A path to the Oasis: *Sharī'ah* and reason in Islamic moral epistemology

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Abstract   I propose a framework for comparative Islamic—Western ethics in which the Islamic categories *Islam, Iman*, and *Ihsan* are juxtaposed with the concepts of obligation, value, and virtue, respectively. I argue that *shari'a* refers to both the obligation component and the entire structure of the Islamic ethic; suggesting a suspension of the understanding of *shari'a* as simply Islamic "law," and an alternative understanding of *usul al-fiqh* as a moral epistemology of obligation. I will test this approach by addressing the question of reason in Islamic moral epistemology via an examination of an argument advanced by a founding *usul* scholar Muhammad bin Idrīs al-Shāfi'ī (150 A.H./767 C.E.).

A suggested general framework for comparative Islamic: Western ethics

Frederick Carney (1983) has proposed that the study of any religious ethic proceed on the hypothesis that the ethic consists of an obligation, a virtue, and a value component.[1] The task, in this case, is to identify and understand each of these components in the ethic, the ways in which they relate to each other, and the manner in which all of this is affected or determined by the religion itself. Carney illustrated the application of this methodology by way of elucidating some aspects of Islamic ethics; specifically, the five-fold schema for evaluating actions in *fiqh*, and al-Ghazali's theory of virtue; intended as studies in the ethic's obligation and virtue components, respectively.

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[1] Carney (1983, p. 159).

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Islamic *ulema* have traditionally organized their disciplines according to the fundamental categories of *Islam*, *Iman*, and *Ihsan*. A working hypothesis of what follows is that *Islam*, *Iman*, and *Ihsan* represent what Carney calls the obligation, value, and virtue components, respectively, of the Islamic *ethic*. The first set of terms is familiar to Islamic scholars, but virtually unknown in the West, while the latter are familiar to Western ethicists, but much less so among Muslims. If these terms are correlates in the way just proposed, then elucidating that relationship may render useful analytical tools for future studies in comparative ethics between the two traditions.

This raises the question, what *are* 'obligation,' 'virtue,' and 'value,' on the one hand; and *Islam*, *Iman*, and *Ihsan*, on the other? By an ethic's obligation component, Carney means, "all that responds to the question, What ought to be done?" By the virtue component, he means, "all that responds to the question, What kind of person (or society) is it most appropriate to be?" And by the value component, he means, "all that responds to the question, What objects or states of affairs are important?"[2] Determinations of value, according to Carney, usually proceed by "engaging in some sort of grading or ranking of objects or states of affairs," of virtue, by "setting forth an attractive ideal of a perfect or authentic person (or society)," and of obligation, by "employing principles and rules (or commandments or laws)."[3]

The scholars of Islam, meanwhile, have traditionally based the triadic organization of their sciences on, among other things, the pivotal "Hadith of Gabriel," narrated by Abdullah ibn Umar ibn al-Khattab as follows:

> My father, Umar ibn al-Khattab, told me: One day we were sitting in the company of Allah's Apostle (peace be upon him) when there appeared before us a man dressed in pure white clothes, his hair extraordinarily black. There were no signs of travel on him. None amongst us recognized him. At last he sat with the Apostle. He knelt before him, placed his palms on his thighs, and said: "Muhammad, inform me about al-Islam." The Messenger of Allah said: "Al-Islam implies that you testify that there is no god but Allah and that Muhammad is the messenger of Allah, and you establish prayer, pay Zakat, observe the fast of Ramadan, and perform pilgrimage if you are solvent enough." The inquirer said: "You have told the truth." It amazed us that he would put the question and then he would himself verify the truth. The inquirer said: "Inform me about Iman." The Prophet replied: "That you affirm your faith in Allah, in His angels, in His Books, in His Apostles, in the Day of Judgment, and you affirm your faith in the Divine Decree about good and evil." The inquirer said: "You have told the truth." The inquirer again said: "Inform me about al-Ihsan." The Prophet said: "That you worship Allah as if you are seeing Him, for though you don't see Him, He, verily, sees you" … Then the inquirer went on his way but I stayed with the Prophet for a long while. He then, said to me: "Umar, do you know who this inquirer was?" I

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[2] *Ibid.*

[3] *Ibid* p. 160.

replied: "Allah and His Apostle know best." The Holy Prophet remarked: "He was Gabriel. He came to you teach you your religion."[4]

Sheikh Nuh Ha Mim Keller gives some explanation of what has been inferred from this narration. "The use of *dīn* in the last words of it," he writes, "*Atakum yu'allimukum dinakum*, "came to teach you your religion," entails that the *religion* of Islam is composed of the three fundamentals mentioned in the hadith: *Islam*, or external compliance with what Allah has asked of us; *Iman*, or the belief in the unseen that the prophets have informed us of; and *Ihsan*, or to worship Allah as though one sees Him."[5]

