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Suspending Dogma, Structuring Law: Legal Consciousness and the *Niqāb* Fatwa of Egyptian Scholar, Ali Gomaa

Lilik Abdul Malik Jamjami *
UIN Sunan Kalijaga, Yogyakarta, Indonesia
ilik.abdul07@gmail.com

Cholila
Al-Azhar University, Cairo, Egypt
cholila@gmail.com

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*Corresponding Author

Abstract

The responses of contemporary Muslim scholars (*ʿulamāʾ*), particularly in Egypt, to emerging social realities are frequently framed through the concept of *fiqh al-wāqiʿ* (Islamic jurisprudence of reality), yet the methodological framework underlying this concept remains underdeveloped. This ambiguity has led to a tendency to view Islamic legal reasoning primarily as a reactive response to external conditions rather than as a structured process of legal formation. Among contemporary scholars, Ali Gomaa presents a particularly significant case for examining how Islamic law is produced through interpretive practice. This study analyzes Gomaa's Islamic legal reasoning on the *niqāb* (face veil) through a phenomenological lens to uncover the structure of legal consciousness underlying his fatwa. Using qualitative textual analysis, the study demonstrates that Gomaa's rejection of the *niqāb*'s obligatory status is not merely a doctrinal conclusion but a methodological act grounded in the suspension of inherited dogmatic assumptions, a directed engagement with scriptural texts, and a reliance on lived communal practices as a horizon of legal meaning. His interpretive process mobilizes intentional structures of consciousness that mediate between textual evidence, juristic reasoning, and social experience. In doing so, Gomaa does not simply adapt the law to context but actively reconstructs legal meaning through a dynamic interaction between revelation and lived reality. This article argues that *fiqh al-wāqiʿ*, as reflected in Gomaa's reasoning, should be understood as a socio-legal process of legal formation grounded in legal consciousness rather than merely as a descriptive framework for contextual legal adaptation.

[*Respons para ulama Muslim kontemporer, khususnya di Mesir, terhadap realitas sosial yang terus berkembang kerap dibingkai melalui konsep* fiqh al-wāqiʿ *(fikih realitas), namun struktur metodologis yang mendasari konsep tersebut masih belum berkembang. Ambiguitas ini telah mendorong kecenderungan untuk memandang penalaran hukum Islam terutama sebagai*

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respons reaktif terhadap kondisi eksternal, alih-alih sebagai suatu proses pembentukan hukum yang terstruktur. Di antara para sarjana kontemporer, Ali Gomaa merupakan kasus yang sangat signifikan untuk mengkaji bagaimana hukum Islam diproduksi melalui praktik interpretatif. Studi ini menganalisis penalaran hukum Gomaa mengenai niqāb *(cadar) melalui lensa fenomenologis guna mengungkap struktur kesadaran hukum yang mendasari fatwanya. Dengan menggunakan analisis tekstual kualitatif, penelitian ini menunjukkan bahwa penolakan Gomaa terhadap status wajib* niqāb *bukan semata-mata merupakan kesimpulan doktrinal, melainkan suatu tindakan metodologis yang berlandaskan pada penangguhan asumsi-asumsi dogmatis yang diwariskan, keterarahan intensional terhadap teks-teks keagamaan, serta penggunaan praktik hidup komunal sebagai horizon pembentukan makna hukum. Proses interpretatifnya menggerakkan struktur-struktur intensional kesadaran yang menengahi hubungan antara bukti tekstual, penalaran yurisprudensial, dan pengalaman sosial. Dengan demikian, Gomaa tidak sekadar menyesuaikan hukum dengan konteks, melainkan secara aktif merekonstruksi makna hukum melalui interaksi dinamis antara wahyu dan realitas hidup. Artikel ini berargumen bahwa* fiqh al-wāqiʿ*, sebagaimana tercermin dalam penalaran Gomaa, seharusnya dipahami sebagai suatu proses sosio-legal pembentukan hukum yang berakar pada kesadaran hukum, dan bukan semata-mata sebagai kerangka deskriptif bagi adaptasi hukum yang kontekstual.*]

Keywords: Ali Gomaa, Fatwa, *Fiqh al-Wāqiʿ*, Legal Consciousness, *Niqāb*, Phenomenology.

Introduction

In the contemporary Muslim world, the formulation of Islamic law increasingly unfolds within contexts shaped by social transformation, political contestation, and competing claims to religious authority.[1] A central challenge in this process concerns how jurists negotiate the relationship between inherited legal doctrines and evolving lived realities, particularly regarding gender, embodiment, and public religiosity.[2] In this regard, the concept of *fiqh al-wāqiʿ* (Islamic jurisprudence of reality) has emerged as an important, though often under-theorized, framework for explaining how Islamic legal reasoning responds to contemporary social conditions. Yet, despite its frequent invocation, the methodological structure through which *fiqh al-wāqiʿ* operates in actual legal reasoning remains insufficiently clarified. This gap underscores the importance of studying contemporary jurists not only to understand legal outcomes but also to examine how Islamic law is socially mediated, interpretively constructed, and reformulated in response to modern realities across Muslim societies.

This broader issue is particularly significant in contemporary Egypt, where Islamic legal authority is deeply intertwined with institutional religion, state

[1] Muhammad Amasha, "Political Judgment, Fiqh al-Wāqiʿ, and the Egyptian ʿUlamāʾ's: Response to the Arab Spring (2011–2013)," *Journal of Islamic and Muslim Studies* 8, no. 2 (November 2023): 49–86.

