

LAW AND ETHICS IN ISLAM

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The Qurʾān regards the conduct of man, individually and collectively, in private and in public, as being under divine command: "Those who do not judge (or decide) in accordance with what God has sent down, these are the disbelievers" (5.44; see also 5.45, 5.47, etc.). Indeed, in 2.213 God's primary purpose in sending revealed books is to decide matters under dispute among people. The Qurʾān, therefore, attributes the commands to prayer or to fast to God, and it is exactly the same with rules concerning financial transactions. Hence Islamic law, from the beginning, was conceived as an indivisible totality in the sense that it was derived from God's Word and thus possessed the same and uniform divine sanction. Some scholars of Islam, both Muslim and non-Muslim, maintain that this characteristic of Islamic law derives from the historical reality. Since there was no government or political ruler in Arabia, as there was, for example, at the birth of Christianity, Muḥammad had to assume the roles of ruler, commander, and lawgiver in addition to dispensing a "religious" teaching. This argument has been developed further by Muslim secularists to show that the combination of a dual authority, religious and political, in Muḥammad was therefore accidental and that with changed conditions, the duality should be separated. But in the Qurʾān, rules concerning political, legal, social, and other matters are not referred to Muḥammad but to God; strictly speaking, the lawgiver (*shāriʿ*) is not Muḥammad, but God.

God's right or function, then, is to command (*sharʿ, amr*), while man must accept and obey (*dīn, ṭāʿa*). It is clear that this approach, which brings all human conduct under the concept of duty or obedience to God, cannot formally distinguish between justiciable and nonjusticiable actions. For example, it is man's duty to God not to tell a lie, and it is also his duty to God—this time through man—not to steal, even though the latter is justiciable in a court of law while the former may be justiciable only at the "bar of conscience" before God. Therefore, in the overall value-structure of human conduct the primary valuation is religiomoral and, although of course humanly administered justice plays a basic role in ordering society, it is

definitely secondary to the real value-order, which is the moral order. This point on the character of Islamic law has been made often,¹ but the exact implications of the relationship between law and ethics have not been fully treated. This is the central question I wish to explore.

It is well to recall that in Islam there exists a sharp distinction, even a cleavage, between law and ethics, among the users of the law if not among its producers or dispensers. The existence of *hiyal* literature, whose avowed purpose is to teach people how to evade law, points to a certain dislocation between morality and law. Al-Ghazālī regarded *fiqh* as “a mere science of this world” if it was not practiced with a religious attitude. He relates the following incident in the *Ihyāʾ*: Someone reported to Abū Ḥanīfa that his disciple, Abū Yūsuf, was resorting to the morally questionable practice of evading payment of zakat by transferring his property to his wife before it had been in his possession a whole year, as required by the law of zakat, and that his wife did the same with her property. Upon hearing this, Abū Ḥanīfa remarked, “Abū Yūsuf is a *faqīh* [as opposed to a man of religion] and, as such, he is perfectly within his rights in doing so.” Al-Ghazālī condoned Abū Ḥanīfa’s alleged response by insisting that law is a science of this world and therefore has nothing to do with the real science of faith, which is *ʿilm al-ākhirah* (science of the hereafter).²

With al-Ghazālī, however, we are dealing with a mystic who is concerned with the purely spiritual aspect of human behavior. In the *Kitāb Mīzān al-ʿAmal*, for example, he observes that prayer, like dancing, contains certain physical movements and postures. If these are performed without an understanding of the true spiritual import of prayer, they are no better—and no worse—than the movements of a dancer. In the case of a dancer, at least, the movements are understandable.³ And when al-Ghazālī and others complain about the “lawyers or *qādīs* of our times,” it is not difficult to see what they mean. But how can one explain the allegation that Abū Ḥanīfa not only condoned but indeed was doing what a *faqīh* can do? Abū Ḥanīfa, we are told, was a person who refused the caliph’s offer of an appointment as chief *qādī* because he was fearful of the responsibility the position entailed. *Fiqh*, if not the center of *dīn*, as al-Ghazālī would say, is certainly the bedrock of Islam. But then why should *fiqh*, under certain conditions, and according to al-Ghazālī probably even under normal conditions, turn out to be antagonistic to *dīn*?