The five constituents of the *Islam* component—known as the 'pillars of Islam'— are all actions, representing, in Keller's words, "external compliance with what Allah has asked of us." If we propose that this also represents what Carney refers to as the 'obligation component' of the Islamic ethic, then it follows that, in that ethic, the set of our moral obligations—what ought to be done—is co-extensive with what God asks. Keller writes:

> The hadith's very words "to *worship* Allah" show us the interrelation of these three fundamentals, for the *how* of "worship" is only known through the external prescriptions of *Islam*, while the *validity* of this worship in turn presupposes *Iman* or faith in Allah and the Islamic revelation, without which *worship* would be but empty motions; while the words, "as if you see Him," show that *Ihsan* implies a human *change* for it entails the experience of what, for most of us, is not experienced.[6]

There is a certain sense of the term 'worship' which, in modern parlance, connotes a narrow range of activities connected to religious ritual, prayer, and the like. Given this idea, the suggestion that the Islam component—through which, as Keller puts it, *how* to worship is known—represents all that responds, in Islam, to the question of *what ought to be done*, would seem to pose the troubling implication that moral value is restricted to the performance of purely 'devotional' practices. This overlooks the much broader scope of worship in the context of a tradition according to which, for instance, the Prophet stated that 'work is worship,' and at another time informed his Companions that the act of sex with one's spouse can bring divine reward. Indeed, there may be a case that the best way to characterize the idea of worship in this context is to say that it encompasses the entirety of that which ought to be done (in a sense that includes the supererogatory as well as the obligatory), whatever that happens to be under the circumstances in which one finds oneself.

Now, if it makes sense to say that the validity of the proposition that such and such action ought to be done depends on an appropriate connection between the action

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[4] Sahih Muslim, Hadith 1—For brevity's sake, a portion of the hadith, recounting a part of the conversation about signs of the hour of judgment, has not been reproduced here. It is not insignificant, however, that such a topic was included in this conversation.

[5] Keller, Nuh Ha Mim, "The Place of Tasawuff in Traditional Islam," http://www.sunnipath.com/resources/PrintMedia/Articles/AR00000144.aspx

[6] *Ibid.*

and some object or state of affairs of value or importance, then there is a clear parallel between this plausible relation between obligation and value, on the one hand, and that which Keller describes here as obtaining between the *Islam* and *Iman* components. The latter, as the hadith describes it, certainly lays out fundamental 'objects or states of affairs,' so to speak, which are of supreme value in Islam, such as God, revelation, and final judgment. In this case, *Ihsan* would be the way in which one ought to do that which ought to be done—as if you see God; and the change that this entails, according to Keller, is clearly toward being a kind of person understood as "most appropriate to be," to use Carney's words in defining "virtue component."

According to Keller, "the level of *Islam* has been preserved and conveyed to us by the Imams of *Sharī'ah* or 'Sacred Law' and its ancillary disciplines…"[7] Therefore, if the *Islam* component of Islam is, indeed, the obligation component of the Islamic ethic, then understanding the Islamic ethics of obligation requires a look at *Sharī'ah*. On the basis of the etymology of the term, along with its use in the Qur'an, I will present a conception of *Sharī'ah* which will support the suggestion that it can be understood as the 'obligation component' of the Islamic ethic. Furthermore, this conception carries within it a reference to all three components, and can thus be understood as a reference to the entire structure of that ethic.

Sharī'ah

The term 'sharī'ah'—شَرِيعَة—comes from the root, شرع, and Lane's *Arabic–Engish Lexicon* does include among the word's meanings, "the religious law of God: consisting of such ordinances as those of fasting and prayer and pilgrimage and the giving of the poor rate and marriage and other acts of piety, or of obedience to God, or duty to Him and to men."[8] Despite this, and the fact that most modern scholars of the topic refer to *Sharī'ah* in English as 'law,' there are good reasons to keep this term at arm's length, avoiding a simplistic translation of *Sharī'ah* as 'Islamic law'.[9]

In translating a term, the probability of distorting the meaning increases with the complexity, specificity, and theoretical baggage of the terms employed in the translation. The term 'law' rates quite high on this scale. Its meaning—the question of what law *is*—remains an open question that constitutes an entire field of Western philosophy. Simply defining *Sharī'ah* as 'Islamic law,' then, entails first, that the question of what *Sharī'ah* is also remains open, and second, that its closure is contingent on the closure of the question of law. The consequence of the first entailment is that defining *Sharī'ah* as Islamic 'law' tells us little or nothing about what it is. The consequence of the second entailment is that it becomes the task of Western philosophers of law to determine what *Sharī'ah* is, and they should be about as happy to accept such a responsibility as they would be to accept a definition of 'law' as 'Western *sharī'ah*.'