[2] Asif Mohiuddin, "Islam, Religious Authority and the State: The Case of Egypt," *Asian Journal of Middle Eastern and Islamic Studies* 16, no. 2 (April 2022): 165–88.

governance, and public moral discourse.[3] Within this context, Ali Gomaa represents a particularly important case for scholarly analysis due to his influential role as Grand *Muftī* (jurisconsult) of Egypt and his position within the broader tradition of al-Azhar scholarship. His legal reasoning on the *niqāb* (face veil) is especially noteworthy because it addresses a highly contested issue in Islamic law concerning women's dress, bodily visibility, and the boundary between religious obligation and cultural practice.[4] Gomaa argues that the *niqāb* is rooted in Arab cultural practices and that its permissibility is context-dependent, shaped by a society's collective consciousness and its adherence to a particular *madhhab* (school of Islamic jurisprudence). Moreover, he contends that wearing the *niqāb* may constitute a form of *bidʿah* (innovation in religious practice) when it is used to distinguish individuals according to perceived levels of piety or religious authority.[5] This position is developed through a close analysis of the argumentative structure underlying legal rulings, particularly those derived from religious texts. Gomaa's interpretive engagement centers on legal practices during the Prophetic era, highlighting his methodological emphasis on integrating contextual understanding with textual reasoning. His approach thus reflects a deliberate effort to construct *fiqh al-wāqiʿ* not merely as a reactive legal tool but as a principled method of legal reasoning grounded in the interplay among tradition, authority, and lived social reality.

Many scholars have overlooked the methodological framework underlying Gomaa's rejection of the obligatory *niqāb*, despite its centrality to his articulation of *fiqh al-wāqiʿ*. Existing studies tend to focus on the influence of Gomaa's theological and political orientations in shaping his legal views, particularly through fatwas (Arabic: *fatwā*) issued in response to modern social and political developments. Scholarship on Gomaa's legal methodology generally follows two main trajectories. The first emphasizes the role of political positioning in legal formation. For example, his engagement with Egypt's political dynamics during the Arab Spring (2011–2012) has been shown to shape several of his fatwas in ways that respond to broader political developments.[6] In this regard, Amāsha argues that Gomaa's political stance during this period influenced his fatwas through a discourse of moderation associated with his status as a scholar of al-Azhar, ultimately securing his place

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3 Samy A. Ayoub, "A Theory of a State? How Civil Law Ended Legal Pluralism in Modern Egypt," *Journal of Law and Religion* 37, no. 1 (January 2022): 133–52; Mona Oraby, "Law, the State, and Public Order: Regulating Religion in Contemporary Egypt," *Law & Society Review* 52, no. 3 (September 2018): 574–602; Tamir Moustafa, "The Islamist Trend in Egyptian Law," *Politics and Religion* 3, no. 3 (December 2010): 610–30.

4 Kent Davis-Packard, "The Burden of Proof: Women and National Identity in 'Islamic' and 'Secular' States – The Case of Egypt," *Studies in Ethnicity and Nationalism* 17, no. 2 (2017): 193–208; Desy Ayu Pirmasari, "To Veil or Not to Veil? Islamic Dress and Control Over Women's Public Appearance," *Journal of Gender Studies* 30, no. 2 (February 2021): 136–49.

5 ʿAlī Jumʿah, "Al-Niqāb," in *Al-Niqāb ʿĀdah wa Laysa ʿIbādah: Al-Raʾy al-Sharʿī fī al-Niqāb bi-Aqlām Kibār al-ʿUlamā'*, ed. Muḥammad Ḥamdī Zaqzūq (Cairo: Dār al-Kutub al-Miṣriyyah, 2008), 30.

6 Akhmad Sulaiman, Mohammad Yunus Masrukhin, and Ibnu Burdah, "'Ulamā,' Maṣlaḥah, and the Politics of Fatwa: The Shifting of Ali Gomaa's Fatwa Approach during the 2011 Egyptian Revolution," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 57, no. 2 (2023): 283–307.

within Egypt's shifting political order.[7] The second trajectory highlights the role of theological orientation in legal construction. Gomaa's position as a *muftī* committed to Sunnī-Ashʿarī theology—often framed as a moderate theological orientation—has been shown to inform his legal interpretations, enabling him to remain responsive to changing contexts while operating within a traditionalist intellectual framework.[8] While these studies are important for illuminating the political and theological conditions surrounding Gomaa's legal thought, they do not sufficiently explain the internal methodological process through which his legal conclusions are produced. More specifically, the existing literature has not adequately examined how Gomaa's legal reasoning operates through the interaction among text, interpreter, and social reality nor how this process reflects a distinct structure of legal consciousness. Consequently, the methodological significance of *fiqh al-wāqiʿ*, frequently invoked in discussions of contemporary Egyptian fatwas, remains insufficiently theorized.

This study examines the mechanisms of legal formation in Gomaa's rejection of the obligatory *niqāb*. The methodological insights developed herein clarify the concept of *fiqh al-wāqiʿ*, which is frequently invoked as the framework through which Egyptian scholars (*ʿulamāʾ*) formulate contemporary fatwas. More specifically, this article contributes to existing scholarship by shifting the focus from the political and theological influences on Gomaa's fatwas to the epistemological, interpretive, and socio-legal structures that underpin his legal judgments. The study develops three analytical models. The first model examines the rationale behind Gomaa's rejection of legal arguments supporting the *niqāb*'s obligatory status, thereby illuminating his relationship to inherited dogmatic assumptions. The second and third models analyze the structure of his legal reasoning by focusing on its relation to religious texts, including the Qurʾān and hadith, to uncover the interpretive mechanisms through which legal meaning is constituted. Taken together, these models reveal the methodological framework underlying Gomaa's legal reasoning on the *niqāb*.

This article argues that the formation of law through fatwas—as responses to social phenomena reflecting tensions between normativity and lived reality—involves the subjective awareness of the legal actor. By examining the jurist's consciousness, the structure of the fatwa can be traced back to the lawgiver, revealing that legal formation is not solely a matter of institutional authority or doctrinal continuity but also an intentional process rooted in the jurist's lived understanding and interpretation of religious texts.[9] The dynamic interaction among the jurist, context, and text shapes the process of legal reasoning, producing outcomes that reflect both subjective and intersubjective consciousness.[10] The

7 Muhammad Amasha, "Ideals and Interests in Intellectuals' Political Deliberations: The Arab Spring and the Divergent Paths of Egypt's Shaykh al-Azhar Ahmad al-Tayyib and Grand Mufti Ali Gomaa," *American Journal of Islam and Society* 40, nos. 3–4 (November 2023): 41–76; Amasha, "Political Judgment, Fiqh al-Wāqiʿ, and the Egyptian ʿUlamāʾs," 49–86.

8 Fredrik Brusi, "In Search of a Lost Paradigm: A Case Study Approach to Retracing Traditionalist Influence in the Fatwas of Ali Goma, Grand Mufti of Egypt" (Stockholm University, 2012).