¹For an excellent and concise statement on this point see H. A. R. Gibb, *Mohammedanism* (Oxford: Oxford University Press, 1952), Chapter 6.

²*Ihyāʾ ʿUlūm al-Dīn*, vol. 1 (Cairo: al-Maktaba al-Tijāriya al-Kubrā, n.d.), *Kitāb al-ʿIlm*, pp. 18 ff. (see also the following reference). Later, on p. 24, ll. 10 ff., al-Ghazālī, somewhat inconsistently, says that his criticism of the *fuqahāʾ* has reference only to the later pseudo-*fuqahāʾ* and does not apply to the very early ones.

³See F. Rahman, “Theology and Law in Islam,” in G. E. von Grunebaum, ed., *Theology and Law in Islam* (Wiesbaden: Otto Harassovitz, 1971), p. 93; see also al-Ghazālī’s text referred to therein.

Similarly, Ibn Taimīya, some two centuries later, while discussing the execution of al-Hallāj, talks of fiqh or legal *ijtihād* and its relationship with the sharī'a as well as the relationship of the Sufi inspiration of *kashf* to the sharī'a. Ibn Taimīya complains that people often equate sharī'a not only with law but also with the actual decisions of judges. He then states that when Sufi intuition and the ulama's *ijtihād* differ, then neither can claim validity but both must compete with each other for sharī'a proofs of their respective legitimacy.⁴ He does not actually define sharī'a, but from his discussion it appears that by sharī'a he means those norms or values or ideals that have been laid down by God, explicitly or implicitly, which are to be applied, through fiqh, to human conduct, which then must be judged against them. It is quite clear that shārī' (lawgiver) in this sense is God alone, and not the Prophet.

Thus there is a distinction between legal rules and an Ideal Law, and it is the latter which, strictly speaking, is the law or the Will of God. In the Qur'ān, verbal derivatives from the term "fiqh" are frequently used but they mean "understanding" of central issues preached by the Prophet and are usually equivalent to *ilm* (knowledge), which also always implies understanding. In only one place is fiqh used specifically for religion, in Sura 9.122, which advises Muslims that they should not all participate in wars, but that "from every segment a group should devote themselves to acquiring a deeper understanding of the Faith (*liyatafaqqahū fī'l-dīn*) and should teach their people when they return so that these too shall receive admonition." Here "fiqh fī'l-dīn" means "deeper understanding of the Faith," which may include rules of conduct but is certainly much more general and comprehensive. Another most important and interesting point in verse 9.122 concerns the function of the fuqahā' or ulama. That function is not to rule, as Khomeini contends in *Vilāyet-i Faqīh* in opposition to the Qur'ān, but to teach the community at large in order to minimize the differences between an *ālim* and a non-*ālim*, for the Qur'ān undoubtedly requires a community whose members are enlightened enough about Islamic teaching to be able to carry on *shūrā* (decision-making) through mutual discussion and consultation.

Despite the distinction between legal rules and the Ideal Law, a distinction supported by the Qur'ān and the later tradition—I have already mentioned al-Ghazālī and Ibn Taimīya—both fiqh and sharī'a became generally equated with specific rules, and it is obedience to these rules that constituted the fulfillment of God's Will. Yet, as noted earlier, in Islam the paramount valuation of human conduct was moral, not legal, and decisions by judges in the courts, and even the opinions of *muftīs* or jurisconsults, did not constitute the primary manifestation of the divine will, although they were very important and were perceived, in some sense, as flowing from that

⁴F. Rahman, *Islam* (2d ed.; Chicago: University of Chicago Press, 1979), p. 113, top, quotation from Ibn Taimīya.

will. The problem, then, is: What happened to the Ideal Law or Will of God, where was it to be located, and in what actual relationship, if any, did it stand to the fiqh law?