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[7] *Ibid.*

[8] Lane (1956, p. 1535).

[9] These reasons have little to do with the "mosque and state in Islam" issues, which themselves cannot be discussed with any clarity before the fundamental moral paradigm of Islam is understood.

Majid Khadduri, for instance, opens his translation of Imam al-Shāfiī's *Risala* with the proclamation that, "law is a system of social control established for the purpose of maintaining an ordered society among men."[10] If *Sharī'ah* is simply 'Islamic law,' it should follow that *Sharī'ah* is an Islamic system of social control established for maintaining an ordered society. But while it does make provisions for social order, such can hardly be claimed to constitute the *essential* function of *Sharī'ah*, such that it could be simply *defined* as a 'system of social control.' Such a statement indicates, rather, what the concept of *Sharī'ah* becomes, when uprooted from the context of its native worldview, and transplanted into the context of a worldview the ontology of which does not include the concerns to which the essential functions of *Sharī'ah* refer.

Sharī'ah is divine in origin and transcendent in its aims. Consequently, the obligations it entails are understood as obligations to God, and not simply obligations to the state. A simple application of legal terminology, restricted in scope, as it generally is, to the latter, carries the potential for misrepresentation in this respect. By this, I do not mean to imply that no obligations, under *Sharī'ah*, are enforceable by the state. When the *Sharī'ah* obliges the ruler—under certain circumstances—to cut the hand of a convicted thief, then this constitutes a moral obligation, on the part of the ruler, to God; and it means that the individual's obligation to God to refrain from stealing is deemed enforceable by the state. However, if an individual Muslim were to be stranded on a desert island, alone, and outside the jurisdiction of any worldly government, there are a good number of *Sharī'ah* obligations that will still apply to him. Only under a conception of 'law' in terms of which legal obligation is possible under such circumstances, would it be remotely possible for the term to adequately apply to *Shari'ah*.

Etymology of *Sharī'ah*

In order to understand what *Sharī'ah* is in its own terms, one must understand the role it plays within its native context, which is the worldview of Islam; and this requires us to start from a definition employing terms in the English language more basic than 'law.' Of those listed in Lane's, "a way of belief or conduct that is manifest and right in religion" is more useful for our purposes, primarily because it shares, in the idea of a *way*, a conceptual common denominator with the original meaning of the term, which is:

> A watering place; a resort of drinkers [both of men and beasts]; a place to which men come to drink therefrom and to draw water…such as is permanent, and apparent to the eye, like the water of rivers, not water from which one draws with the well-rope…and [in like manner it is said that] شَرِية signifies a place of descent to water: or a *way to water*.[11]

The idea of a 'path' or 'way' rests on that of *movement in a direction*. Verb forms of the term 'sharī'ah' carry the idea of direction *into* something. شَرَعْتُ فِى الْمَاْء (*shara'tu*

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10 Khadduri p. 3.

11 *Ibid.*

fīl mā') for example, means: "I entered into the water," as well as "I drank the water with my hands." شَرَعَ فِى الأَمْر (*shara'a fīl amr*) means: "He entered into the affair."[12] أَمْر (*amr*), the word translated as 'affair' here, can also mean 'command' or 'purpose.' These latter two are essentially intentional in nature; and intentionality is itself essentially directional. Thus, in English, a purpose is also an 'aim.' شَرَعَ (*shara'a*), said of a spear, means "It pointed directly."[13] That is, it *aimed*.

A *Sharī'ah* is a path that *aims*; that is, a path with a purpose; and the purpose of the sort of path that has a purpose is nearly always to take you somewhere. Of fundamental importance, with respect to the function of any such path, is that it is *marked* in some way.[14] An invisible or merely abstract 'path' cannot *show* you the *way*. A path that takes you to your destination must be one by which the way becomes clear. Indeed, the same term, شَرَعَ (*shara'a*), that in relation to a spear, means 'It pointed directly,' in relation to a path (and also to an affair or a case) means "It was or became apparent, manifest, or clear."[15] The word شَرْعٌ (*shar'*), meaning "a manifest, a plain, or an open track, or road, or way," can also carry the sense of 'sufficiency,' as in the Arabic proverb: شَرْعُكَ مَا بَلَّغَكَ المَحَلَّا (*shar'uka mā ballaghak-almahalla*). That is, 'sufficient for you is that which will cause you to reach the place (you are going).'[16]

The purpose of a *Sharī'ah*, understood as a path to water, is for the traveler to travel to a place from where he can drink and draw water. This is also, clearly, the very essence of a *Sharī'ah*; for how can a path be a path to water that does not, when traveled, take one to water? The idea that emerges, therefore, contains within itself a conceptual reference to water as well as to a traveler in need of it. Human beings need water for two reasons: to drink and to clean. In the course of life we periodically become thirsty and dirty, and thus have a constantly recurring need of the substance— water—the nature of which *suffices* for transformation from a state of thirst and filth to one of satiety and purity.

