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Islamic Law: Its Sources, Interpretation and the Translation of It into Laws Written in English

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1 The Qurʾān and the Sunna

The two primary and transmitted sources of Islamic Law are the Qurʾān and the Sunna (Prophetic traditions and practices). This combination of the two crucial sources of Islamic Law is seen as a link between reason and revelation. Indeed, the marriage between these two sources has resulted in the emergence of Islamic Law [8: p. 15]. The Qurʾān is considered the most sacred and important source of Islamic Law, which contains verses related to god, human beliefs and how a particular believer should live in this worldly life. The human conduct that should govern the believers' life, which is clearly stated in the Qurʾān, is indeed the domain of Islamic Law. The Qurʾān comprises about five hundred legal verses that explicitly set out legal rulings that need to be applied by all believers [8: p. 16]. Even non-legal verses in the Qurʾān do support the establishment of the legal system of Islam, as will be expounded by Professor Almatroudi. The second primary and transmitted source of Islamic Law is the Sunna, which represents the Prophet Mohammad's (peace be upon him) deeds and sayings, which were formulated in the form of narratives and became known as Prophetic Ḥadīth [8: p. 16]. The Sunna also comprises a number of legal provisions that must be applied by all believers of Islam. Certain legal rulings in these transmitted Islamic sources are definitive. In other words, the law-giver (God) has formulated them in such a way which does not need personal legal reasoning and is not open to different interpretations as they are clear and definitive. Conversely, there exists a corpus of legal contents stated in both the Qurʾān and the

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Sunna, the application of which requires reasoning. The law-giver who has formulated certain legal rulings stated in the Qurʾān and the Sunna in such a way that never accepts two different interpretations, could have also done the same with regard to the rest of legal contents laid down in the aforementioned Islamic sources. However, there has been a pivotal reason behind making a huge bulk of legal contents mentioned in the Qurʾān and the Sunna open to legal reasoning. This flexibility in the law qualifies it to be legally valid for all legal cases regardless of time and place as it is amenable to development and change, a matter which will be further discussed in Sect. 3. Furthermore, the difference in the interpretation of a particular legal issue is deemed amongst jurists a kind of mercy. The de facto corpus of legal contents stated in the Qurʾān and the Sunna, the application of which demands independent legal reasoning leads us to another source of Islamic Law known as legal reasoning.

2 Legal Reasoning

Legal reasoning (ijtihād) is an untransmitted source of Islamic Law, whose emergence is due to the fact that Islamic jurists could not always interpret the language of the Qurʾān and that of the Sunna in the same way arriving at the same legal result, rather they frequently differ in their interpretations of certain Qurʾānic verses and particular Prophetic traditions, reaching different legal rulings. This is owing to the fact that the law-giver has deliberately set out a number of legal rulings in these two revealed legal sources, and formulated them in such a way that makes them open to reasoning and juristic interpretation so that the law becomes legally valid on a permanent basis and is susceptible to development as new legal issues emerge. Hallaq [8: p. 19] points out that certain terms in the Qurʾān and the Sunna can have more than a single legal interpretation. Metaphorical lexical items, for instance, need to be interpreted to convey specific legal meanings. Hence, Muslim jurists develop a corpus of certain linguistic rules in an attempt to surmount such problems. One crucial aim of exercising his personal reasoning is that the jurist would establish a particular legal norm for each legal case he confronts [8: p. 19].

Acts according to the Sharīʿa fall within five different legal norms. The first is represented by the prohibited category, which demands punishing the doer after committing a prohibited act. The second is the obligatory category, which entails punishment on account of failure to perform an act whose performance is deemed obligatory in the eyes of Islamic Law. Other categories are the recommended, permissible and abominable. If the person performs the abominable and not the recommended category, he/she shall not be punished. However, the person, by performing the recommended and leaving the abominable, shall be rewarded in the hereafter. The permissible category involves neither permission, nor prohibition, a matter which entails neither reward, nor punishment. Hence, when the jurist confronts a Qurʾānic verse and/or a Prophetic tradition which may include an imperative or prohibitive form, he is required to specify within which of the five legal norms/categories the legal ruling of the verse and/or the tradition falls [8: p. 20].

