Meta-ethics: A Quest for an Epistemological Basis of Morality in Classical Islamic Thought

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Abstract

The aim of this article is to critique the meta-ethical foundation of the purposes of law theory (*maqāṣid al-sharīʿa*). It starts by introducing the Ashʿarite meta-ethics, and in two sub-sections briefly elucidates the perceived relation between meta-ethics and normative ethics and the relation between ethics, Islamic jurisprudence (*uṣūl al-fiqh*) and speculative theology (*ʿilm al-kalām*). The article examines the meta-ethical presuppositions of the Qurʾan, arguing that Qurʾanic ethics allows for rethinking the meta-ethical foundation of the *maqāṣid,* since it accepts objective moral values and allows for moral epistemology that is based on reason. The last and the longest section of the article develops arguments that would admit human reason in formulating the *maqāṣid* and suggests that this requires a different ethical foundation, one that is closer to the Muʿtazilite conception of morality. The arguments are based on the work of some classical and contemporary scholars who have noted the contradiction in the traditional *maqāṣid* theory, and on the views of those scholars whose ethical views and principles expressed an understanding of morality that contradicts with ethical voluntarism or 'divine command theory' in ethics. The theory of *maqāṣid* is here clearly presumed to be a normative one rather than simply descriptive.

Keywords

Introduction

This paper focuses on developing arguments for a meta-ethical foundation of the theory of *maqāṣid.* I argue that *maqāṣid al-sharīʿa*, as a normative moral theory should be amended and reconciled with the theory of 'rational obligation' (*al-taklīf al-ʿaqlī*) by grounding it in a proper meta-ethical foundation. Rational obligation is a theory elaborated by the Muʿtazilites. It implies that all human beings are endowed with reason and the ability to distinguish between good and evil. Rational obligation is based on human beings' necessary knowledge of moral principles such as the principle to refrain from wrongdoing and the obligation to return a deposit. According to this theory, all rational human beings are obliged to do what is known to be good. Rational obligations are distinguished from obligations known only through revelation such as rituals including fasting, praying and dietary requirements. For more on the theory of rational obligation see, for example, ʿUthmān 1971 and Al-Attar 2010, 76–79.

The theory that has traditionally provided the epistemic foundation of the normative theory is the Ashʿarite theory on good and evil (*ḥusn wa-qubḥ*), which is analogous to the "divine command theory." This theory states that moral values (good and evil) have absolutely no meaning apart from divine commands and prohibitions. Accordingly, divine commands and prohibitions constitute not only the epistemological, but also the ontological basis of morality; i.e. no good or evil (*ḥusn* or *qubḥ*) really exist apart from what was commanded and what was prohibited. Thus, it necessarily entails that no moral knowledge can be perceived apart from the divine commands and prohibitions. Those who emphasized God's will instead of His commands preferred to call it ethical voluntarism or theological voluntarism, implying that God's commands should be interpreted according to His will. They must have assumed that His will or intention is not explicitly known from His commands. The divine command theory also prevails in Protestant Christian ethics. The proponents of this theory in Christianity include Martin Luther (d. 1546), Karl Barth (d. 1968) and Emile Brunner (d. 1966) among others.

Some classical Muslim scholars have acknowledged the existence of values (good and evil) apart from revelation, yet, without linking them to ethico-legal judgments (right and wrong) or the well-known moral judgments in Islamic jurisprudence (prohibited, mandatory, recommended, discouraged and permissible). This was the position of most of the late Ashʿarite[1] scholars whose position is discussed at the end of this article, since they are credited for

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1 By late Ashʿarite scholars, I mean the Ashʿarites who flourished during the late 11th century onward, starting with Imām al-Ḥaramayn al-Juwaynī.

establishing the 'purposes of law theory' (*maqāṣid al-sharīʿa*), which became popular among modern and contemporary Muslim reformers. On one hand they explicitly endorsed ethical voluntarism, whereas, on the other hand they established an ethical theory that clearly required an extensive reliance on reason. For the development of the concept of *al-maqāṣid* and understanding its roles and legitimacy in different eras of Islamic history, and its main representatives starting with al-Juwaynī, al-Shāṭibī and Ibn ʿAshūr and ending with the contemporary reformist thinkers, see Al-Khaṭīb 2007.

This article proposes that rethinking the meta-ethical foundation that provides the epistemic basis of the theory of the *maqāṣid* is essential for developing a more consistent and well-grounded moral theory. It is also essential for creating a state of mind, which if endorsed, will allow people to make moral judgments that would guide them in their lives and contribute in creating an intellectual atmosphere that supports and encourages 'creative ethical reasoning' instead of fear, imitation and accusations of unbelief. Rethinking the epistemic foundations might contribute in reducing the phenomenon described by Sāmir Rashwānī as "the excessive demands for legal opinions (*fatwā*), which is widely spread, and reveals a state of resignation of 'creative ethical reasoning' from which many Muslims suffer." (Rashwānī 2015). As, when one believes that morality is based on reason endowed to humans, rather than commands and prohibitions that are exclusively interpreted by religious scholars, he/she would be empowered to think creatively and engage in productive ethical reasoning. However, rethinking the meta-ethical foundations of the *maqāṣid* theory requires a clarification of what is meant by meta-ethics and what is the supposed relation between ethics, meta-ethics, the 'principles of jurisprudence' (*uṣūl al-fiqh*) and *kalām*[2] in the Arabo-Islamic thought.