In order to be in a position to give anything like a satisfactory answer to these questions, we should look at certain telling examples from the Qurʾān. These examples will, I think, show that whenever there are specific Qurʾānic commands and prohibitions, lawyers take them very seriously, but whenever the lawyers are faced with general Qurʾānic requirements with an ethical import, they do not know how to deal with them, and in many cases do not even try. Sura 4.2, for example, severely criticizes certain guardians of orphans for abusing the latter's property—a theme that goes back well into the Meccan period—and 4.127 states that these guardians, rather than return their property to orphan girls when they come of age, would prefer to marry them (and enjoy their property). Further, in 4.3, the Qurʾān states that if these guardians cannot do justice to the orphan girls' properties, then they may marry up to four from among the latter, provided they do justice among co-wives; but if they cannot do justice to each, they must marry only one. In 4.129, again, the Qurʾān categorically denies the possibility of justice among a plurality of wives. Now the lawyers understood 4.3 to grant a specific legal permission for marrying up to four wives; as for the justice clause, they understood it not as a specific rule but only as a general command to do justice and a recommendation to the husband's conscience. In recent times, the legislation concerning multiple marriages has been reversed in some countries; Tunisian family law, for instance, assumes that polygamy was permitted only temporarily and under certain conditions, and that the Qurʾānic command to do justice, coupled with a denial of the possibility of such justice, necessitates the prohibition of polygamy.

In 23.44, the Qurʾān gives Muslims a general command to execute freedom-purchasing contracts with their slaves, if the latter so desire, and to give such of them as are destitute a part of their own wealth. Most early fuqahāʾ maintained that this is only a recommendation, not a command, and Mālik (d. 179/795) states unequivocally that he never met an ʿālim who believed otherwise.⁵ Again, in 42.32, the Qurʾān enumerates the moral characteristics of those who have faith and states that men of faith must decide their affairs by *shūrā* (mutual consultation), a democratic pre-Islamic Arab institution which the Qurʾān upholds. *Shūrā* was not developed into any institutionalized form until Muslim Modernists insisted upon a constitutional form of government in the nineteenth and twentieth centuries. It is true that the fuqahāʾ had little political power to either implement, or to cause the implementation of, *shūrā*, but they could at least have attempted to formulate its necessary elements, structure, and the like, something they never did.

⁵ Ibid., "Epilogue," p. 298, ll. 5 ff.

The Qur'ān, from its very beginning, has been very emphatic regarding the amelioration of conditions for the poor and the deprived and has strongly advocated socioeconomic justice. In fact, these are cornerstones of the entire Qur'ānic teaching. The Qur'ān also prescribes the levying of zakat. Further, Sura 59.7, concerning the distribution of booty, defines the categories in which booty is to be divided and adds: "This is so that wealth should not circulate only among the rich ones of the society." To implement this general economic requirement it was necessary to have political power, which the fuqahā' lacked. They did, however, have the necessary intellectual power, and the opportunity, to explain what was meant by "circulation of wealth in the society as a whole" and to show how this could be brought about. Yet the fuqahā' did little to reinterpret zakat, which in any event had become a fixed law. On the question of general economic justice, we have only the disturbing opinion of the Zāhiri Ibn Ḥazm (d. 450/1058), who believed that it is an Islamic duty for the poor to revolt against the rich and against political authority if their plight is such that they are threatened with starvation. This passage of Ibn Ḥazm's⁶ has been played up in recent Muslim socialist literature, but it is an isolated example and is not explicitly related to the Qur'ānic teaching on economic justice.

It is striking, indeed, how the fuqahā' felt either helpless before these general Qur'ānic directives or did not feel their importance strongly enough to try to explicate their legal imperatives. The fuqahā' did draw a distinction between *fatwā* and *taqwā*, that is, between legal imperatives and deeper moral obligations. For example, the majority of the fuqahā' prohibited any excess charge on a sum loaned, for that would constitute *ribā*, which the Qur'ān bans; this is *fatwā*, or a legal norm. But many fuqahā' also stated that it is unlawful, or rather, immoral for a creditor to exploit in any way the situation of the debtor vis-à-vis himself. Thus it would be reprehensible for a creditor to as much as ride on his debtor's riding beast or to take shelter from the sun in the shade of his debtor's house; this is *taqwā*, or a moral demand, which of course cannot be enforced through a court of law. Yet even in this example, it is both interesting and significant that instead of formulating a general principle to the effect that a creditor must not take any advantage, big or small, of anyone indebted to him, fiqh literature prefers to cite concrete examples, such as a creditor riding the debtor's beast or seeking shelter in the shade of his house.