The term 'sharī'ah' simultaneously conjures a narrower and a broader concept. The former is simply that of the path itself. The latter includes the path, as well as the other components of the relational structure within which, alone, it can be a path *to water*, i.e. water and its value to, and effect on, the traveler. A *Sharī'ah* shows you what you *ought to do* ('walk this way') to access the source of *that which you need* (water) in order to bring about the desired *state* (satiety and purity). In the concrete imagery invoked in the original meaning of the term 'sharī'ah,' then, we find represented an obligation component: the path, the traveling of which is *what ought to be done*. We also find a value component: the water, an object *the value and importance* of which is

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[12] Lane (1956, p. 1533).

[13] *Ibid.*

[14] Commonly, the mark of a path is the effect of its having been frequently traveled, so that the ground is well worn in the place where people have walked before. Thus, the meaning, mentioned above, of شَرَعٌ—'a large street or thoroughfare,' shows its significance. It is a well traveled path of the community at large. The idea implicit in the image of a path being marked out or clarified by the footsteps of predecessors and a community alludes to a crucial element of Islamic moral epistemology.

[15] *Ibid.*

[16] *Ibid* p. 1535.

that in virtue of which the proposition that the path *ought to be taken* is *valid*. Lastly, we find a virtue component: the state of satiety and purity that the water promises for a thirsty traveler, representing a *human change* toward being *the kind of person* the being of which is *ideal*.

Shari'ah in the Qur'an

As far as I know, derivatives of the root شرع appear in the text of the Qur'an in just five places. Two of these five are actually instances of the verb شَرَعَ (*shara'a*), which, as previously mentioned, can mean 'directed' or 'aimed'. These appear in the thirteenth and twenty-first verse of the forty-second chapter, *Al-Shura*. The statement in 42:13 is translated by Abdullah Yusuf Ali as: "The same religion has He established for you as that which He enjoined on Noah," while that in 42:21 is: "Have they partners (in Godhead), who have established for them some religion without the permission of Allah?"[17] The key Arabic phrase in 42:13 is شَرَعَ لَكُم مِّنَ الدِّينِ (*sharaa lā kum min al-dīn*). Thus, it could plausibly be understood to mean, 'He aimed/pointed/directed you' (*shara'a la kum*) 'regarding the *dīn*' (*min al-din*). In 42:21, the key phrase is شَرَعُو الْهُم مِّنَ الدِّينِ (*shara'ū lā hum min al-dīn*), and a similar translation is likewise plausible. The point here is not to offer alternative translations or take issue with Ali's. It is simply to bring out the element of *trajectory* at the core of the idea of *Shari'ah*, which is not so apparent with the term 'established' without its being specified as the *establishment of an aim.*

In 5:48 we find the statement: "To each among you we have prescribed a شِرْعَةًوَمِنْهَاجًا (*shir'ah wa minhaj*)," which Ali translates as "a Law and an Open Way."[18] But, where the term شَرِيعَة (*Sharī'ah*) appears in verse 45:18, Ali translates it as: "Then We put thee on the (right) Way of Religion: so follow thou that (Way), and follow not the desires of those who know not."[19] The "Way of Religion" here, is the Arabic شَرِيعَةٍ مِّنَ الأمْر (*sharī'ati min al-amr*). An explanation for the difference may rest in context. Just before the statement in 5:48, the Prophet is told: "…so judge between them by what Allah had revealed, and follow not their vain desires…" Indeed, during the revelation of that verse, he had been placed in the position of arbiter between members of various religious communities in Medina; Christians and Jews whom, we are told, had each been given their own *shir'ah wa minhaj.* The context of 45:18, however, is from an earlier period in Mecca, where this sort of adjudication was not an issue.

Muhammad Asad, on the other hand, translates the verse as: "And finally [O Muhammad,] We have set *thee* on a way by which the purpose [of faith] may be fulfilled; so follow thou this way, and follow not the likes and dislikes of those who do not know [the truth]."[20] He explains this on the basis of the fact that, "the common denominator in all the possible meanings of the term *amr*—e.g., "command,"

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[17] Al-Qur'an 42:13, 42:21; Abdullah Yusuf Ali, trns. (1989, pp. 1249, 1253).