9 Dermot Moran, *Introduction to Phenomenology* (London: Routledge, 2000), 159.

10 James Boyd White, *The Legal Imagination* (Chicago: University of Chicago Press, 1985), 47.

distinction between these two levels of consciousness in Gomaa's rejection of the *niqāb*'s obligation offers a socio-legal framework for understanding legal formation as a situated, meaning-making practice within the contemporary role of the *ʿulamāʾ*.

This study examines Gomaa's legal reasoning regarding the *niqāb* within the broader discourse on veiling practices in contemporary Islam. Given the qualitative nature of the data, the study employs a research design suited to uncovering the meanings, assumptions, and interpretive structures underlying legal thought and action.[11] The primary data consist of Gomaa's writings on the *niqāb*, collected through textual documentation. To enhance the credibility of the findings, the study employs triangulation by applying multiple analytical strategies to the same dataset.[12] Two complementary approaches support the analysis and interpretation: thematic analysis and phenomenological analysis. Thematic analysis is used to map the argumentative structure through which Gomaa formulates legal judgments, while phenomenological analysis traces his personal and contextual engagement with the issue without reducing that engagement solely to external explanatory variables. More specifically, the phenomenological approach adopted in this study is primarily informed by Edmund Husserl's transcendental phenomenology, particularly the concepts of *epoché* (suspension), intentionality, and *Lebenswelt* (life-world).[13] These concepts function not merely as philosophical references but as analytical tools for examining how legal meaning is constituted, mediated, and stabilized in Gomaa's reasoning process.

The Intellectual Foundations of Gomaa: Reasoning in Islamic Legal Formation

Nūr al-Dīn Abū al-Ḥasan ʿAlī ibn Jumʿah ibn Muḥammad ibn ʿAbd al-Wahhāb ibn Salīm ibn ʿAbd Allāh ibn Sulaimān al-Azharī al-Shāfiʿī, commonly known as Ali Gomaa or ʿAlī Jumʿah, was born in Beni Suef, Egypt, on Monday, March 3, 1952.[14] His father was a respected practitioner and professor of Islamic law, a background that significantly contributed to Gomaa's early exposure to juristic reasoning and religious scholarship.[15] After relocating to Cairo, he began his education at an early age, studying religious sciences such as Arabic linguistics, *fiqh* (Islamic jurisprudence), and the Qurʾān. He memorized the Qurʾān at the age of ten under the supervision of Muḥammad Ismāʿīl al-Ḥamdānī.[16] Gomaa later pursued higher education at ʿAin Shams University in 1973 before obtaining a bachelor's degree from al-Azhar University in 1979. He subsequently completed a master's degree in *uṣūl al-fiqh* (principles of Islamic jurisprudence) at al-Azhar in 1985, followed by a doctorate

[11] Joseph A. Maxwell, "Why Qualitative Methods Are Necessary for Generalization.," *Qualitative Psychology* 8, no. 1 (February 2021): 111–8.
[12] Joseph A. Maxwell, *Qualitative Research Design: An Interactive Approach* (California: SAGE Publications, 2013), 115.
[13] Edmund Husserl, *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy*, trans. Richard Rojcewicz and Andre Schuwer (Dordrecht: Kluwer Academic Publishers, 1989), 33–62.
[14] Usāmah al-Sayyid al-Azharī, *Asānīd al-Miṣriyyīn* (Cairo: Dār al-Faqīh, 2011), 539.
[15] Ibrahim Negm, *The Epistemology of Excellence: A Journey into the Life and Thoughts of the Grand Mufti of Egypt* (Beirut: Innovatio Publishing Ltd., 2012), 3.
[16] Al-Azharī, *Asānīd al-Miṣriyyīn*, 539.

awarded with high distinction in 1988. These formative educational experiences are important not merely as biographical details but because they situate Gomaa within a legal-intellectual tradition that combines classical juristic training, institutional religious authority, and disciplined textual reasoning—elements that would later shape his method of legal interpretation.

Formal education, however, was not the sole factor shaping Gomaa's intellectual development. Emerging as a scholar in the late twentieth century, Gomaa was influenced by a period of significant transformation in al-Azhar's intellectual and political environment, particularly under the legacy of Gamal Abdel Nasser, whose policies reinforced al-Azhar's status as a state-recognized authority on Islam.[17] Following Nasser's death and the succession of Anwar Sadat in 1970, Egypt experienced major shifts in the relationship between religion and politics, including the rise of Salafi activism on university campuses and the broader Islamic revival of the 1970s. This revival became increasingly complex after Sadat granted amnesty to figures associated with the Ikhwān al-Muslimīn (Muslim Brotherhood), while the state simultaneously relied on al-Azhar to counter more radical currents.[18] Gomaa actively participated in this intellectual and ideological contestation, including engagement with Salafi and extremist figures such as Shukrī Muṣṭafā. Within this context, scholars like Gomaa helped articulate what came to be described as "Civilizational Islam," a discourse promoting a democratic, anti-authoritarian, and non-violent interpretation of Islam, presenting itself as a moderate alternative to both secular marginalization and radical exclusivism. From a socio-legal perspective, this context is crucial because it demonstrates that Gomaa's legal reasoning did not emerge in an intellectual vacuum; rather, it was shaped within a field of competing religious authorities, state regulation, and conflicting claims over the legitimate interpretation of Islam.

A moderate understanding of Islam constitutes a central element of Gomaa's intellectual framework. Negm argues that Gomaa's approach to Islam is characterized by flexibility and balance in negotiating the relationship between the past, present, and future, thereby enabling Islamic thought to address enduring human concerns across evolving historical contexts. This orientation underpins Gomaa's engagement with Islam's intellectual heritage and the broader civilizational legacy of Muslim societies. Negm further asserts that Gomaa, as an Islamic jurist, responds to contemporary needs by drawing deeply upon this civilizational inheritance to produce interpretations that remain both faithful to tradition and relevant to the present.[19] Within this framework, religious authority is entrusted to scholars who possess the intellectual competence to mediate between scriptural sources, inherited juristic traditions, and contemporary social realities. In this

[17] Tamir Moustafa, "Conflict and Cooperation between the State and Religious Institutions in Contemporary Egypt," *International Journal of Middle East Studies* 32, no. 1 (2000): 3–22; Malika Zeghal, "Religion and Politics in Egypt: The Ulema of al-Azhar, Radical Islam, and the State (1952-94)," *International Journal of Middle East Studies* 31, no. 3 (1999): 371–99.