It would be tempting to argue, as several Western writers have done, that the Arab mind is more concrete than abstract, that it works by imagination rather than by reason, and therefore can deal with particulars and minutiae better than with universals. Such theories were common in nineteenth-century

⁶See F. Rahman, "Sources and Meaning of Islamic Socialism," in Donald E. Smith, ed., *Religion and Political Modernization* (New Haven: Yale University Press, 1974), p. 256, ll. 5 ff.

Europe. I too hold that the Arab mind possesses a strong imagination and loves the concrete, but the second part of the proposition, namely, the "atomicity" of the Arab mind, to use Hamilton A. R. Gibb's phrase,⁷ does not necessarily follow. In any case, not all jurists were Arab, particularly in Iraq; Abū Hanīfa himself was an Iranian. I think the answer must be sought in the nature of the culture, rather than in any romanticizing of ethnicity.

The Arab-Islamic culture values a living sense of moral rectitude in human conduct above everything else. Intellectualism for the sake of intellectualism—the hallmark of Greek culture and of much of modern Western culture—is perceived as a sin against human nature, if not a crime as well, for it deliberately distorts the human perspective. The nearest antecedent to Arab-Islamic culture is Syriac Christianity, which according to many Western scholars is also causally connected with it. Among the three main streams of classical Christianity, it is the Syriac which kept the Semitic moral Weltanschauung most alive. This has been adduced to explain the curious fact that the Qurʾān, in the Meccan period, hardly mentions the New Testament but refers to the Book of Moses six times as its great forerunner, despite the fact that at the time there were more Christians than Jews in and around the Arabian Peninsula. The explanation is that in Syriac Christianity, the Old Testament was given more prominence than the New Testament.

The Qurʾān is not a book of abstract ethics, but neither is it the legal document that Muslim lawyers have made it out to be. It is a work of moral admonition through and through. A large part, which deals with human relations (and which also includes many of the stories), is full of statements on the necessity of justice, fair play, goodness, kindness, forgiveness, guarding against moral peril (*ʿadl*, *qist*, *iḥsān*, *taqwā*, and their equivalents), and so on. It is clear that these are general directives, not specific rules. But they are not abstract moral propositions either; they have a driving power, a compelling force, which abstract propositions cannot yield. This fact was acknowledged also by the Muʿtazila Rationalists, who, while insisting that "good" and "bad" (i.e., moral truth) were knowable by natural reason without the aid of Revelation, nevertheless believed that Revelation was not superfluous but helped motivate people to pursue goodness.⁸

Of course, besides certain general pronouncements made in the Qurʾān, of which we have already cited some examples and which the jurists do not appear to have taken seriously in their legislation, all the specific injunctions of the Qurʾān contain general principles as well. The jurists, at least theoretically, acknowledge that the specific injunctions of the Qurʾān are meant

⁷See H. A. R. Gibb, *Modern Trends in Islam* (Chicago: University of Chicago Press, 1946), Chapter I, p. 6; but the entire chapter should be read.

⁸On Muʿtazila ethics and theology see the masterly treatment by George Hourani, *Islamic Rationalism* (New York: Oxford University Press, 1971).

to satisfy these general requirements or principles. They also maintain that these requirements or principles constitute the *rationes legis* (ʿilal 'l-aḥkām) of the Qurʾānic injunctions. Their whole theory of *qiyās* (analogical reasoning) is based upon this premise. Thus they seek to deduce law by extricating the *ratio legis* of a certain legal text that is analagous to the case under consideration and then applying it to the given case, allowing for differences. This *ratio legis* is nothing more than a general principle which is presented as the essence of the law. In other words, it is the moral value that the law seeks to embody and realize. If values and principles were to be derived from the entire Qurʾān, it would be possible to build an ethical system that would be genuinely Qurʾānic.

If such a task had been attempted, jurists would not have been compelled to resort to principles like *istiḥsān* and *maṣlaḥa mursala*, which are specific formulations of the principle of equity and justice in general. The trouble with these principles is the difficulty of applying them well and avoiding arbitrariness. Also, these principles, as they were formulated and applied, seemed to secularize Islamic law. We are told that the function of *maṣlaḥa mursala* is to locate and formulate a value wherein a certain legitimate interest of the community lies but which is not connected with any sharīʿa value (aṣl sharʿī). In other words, it is in some sense definitely secular in terms of the basic nature of Islamic legislation. The case with *istiḥsān* (equity) is not much better. It is sometimes defined as a deviation from *qiyās*. This second formulation seems highly meaningful because it implies an appeal to a higher principle or value than the one upon which strict *qiyās* was supposed to be based. This would call for some systematization of values in terms of priorities. But this is precisely what was never done, and the two bases of legislation appeared so arbitrary that al-Shāfiʿī felt compelled to say regarding *istiḥsān* that whoever resorts to it claims to lay down a new sharīʿa.⁹