[18] *Ibid* 5:48, p. 263.

[19] *Ibid* p. 1297.

[20] Qur'an 45:18, Muhammad Asad trns. (1980, p. 767).

"injunction," "ordinance," "matter [of concern]," "event," "action," etc.—is the element of *purpose*…which obviously alludes to the purpose underlying all divine revelation and, consequently, man's faith in it."[21] An interesting fact that Asad does not mention is that the closely related term *amaar* means "a small sign, or mark, of stones, to show the way, in a waterless desert."[22]

Usul al Fiqh as a moral epistemology and the role of reason

As we have noted, any path that leads you somewhere needs to be clearly marked; there must be *amaar* to indicate the way. The *amaar* of *Sharī'ah* are the commands of Allah, delivered to humanity through the revelation of the Books and the Prophets, of which the Qur'an, and the Sunnah of the Prophet Muhammad, are considered final. Taking the path, therefore, involves the identification and interpretation, from within this material, of the *amaar* that mark it out. This raises the question of the role of reason, and its relation to revelation, in the structure of this ethic.

In the opening of his theological treatise, *al-Iqtişād fī al-I'tiqad*, Abu Hamid al-Ghazali (450–505 A.H./1058–1111 C.E.) castigated those who attempt to depend exclusively either on reason or revelation. "Oh how one falls short and trails behind in misguided paths when one does not bring together these differences of reason and revelation!" he writes, "For reason is like healthy sight that has no ailments or flaws, and the Qur'an is like the sun that shines abroad."[23] In a later work, entitled *al-Mustasfā min 'Ilm al-Uşūl*, he classifies the sciences into the purely rational (arithmetic, geometry, etc.) and the purely traditional (hadith, tafsir, etc.). "Yet the noblest knowledge is where Reason and Tradition are coupled, where rational opinion and the *Sharī'ah* are in association," he writes, "The sciences of *fiqh* and its *uşūl* are of this sort, for they take from the choicest part of the *Sharī'ah* and Reason."[24]

Mohammad Hashim Kamali, in a recent textbook of *uşūl al-fiqh* entitled *Principles of Islamic Jurisprudence*, defines *fiqh* as, "knowledge of the practical rules of Sharī'ah acquired from the detailed evidence in the sources."[25] Al-Ghazali similarly defined *fiqh* as "knowledge of the *Sharī'ah* rules which have been established for [qualifying] the acts of the loci of obligation."[26] The *faqih* (scholar of *fiqh*), he writes, "specifically denotes scholars of the *Sharī'ah* rules which have been established to [qualify] human acts, such as obligation [*wujūb*], prohibition [*ha ̱zr*], indifference [*ibā ̱ha*], recommendation [*nabd*], or reprehension [*karāha*]…and the like."[27]

Uşūl al-fiqh refers to the 'roots of *fiqh*', meaning the system of methodological principles that, in Kamali's words, "provides standard criteria for the correct deduction of

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[21] *Ibid* (footnote).

[22] Lane's (1956, p. 97).

[23] *Ghazali*, Iqtişād (2005, p.73).

[24] Ghazali, Mustaşfā (1987, pp. 303–304).

[25] Kamali, Principles (1998, p. 2).

[26] Ghazali, Mustaşfā (1987, p. 307).

[27] *Ibid* p. 308.

the rules of *fiqh* from the sources of *Sharī'ah*."[28] Ghazali defined *uşūl al-fiqh* as "the sources of these rules [*ahkām*] and the knowledge of the ways that they indicate the rules as a whole, rather than from the point of view of details."[29] "*Fiqh* as such is the end product of *uşūl al-fiqh*; and yet the two are separate disciplines," writes Kamali, "The main difference between *fiqh* and *uşūl al-fiqh* is that the former is concerned with the knowledge of the detailed rules of Islamic law in its various branches, and the latter with the methods that are applied in the deduction of such rules from their sources."[30]

The suggestion I want to make here—in spite of the *title* of Kamali's book, to which I will nevertheless be making reference—is that, rather than jurisprudence and its methodology, *fiqh* and *usul al-fiqh* might be more adequately understood as a first order ethics of obligation and a moral epistemology thereof, respectively. By the latter I mean a paradigm under which questions of moral epistemology are dealt with, which is based on, and therefore partially determined by, a set of inter-related metaphysical, meta-ethical, and epistemological propositions which are dealt with in fields distinct from but organically related to *uşūl al-fiqh* proper. Obviously, as a religious ethic, *Sharī'ah* is grounded in that revelation that forms the basis of Islam. Hence, the strictness with which it regards the purity of its sources. Kamali writes:

> The sources of *Sharī'ah* are, on the whole, well-defined and almost exclusive in the sense that a rule of law or a *hukm shar'i* may not be originated outside the general scope of its authoritative sources on grounds, for example, of rationality (*'aql*) alone. For *'aql* is not an independent source of law in Islam. *Uşūl al-fiqh* is thus founded in divine ordinances and the acknowledgement of God's authority over the conduct of man.[31]

Does this mean that rationality has no place in *Sharī'ah*? It is, after all, entirely addressed to the *mukallaf*—one who is subject to *taklif,* or moral obligation—a necessary condition of which is that the person is in possession of *'aql* (reason); that is, they are mature and sane.[32] The question here is one of independent sources. *Ijtihād,* which is the deduction, from the implications in the sources, of those *Sharī'ah* rulings which are not explicitly spelled out therein, is a deduction after all, for which the *uşūl* constitute the rules of inference and for which rationality is a presupposition. The first principles of those deductions, however, must be rooted in the authoritative sources. The role of the *mujtahid*, according to Kamali, is "basically one of deduction and inference of rules which are already indicated on the sources…"[33]

The inferential rules governing this process are *al adillah al shar'iyyah*, or the 'proofs of *Sharī'ah*.' *Adillah* is the plural of *dalil*, meaning 'proof' or 'evidence', and as a technical term in *uşūl al fiqh*, "it is an indication in the sources from which

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[28] Kamali, Principles (1998, p. 2).

[29] Ghazali, Mustaşfā (1987, p. 309).

[30] Kamali, Principles (1998, p. 2).

[31] *Ibid* p. 6.

[32] *Ibid* p. 11.

[33] *Ibid.*

a practical rule of *Sharī'ah*, or a *hukm* is deduced," all of which fall under one of four principal categories, "namely, the Qur'an, *Sunnah*, consensus, and analogy."[34] According to Kamali, the *dalil* of each category is rooted in the first, which mentions all of them in a number of verses, one of which is translated as follows.

> O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in the Last Day: that is best, and most suitable for final determination.[35]

"'Obey God' in this *āyah* [verse] refers to the Qur'an, and 'Obey the Messenger' refers to the *Sunnah*," writes Kamali, "Obedience to 'those who are in charge of affairs' is held to be a reference to *ijmā'* [scholarly consensus], and the last portion of the *āyah* which requires the referral of disputes to God and to the Messenger authorizes *qiyās* [analogy]."[36] The consensus is just that between the qualified scholars in the deduction of a ruling from the Qur'an and *Sunnah*, and is classified, along with the Qur'an and *Sunnah*, as one of the *adillah naqliyyah* or 'transmitted proofs', the authority of which are "independent of any rational justification that might exist in their favor."[37] Instances of *qiyas*, on the other hand, are classified as *adillah'aqliyyah* or 'rational proofs', that are "founded in reason and need to be rationally justified."[38] And, since "rationality alone is not an independent proof in Islam," it follows that, "*qiyās* in order to be valid must be founded on an established *hukm* of the Qur'an, *Sunnah* or *ijmā'*."[39]

This statement gives us reason to pause. In it, we can distinguish two different senses in which analogical reasoning, or *qiyās*, is said to be dependent on transmitted proofs. One is with regard to the legitimacy of a particular execution of *qiyās*—in every case it must be founded on an established ruling, as just mentioned. We will see more about that in due course. The other is with regard to its legitimacy *as a method*. We saw this in Kamali's mention of the proof of *qiyās* being based on the verse of the Qur'an, cited above. The latter is a far more radical sense of dependence than the former, and we aim to clarify the two in what follows. At any rate, *qiyās* has been separated from the other three categories of proof, consequently, by the following distinction.

> The *adillah shar'iyyah* have been further classified into *mustaqill* and *muqayyad*, that is, independent and dependent proofs respectively. The first three sources of the *Sharī'ah* are each an independent *aşl*, or *dalil mustaqill*, that is, a proof in its own right. *Qiyas*, on the other hand is an *aşl* or *dalil muqayyad* in the sense, as indicated above, that its authority is derived from one or the other of the three independent sources.[40]

34 *Ibid* pp. 9, 10.

35 *The Holy Qur'an*, translated by 'Abdullah Yūsuf 'Alī. *Surah Al Nisā'* (4:59).

36 Kamali, Principles (1998, p. 10).

37 *Ibid*.

38 *Ibid.*

39 *Ibid* pp. 10, 11.

40 *Ibid* p. 11.

