'eddeb*, "the liver makes one suffer, causes torment," or *l-ḥubb merḍ* "love is a sickness [without cure]."

5   Conclusion

I would like briefly to conclude here by saying that while this ethnographic presentation and analysis are proper to the context of Morocco, my intentions are multiple: making of adoption a topic of anthropology in the Muslim World where it is believed not to even exist; of contributing to the re-thinking of "kinship" in the Muslim world where it has been mostly studied as relating to questions of *nasab* and extended families; by bringing the light to an entirely untreated and/or unknown topic of abandoned children. Finally, and this a portion of my work that I have not talked about here much, it relates to a political issue concerning the question of abandoned children and the need to address the stigma attached to bastardy. Bringing to light and discussing a taboo topic is where I largely inscribe the political edge to this ethnographic project and that I refer you to my presently forthcoming book.

NOTES

1   Jack Goody, *The Oriental, the Ancient, and the Primitive: Systems of Marriage and the Family in the Pre-Industrial Societies of Eurasia*, New York: Cambridge University Press, 1990. The larger context of Goody's remark is one that examines questions of inheritance and property; for he specifically writes that "[a]nd if one aim is to keep property together, there is little point in dividing it on the occasion of the marriage. In this way close, intra-clan, marriage parallels the close, intra-clan adoption practiced in China and India; the Arabs forbid adoption, the latter forbid intra-clan marriage" (p. 380). Goody's emphasis on the role of inheritance and delegating property, are of capital importance in legislating against adoption in these religious interpretations. But while his reading is understandable in terms of macro-system theories, ethnographic and historical research offers evidence that other practices subverted this idealized version even when considering these nodal issues of inheritance.

2   This is similar to client-patronage system, but it equally reminiscent of the system of indentured servants.

3   Unless the adopting party wants to secure a part of the inheritance to the adopted person. Then they "write" this person down as an inheritor. This is *waṣiyya*; there is another legal form called *tanzīl*.

4   Such customary adoption is close to "open adoption" that activists in Europe, in America and in Australia are lobbying for today. Open adoption allows the adoptees to grow up knowing both genitors and adopting families.

5   A *close person* in this context is quite problematic for it may be a person located at two contrary ends of the spectrum. Close may be a person who pressures the young mother to relinquish the baby like a brother, a mother, a boss (who could be the father) because of the social stigma and fear. In this case, close means exercising a "negative" power. Close also may be a person who really loves the new mother and is genuinely concerned about her welfare, the attention is mostly directed to the mother and not the fear/stigma component. A certain complicity and understanding between the new mother, her mother, a sister, a cousin or even a friend who may have gone through similar conditions, will be to assure that giving this baby is carried in as "nice" of environment as possible. But most of these can only be judged on individual cases.

6   I am italicizing legal here because the distinction between a legal, natural, a foundling, an orphan, and an abandoned child are extremely important legally.

7   Souad Lmrini Al Amrani, *al-Kafāla bayn al-Sharī'a wa-Qānūn al-Iltizām wa'l-'Uqd al-Maghribiyya*, Kulliyyat al-Sharī'a bi-Fās, unpublished doctoral dissertation, 1994.

8   I am thankful to Dr. Jean-Joseph Goux from Rice University for this comment. The "cult" of the family was a religion in classical times, and hence a symbolic affiliation was nigh absolute for the continuation of the cult in case none was biologically available. In the case of Islam, no such symbolic affiliation is possible because the emphasis has been displaced to another arena; that of an abstract sense of faith.

9   In Islamic scholastic tradition, the discipline called *asbāb al-nuzūl*, reasons of the revelation, situates the historical circumstances for each revelation.

10 I use Marmaduke Pickthall's interpretation/translation of the Qur'ān, New York: Alfred A. Knopf, 1930.

11 Mohammed Arkoun, *Lectures du Coran*, Paris: Editions Maisonneuve et Larose, 1982. The original text "...lier les versets à la circonstance, c'est accréditer, comme on l'a fait, l'idée positiviste d'une Révélation opportuniste, d'un prophète appelant Dieu au secours dans les moments utiles; c'est figer dans la contingence la portée d'un Texte dont l'intention première et le résultat effectif est d'activer l'histoire. Il est temps de réviser cette attitude mortelle de la théologie essentialiste développée au Moyen Age" (p. 26).

12 Fatima Mernissi, for instance, has explained this incident in terms of the Prophet's fascination for women. She locates the misogyny attributed to Islam in that corpus of interpretation by jurisconsults (*fuqahā'* and *'ulamā'*) and not to the Qur'ān or the Prophet himself. She argues that Zaynab's incident was "the most significant example of women's irresistible power over the Prophet is probably his sudden (and *scandalous, by his own people's standards*) passion for Zaynab bint Jaḥsh, the wife of his adopted son Zayd. In Muḥammad's Arabia, the link created by adoption was considered identical to blood-ties. Moreover, Zaynab was the Prophet's own cousin, and the Prophet himself had arranged her marriage with his adopted son"

(*Beyond the Veil. Male-female dynamics in modern Muslim society*, Indiana University Press. 1975/1986, p. 56, emphasis added).

13   Despite the skeptical, and at times even dismissive if not pejorative tone, Georges Bataille inscribes Islam into a given economic typology. He argues that *jihād* (holy war), and the changes to occur after the *hijra* are an intrinsic part of a new economy built on notions of faith and the valorization of faith which are radical notions if considered from the point of view of loyalty as exclusively based on blood during the ante-Islamic period. See "La société conquerante: L'Islam" in *La Part Maudite*, Paris: Editions de Minuit, 1967.

14   The texts I have consulted are the most canonized: *al-Ṭabarī* (9th century), *al-Zamakhsharī* (12th century), al-Bayḍāwī (13th century) and and Ibn Kathīr (14th century).

15   As most of these texts explain, the idiom of "having two-hearts" was used as a figure to describe someone who is very intelligent and witty; that a *taẓāhur* ("you are to me as my mother") was an expression used by men when they were bored (sexually bored) with their wives; and finally that the structure of the family-tribe treated adopted foreigners at the expense of a total dismissal of the women. In some of these interpretations (namely *khawāṭir 'an al-qur'ān* by al-Shīrāzī), this *sūra* was revealed to reform the make-up of the tribe by giving precedence to its female native members over the alien non-native males adopted in it.

16   Ibn Manẓūr, *Lisān al-'Arab*. Explanation under "guardianship" in *Oxford Encyclopedia of the Modern Islamic World*. See also the article "Walī" in *E.I.*[2] and *The Oxford Encyclopedia of Islam*.

17   Arkoun, *Lectures du Coran*, p. 62.