These three free-floating principles—*maṣlaḥa*, *istiḥsān*, and *ḍarūra* (necessity)—in medieval times gave the administrative authorities an instrument of great flexibility for applying sharīʿa, and afforded later rulers, particularly the Ottomans, the opportunity to systematically introduce a new state-made law that claimed to be sanctioned by sharīʿa law. The Ottoman experience, in turn, paved the way for the introduction of secular law in Turkey. Modern legal systems in Egypt and Iraq, drafted by the late Sanḥūrī Pāshā, are also based on systematic appeals to the same principles of community interest and necessity without any attempt to relate them to relevant sharʿī values. Yet the same and indeed far better results could have been achieved by the juridic procedure of extracting the *rationes legis* of Qurʾānic injunctions, formulating them into general principles or values, systematizing these

⁹See n. 3; see also F. Rahman, introduction to *Islam and Modernity: Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1984).

principles or values, and deriving law from them. One case will illustrate the point. The Qur'ān (2.178; see also 2.92) enunciates the *lex talionis* and also confirms the system of settling a murder through blood-money (*diya*), which was practiced in pre-Islamic Arabia. This, of course, makes of murder a private crime and upon this premise rests the classical fiqh law of murder. Elsewhere, however, the Qur'ān refers to the murder of Abel by Cain and states: "For this reason, we laid it down upon the Children of Israel that whoever kills one human without his having the right to it or without there being a state of war, it is as though he has killed all mankind, and whoever gives life to one human, it is as though he has given life to all humanity . . ." (5.32), which explicitly makes the crime of murder a crime against humanity. Now a legal solution could have been derived from this general statement, but this was never done.

I am not suggesting that if the development of Qur'ānic ethics had taken place and law had been deduced from it, differences of legal opinion would have been eliminated—that would be neither possible nor desirable. But differences of opinion would have been grounded more soundly and would have been better controlled or rationalized and chaos would have been minimized. Moreover, the evolution of law could have proceeded more smoothly, the so-called "closure of the gate of *ijtihād*" would not have occurred and, in fact, would have become inconceivable. Resort to principles like *maṣlaḥa*, which were never well formulated, whose operations were uncontrolled and often arbitrary, and which were, indeed, amorphous, would have been related to *sharī'a* principles. It is true that because of the lack of cohesiveness an astonishingly rich wealth of opinion on virtually all important issues has been generated along the entire legal spectrum. Abū Ḥanīfa and Mālik, for example, prohibit sharecropping and absentee landlordism; from Abū Yūsuf onward, however, most jurists allow it. In retrospect, it can be seen that between Mālik and Abū Yūsuf the differences in milieu made the crucial difference. Still, the reasoning of all three—Abū Ḥanīfa, Mālik, and Abū Yūsuf—is abstract and there is no appeal to any common principle; the differences in reasoning can be attributed to different interpretations of *ḥadith*. The question of birth control may serve as another example. Opinions range from outright prohibition to strong recommendation, the reasoning on both sides having no common basis; those who prohibit birth control use the necessity of strengthening the community as their main argument; others, like al-Ghazālī, say that a couple must avoid having children if they are too poor to feed them and fear that economic hardship might compel them to obtain money by unlawful means. Both sides of the issue have assumed large proportions in today's Muslim world and the division of opinion among Muslims can have grave consequences.