Consequently, every rational proof is ultimately dependent on the transmitted proofs which, alone, enjoy the status of being independent proofs. This arrangement reflects the dominant definition of the legitimacy and role of *ijtihād* in Sunni thought, which was systematically formalized for the first time by Muhammad bin Idrīs al-Shāfiʿī (150 A.H./767 C.E.). Shāfiʿī was simultaneously concerned, first, to defend the use of reason in arriving at practical judgments in sets of circumstances not explicitly addressed by the Qurʿan and Sunnah, and secondly, to anchor the use of reason to those sources in such a way as to provide that judgments arrived at thereby will be made in the light of these sources. In his *Risala*, he writes:

> On all matters touching the [life of a] Muslim, there is either a binding decision, or an indication as to the right answer. If there is a decision, it should be followed; if there is no indication as to the right answer, it should be sought by ijtihād, and ijtihād is qiyās.[41]

Qiyās literally means 'ascertainment' specifically by reference to a standard unit of measurement. In the context of *uṣūl al-fiqh*, the standard units of measurement consist of practical imperatives that have already been explicitly indicated, by the revelation, as binding under specific conditions. According to Kamali:

> Technically, *qiyās* is the extension of a *Sharīʿah* value from an original case, or *aṣl*, to a new case, because the latter has the same effective cause as the former. The original case is regulated by a given text, and *qiyās* seeks to extend the same textual ruling to the new case. It is by virtue of the commonality of the effective cause, or *ʿillah*, between the original case and the new case that the application of *qiyās* is justified.[42]

In the framework of moral epistemology established by al-Shāfiʿī, then, proper moral reasoning is a matter of ascertaining the moral imperatives operative in novel circumstances via analogical extension from circumstances in which the operative moral imperatives are already indicated explicitly by revelation, to circumstances in which they are not explicitly indicated. Interestingly, in the *Risala*, Shāfiʿī actually draws an analogy in defense of the methodological legitimacy of *qiyās*. The following is his response to an interlocuter's question, "on what ground do you hold that [the exercise of] ijtihād is permitted in addition to what you have already explained?"

> It is on the basis of God's saying:

> From whatever place thou issuest, turn thy face in the direction of the Sacred Mosque; and wherever you may be, turn your faces in its direction. [Q. II, 145].

> Regarding him who [wishes to] face the Sacred Mosque [in prayer] and whose residence is at a distance from it, knowledge instructs us that he can seek the right direction through ijtihād on the basis of certain indications [guiding] toward it. For he who is under an obligation to face the Sacred House and does

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[41] Shāfiʿī, Risala (1987, p. 288).

[42] Kamali, Principles (1998, p. 197).

not know whether he is facing the right or wrong direction may be able to face the right one through certain indications known to him [which help him] to face it as accurately as he can, just as another person may know other indications which help orient him [in the right direction] although the direction sought by each person may be different from that sought by the other.[43]

Shāfi'ī clearly means to justify *ijtihād* in general on the basis of analogy from (and, therefore, on the model of) this specific case. It is not insignificant, then that he chose the specific example of estimating the direction of prayer as the original case—the *aṣl*—on which to base the analogy. It is true that the scholars of *fiqh*, including Shāfi'ī, do draw a distinction between the obligations which pertain to a person's relation with Allah, involving acts of worship and the like, and those which pertain to a person's relation to other people. Even so, Shāfi'ī's choosing this specific case as the basis upon which to analogically justify (and thereby define a model of) *ijtihād* as *qiyās* in all areas of *fiqh*, entails that all prescriptive norms are relevantly similar to the prescription of the direction of prayer.

Consider, again, the two possible senses, mentioned earlier, in which one might understand the statement that *qiyās* depends on transmitted proofs; one of which was with regard to its general legitimacy as a method. Here, however, we see that Shāfi'ī's defense of *ijtihād* as *qiyās*, itself, proceeds on the basis of *qiyās*. Granted, the specific practice of ascertaining the *qibla* from a distance by means of navigational indicators is established explicitly by the Sunna of the Prophet (saw), who prayed in that direction for years while living in distant Medina. Furthermore, this practice is one by which the normativity of an original imperative ('pray in the direction of the *qibla*') is transferred, by means of a shared relevant feature (i.e. their being in the same direction) to a new imperative ('pray in the direction of such and such a visible landmark, star, etc.). That is, it is an instance of *qiyās*. However, the question remains open, at this point, as to whether applying *qiyās* in circumstances other than those in which there is explicit precedent in the Sunna is methodologically legitimate. Those applications of '*qiyās*' for which there is such a precedent are arguably not genuine instances of *qiyās* at all, but are simply instances of following an explicit precedent of the Sunna.