2.1 Consensus

Related to legal reasoning is another source of Islamic Law known as consensus (ijmāʿ), which refers to the agreement of jurists, living in a particular age, on a specific legal ruling of a particular act, after being subject to different legal views and opinions. Consensus has to be founded on the Qurʾān and/or the Sunna. Consensus plays a crucial role in ratifying and ascertaining legal rules which may have been grounded in probable evidence. If there exists a particular consensus on a specific probable evidence, such evidence can never be subject to error. Consequently, it can safely be argued that consensus is chiefly based on rules which are grounded in particular methods of reasoning. However, it is worth noting that the legal cases upon which there has been consensus are indeed limited within Islamic Law, though such legal cases have acquired special importance on account of being subject to this extraordinary source of law [8: p. 22]. Such legal cases cannot be stated here due to space restrictions.

2.2 Analogy

Also, categorized within the realm of legal reasoning is another legal source of Islam referred to as analogy (qiyās). This source of law is not deemed a material legal source, the legal content of which can be depended upon by the jurists. However, it is a legal source that can offer ways which can be utilised by the jurist to reach legal norms. Analogy is composed of four crucial components. The first is represented by the new case which demands a legal ruling; the implementation of one of the five legal norms stated above. The second is the original case which may be mentioned in the Qurʾān or the Sunna, or accepted by consensus. The third deals with the attribute to the new case as well as the original one. The last component resides in the legal norm that serves as a legal ruling in the original case, and is applied to the new case on account of the de facto similarity between the original as well as the new cases [8: pp. 22–23].

2.3 Preference

Preference (istiḥsān) is a particular legal practice exercised by jurists, which falls within the sphere of legal reasoning. It is deemed an inference made on the basis of a revealed text, though gives rise to a different legal result from that arrived at by analogy. The main difference between analogy and preference may lie in the fact that while the reasoning behind analogy falls chiefly within the large body of the law with no exception allowed, the reasoning underpinning preference, on the other hand, is to find a particular exception through the jurist's selection of a revealed text that allows this very exception [8: pp. 25–26]. A clear example for this is a person who has eaten in the day of Ramadan mistakenly. The reasoning behind analogy dictates that the person has to compensate for that day as there is no exception as to whether the person has eaten in the day of Ramadan intentionally or otherwise. Conversely, reasoning via preference does not demand compensation since the person has not eaten intentionally, rather he has done so mistakenly. It is worth

pointing out that the reasoning underpinning preference is based on a valid Prophetic tradition and does therefore supersede the reasoning behind the drawn analogy. Not all preference exceptions are founded on revealed texts, some of which are based on consensus, while others are grounded in the principle of necessity.

2.4 Public Interest

Public interest (istiṣlāḥ) is another legal practice which is contained within legal reasoning. The reasoning of public interest does not seem to be founded on the Qurʾān. Public interest, however, plays an undeniably crucial role in the determination of the ratio's suitability peculiar to analogy. This strong connection between the ratio and suitability has resulted in considering public interest by some jurists an extension to analogy. There are, indeed, certain universal principles on which the Sharīʿa is generally based. These reside in the protection of one's life, his/her mind, offspring, religion as well as property [8: p. 26]. If the feature of public interest in a particular case is in line with these universal principles, the reasoning in accordance with publish interest must be exercised. It is worth stating that the element of universality is of paramount importance as the law intends to serve interests of Muslims at large [8: p. 27].

3 Interpretation of Islamic Law

As stated above, the two primary sources of Islamic Law are the Qurʾān and the Sunna. These two revealed legal sources have contained certain definitive legal rulings, which require no legal reasoning from the part of the jurist, rather need to be applied as they are. The Qurʾān and the Sunna have also comprised legal contents, the implementation of which demands legal reasoning from the side of the jurist. This legal reasoning points to the maximum effort exerted by the jurist to interpret and apply the rules pertaining to the origins of jurisprudence (ʾuṣūl alfiqh), in quest for the appropriate legal ruling that best fits the legal case in question [7: p. 3]. In deed, a huge bulk of Islamic Law is subject to legal reasoning and is dependent thereon. This is owing to the fact that only limited legal rulings stated in the Qurʾān and the Sunna have a definitive nature, and the rest of the legal body of Islamic Law is contingent upon the jurists' legal reasoning. This is not at all a defect in the law, since the law-giver who set out definitive legal rulings, was indeed able to enforce a wholly definitive law, the application of its legal rulings is not subject to any reasoning. However, there have been important reasons behind this flexible nature of Islamic Law. This very nature of Islamic Law has made the law flexible and adaptable to all societies and regions. Moreover, the law has become susceptible to develop and change in different ways. Its development can be shown through choosing certain legal views that are more appropriate than others in addressing the legal cases concerned. The development can go even further than that by creating new legal views as new legal cases emerge [8: p. 27]. This aspect does unequivocally make Islamic Law legally valid for all legal cases regardless of time and place. The importance of the interpretation of Islamic Law does not lie in