Normative Ethics and Meta-Ethics

Meta-ethics is that branch of moral philosophy that concerns itself with analyzing the terms and concepts used in normative ethics. The term "meta" means *after* or *beyond*, and, consequently, the notion of meta-ethics involves a removed, or bird's eye view of the entire project of ethics. Meta-ethics can be defined as the study of the origin and meaning of ethical concepts. (Fieser,

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2 I refrain from translating *kalām* to scholastic or speculative theology, since it is basically concerned with the principles of religion (*uṣūl al-dīn*), and together with *uṣūl al-fiqh* they were established in order to provide the theoretical foundations of belief and practice. The two disciplines sometimes overlap, especially when dealing with what one might now call moral philosophy. In this article I use the term *kalām* which is more widely used than *uṣūl al-dīn* and will keep the term *uṣūl* to designate *uṣūl al-fiqh*.

retrieved 2014.) The importance of meta-ethics lies in its being an important tool helping us better understand the terms and concepts that are used in any normative statement. For example, if someone says that 'you should keep your promises', we might engage him in a normative discussion by asking him whether 'one should always keep one's promises or is one exempted from keeping those promises under certain circumstances?' Yet we might choose first to understand the meaning of the terms used in the normative statement and therefore ask 'what does the term 'should' really mean here?' Another example, if one says: "it is forbidden to steal;" we might ask whether it is absolutely forbidden to steal, or if it is allowed in certain circumstances? Such a question will take us to a normative discussion, as we will be seeking the norms or the criteria according to which stealing is forbidden. We might first want to understand the morally significant terms that are used in the above statement and therefore find the meaning of the terms forbidden, good, obligatory and so on. Does it mean that a certain authority has declared it so? Does it indicate that the action is harmful to the agent? Does it imply that it is punishable by law? What is the true meaning of 'forbidden'? Searching for the true meaning of terms used in normative ethical statements is what we really mean by meta-ethics. Yet, it should be noted, that there is no clear cut between ethics and meta-ethics, since the two areas of inquiry are closely intertwined. One might discuss meta-ethical issues in the context of normative research or raise a normative ethical issue in the context of a meta-ethical research.

In this article the theory of the purposes of law (*maqāṣid al-sharīʿa*) is seen as a normative theory, as the criteria for judging any action are based on the norms provided by this theory, which are the five universal objectives (*al-kulliyyāt al-khams*) that are necessary for the well-being of a community (*maṣāliḥ ḍarūriyya*), known as *al-maqāṣid*.[3] It is not the normative theory itself that is discussed in this article, which is mainly concerned with the meta-ethical assumption of the theory that is related to a specific meaning of the basic value terms good and evil or *ḥasan* and *qabīḥ*. (For the discussion of the theory of *maqāṣid al-sharīʿa* and its use in contemporary Muslims reformists thought see Duderija 2014.)

Ethics, Jurisprudence (uṣūl al-fiqh) *and* kalām

For the purposes of this study, it is paramount to clarify the presumed relation between ethics or moral philosophy and the principles of law (*uṣūl al-fiqh*),

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3   The five universal necessities were traditionally considered to include preserving religion, life, progeny, property and intellect. Modern and contemporary scholars added other values.

because the most genuine ethical inquiries in the Arabo-Islamic thought are those scattered in the works of *uṣūl and kalām*. (See, for example, Ṣubḥī 1969, 14; Hourani 1985, 20; Reinhart 1983). Edward Moad rightly stated that "questions of moral epistemology are dealt with, and 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 *uṣūl al-fiqh* proper". (Moad 2007).

Searching for the normative basis for moral judgments is a matter that concerns both, the moral philosopher and the *uṣūlī* scholar. For example, many philosophers considered utility to be the ultimate criterion of moral judgments.[4] Some considered it to be the benefit of the agent,[5] others insisted that it is the benefit of the majority that matters, while some philosophers developed the theory adding principles, regulations and restrictions, in response to the critiques that were raised against the principle of utility. Some ethicists considered some absolute rational and universal moral rules to be the standards for the truth of moral judgments,[6] while others endorsed ethical relativism and held that moral judgments are relative and vary across cultures. Likewise, the *uṣūlī* scholars investigated the sources and justifications of moral judgments; some of them accepted custom (*'urf*), some disagreed on the concept of 'juristic preference' (*istiḥsān*) and others put regulations on the *maṣlaḥa* (well-being or public interest) and disagreed on the meaning of *ijmā'* (consensus). It seems ineligible to object by saying that the *uṣūlī* scholars should not be compared with moral philosophers, since the latter consider the divine commands and prohibitions the ultimate criteria for normative judgments, while the philosophers give reason the first priority. The comparison is viable since the *uṣūlis* also took into consideration various sources, as mentioned above. Yet the most important reason that is related to the purpose of this study is the disagreement of the *uṣūli* scholars over the ultimate justification of moral judgments which varied according to their explicit or implicit meta-ethical presuppositions.