[18] Amasha, "Ideals and Interests in Intellectuals' Political Deliberations," 41–76.

[19] Negm, *The Epistemology of Excellence*, 17.

regard, Gomaa's commitment to moderation should not be understood merely as a theological preference but as a methodological stance that shapes how legal meaning is produced. It is precisely this stance that is significant for the present study, as it helps explain how his legal consciousness operates through the suspension of rigid doctrinal closure and the reconstruction of normativity in relation to lived social experience.

Gomaa's Rejection of the *Niqāb*: A Suspension of Dogmatic Beliefs

The practice of wearing the *niqāb* in contemporary Muslim societies, which is based on a contested juristic opinion (*khilāfiyyah*), requires suspending its presumed obligatory status to enable a renewed understanding of its legal foundation. Claims regarding its obligation stem from divergent interpretations of Qurʾānic verses on *ḥijāb*, which are generally understood to mandate bodily covering.[20] This interpretive disagreement suggests that the dogmatic justification of the *niqāb* must first be bracketed to achieve a form of legal knowledge grounded not merely in inherited assumptions but in reflective engagement with both textual sources and lived realities.[21] From a phenomenological perspective, dogmatic frameworks operate through the uncritical acceptance of meaning as already settled, thereby limiting the potential for deeper interpretive inquiry. For this reason, suspending these frameworks becomes methodologically necessary to recover the conditions under which legal meaning is constituted.

Gomaa challenges dogmatic beliefs regarding the *niqāb* by rejecting the claim that it is religiously obligatory. He views the obligation of the *niqāb* as an inherited assumption lacking strong and explicit textual evidence that establishes face-covering as part of the *ʿawrah*—the parts of the body that must be covered. Instead, Gomaa considers the *niqāb* primarily an Arab cultural practice rather than a definitive Islamic injunction.[22] He further argues that when the *niqāb* is imposed or worn as a marker of pious distinction or moral superiority, it may constitute *bidʿah*, especially when it fosters symbolic boundaries and social divisions within Muslim communities. By situating the *niqāb* within the realm of culture rather than immutable religious duty, Gomaa shifts the legal discussion from doctrinal absolutism toward socially embedded normativity. On this basis, he concludes that women's dress should be evaluated in relation to local customs, provided that the relevant standards of *ʿawrah* are maintained.[23]

By foregrounding local culture, Gomaa shifts the legal evaluation of the *niqāb* from rigid dogma to social relations and embodied interaction, with *shahwah* (sexual desire) serving as a key regulatory criterion. He supports this argument by drawing on earlier jurists to challenge the dogmatic treatment of the *niqāb*. Citing Aḥmad ibn

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[20] Muḥammad ʿAlī al-Ṣābūnī, *Rawāʾiʿ al-Bayān: Tafsīr Āyāt al-Aḥkām* (Cairo: Dār al-Ṣābūnī, 2007), 2:111.
[21] Husserl, *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy*, 377.
[22] ʿAlī Jumʿah, "Al-Niqāb Martabat bi al-ʿIbādah," in *Al-Niqāb ʿĀdah wa Laysa ʿIbādah: Al-Raʾy al-Sharʿī fī al-Niqāb bi-Aqlām Kibār al-ʿUlamā'*, ed. Muḥammad Ḥamdī Zaqzūq (Cairo: Dār al-Kutub al-Miṣriyyah, 2008), 16.
[23] Jumʿah, "Al-Niqāb," 19.

Muḥammad al-Shāwī, Ibn Marzūq, and Ibn Maudūd al-Mauṣilī, Gomaa affirms the permissibility of uncovering the face, provided that looking at it does not provoke desire (*shahwah*).[24] He also argues that social considerations justify women revealing their faces, particularly when necessary to avoid harm (*maḍarrah*) and to facilitate ordinary social interactions, including commercial and public transactions.[25] Such practical needs are central to his claim that legal positions derived from textual interpretation must remain responsive to the conditions of social life. In this respect, Gomaa's reasoning demonstrates that the legal status of the *niqāb* cannot be determined solely through abstract doctrinal inheritance but must also be mediated through the social consequences and relational realities within which legal norms are enacted.[26]

The flexibility of legal rulings on the *niqāb*, grounded in hardship (*mashaqqah*) and customary practice, does not similarly extend to rulings on *ḥijāb*. For Gomaa, legal concessions (*rukhṣah*) regarding *ḥijāb* are limited to exceptional circumstances, such as situations involving a serious threat to life, unlike the *niqāb*, whose normative status is more directly influenced by culture and custom.[27] This distinction is based on the fact that the obligation of *ḥijāb* is supported by explicit textual evidence, which ordinary social difficulties cannot override. In contrast, the normalization of the *niqāb*, originally associated with Arab norms of honor (*murūʾah*), must be evaluated in light of public welfare (*maṣlaḥah*) and prevailing social customs. Accordingly, when the *niqāb* is used as a means of distinguishing oneself from other Muslim women, it becomes legally problematic and may even be deemed impermissible.[28] Through this distinction between *ḥijāb* and *niqāb*, Gomaa differentiates between norms grounded in explicit scriptural obligation and those shaped by historical and experiential conditions. This distinction is central to his legal methodology, as it reveals how textual authority is interpreted through the lens of lived social reality.