the different legal views held by different jurists with regard to a particular legal case, rather it chiefly resides in the way in which the jurist interprets the law. When interpreting a particular Qurʾānic verse, for instance, the jurist cannot interpret it in isolation. He should, however, consider the verse, its legal and linguistic contexts, its occasion of revelation and all the events that surround the revelation thereof. In other words, a particular legal text never stands on its own according to Islamic legal system, but it is with no doubt influenced by a number of events that scaffold the jurist to extrapolate the most appropriate legal ruling for the legal case in question. Elements of coherence and intertextuality are of utmost significance and should always be in the jurist's mind during the process of interpretation and extrapolation of legal provisions.

4 Translation of Islamic Law

Language is viewed as the "heart within the body of culture" [5: p. 288]. Culture and language are strongly connected such that the former includes the latter [2: p. 187]. When exercising interlingual translation, differences in linguistics and culture clearly emerge and challenge the translator who becomes required to bridge such gaps between the two languages in question. This is indeed the main foundation on which the majority of research projects on translating and interpreting are intrinsically based [9: p. 201]. More intricacies and complications come to light when a legal text is to be translated from a single language into another, but from a specific legal system into a different legal system. Similar as well as different features between legal systems may exist, a matter which emanates from the difference in legal sources upon which each legal system is built. Engberg [6: p. 11] argues that the search for possible interrelations between the source and target legal systems is considered an important requirement for rendering legal texts from one law into another. Linguistic and cultural problems in legal translation do ipso facto exist due to the difference in legal systems [10: p. 247] and legal cultures.

Islamic Law, like any other law, is replete with a set of legal terms [1: p. 901] with concepts which may not exist in other laws, despite the fact that such legal concepts undergo conceptual developments across different legal systems. This runs in line with Cabanellas [4: p. 78], who asserts that despite the fact that concepts peculiar to legal terms go through certain processes of development across diverse sets of laws, they, however, possess different legal existence in different laws. Consequently, differences in legal systems should be put into consideration by translators in legal translation, as noted by Smith [11: p. 179]. Also, the translator is required to appreciate the accuracy at both word level and sentence level in a legal discourse [11: p. 180]. Based on the foregoing, it seems highly unlikely that there is one-to-one correspondence between terms specific to Islamic legal system and those particular to any legal system written in English, such as Common Law, for instance, as will be addressed by Dr El-Farahaty. However, of course, strategies to surmount such a dilemma are also in place, and legal translators often resort to them to achieve and serve the main purpose for legal translation, for further detail on this issue, please see [3].

5 Issues Discussed in the Current Issue

The present issue will deal chiefly with Islamic Law, placing special emphasis on five major issues. These lie in the sources of Islamic Law, its interpretation, economics, its finance as well as the translation between it and other laws written in English.

5.1 Issues Related to the Qurʾān and the Interpretation of Its Legal Contents

Professor Abdul-Hakim Almatroudi (University of London, United Kingdom), addresses the Qurʾān as one of the primary sources of Islamic Law, placing special emphasis on the fact that the Qurʾān is interrelated in nature such that its non-legal verses do support its legal issues. He claims that even though a large proportion of the Qurʾān lacks any explicit or implicit legal provisions, it, however, helps establish and support the system of Islamic Law. The contributor has arrived at this conclusion through carrying out profound analysis on the relationship between legal verses and those which do not comprise any legal rulings, assessing, at the same time, certain major themes, namely God, the Prophet and his message as well as the present life and the hereafter.