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4 Such as Jeremy Bentham (d. 1832) and John Stewart Mill (d. 1873).

5 I am referring to ethical egoism where the benefit of the agent is the ultimate criteria of moral action.

6 Those whose ethics were interpreted to be deontological, like Immanuel Kant (d. 1804) in western philosophical tradition.

Meta-ethical Presuppositions of the Qurʾan[7]

The ontological status of moral values and the epistemic bases of morality were discussed in the history of Arabo-Islamic thought under the heading of "the issue of good and evil" (*masʾalat al-ḥusn wa-ʾl-qubḥ*). The question as for-mulated by early scholars was whether *al-sharʿ* (the divine law) establishes or merely indicates morality (*al-sharʿ muthabbit am mubayyin*)? Of course, there is no clear Qurʾanic answer that would support any of the rival positions tradi-tionally adopted by the Muʿtazilites and the Ashʿarites. However, the Qurʾanic ethos clearly supports the objective basis of morality. What I mean here by the objective basis of morality is the good and evil noticed in human behaviour and actions, which can be judged through observing the harmful or beneficial consequences of an action, context and circumstances and conformity with natural conception of moral values that is common among people regard-less of their religion. The issue was investigated by the early *kalām* scholars, who disagreed and held divergent views concerning the nature of good and evil. Some, like Abu al-Hudhayl al-ʿAllāf (d. 227/841) held that moral values of actions are intrinsic properties of actions and considered them to be natural entities that inherit in things and actions. Others like Abū Hāshim (d. 321/933) considered them to be related to the state of the agent, while ʿAbd al-Jabbār held that the value of an action, whether good or evil is determined by the state of the action, its circumstances and consequences. (For different theo-ries regarding the nature of good and evil, see: Al-Attar 2010, 123–135). While the Ashʿarites unanimously opined that there is no real good or evil apart from divine commands and prohibitions, and while most jurists (*fuqahāʾ*) and Muʿtazilite scholars believed that moral knowledge is possible apart from religion, the Ashʿarites opined that religious law is the sole source of moral

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7 Meta-ethical presuppositions of the Qurʾan are assumed to be the same as those of the *Sunna*. This is justified since the non-ʿibādiyya elements [not related to religious rituals] of the concept of *sunna* are hermeneutically linked to those in the Qurʾan in such a manner that is not constrained by the classical *uṣūl al-fiqh* theory, as rightly argued by Duderija 2015, 231. Moreover, S*unna*'s conceptual and hermeneutical link with the Qurʾan was evident in the pre-classical Islamic scholarship (*ibidem*, 230). It is important to note that "There has always been tension between, on the one hand, the epistemologically and methodologically *ḥadīth*-dependent *concept of sunna* of the *ḥadīth* specialists following the *ahl al-ḥadīth* understand-ing of *sunna* (in addition to some Islamic jurists who subscribed to the same) and, on the other hand, the Muʿ tazila and some of the Ḥanafī and Mālikī legal theoreticians (*uṣūliyyūn*) whose understanding of *sunna* was closer to how *sunna* was understood prior to the process of ḥadīthification of *sunna* and traditionalization of Islamic thought." Duderija 2015, 5. For an investigation of the ethical presuppositions of the ḥadīth, see Al-Attar 2010, 21–25.

knowledge. The following section intends to shed some light on the status of the Qurʾan regarding the issue, taking into consideration the explanations of some scholars of *kalām* who interpreted the Qurʾan using traditional sources (*tafsīr bi al-maʾthūr*) and those who are considered to have produced opinion-oriented exegesis.[8]

Moral Ontology (*The Objectivity of Moral Values in the Qurʾan*)

Saying that moral values are objective, however, does not mean that they are physical properties that exist on their own and independently from the human consciousness. Objectivity here only means the existence of a real basis that is related to an action, including the context of the action and the consequences that would justify judgment. Objectivity also indicates that the moral values are independent from any individual's taste or desires. In other words, when we say that moral values are objective we mean that they are not subjective and that they are not relative.