Gomaa's rejection of the *niqāb*'s obligatory status reflects a broader method of legal formation grounded in direct engagement with scriptural evidence, mediated by lived experience. He brackets inherited claims about the *niqāb*'s obligation when they lack clear textual support, thereby shifting the analysis toward what can be described phenomenologically as "reflective legal consciousness". In Husserlian terms, this move interrupts the "natural attitude," that is, the unreflective acceptance of inherited social meanings as self-evident.[29] Gomaa rejects the elevation of the *niqāb* to a universal religious obligation by arguing that its normative force derives primarily from Arab cultural conventions rather than from a binding

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24 Jumʿah, "Al-Niqāb," 25–27.
25 Jumʿah, "Al-Niqāb," 27.
26 Jumʿah, "Al-Niqāb Martabat bi al-ʿIbādah," 18.
27 ʿAlī Jumʿah, *Al-Kalim al-Ṭayyib: Fatāwā ʿAṣriyyah* (Cairo: Dār al-Salām, 2010), 2:345.
28 ʿAlī Jumʿah, *Al-Mutashaddidūn: Manhajuhum wa Munāqashat Ahamm Qaḍāyāhum* (Cairo: Dār al-Maqṭam, 2011), 146.
29 Edmund Husserl, *The Crisis of European Sciences and Transcendental Phonomenology: A Inroduction to Phenomenological Philosophy*, trans. David Carr (Evanston: Northwestern University Press, 1970), 148.

scriptural command. In doing so, he distinguishes between textually grounded legal obligations and historically sedimented social assumptions.[30] This movement beyond inherited practice toward reflective legal evaluation is what makes his reasoning socio-legally significant, as it reveals how Islamic legal meaning is formed through the interaction of text, normativity, and social life, rather than through doctrinal repetition alone.

Bracketing the presumed obligation of the *niqāb*, which stems from divergent interpretations of verses related to *ḥijāb*, allows a return to primary textual evidence. This return initiates a process of legal meaning-making that is less constrained by interpretive sedimentation and inherited assumptions that may no longer align with the original normative horizon of the text. Such suspension enables a more critically reflective engagement with legal evidence, aiming to distinguish between scriptural indications and historically accumulated practices.[31] In contrast, practice-based understandings often stabilize legal meaning within a particular worldview, thereby narrowing the interpretive field. As Fylypovich et al. observe, practiced religious phenomena can shape interpretive judgment in ways that influence how normative claims are perceived and reproduced.[32] In this sense, Gomaa's rejection of the *niqāb* as an unquestioned legal obligation functions not as a denial of tradition but as a methodological effort to preserve the integrity of textual meaning against the uncritical authority of inherited social practice.

Gomaa's rejection of the *niqāb*'s dogmatic basis reflects a broader methodological orientation toward legal evidence within its original normative context. This approach complicates Mark Sedgwick's characterization of Gomaa as a neo-traditionalist scholar who primarily responds to modernity by advancing a new modern framework.[33] It also partially aligns with Brusi's view of Gomaa as adapting Islamic rulings to secular conditions.[34] While Gomaa's responsiveness to context indeed marks him as a neo-traditionalist in certain respects, his method cannot be reduced to contextual adaptation alone.[35] Rather, his insistence on returning to the *ẓāhir* (apparent or literal) dimension of textual evidence through the suspension of interpretive dogma reveals a more precise methodological logic. It is precisely here that *fiqh al-wāqiʿ* becomes analytically visible—not simply as a discourse of contextual responsiveness, but as a structured mode of legal reasoning grounded in the interplay among textual evidence, juristic consciousness, and lived

30 Husserl, *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy*, 312.
31 Caleb Scoville and Heather Mooney, "So You've Provincialized the Canon. Now What?," *Teaching Sociology* 51, no. 1 (2023): 67–78.
32 L. O. Fylypovich, V. V. Tytarenko, and O. V. Horkusha, "The Chellenges of The Russian-Ukrainian War for Ukrainian Religious Studies: Methodological Aspects," *Zhytomyr Ivan Franko State University Journal. Philosophical Sciences* 2, no. 94 (December 2023): 43–56; Philip Joseph D. Sarmiento, "Re-Contextualization of Christian Dogmas on God, Christ and Grace: Implications to Catholic Religious Education," *Asia Pacific Journal of Multidisciplinary Research* 5, no. 4 (2017): 120–25.
33 Mark Sedgwick, "The Modernity of Neo-Traditionalist Islam," in *Muslim Subjectivities in Global Modernity*, ed. Dietrich Jung and Kirstine Sinclair (Leiden: Brill, 2020), 121–46.
34 Brusi, "In Search of a Lost Paradigm."
35 Sulaiman, Masrukhin, and Burdah, "'Ulamā,' Maṣlaḥah, and the Politics of Fatwa," 283–307.

social reality.[36] In this sense, Gomaa's suspension of dogma serves as a key entry point for clarifying the methodological substance of *fiqh al-wāqiʿ*, a concept often invoked yet insufficiently theorized in contemporary Islamic legal studies.

Intentionality in Legal Formation: Gomaa's Suspension (*Epochē*) of *Niqāb* Dogmas

Gomaa's suspension of dogmatic assumptions enables the interpreter to redirect attention toward the construction of legal evidence by orienting consciousness to the foundational text itself.[37] This mode of awareness corresponds to intentionality, understood phenomenologically as the directedness of consciousness toward an object of meaning. Through intentionality, the interpreter derives legal significance from the text not as a fixed repository of ready-made conclusions but as a field of meaning accessed through acts of perception, reflection, and interpretation. In this sense, the discovery of legal meaning depends on conscious engagement with textual evidence rather than passive acceptance of doctrinal positions. This process frees the interpreter from dogmatic prejudice and opens the possibility of systematically examining the subjective structures through which legal understanding is formed.[38] The operations of consciousness—remembering,[39] perceiving, and imagining—thus become integral to the constitution of legal meaning, as the interpreter's intentional engagement with the text shapes the horizon within which normativity is understood.

Gomaa's reasoning becomes clear through his reflective engagement with arguments supporting the obligation of the *niqāb*. He cites Sūrat al-Nūr, verse 31, to determine the legal boundaries of *ʿawrah* (the parts of the body that must be covered) for free Muslim women, and in doing so, he rejects the claim that the *niqāb* is obligatory. Gomaa interprets the phrase "*wa-lā yubdīna zīnatahunna illā mā ẓahara minhā*" (and not to reveal their adornment except what ordinarily appears thereof) as referring to the face and hands, where adornments such as kohl and rings are customarily displayed. This reading suggests that the verse presupposes the visibility of certain bodily areas and therefore does not require full facial covering.[40] His interpretation is grounded in the textual wording and reinforced by exegetical authorities such as Ibn Kathīr[41] and Jalāl al-Dīn al-Suyūṭī,[42] both of whom offer readings compatible with this view. By reading Sūrat al-Nūr, verse 31, together with Sūrat al-Aḥzāb, verse 59, Gomaa concludes that the legal obligation pertains to *ḥijāb* as bodily modesty rather than to the *niqāb* as face covering.