Perhaps the most interesting case of grave neglect of propounding theories based on *sharī'a* principles is in the political field. From Morocco to Indonesia we see a continuous spectacle of personal rule (even discounting central

Asia and Afghanistan, which are under Russian occupation): monarchs, military dictators, religious autocrats, all offering themselves as the best alternative and the best form of rule for the Muslim community. The Qurʾān, as has been pointed out, gives the principle of *shūrā* (mutual consultation and discussion) to the Muslim community as a decision-making process, but *shūrā* was never developed into an institution. Instead, the caliphal form of government became, in the course of time, for Muslims and Muslim political theorists, the only valid form of rule, even though there is no word about it either in the Qurʾān or in the Prophet's sunna, except for an obviously spurious ḥadīth according to which the Prophet said, "Obey me and my rightly guided successors (*al-khulafāʾ al-rāshidūn*)." Since the mid-nineteenth century, practically all Modernist Muslim thinkers have contended that the only valid Muslim rule is through *shūrā*, which in the world of today means a representative form of government. In conformity with this ideology parliaments were instituted in several Muslim countries. But the current deluge of secular and fundamentalist dictatorships has, at least for the time being, submerged that entire democratic orientation. The curious thing is that in the Islamic dictatorships of Khomeini and Ziaul Haq, no actual reference is made either to the Qurʾān or to its *shūrā* principle. In fact, both men have tried to undermine that principle by insisting that the common Muslim has no sense of right and wrong, and that consequently guidance must come to him from above. Now if this argument is correct, and if the Qurʾān puts the responsibility for *shūrā* on the community and not on Khomeini or Ziaul Haq, then it must be concluded that the Muslim community is not in existence. Perhaps most interesting of all is the fact that while Muslim Modernists, including Shīʿa thinkers like Amīr ʿAlī, have insisted that Islam cannot be a theocracy since it has no priestly class, Khomeini and his colleagues are saying precisely that there is a priestly class in Islam and that it must rule; this is essentially true of Ziaul Haq's stance as well.

What lies at the bottom of this dilemma and how, if at all, can it be resolved? If I have been able to give a satisfactory answer to this question and to suggest a way towards a solution to its underlying problem, then a way will have been opened for Muslims to attain their goal, namely, a proper rediscovery of Islam—if we Muslims really wish to do so. The answer, in brief, is that the Qurʾān's message must be understood as a unity and not as so many isolated commands and injunctions. But in order to bring out the Qurʾān's message as a unity, one must start with the theology and ethics of the Qurʾān and only then approach the realm of law. The Islamic developments in history started with the law, and Muslims subsequently developed a theology that in its genesis and historical development had no connection with the law. The theology later claimed for itself the status of "crown of the sharīʿa sciences" and the function of protector of the law. As Ibn Taimīya has stated, a theology which rejects the freedom and efficacy of

the human will ill accords with a law that assumes human freedom and responsibility.¹⁰ The formulation of a proper Qur'ānic theology is necessary particularly in order to define the God-man relationship. A Qur'ānic ethics was never worked out by Muslims. In the present volume, the participants at the Ninth Levi Della Vida Conference discuss the different ethical traditions that developed in Islam, some that are nearer to the Qur'ān than others, but almost none that have grown out of the Qur'ān proper. The reason, I believe, is that such an ethics presupposes a satisfactory theology. After ethics comes law, and that law must satisfy the demands of the Qur'ān as a unitary teaching.

The rise and development of Islamic law, as they actually occurred, kept the Muslims' attention focused on details, at the expense, I think, of the general requirements of the Qur'ān. It is true that the fabric of daily life is made up of details and minutiae; these can, however, be managed and properly directed, but only by recourse to ultimate principles. Whether a particular sales transaction is lawful and valid, or whether and to what extent a tailor is liable for the loss of material he had in his possession, are examples of the problems men face throughout their lives. Unless there is a mechanism for defining the nature of human responsibility and for applying the concepts of justice, fair play, kindness, and mercy to *all* the data of actual life—concepts which the Qur'ān emphasizes so untiringly—the law cannot really provide the necessary foundation for “the good life” envisaged by the great jurists. Eventually law must run the risk of a critique such as that of al-Ghazālī, quoted earlier.

In the absence of a living link with ultimate principles, it became necessary, through the second century in particular, to invoke the infallible authority of the Prophet—*Prophetus ex machina*, as it were—and attribute to him all the trivia of daily life. The minutiae of law were spun out as isolated items of legislation, with the Ḥanafis invoking “considered opinion (*ra'y*)” or “analogical reasoning (*qiyās*),” and the Mālikis relying on “the practice of Madina” (*ʿamal ahl al-Madīna*). In the absence of any substantive unifying principles that could bind these isolated items into a system, the need for an infallible authority is understandable.