In support of the objective status of moral values in the Qurʾan, it is important to notice that the Qurʾan used a pre-existing language in revealing the divine message. It used the particular concepts with their specific meanings and connotations, and addressed many ethical terms to pagans, such as *ʿadl* (justice), *ẓulm* (transgression), *khayr* (goodness), *sharr* (evil). Therefore, it used ethical terms in a way that people could understand. If good and evil deeds mentioned in verses such as (Q.16:90) "Surely Allah enjoins the doing of justice and the doing of good (to others) and the giving to the kindred, and He forbids indecency and evil and rebellion; He admonishes you that you may be mindful" (translation by Shakir 1983) meant only 'obedience to commands', the whole sentence would be almost tautologous and pointless. Among the most common terms in the Qurʾan for virtuous acts is (*maʿrūf*), literally, 'the known'. In the *Encyclopedia of the Qurʾan*, Reinhart draws attention to the fact that, although this term appears thirty-two times in the Qurʾān, the commentators do not feel a need to explain it, because it is taken for granted. He adds that: "It is worth noting that the implication of *maʿrūf*, as an ethical term, is that 'the right thing is known'." (Reinhart 2002, 62) Such verses support the view that

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8 Al-Dhahabī 1976 divides the *tafsīr* into different types, including the works that used traditional sources (*al-tafsīr bi al-maʾthūr*) and the opinion-oriented *tafsīr*. He classifies the latter into approved and condemned opinion. He classified the exegetical works of those who were known to have Muʿtazilite leanings as *tafsīr* by condemned opinion, including Zamakhsharī's *Kashshāf* and ʿAbd al-Jabbār *Tanzīh al-qurʾān ʿan al-maṭāʿin*. Whereas he classified the Ashʿarite tafsīr among approved opinion-oriented tafsīr. See vol. 1, p. 205. He classified al-Ṭabarī's and Ibn Kathīr's *tafsīr* as *tafsīr bi al-maʾthūr*.

the values and the duties promoted in the Qurʾan were well-known to some people before Islam, and this implies that divine commands expressed in the Qurʾan are not arbitrary commands, but righteous ones, appealing to human ethical knowledge. Khaled Abou El-Fadl also maintains that "the Qurʾan often uses terms such as ẓulm (injustice), ʿadl (justice) or ṣāliḥ (the good) in an objective fashion, as if they are ontological realities—independent and objective." He seems to acknowledge the objective nature of moral values and the validity of moral knowledge apart from revelation. In an eloquent paragraph Abou El-Fadl compares moral precepts to divine light, available to all people: "Metaphorically, moral and ethical precepts are like luminous supernal elements within the light of God." He considers it possible to seek out and recognize these luminous elements without revelation. (Abou El Fadl 2004)

Moral Epistemology and the Qurʾan

Most ordinary Muslims would accept a simple answer regarding the judgment of actions. They might simply seek to know whether it is permitted (ḥalāl) or prohibited (ḥarām), yet many would find it legitimate to ask further why it is ḥalāl or ḥarām. Such legitimate enquiry will definitely lead to the grounding of moral or ethico-legal judgments in value judgments. Grounding moral judgments (right and wrong) or ethico-legal judgments (obligatory, permissible, recommended, prohibited and discouraged) in value judgment (good and evil) or (ḥasan and qabīḥ) is what truly distinguishes a moral epistemology that is based on reason. Therefore, an action or behaviour would be considered wrong and prohibited because it is evil, not evil because it is prohibited. However, it must be mentioned that this does not contradict the belief that qabīḥ and ḥarām designate the same action.

The Almighty explicitly states that He has endowed the knowledge of good and evil in human nature. Q. 91:7–10 states: "And the soul and Him Who made it perfect, then He inspired it to understand what is right and wrong for it (alhamahā fujūraha wa-taqwāhā). He will indeed be successful who purifies it, and he will indeed fail who corrupts it." Here the knowledge of good and evil is one of the capabilities created innately by God. God has therefore mentioned this knowledge as His special bounty. In the Tafsīr of Ibn Kathīr (d. 773/1372) it is reported that Ibn ʿAbbās interpreted (alhamahā fujūraha wa-taqwāha) to mean that "He explained the good and the evil to it [the soul]." And Saʿīd b. Jubayr also confirmed that, saying: "He gave him inspiration (to see what was) good and evil." (Ibn Kathīr 2000, 10:497). Where the Muʿtazilite ʿAbd al-Jabbār (d. 415/1024) in Tanzīh al-Qurʾān informs us that some people have explained the verse in a way that confirms the doctrine of determinism, holding that wickedness and rightness or (fujūr wa taqwā) are man's qualities that are cre-

ated by God. Of course, ʿAbd al-Jabbār disagrees with this interpretation and mentions that "what is meant by *alhamaha* [inspired] is that God informed human soul by exposing wickedness to it so it can avoid it and showing right-fulness to it so it can pursue it." (ʿAbd al-Jabbār n.d., 463).