Gomaa's interpretation of Sūrat al-Aḥzāb, verse 59, similarly involves a close analysis of the verse's linguistic structure to clarify the command regarding bodily covering and modesty. He examines the phrase "*wa-lyaḍribna bi-khumurihinna ʿalā*

36 Amasha, "Political Judgment, Fiqh al-Wāqiʿ, and the Egyptian ʿUlamāʾ's," 49–86.
37 Husserl, *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy*, 233.
38 Edmund Husserl, *The Idea of Phenomenology*, trans. William P. Alston and George Nakhnikian (The Hague: Martinus Nijhoff, 1964), 38–40.
39 Moran, *Introduction to Phenomenology*, 155–57.
40 Jumʿah, "Al-Niqāb Martabat bi al-ʿIbādah," 16.
41 Jumʿah, "Al-Niqāb Martabat bi al-ʿIbādah," 17.
42 Jumʿah, "Al-Niqāb," 22.

juyūbihinna" (and let them draw their head coverings over their chests), carefully distinguishing between *khumur* (head coverings), *ḥijāb*, and *niqāb*. For Gomaa, *ḥijāb* generally refers to covering or concealment, whereas *khumur* in this verse specifically denotes headscarves.[43] In contrast, the term "*niqāb*", which refers to a face covering, does not appear in the verse.[44] This lexical absence is legally significant in Gomaa's reasoning, as it indicates that the face is not among the body parts explicitly required to be covered. On this basis, he excludes the face from the category of *ʿawrah*, thereby reinforcing his broader rejection of the *niqāb*'s obligatory status. Here, intentionality operates through disciplined attention to textual distinctions, allowing legal meaning to emerge from the revelation's semantic structure rather than from later doctrinal expansion. According to Gomaa, identifying the legal provisions governing *ʿawrah* requires a close analysis of the specific wording of Sūrat al-Aḥzāb, verse 59. The term "*juyūb*" (chests) is interpreted as "*fatḥat al-ṣadr min al-qamīṣ wa-naḥwih*" (the opening of the chest in a garment or the like),[45] while the phrase "*wa-lyaḍribna bi-khumurihinna*" emphasizes the act of covering that area with *khumur*. This textual structure leads Gomaa to conclude that the chest and neck are among the parts of the body that must be covered with a headscarf. To support this interpretation, he cites Ibn Ḥazm:

> "*Fa-amarahunna Allāh taʿālā bi-l-ḍarb bi-l-khimār ʿalā l-juyūb, wa-hādhā naṣṣ ʿalā satr al-ʿawrah wa-l-ʿunuq wa-l-ṣadr, wa-fīhi naṣṣ ʿalā ibāḥat kashf al-wajh, lā yumkin ghayr dhālik aṣlan*."[46]
>
> [Allah, the Exalted, commanded women to draw their head coverings over their chests. This clearly mandates covering the *ʿawrah*, neck, and chest, while permitting the face to remain uncovered; no other interpretation is fundamentally possible.]

By affirming the permissibility of uncovering the face, Gomaa further challenges the assertion that the *niqāb* is a mandatory form of bodily covering.

Gomaa rejects the obligation of the *niqāb* through a deliberate analysis of the linguistic and semantic structure of Qurʾānic discourse. He examines Sūrat al-Nūr, verse 31, and Sūrat al-Aḥzāb, verse 59, as perceptual and meaning-bearing texts, focusing closely on their wording to establish legal significance. This perceptual approach shapes intentionality through what phenomenology describes as belief-based (*doxic*) modes.[47] Gomaa's legal reasoning exemplifies a form of rational intentionality in which textual perception is mediated by interpretive judgment and reinforced through engagement with exegetical authorities. By citing earlier commentators, he does not merely reproduce inherited views; rather, he evaluates them to establish legal evidence (*setzung*) and to fulfill the intuitive dimensions of

43 Jumʿah, "Al-Niqāb," 22.
44 Jumʿah, "Al-Niqāb," 21.
45 Jumʿah, "Al-Niqāb," 22.
46 Jumʿah, "Al-Niqāb," 22.
47 Husserl, *The Idea of Phenomenology*, 10.

textual meaning.[48] His rational and textually disciplined approach—combining linguistic analysis, juristic interpretation, and experiential awareness—reveals a consistent pattern of legal meaning-making that underpins his rejection of the *niqāb* as a mandatory covering.

The interpreter's intentional engagement with the lawgiver's texts, when read as arguments rather than fixed formulas, generates a dynamic conception of legal meaning. Meaning does not remain static but evolves through historical and social conditions, thereby shaping legal rulings that are responsive to particular situations. Reflective analysis of textual structure enables the connection of original normative indications with newly emerging contexts, a necessary condition for contextual legal interpretation.[49] This process can be understood as a dynamic linkage between text and meaning, allowing legal reasoning to remain responsive to changes in time and place without severing its connection to scriptural foundations.[50] Gomaa's intentionality exemplifies such a re-evaluative legal method: by analyzing the propositional structure of religious texts such as Sūrat al-Nūr, verse 31, and Sūrat al-Aḥzāb, verse 59, he reopens the question of obligation and thereby challenges the entrenched dogma surrounding the *niqāb*. From a socio-legal perspective, this demonstrates that legal norms are not merely inherited but are actively reconstructed through interpretive practices that mediate between revelation and social life.

Gomaa's legal reasoning integrates an awareness of religious tradition with experiential engagement in contemporary realities, and it is this integration that shapes his interpretive framework. His adaptive yet textually disciplined approach, which seeks to respond to modern social conditions,[51] is partially reflected in his rejection of the *niqāb*'s obligatory status. He formulates legal rulings through a combination of textual analysis and intuitive evaluation of legal arguments, as demonstrated in his interpretation of Sūrat al-Nūr, verse 31, and Sūrat al-Aḥzāb, verse 59. Bunt identifies a similar pattern in Gomaa's fatwa permitting Qurʾānic recitation as a ringtone, which likewise reflects his willingness to engage contemporary issues through a method firmly anchored in scriptural interpretation.[52] In this respect, Gomaa's reasoning differs from other contextual models that rely primarily on *qiyās* (analogical reasoning) to move beyond the original textual framework.[53] By grounding legal formation in the core semantic structure of revelation, Gomaa allows legal meaning to expand contextually through

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48 Timo Miettinen, *The Idea of Europe in Husserl's Phenomenology: A Study in Generativity and Historicity* (Illinois: Northwestern University Press, 2013), 134.