Dr. Mustafa Shah (University of London, United Kingdom), focuses on a study of the corpus of variae lectiones (Qurʾānic readings) and role that differences among concomitant or two-fold readings played in the interpretation of law. Reviewing the historical processes associated with the textual transmission of the Qurʾān, the contributor assesses the view that these readings were the product of attempts to circumvent legal inconsistencies in the juridical teachings of the Qurʾān. He explores, through an examination of the historical framework of the origin of variae lectiones, and by reference to early literature of grammar, the way jurists interpreted such material. The contributor also reviews different attitudes concerning types of variae lectiones which classical scholars viewed as being anomalous (shādhdha).

Dr. Ramon Harvey (Cambridge Muslim College, United Kingdom), addresses the oral transmission of the Qurʾān, which gives rise to the development of a reading tradition, which leads to diverse vocalizations made on the basis of the main Qurʾānic text of the ʿUthmānī manuscript. Ten readers were chosen by Ibn Al-Jazarī (d. 833/1429) to represent such reading tradition, while the readings of these ten readers are still considered canonical until present. Al-Kisāʾī (d. 189/805) is one of these ten readers, who has been known by his deep focus on the Qurʾānic grammar, compared to the other readers. The contributor discusses the process of selection particular to Al-Kisāʾī when having to choose a specific reading amongst numerous types of readings. He utilizes for his analysis a sample comprising fifty cases in which there are differences between Al-Kisāʾī's reading and those of the other readers. The contributor claims that it is possible, through carrying out a comparison between Al-Kisāʾī's reading and the notes given by classical scholars of linguistics of the Qurʾān, to suggest a typology of possible rationale behind Al-Kisāʾī's differences in his reading from the readings of the others. Such differences in his

reading from the readings of others are clearly grounded in grammatical preferences and are consistent. Analysing a range of his readings with the aim of interpreting Islamic Law would further help present the subtlety of his work.

Mr. Shafi Fazaluddin (Solicitor of the Senior Courts of England and Wales, qualified 1998, United Kingdom), tackles the concept of conciliation ethics in the Qurʾān as a crucial aspect in Islamic Law, which leads to Islamic legal rulings. It forms an important part in the legal system of Islam, settling disputes among litigant parties. The contributor points out that traditional literature specific to the concept of conciliation in the Qurʾān has often been inclined to the discussion of the process of reconciliation, though Western scholarship has little or no interest in this field. He, examining the notion of conciliation ethics in the Qurʾānic texts, questions its constituents, scope, its focus and purpose. Carrying out a survey on the whole Qurʾān, the contributor claims that the concept of conciliation is not at all restricted to Qurʾānic texts that contain the term 'ṣulḥ', rather it is deemed a pervasive notion that exists within social relationships. It is particularly accomplished through good behaviours, positive attitudes, dispute avoidance, etc.

5.2 Abductive Legal Reasoning and Islamic Economic Thought

Dr. Valentino Cattelan (University of Florence, Italy), pinpoints, through the use of Alice in Wonderland as a hermeneutical device in an attempt to search for the logic of Islamic jurisprudence, a crucial divergence in the implementation of abduction as a primary element of inference in Islamic Law between Western and Islamic legal thinking. Specifically, the contributor, through close examination of the relation between law and fact in symbolic terms, accentuates the fact that while Western legal thinking is characterized by having a dichotomy between fact and law, Islamic jurisprudence presents a strong connection between the 'real' and the 'right' where exercising personal reasoning 'ijtihād' in understanding Sharīʿa often leads to the real legal ruling in God's creation. Based on the foregoing, He claims that if the law is prescribed by Sharīʿa, not only is the legal ruling derived from primary legal sources, but the right shall also be justified by way of a verdict clarifying the fact that has given rise to the law to be implemented in the given instance. Therefore, abduction, the contributor asserts, can offer an account for the nature of Islamic jurisprudence, its ramifications and its function of the tradition as being important factors of the logic of the legal system of Islam. Uncertainty, however, does exist concerning the compatibility between logic of Islamic Law and deductive logic of Modern State Law, which is viewed as a product of Western legal thinking.