In Q.90:8–10 the verse says: "Have We not given him two eyes, and a tongue and two lips, and pointed out to him the two conspicuous ways (*wa hadaynāhu l-najdayn*)." This verse indicates that the ability to distinguish between good and evil is also a blessing from God. Ibn Kathīr stated in his *Tafsīr* that it has been reported from Ibn ʿAbbās (d. 68/687), ʿAbd Allāh b. Masʿūd (d. 32/652) and others that the 'two ways' means: "The good and the evil." (Ibn Kathīr 2000, 10:484). ʿAbd al-Jabbār added that "this indicates that He guided everyone, believers and unbelievers." (ʿAbd al-Jabbār n.d., 463). Man is also endowed with a divine spark, described in the Qurʾan (15:29) as a divine spirit breathed into man: "So when I have made him complete and breathed into him of My spirit, fall down making obeisance to him." The Holy Qurʾān further emphasizes that faith is man's nature, but that he is prone to forget it. God has been sending His messengers to remind him of this forgotten faith. So Q. 30:30 says: "Then set your face upright for religion in the right state—the nature made by Allah in which He has made men; there is no altering of Allah's creation; that is the right religion, but most people do not know." Q. 40:53–4 states: "And certainly We gave Mūsā the guidance, and We made the children of Israel inherit the Book, a guidance and a reminder to the men of understanding." In Q. 24:35 good nature and divine inspiration have been described as "light upon light." Hence, divine revelation is not light over darkness but light upon light.

God's covenant with mankind is mentioned in the Qurʾan, where all human beings acknowledged their obligation to obey God, their creator. In Q. 7:172 is stated "And when your Lord brought forth from the children of Adam, from their backs, their descendants, and made them bear witness against their own souls: Am I not your Lord? They said: Yes! We bear witness. Lest you should say on the day of resurrection: Surely we were heedless of this." The last sentence makes it clear that human beings are innately morally responsible. Thus the covenant with humans, and the divine breath in human beings indicates that all Adam's descendants possess a conscience that distinguishes good from evil, which agrees with the interpretation of ʿAbd al-Jabbār (Ibidem, 153), al-Zamakhsharī, and al-Nasafī among others. (Al-Zamakhsharī 1407H, 2:176; al-Nasafī, 1998 1: 617).

Therefore we can conclude that the Qurʾan presumes man's ability to distinguish between good and evil, and does not exclude the role of reason in moral knowledge. The explanations of those whose exegetical works were classified as exegesis that depended on traditional sources (*al-tafsīr bi-al-l-maʾthūr*) and

the opinion-oriented *tafsīr* clearly confirm that. Indeed, maintaining that independent reason is incapable of knowing good and evil, and that there is no good and evil before revelation not only undermines the role of reason in ethics, but results in a gap between morality and religion. Subsiding reason and its role in moral knowledge was behind issuing some contemporary legal verdicts (*fatāwi*) that are irrational, contradict scientific knowledge[9] and others that are abhorrent and cannot stand up to moral reasoning.[10]

Among the contemporary scholars, Abdulaziz Sachedina draws attention to the fact that "ethical inquiry connected with moral epistemology or moral ontology is underdeveloped in the Islamic seminarian curriculum." (Sachedina 2009, 41). He stated that "The majority of the Sunni ulema, in line with the Ashʿarite theological voluntarism that vindicated the primacy of God's will over the intellect (which led to identifying morality with divine positive law and denying that ethical values can have any other foundation but the will of God), resisted the rationalist impulse of the Qurʾan." (Ibidem, 86). Whereas Khaled Abou El Fadl maintains that "Muslims are encouraged to search for moral universals that could serve as shared and common goals with humanity at large. This seems to me to be an essential characteristic of a universal religion that is addressed to humanity at large, and not to an exclusive cultural, social, or ethnic group." (Abou El Fadl 2014). Muḥammad ʿAbd Allāh Darāz stated that "according to the Qurʾan itself, the law of the conscience existentially comes first before positive religion. The sense of good and evil, of right and wrong, is breathed into every human soul from its very creation." Darāz maintained that "the positive law did not come to abolish natural law and destroy the inner authority which had established it." (Draz 2008, 286). Nevertheless, as noted by Sāmir Rashwānī, "Darāz overlooked the discussion of some serious issues, including the ethical ruling before the sharīʿa prescription in which he briefly

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9   For example the denial of the fact that the earth rotates around the sun and Dr. Nidal
        Guessoum's discussion of this in http://nidhalguessoum.org/earth-doesnt-move/, accessed
        in 20 Jan. 2015.