49 Paul Ricoeur, *Time and Narrative*, vol. 1, trans. Kathleen McLaughlin and David Pellauer (Chicago: University of Chicago Press, 1984), 71–6.

50 Husserl, *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy*, 222–25.

51 Mohamed Jabir Ali al-Hudawi, Emin Poljarević, and Khalil Ahmad, "A Critical Examination of the Theoretical Foundations of Wasaṭī Minority Jurisprudence," *Sociology of Islam* 10, nos. 3–4 (November 2024): 258–79.

52 Gary R. Bunt, "#Islam, Social Networking and The Cloud," in *Islam in the Modern World*, ed. Jeffrey T. Kenney and Ebrahim Moosa (London: Routledge, 2014), 185.

53 Choirur Rois et al., "Recontextualization of Fiqh al-Siyāsah from the Perspective of Fiqh al-Ḥaḍarah in Realizing World Peace," *Journal of Islamic Thought and Civilization* 14, no. 1 (June 2024): 335–51.

reflective and experiential engagement. This approach makes his method particularly significant for socio-legal studies of Islamic law: it demonstrates how legal authority is produced not simply through doctrinal continuity but through intentional acts of interpretation that mediate between text, social practice, and evolving historical conditions.

Consciousness in Veil-Wearing Practices: Gomaa's Evidence through the *Lebenswelt* (Life-World) of the *Niqāb*

Conscious engagement with *niqāb*-wearing reflects the active role of individuals in interpreting legal texts within the realm of religious practice. Therefore, examining the legal status of the *niqāb* requires attention not only to scriptural formulations but also to how veiling was actually practiced and experienced within the earliest Muslim community. From a phenomenological perspective, Husserl's concept of the transcendental ego,[54] the conscious subject that constitutes meaning through experience, helps explain how legal understanding is shaped through lived engagement with the world. In this context, the framework becomes relevant through the practices of the Prophet's Companions during the period of Qurʾānic revelation, as preserved in relevant traditions. These hadith-based practices constitute a form of lived legal knowledge through which normative meaning is apprehended in its pre-theoretical form rather than through later dogmatic codification.[55] From this perspective, the Companions' practices regarding the *niqāb* reveal a structure of consciousness grounded in lived experience, and it is this structure that informs Gomaa's rejection of its obligatory status.

Gomaa bases his rejection of the *niqāb* as a mandatory face covering for the *ʿawrah* on legal practices traceable to the Prophet's time. He cites hadith reports indicating that women appeared in public with their faces uncovered. One example concerns the Farewell Pilgrimage (*ḥajjat al-wadāʿ*) to Mecca, during which al-Faḍl ibn ʿAbbās looked at the face of a woman from the Khathʿam tribe. The phrase "*wa-kānat imraʾah ḥasnā*" (and she was a beautiful woman)[56] suggests that her face was visible. For Gomaa, the Prophet's failure to instruct her to cover her face indicates that the face was not considered part of the *ʿawrah*.[57] Moreover, Gomaa cites another hadith from the same context in which the Prophet prohibited women in a state of pilgrimage from wearing the *niqāb* or gloves (*quffāzayn*).[58] Taken together, these reports reinforce Gomaa's rejection of the *niqāb*'s obligatory status by grounding legal interpretation in the actual customs of women during the formative period of Islamic law.

Gomaa further supports his argument by appealing to the broader historical experience of women during the Prophetic era, whom he portrays as not typically covering their faces. He cites a hadith narrated by Jābir ibn ʿAbd Allāh, who

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54 Husserl, *The Crisis of European Sciences and Transcendental Phonomenology*, 205.
55 Dan Zahavi, *Husserl's Phenomenology* (California: Stanford University Press, 2003), 51.
56 Muḥammad ibn Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Damascus: Dār Ibn Kathīr, 1993), 1:648.
57 Jumʿah, "Al-Niqāb Martabat bi al-ʿIbādah," 17–8.
58 Jumʿah, "Al-Niqāb Martabat bi al-ʿIbādah," 17; Al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī*, 1:653.

accompanied the Prophet to the ʿĪd prayer. During the Prophet's sermon encouraging almsgiving, a woman described as having visibly darkened cheeks (*safʿāʾ al-khaddayn*) stood up to question him. Jābir's description implies that she spoke publicly with her face uncovered, which Gomaa interprets as additional evidence that face covering was not a normative requirement at that time.[59] This example reflects Gomaa's reliance on a reflective analysis of women's customary practices in the Prophetic community as a basis for rejecting the claim that the *niqāb* constitutes a binding legal obligation.

Gomaa also highlights women-embodied legal practice by citing a hadith narrated by ʿĀʾishah concerning the Prophet's guidance to Asmāʾ bint Abī Bakr regarding the *ʿawrah* of an adult woman. According to this report, Asmāʾ approached the Prophet wearing thin clothing, prompting him to turn away and instruct her that once a woman reaches maturity, nothing should be visible except her face and hands. The wording of the hadith, conveyed through *ishārah* (gestural indication)—"*lam taṣluḥ an yurā minhā illā hādhā wa-hādhā*" (nothing should be seen of her except this and this")—is understood to refer to the face and palms.[60] For Gomaa, this report further supports the conclusion that the face does not belong to the category of *ʿawrah*. More importantly, however, the report illustrates how legal meaning is disclosed through embodied interaction and situational guidance rather than through abstract doctrinal formulation alone.