Shāfi'ī's defense is of *qiyās* proper. In order for such a defense to be made on the basis of a specific precedent, like that of ascertaining the *qibla*, analogical extension must be made from the specific circumstances under which *qiyās* is known to have been applied, to circumstances under which there is no precedent in the Sunna for its application, on the basis of some relevant similarity between the former and the latter. In other words, the defense of *qiyās* as a method, itself, requires the application of *qiyās*. It may be objected that such a defense is question-begging. However, this is only the case if we hold to a certain interpretation of Kamali's statement that "rationality alone is not an independent proof in Islam," under which the methodological legitimacy of reason itself must be 'proved' by revelation. Such a proposition is clearly self-defeating in as much as the very concept of 'proof,' itself, *presupposes* rationality.

The question of the legitimacy of *qiyās* just is that of the legitimacy of reason; and this, as philosophers have noticed over the centuries, can neither be defended nor

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[43] Shāfi'ī, Risala (1987, pp. 295–296).

undermined except by reason itself. Shāfiʿī's defense of *qiyās* by means of *qiyās* represents, in the history of human thinking, yet another acknowledgment of this basic fact; but while demonstrating thereby the irreducible necessity of *ijtihād* in *fiqh*, it also implies its necessary insufficiency. The insufficiency lies in the fact that *qiyās* alone cannot establish a prescriptive norm which is not simply a specification of a pre-established imperative.

The structure of Shāfiʿī's example can be understood to consist of a simple inference on the basis of two premises. The first is the prescriptive proposition that *I ought to face the direction of the qibla to pray*. This proposition comes directly and explicitly from verses of the Qur'an. The second is the purely descriptive proposition that *the qibla is in the direction of the indicator*. This fact, which is, of course, relative to my current location, cannot be ascertained by reference to revelation, but must be estimated on the basis of some fixed navigational indicators. Once this estimation is made, the conclusion that follows is a new, prescriptive proposition specific to my circumstances that *I ought to face in the direction of the indicator to pray*.

(1) *I ought to face the direction of the qibla to pray.*
(2) *The qibla is in the direction of the indicator.*

Therefore, *I ought to face the direction of the indicator to pray*.

Critically, all that is determined by *ijtihād* here is purely descriptive—the simple fact that the *qibla* is in the direction of the indicator. Neither the indications, nor the reasoning process by which this fact is ascertained, themselves, imply anything normative at all. The prescriptive force—the 'ought'—in the conclusion, is based exclusively on the proposition that *I ought to face the qibla to pray*, itself being derived exclusively from revelation. The scope of reasoning is limited, in this case, to the estimation of purely descriptive facts.

By analogical extension, then, it would follow that the scope of reason is limited everywhere to the estimation of purely descriptive facts, by means of which pre-established prescriptive norms are merely specified to the circumstances at hand.[44] This clarifies the other, less radical of the two senses, mentioned above, in which rational proof in *fiqh* depends on transmitted proof. The requirement that every legitimate exercise of the former must be founded on an established ruling of the latter, amounts to the requirement that the normative ingredient, so to speak, of the new ruling is wholly derived from the established ruling. That is, revelation *prescribes*, and reason only *describes* a situation as falling under the scope of a pre-existing prescription.

For instance, the indications mentioned in the example, which are accessible to human reason and by means of which one can determine the direction of the Kaaba, only help to ascertain this direction given one's current position; they are not what *make* this the direction in which one *ought* to pray. These 'indications' correspond analogically to the *ʿillah*, mentioned above, the sharing of which, between the original and a new case, underwrites the analogical extension of the moral judgment from the

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[44] In the context of Islamic epistemology, it should be pointed out here that reason *qua* rationality is not usually considered to be exhaustive of the faculties of human intelligence. Therefore, the fact that reason is limited in the way just described does not necessarily preclude the human being from any epistemological access to the good, or otherwise, of ends. However, this opens onto a topic far too involved to do justice to in the space of this paper.

former to the latter. Consequently, scholars of the *Shāfiʿī* school, notably including Ghazali, mentioned above, have frequently been careful to point out that the *ʿillah* are not 'causes' in the strict sense, but only indications on the basis of which moral judgments can be made.

In other words, the natural features of the circumstances, on the basis of which one determines how one ought to behave in the given situation, are not thereby *that in virtue of which* one ought to behave in that way. We can say, then, that the moral *supervenes* on the natural, in the sense that what one *ought* to do under one set of natural circumstances will not differ from what one ought to do under another set which is exactly similar; but not that it is *reducible* to the natural. Reason is necessary for the reading of the signs that mark out the path leading to water. However, it cannot, by itself, produce that water out of the dry sand.

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