10   For example, see Aḥmad Raysūnī's critique of the *fatwa* that allows marriage with the
        intention of divorce (*zawaj bi-niyyat al-ṭalāq*) and says: "The marriage in question declares
        nothing about timing as the husband keeps it secret whereas timing is declared in the
        mutʾah marriage and accepted by both parties. In fact, the marriage with the intention of
        divorce is worse than *mutʾah* marriage, because it is temporary marriage and it includes
        deceit and cheating as the man deceives the woman and her family. It should be worthier
        of forbiddance." In "Ethics and Legislation in the Glorious Quran," a paper presented in
        the Seminar: Quran and Ethics: Approaches, Objectives and Examples, organized by the
        Research Center for Islamic Legislation and Ethics (CILE), Doha, Jan. 4–6, 2015.

advocated the doctrines of Ash'arite School of Theology and criticized the Mu'tazilite views without delving into details." (Rashwānī 2015)

The Controversy over the Ultimate Justification of Moral Judgments

The Ash'arites held that religious law establishes and indicates morality (*al-shar' muthabbit wa mubayyin*), which means that there is no good nor evil apart from revelation, and without revelation actions have no moral value. Conversely, The Mu'tazilites held that revelation indicates good and evil and does not establish them (*al-waḥy mubayyin lā muthabbit*). According to the latter, the role of revelation is merely to indicate, since everything was established in a certain way since the beginning of creation. Man is capable by his natural disposition (*fiṭra*) and reason to distinguish between good and evil. Divine law (*al-shar'*) according to the Mu'tazilites could not have been revealed to change the nature of things nor to convert good to evil and evil to good. Moreover, divine commands are not arbitrary; they are moral commands that agree with reason and natural disposition. The position of the Ash'arites necessarily entails that divine commands are arbitrary, since those are commands that proceed from absolute will, not even restricted by the reality of the creation itself. This explains why al-Ash'arī held that it is possible to impose an obligation to do an unbearable act (*taklīf bi mā lā yuṭāq*), which is a dogma that was abolished by the late Ash'arites who rejected some doctrines that are necessarily implied in the Ash'arite theory on good and evil, including the arbitrariness of divine commands. (For more on Mu'tazilite–Ash'arite controversies, see: Al-Attar, (2010), p. 75–76).

The theory developed by the late Ash'arite scholars,[11] which is known as the theory of the purposes of law (*maqāṣid al-sharī'a*) embraces the idea that the divine commands and prohibitions are purposeful and not arbitrary. Those who embraced the concept of purposeful commands seem to have contradicted what is necessarily inferred from any consistent 'divine command theory,' which is that the commands and prohibitions are arbitrary. However, the 'purposes' according to them are not, as some might think, to realize and achieve public interest or well-being (*al-maṣlaḥa*) actualized in preserving the five universal necessities (*al-kulliyāt al-khams*). *Maṣlaḥa* according to the Ash'arites is to adhere to the *maqāṣid,* which are known only through inductive reasoning that includes deriving the purposes from explicit divine com-

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11   Like al-Juwayni (d. 478/1085), al-Ghazālī (d. 505/1111), al-Qarāfī (d. 684/1285), al-'Izz b. 'Abd al-Salām (d. 660/1261) and al-Shāṭibī (d. 790/1388), among others.

mands and prohibitions. This means that those who held the theory of 'the purposes of law' among the Ashʿarites remained faithful to their Ashʿarism by holding that *maṣlaḥa* is only what law *sharʿ* considers so, and does not include what might be established by reason. The true *maṣlaḥa*, according to them, can only be known by investigating various judgments and observing the purposes behind them. Thus, it is not possible to know 'public interest' or the 'purposes', apart from the commands and the prohibitions, just as it is not possible to know true good and evil before the advent of revelation.

Therefore, although the Ashʿarites have modified their 'divine command theory' by accommodating purposeful divine commands and prohibitions in their theory, they still remained faithful to Ashʿarism by regulating and adjusting the concept of *al-maṣlaḥa* to commensurate with the Ashʿarite conception of good and evil, denying by that the role of human reason in determining *maṣlaḥa* and *maqāṣid*. One can say that they kept the cart before the horse as put by Abū al-Ḥasan al-Ashʿari, although they increased the power of the horse and improved his jumping ability. By assuming the purposefulness of the commands and the prohibitions, the ultimate criterion for judgments are not the commands and the prohibitions themselves, but the purposes behind the commands and the prohibitions. However, inductive inference of religio-legal rulings dispersed in the sacred texts remained the method followed by the *uṣūli* Ashʿarite scholars. It seems that such a methodology is no longer appropriate and has to be modified in a way that gives reason the role that it deserves. It is true that ethical voluntarism or divine command theory remained the dominant meta-ethical position in the *maqāṣid* oriented thought, yet, as we have seen, it is not the sole possible option in ethics and principles of jurisprudence (*uṣūl al-fiqh*) and it definitely does not represent the Qurʾanic position.