What was needed was the development of *ijtihād* and *ijmāʿ* in constant interaction with each other. *Ijtihād* was needed not only for a horizontal deduction of law as it was actually used, but also for a vertical development of arching and overarching general principles in order to progressively subsume the multiplicity of principles under them. Later jurists like al-Shāṭibī (d. 1388 C.E.) and Ibn Rushd (d. 1198 C.E.) worked on the general principles of the *sharīʿa* from different points of view, but this was a somewhat different exercise. Al-Shāṭibī and ʿIzz al-Dīn ibn ʿAbd al-Salām al-

¹⁰ Rahman, *Islam*, p. 113.

Sulamī (d. 1182 C.E.) aimed at extracting the purpose of the laws (*aghrāḍ al sharī'a* or *al-maṣāliḥ*). Ibn Rushd tried to clarify the basis and methodology of different schools of law and to explain their divergence, particularly between the Ḥanafīs and the Mālikīs, a task to which he brought a cogency and a lucidity which only philosophical training could have given him. Al-Shāṭibī is fully aware that isolated sharī'a proofs, like individual verses of the Qur'ān or ḥadīths (even if the latter are *mutawātir*, i.e., handed down by an overwhelming number of transmitters), cannot constitute sharī'a proofs properly speaking and cannot reach the point of certainty, unless such proofs, of different provenance, converge upon one specific point (*taḍāfur al-adilla*).¹¹ Although al-Shāṭibī, so far as I can read him, is talking about individual points to be proved, for example, the obligation of prayers, his argument definitely has the potentiality of being applicable to Islam as a whole, or to the message of the Qur'ān as a whole. This would necessarily entail not only a horizontal movement but a vertical movement as well. The famous maxim quoted by many lawyers and numerous commentators on the Qur'ān, which states that "parts of the Qur'ān are mutually explanatory (*al-Qur'ān yufassiru ba'ḍuhū ba'ḍan*)," also implies that the Qur'ān is a unity and not a jumble of isolated or mutually contradictory ideas.

Ethics may be defined as a theory of moral right and wrong. This is exactly what the Qur'ān claims to do; for this is what guidance (*hudā*) means. In this definition, the terms "theory" and "moral right and wrong" are basic. Some might argue that the two concepts are incompatible because moral right and wrong are practical and, as such, have to be intuited rather than theorized, and that the more one theorizes about right and wrong, the more one recedes from a real sense of what they are. I suspect that this type of consideration was, perhaps unconsciously, working among Muslims. In fact, I suspect that it was at work in the Semitic culture alluded to earlier, which manifests a sort of instinctive abhorrence of general abstract propositions, particularly in the moral field, which in that culture constitutes the primary field of human endeavor. Morality is not expressed in terms of propositions but rather in terms of divine dictates and actions. On this view, right and wrong, which are primarily qualities of actions, cannot be determined by an appeal to general propositions but only with reference to the state of mind called *taqwā* or the living sense of God's presence. There is, no doubt, a point here and one can even say that the more ethical theorization there has been in modern times, the less concern there has been about actual right and wrong. This was the crux of the difference between the Mu'tazila and their opponents, the Ash'arites, who believed that right and wrong originate in the divine imperative rather than in rational propositions, and that "good" and "bad" are known through Revelation rather than

¹¹ Rahman, *Islam and Modernity*, pp. 21-22.

through Reason (although, as I pointed out earlier, the Muʿtazila did admit that Revelation has a motive power which Reason does not possess, at least not sufficiently).