According to Gomaa's reasoning, the legal practices of the Prophet's early community serve as a foundation for the ongoing interpretation of *ʿawrah* in the modern era. These practices embody layered normative meanings connected to the Prophet's own understanding of the Qurʾānic injunction regarding bodily covering. Through repetition and transmission, such practices contribute to the formation of a shared legal worldview that endures across generations. Husserl's concept of the transcendental ego elucidates this process by demonstrating how consciousness accumulates and organizes meaning over time through lived experience.[61] Analyzing the actualization of this transcendental consciousness reveals how beliefs and practices become sedimented into legal assumptions,[62] including the subsequent contestation of the *niqāb*'s status. However, because meaning remains dynamic rather than fixed, the continuation of practice does not merely reproduce the past; it also refines and rearticulates legal reality in response to changing contexts. Thus, Gomaa's analysis of the Companions' practices through *riwāyah* (narrated traditions) supports a historically continuous yet interpretively open understanding of veiling norms.

Prophetic-era legal practices form the foundation of Gomaa's framework for reconstructing modern Islamic legal reasoning, particularly concerning the obligation of the *niqāb*. These practices, which predate later formalized juristic debates on veiling, underscore the significance of hadith as part of the *Lebenswelt*

59 Jumʿah, "Al-Niqāb Martabat bi al-ʿIbādah," 18.
60 Jumʿah, "Al-Niqāb Martabat bi al-ʿIbādah," 18.
61 Husserl, *The Crisis of European Sciences and Transcendental Phonomenology*, 92.
62 Miettinen, *The Idea of Europe in Husserl's Phenomenology*, 172.

(life-world) in which legal meaning initially arises.[63] They serve as the traditional Boden (ground or foundation) upon which theoretical legal interpretation is subsequently constructed. In this regard, Gomaa's approach bears some resemblance to Angelika Neuwirth's pre-canonical reading of the Qurʾān, which views revelation as inseparable from the lived historical experience of the Prophet's community.[64] However, unlike Neuwirth, Gomaa places greater emphasis on the lived experience of the Companions as preserved in hadith reports. Despite this difference, both approaches suggest that the earliest experiential horizon of revelation remains essential for recovering legal meanings that continue to shape contemporary normative judgments.

Gomaa's legal reasoning centers on meanings derived from communal practices during the Prophetic era, which continue to inform his stance on contemporary issues such as the legal status of the *niqāb*. Brown identifies a similar pattern in Gomaa's approach to apostasy, noting that his interpretation of hadith partly relies on the absence of a fixed punishment for apostasy during the Prophet's time.[65] This leads Gomaa to construe apostasy not as a matter of private belief but as an act of political treason against the Muslim polity. This broader pattern suggests that Gomaa consistently privileges the lived normative world of the earliest Muslim community as a source of legal meaning. Yet, this dimension of his thought is often overlooked. For example, Brusi portrays Gomaa primarily as a scholar shaped by traditionalist Sunnī-Ashʿarī narratives,[66] while Sulaiman et al.[67] and Amāsha[68] emphasize his entanglement with political interests during periods of crisis in Egypt. Although such interpretations illuminate important facets of his intellectual and political positioning, they risk obscuring the pre-theoretical and experiential structure of his legal method. It is precisely this structure—rooted in the *Lebenswelt* of early Muslim practice—that reveals how Gomaa's legal consciousness operates beyond doctrinal repetition and transcends the reduction of legal reasoning to theology or politics alone.

Conclusion

This study elucidates the methodological framework underlying the concept of *fiqh al-wāqiʿ* (Islamic jurisprudence of reality) as reflected in the legal reasoning of Egyptian scholars (*ʿulamāʾ*), particularly Ali Gomaa, through the application of a phenomenological approach. The findings reveal that Gomaa's rejection of the obligatory *niqāb* (face veil) is not merely a doctrinal legal conclusion but a structured methodological act grounded in the suspension of dogmatic presuppositions (*epoché*), a directed engagement with scriptural sources (intentionality), and an

63 Husserl, *The Idea of Phenomenology*, 131.
64 Angelika Neuwirth, "Negotiating Justice: A Pre-Canonical Reading of the Qur'anic Creation Accounts 1 (Part I)," *Journal of Qur'anic Studies* 2, no. 1 (January 2000): 25–41.
65 Jonathan Brown, "Scripture in the Modern Muslim Word: The Quran and Hadith," in *Islam in the Modern World*, ed. Jeffrey T. Kenney and Ebrahim Moosa (London: Routledge, 2014), 30.
66 Brusi, "In Search of a Lost Paradigm."
67 Sulaiman, Masrukhin, and Burdah, "'Ulamā,' Maṣlaḥah, and the Politics of Fatwa," 283–307,
68 Amasha, "Political Judgment, Fiqh al-Wāqiʿ, and the Egyptian ʿUlamāʾ's," 49–86.

appeal to lived communal practices as a horizon of legal meaning (*Lebenswelt*). This interpretive model foregrounds the jurist's role as a meaning-constituting subject who approaches the text not as a passive transmitter of inherited doctrine but as an active legal actor situated within a specific social and historical context. In this regard, the study demonstrates that the formation of fatwas is not determined solely by textual authority or institutional legitimacy but also by a structured process of legal consciousness shaped through the interaction among text, interpreter, and social reality. More broadly, these findings contribute to socio-legal studies of Islamic law by offering a more explicit conceptualization of *fiqh al-wāqi*ʿ as an interpretive, experiential, and socially mediated process of legal formation rather than merely a descriptive framework for contextual legal adaptation.

However, this study is limited to analyzing Gomaa's reasoning on the specific issue of the *niqāb*, which may not fully capture the diversity of methodological approaches employed by Egyptian scholars in other legal domains. The articulation of *fiqh al-wāqi*ʿ identified in this article should therefore be understood as a context-specific, case-based reconstruction rather than a universally generalizable model of contemporary Islamic legal reasoning. Future research is needed to examine a broader range of fatwas, legal issues, and juristic figures to assess whether similar phenomenological structures of legal consciousness can be identified across different socio-legal contexts. Such investigations would not only help substantiate, refine, or challenge the analytical framework proposed here but also deepen scholarly understanding of how Islamic legal authority is formed, negotiated, and enacted in contemporary Muslim societies.

Data Availability

The data supporting the findings of this study are publicly available through the published works of Ali Gomaa and other scholarly sources cited in this article.

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ORCID

Lilik Abdul Malik Jamjami https://orcid.org/0009-0005-3814-7686
Cholila https://orcid.org/0009-0006-9938-1465

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