It is worth noting that the early definitions of ethico-legal judgments grounded them in value judgments. Al-Tahānawī (d. after 1158/1745), stated that the Muʿtazila in general agreed on the following definitions of normative judgments of actions:

> *Wājib* is an act or the judgment (*ḥukm*) of an act which, if not performed, entails or leads to corruption or harm (*mafsada*).
> *Ḥarām* is the judgment of an act which, if performed entails corruption.
> *Mandūb* is the judgment of an act, which, if performed, entails some benefit (*maṣlaḥa*).
> *Makrūh* is the judgment of an act, which, if not performed, entails benefit.
> *Mubāḥ* is the judgment of an act, which does not entail any corruption or benefit.

AL-TAHĀNAWĪ 1996, 1: 668

These are the judgments of acts before and after revelation in the Muʿtazilite thought. According to al-Zarkashī (d.749/1392): "Reason (*al-ʿaql*) perceived that God, because of his great wisdom, could not have left a benefit (*maṣlaḥa*) at any time, without making it obligatory and rewardable, and could not have left any harm, at any time without it being prohibited and punishable which verifies his wisdom, or else there would be no wisdom in divinity." (Al-Zarkashī 1414/1994, 1: 190). Yet, we know that the majority of the *fuqahāʾ* before al-Ashʿari, and not only the Muʿtazilites, agreed that *al-maṣlaḥa* is the ultimate criterion of moral judgments, so the above definitions could not have been disputed by most of the Muslim scholars. (See for instance Nyazee 1996, 43). Al-Taftazānī (d.793/1390) informs us that "this issue is taken in the *uṣūl* [*uṣūl al-fiqh*] works of the Shāfiʿiyya and the Ashʿariyya to be in agreement with the Muʿtazilite belief that reason can judge good and evil" (Al-Taftazānī n.d., 2: 216), which clearly indicates that the Ashʿarites who followed the Shāfiʿī school of jurisprudence accepted the Muʿtazilite doctrine in their jurisprudence (*uṣūl al-fiqh*). In fact, medieval and contemporary scholars have noticed the contradiction between the Ashʿarite writings in jurisprudence and their writings in *kalām* literature. (Qarārī 2010). Although reason according to the Ashʿarites, as we know, cannot independently get to know good and evil, we find al-Qarāfī (d. 684/1285), an Ashʿarite, saying that "the commands follow the benefits (*maṣāliḥ*) and the prohibitions follow the harms." Al-Qarāfī believed that "the legislator (*ṣāḥib al-sharʿ*) had not left anything that is the reason for making a certain action obligatory without it including a benefit (*maṣlaḥa*) proportional to its being obligatory. If the benefit of the action is less, He made it the reason of its being recommended. Also, He would not make anything the reason of prohibiting an action to the agent unless that reason includes a harm that is proportional to the prohibition. If the harm was less than that, it is made the reason for the action being discouraged. For example, giving a loaf of bread to someone who is hungry and about to perish, is obligatory and the reason for its being obligatory is the necessity of preserving his life, which is a great benefit that fits obligation." (Qarāfī n.d., 3: 113).

It is clear that al-Qarāfī's above statement is closer to the Muʿtazilite conception of rational good and evil than to the Ashʿarite, and it fully agrees with the definitions of the normative judgments of actions. Nonetheless, elsewhere al-Qarāfī clarifies the point of disagreement with the Muʿtazilites and shows us that the Ashʿarites agree with the Muʿtazilites on two meanings of good and evil that are rational (*ʿaqliyyayn*): what appeals to one's natural dispositions and what has an attribute of excellence or deficiency. Whereas the third mean-

ing, which is the most important, as it is the ethical normative meaning and is related to the final salvation, is only established by religious law *al-sharʿ*, according to al-Qarāfī and all the Ashʿarites. He says: "Evil is that which God prohibited and good is that which He didn't prohibit." (Qarāfī 1393/1973, 1: 88). One should really wonder, how come that an action would acquire the attribute of excellence and agree with one's natural dispositions and yet would not deserve a reward in the hereafter, or how could an action have an attribute of deficiency and be reprehensible or in disagreement with natural dispositions and still not deserve blame and punishment? It is true that the holy Qurʾan says: "And never would We punish until We sent a messenger." (Qurʾan 17:15). Yet, that could apply to the religious obligations that are not known by reason, like praying and fasting. According to the Muʿtazilites, who considered justice their main principle, the evil doer will be punished. The Ashʿarites, despite the depth of some of their analyses and the importance of their contributions, remained faithful to al-Ashʾari's theory in ethics that corresponds to the divine command theory in contemporary western thought.