Mr. Sami Al-Daghistani (Double PhD candidate, Leiden University and WWU Münster, visiting scholar, MESAAS Columbia University, The Netherlands and Germany), addresses the concept of maṣlaḥa and its connection to the area of Islamic legal and economic thought as discussed by eminent Muslim scholars both in the past and at present time. The contributor indeed seeks to tackle a number of issues, such as the way in which maṣlaḥa may be embodied within Islamic legal reasoning, the type of meaning relayed by maṣlaḥa, the economic and/or legal reading it postulates and the notion of whether or not law, ethics and scriptural sources play an equal role in the development of the concept of maṣlaḥa in

economic terms. The concept of maṣlaḥa has always been part of the theory of Islamic Law, but has seldom been tackled within the context of economic thought. The contributor offers a historical account of the legal system of Islam and the concept of maṣlaḥa within the context of Islamic economics, placing special emphasis on the work of AlGhazālī. He then investigates the Islamic economic jurisprudence and Islamic economic theory as understood and discussed by influential theoreticians of economic studies in Islam, with credence lent to the view that Islamic economics is strongly linked to the essence of Islamic legal reasoning. The contributor makes use of Mohammad Al-Sadr's thoughts in viewing Islamic economics as a principle and not a science. He examines legal foundation of Islam with its normativity, casting lights on the notion that legal norms have been included within Islamic economic reasoning, an idea which resides in the concept that patterns of Islamic Law have been constructed socially alongside certain features of Islamic economic reasoning. He claims that in spite of the fact that literature of Islamic Law and that of Islamic economics are founded on primary Islamic legal and economic sources 'The Qurʾān and Prophetic Traditions', they, however, lie in ethical cosmology which is even more than just being an exact theological matter.

5.3 Custom as a Source of Islamic Law and Juristic Views of an Early Andalusian Mālikī Jurist

Dr. Abbas Mehregan (Independent Scholar, Germany), deals with the relationship between law and society and its crucial role played in the formulation of women's law within Islamic legal system from the sociological point of view. The contributor examines the economic, political and social structures specific to women's law in the Arabian Peninsula in the pre-Islamic era, presenting certain laws based on Arabs' customs which were rejected by Islamic Law and others which were modified and then accepted by Islamic jurisprudence. Certain legal issues have been particularly tackled, such as marriage, polygamy, rights to inheritance, blood money, the process of testimony and accepted forms of evidence in legal cases, the system of giving fatwā, the exclusion of women from the judiciary, rules concerning the veil and right of guardianship of children in the case of divorce. The contributor claims, through close examination of the way in which the Prophet Mohammad (peace be upon him) introduces Islamic Law, that custom should be regarded as a source of Islamic Law alongside other commonly known legal sources of Islamic jurisprudence.

Dr. Daniel Vazquez-Paluch (House of Wisdom, United Kingdom), collects the juristic opinions held by an early Andalusian jurist: ʿĪsā ibn Dīnār (d. 212/827), in an attempt to explore and analyse his legal views and thoughts. The contributor closely examines his detailed and explanatory notes and comments written on Almuwaṭṭaʾ as documented in the legal juristic issues which he had elaborated on in Mustakhraj by Alʿutbī (d. 255/869), beside profound analysis of his lengthy discussion with his student Ibn Muzayn. There has been a great focus on the Mālikī Muwaṭṭaʾ in Alandalus since a very early era where the Mālikī School of Law had been the dominant legal authority and Ibn Alqāsim had been the reliable interpreter of the

Mālikī Madhhab. The contributor claims that the foregoing represents challenges to Calder's dating of the Mālikī Muwaṭṭaʾ and Melchert's dating of Western Mālikism.