This is why I stress the need for a system of ethics that grows out of the Qurʾān. I do not say that Greek ethics or Persian ethics or, indeed, modern ethical theories are necessarily antagonistic to the Qurʾān, but for Muslims there are multiple reasons why a Qurʾānic ethics must be worked out. First of all, Muslims believe that the Qurʾān is the Word of God. Second, they believe that the Qurʾān contains, actually or potentially, the answers to all the questions of everyday life. Since the questions are infinite, the Qurʾān must contain the answers potentially. To get actual answers requires the exercise of mind and spirit. There is a profound statement on this subject attributed by the Shīʿa tradition to ʿAlī: "The Qurʾān speaks (only) if you ask it to speak," that is, you ask sincerely;¹² this is *ijtihād*. But if one uses *ijtihād* to elicit trivial details from the Qurʾān, one will feel the need for some validating authority, and this is why, as I have stated, at a certain stage of the development of *fiqh*, the need for Prophetic authority was felt and then satisfied by the fabrication of *ḥadīth*. The early Ḥanafīs were able to a large extent to avoid this drastic solution by their stated position—which remained effective even after al-Shāfiʿī's wholesale introduction of *ḥadīth* into law—that in the presence of a definite principle derived from the Qurʾān (*aṣl qaṭʿī*), they would reject a *ḥadīth* if it was in conflict with either. What is this *aṣl qaṭʿī*, or definite principle derived from Revelation? It is none other than what I previously described as the *ratio legis*, or generalized statement. This is the beginning of the vertical movement or discovery of the more general principle. Such a principle needs no authentication of its details by a *ḥadīth* report because it is more reliable than most *ḥadīths*, and certainly the *akhbār al-āḥād* (i.e., *ḥadīths* transmitted in a single chain), which, in fact, constitute the majority of *ḥadīths* in the sphere of law.

If the argument thus far is correct, then the term *uṣūl al-fiqh* is better applied to the general precepts and principles that are either explicitly formulated in the Qurʾān or are explicable from its *rationes legis*, than to the celebrated "four roots of law," namely, the Qurʾān, the sunna, *ijtihād*, and *ijmāʿ* or consensus. For, on the view that we have tried to expound, *uṣūl al-fiqh*, or principles of law, is that body of ethical teaching which will have emerged as a result of a systematic formulation of the *rationes legis* or objectives of the Qurʾānic legislation and injunctions. The Qurʾān and the authentic sunna of the Prophet are the *material sources of law*, while *ijtihād* and *ijmāʿ* are the *methodology of Islamic theology, ethics, and law*. Through this methodology, what is to be worked out in the first instance

¹² See K. *al-Kāfī*, vol. 1 (Tehran: al-Ṣadūq Press, 1381/1961), p. 61, l. 7; for the saying attributed to Jaʿfar al-Ṣādiq, see also p. 59, ll. 7 ff.

is the theology, and then the value-structure or higher objectives and goals of the Qurʾān: What kind of man does the Qurʾān desire to mold and, granted such individuals, what kind of sociopolitical order does it want to establish on earth?

In classical Islamic law, because ultimate values were not distinguished from instrumental ones, a good deal of confusion arose regarding the nature of laws of different provenance. It is certain, for example, that the Qurʾān views the establishment of a Muslim community as essential for its task and will not be content with good individuals only; further, this community is charged with the task of establishing a sociopolitical order. The community is thus the necessary instrument for this purpose. Later, not only was the community declared inerrant, most probably through considerations of the infallibility of *ijmāʿ*, but, in law it came to be regarded as something ultimate. A person's decision to abjure the community or the Islamic faith, for example, was made a capital crime. The Qurʾān states: "Those who believed, then disbelieved, again believed and once again disbelieved and then became entrenched in disbelief, God will not pardon them nor show them a right way" (4.137; cf. 3.90). In 2.256 the Qurʾān clearly formulates the principle of freedom of faith: "There can be no coercion in matters of faith—truth has become clear from falsehood." This is a good illustration of the conflict between the values and principles laid down by the Qurʾān and those deduced by the jurists on the basis of the logic of the Islamic Imperium, which emerged by swift conquests shortly after the Prophet's death. Before the conquests, however, immediately on hearing the news of the Prophet's death, many Arab tribes rebelled against the political authority of Medina and reverted to their old tribal sovereignty. They did not abjure Islam—although Muslim historians and lawyers have called the reaction by the misnomer "apostasy movement"—but insisted that they would pay taxes not to the central authority at Medina but to their own tribal organizations. Otherwise they would carry out all the duties devolving upon a Muslim, like prayer, fasting, pilgrimage, and so on. This shows clearly that theirs was a political rebellion. The rebellion was put down by force of arms, but by a mistaken argument Muslim lawyers deduced from this that a person who leaves the faith of Islam deserves capital punishment. The clearly stated Qurʾānic verse 4.137, quoted above, was ignored. Hence the source of the Islamic law on apostasy is not the Qurʾān but the logic of the Islamic Imperium. The science of Qurʾānic ethics will have to decide the relative place of both in the structure of Islam.