5.4 Islamic Finance and Legal Translation Between English and Arabic

Dr. Fahad Al-Zumai and Dr. Mohammed Al-Wasmi (Kuwait University, Kuwait), address the industry of Islamic finance as being relatively new, though growing rapidly to be the prevailing finance industry in the Middle East as well as North Africa. Islamic finance industry is chiefly built upon Sharīʿa provisions, including the prohibition of usury. The contributors point to the emphasis accorded by Islamic Law scholars to the ethical dimension of Islamic finance industry to the extent that it can be viewed as a fruitful solution to the de facto crony capitalism. The present financial crisis has created crucial challenges to the industry of Islamic finance, but has, at the same time, given this industry a golden opportunity to merge into prevailing finance and be an influential industry. The contributors evaluate the industry of Islamic finance in relation to the current financial crisis, in an attempt to explore whether or not the ethical foundation of Islamic finance institutions can distinguish these institutions from conventional finance institutions. They offer a relatively succinct account of finance in Islam, followed by discussion of the governance framework structure of Islamic finance institutions and the crucial role played by the organs thereof. A comparison is made between the ethical construction of Islamic finance institutions and that of conventional finance institutions. The contributors claim that there exists a great ethical failure of the present universal financial system in coping with the current financial crisis.

Dr. Hanem El-Farahaty (University of Leeds and University of Mansoura, United Kingdom and Egypt), addresses the concept of legal translation between English and Arabic as there has been a global pressing need for legal translation due to asylum seeking and immigration reasons, a matter which demands further research to be conducted on this particular field. Owing to the fact that there are clear differences between legal English and legal Arabic at diverse levels, different translation problems often arise when a particular legal text is rendered between the aforementioned languages, ranging from linguistic problems, culture-specific problems to system-bound problems. The contributor examines different ways of rendering lexical elements between legal English and legal Arabic. She explores and analyses different problematic areas in legal translation between English and Arabic, suggesting plausible strategies in coping with such acute translation areas. These include culture-specific and system-bound terms, specialized terms, archaic terms, doublets as well as triplets. The contributor tackles the common problems confronting the translator when rendering a particular legal text from English into Arabic and vice versa, with some light cast on the lexical problems encountered in English–Arabic and Arabic–English legal translation. Also, she presents certain procedures that need to be followed when rendering legal terms between English and Arabic. The contributor claims that the translation of lexical legal terms between English and Arabic demands strong acquaintance with the linguistic and legal systems of both English and Arabic, professional training, well-defined corpora and up-to-date electronic dictionaries.

References

1. Alwazna, R. Y. 2013. Testing the precision of legal translation: The case of translating Islamic legal terms into English. *International Journal for the Semiotics of Law*, special issue the process of translabiliting: translating and transferring law, its concepts, notions and language, 26(4): 897–907.
2. Alwazna, R.Y. 2014. The cultural aspect of translation: The workability of cultural translation strategies in translating culture-specific texts. *Life Science Journal* 11(11): 182–188.
3. Alwazna, R.Y. 2014. Important translation strategies used in legal translation: Examples of Hooper's translation of the Ottoman Majalla into English. In *The Ashgate handbook of legal translation*, ed. L. Cheng, K. Sin, and A. Wagner, 237–254. Surrey: Ashgate Publishing Limited.
4. Cabanellas, G. 2014. *The legal environment of translation*. Oxon: Routledge.
5. Dejongh, E.M. 1991. Foreign language interpreters in the courtroom: The case for linguistic and cultural proficiency. *The Modern Language Journal* 75(3): 285–295.
6. Engberg, J. 2013. Comparative Law for translation: The key to successful mediation between legal systems. In *Legal translation in context: Professional issues and prospects*, ed. A.B. Albi, and F.P. Ramos, 9–25. Bern: Peter Ling AG, International Academic Publishers.
7. Hallaq, W.B. 1984. Was the gate of ijtihad closed? *International Journal of Middle East Studies* 16 (1): 3–41.
8. Hallaq, W.B. 2009. *An introduction to Islamic Law*. Cambridge: Cambridge University Press.
9. Mikkelson, H. 1995. On the horns of a dilemma: Accuracy vs. brevity in the use of legal terms by court interpreters. In *Translation and the Law*, ed. M. Morris, 201–218. Amsterdam/Philadelphia: John Benjamins Publishing Company.
10. Obenaus, G. 1995. The legal translator as information broker. In *Translation and the Law*, ed. M. Morris, 247–259. Amsterdam/Philadelphia: John Benjamins Publishing Company.
11. Smith, S.A. 1995. Culture clash: Anglo-American case law and German civil law in translation. In *Translation and the Law*, ed. M. Morris, 179–197. Amsterdam/Philadelphia: John Benjamins Publishing Company.