A Critique of the Ashʿarite Basis of the Maqāṣid Theory

Ethical voluntarism, advocated by al-Ashʿarī, implies that "it is fundamentally and ultimately impossible to explain God's commands in terms of any purpose or end." (Frank 1983, 214–215). Hence, ethical voluntarism remained a theological position and was not implemented in *uṣūl al-fiqh*, where jurists from all schools continued to use reason and derive judgments through different methodologies which could not have been used without acknowledging the reasons behind divine commands. A good example of ethical voluntarism is the position of al-Ashʿarī (d. 323/935) and Dāʾūd al-Ẓāhirī (d. 270/882) who were ready to accept the most extreme consequences of their position: that if God had commanded theft and idolatry, it would then be right for humans to commit them. For the Ashʿarites, there is no convincing reason for God to will something over its opposite and no reason for Him to command something rather than the opposite. Even the late Ashʿarites, from al-Juwaynī (d. 478/1085) onwards accepted such position, which invoked Ibn Tamiyya's (d. 728/1328), criticism when he said: "Those who argue against the affirmation of wisdom (*hikma*), in the acts of Allah the Exalted, their *fiqh* contradicts the principles of their *kalām*; since they certainly affirm the opposite in the issues of *fiqh*, exegesis and *Hadīth*. Al-Rāzī denied reasoning in *kalām*, because his master is al-Ashʿarī, while he accepted reasoning [when investigating an issue related

to *fiqh*], because his master, in that field, was al-Shāfiʿī." (Ibn Taymiyya, *Minhāj al-Sunna,* vol. 1, p. 34–35, cited in Ṣubḥī 1969, 85–86).

Fakhr al-dīn al-Rāzī (d 606/1209) and other Ashʿarites realized that there were three commonly recognized ways of defining *ḥasan* and *qabīḥ*. They agreed with the Muʾtazilites on the first two meanings and disagreed on the third. He said: "The first definition denotes what is appealing or repulsive to one's natural disposition, (*mulāʾamat al-ṭabʿ wa munāfaratuhu*); the second, that something has a property of excellence or perfection (*ṣifat kamāl*) or deficiency and imperfection (*naqṣ*). These two meanings [of good and evil] are both rational (*ʿaqliyyān*). Yet, these terms are sometimes said to indicate that a certain action necessitates punishment or reward, and praise or blame. If this is meant then it is for us [the Ashʿarites] a matter of law (*sharīʿa,*) in contrast to the Muʾtazila." (Al-Rāzī 1411/1991, 478–479).

Thus al-Rāzī, like al-Qarāfī, maintained that the grounds of divine judgments cannot be human purposes and reasons, and he states that this is contrary to what was maintained by the Muʿtazilites and most of the jurists (*fuqahāʾ*). (Al-Rāzī 1411/1991, 483). Al-Rāzī was a scholar who combined theological, philosophical and legal knowledge. He was a sophisticated thinker. Ayman Shihadeh, informs us that al-Rāzī's discussions of certain ethical themes are among the most penetrating in Islamic history and easily match corresponding discussions in any extant Muʿtazilī texts. (Shihadeh 2006, 2).

We are told that "according to theologians (*mutakallimun*), *ʿaql* is a source of knowledge and, as such, is the antithesis of *naql* or tradition. The words *fiṭra* and *ṭabīʿa* are also used for it. *Al-ʿAql* is thus a natural way of knowing, independently of the authority of revelation, what is right and wrong." (Rahman 1986). Yet whether *al-ʿAql* includes the ability to know right and wrong was disputed by al-Ashʿari (260/873–324/935), who insisted on the epistemic priority of revelation over moral knowledge. A valid argument raised against his position is that it would be impossible to know God and the truthfulness and rightfulness of His revelation unless one first has the ability to distinguish between good and evil.

The normative function of reason was acknowledged by the scholars who did not adhere to the Ashʾarite school, and that also includes most of the jurists until the time of al-Juwaynī (d. 478/1085). The latter seems to be the first to systematically combine Shafiʿite jurisprudence with Ashʿarite theology, and to exclude moral knowledge from what is necessarily known.[12] The source of moral knowledge according to Abu Ḥāmid Al-Ghazālī (450–505/1058–1111) is either

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12   The Baṣran Muʿtazilites upheld the necessary knowledge of good and evil which is
       general. That includes the knowledge of the evilness of wrongdoing, the goodness

religion or human purposes (*al-aghrāḍ*). (Ghazālī 1995, 1:72). However, al-Ghazali does not deny that commonly accepted moral principles, purposes and ends could be determined by investigating humans' purposes. Yet according to him, these purposes are subtle and concealed, so they are not recognized except by those who scrutinize and investigate (*lā yantabihu lahā illā al-muḥaqqiqūn*).[13] Al-Ghazālī articulated the essential purposes, which are known as the purposes of law (*al-sharʿ*) and which actually reflected the ultimate purposes of human beings. Those are the well-known universal ends (*kulliyāt khams*) or *maqāṣid al-sharʿ*. Al-Ghazali like his Shafiʿite teacher al-Juwaynī and like the Malikite jurists al-Qarāfī (d. 684/1285) and later al-Shāṭibī (d. 790/1388) remained faithful to the Ashʾarite conception of morality. According to al-Shahrastānī, Abū al-Ḥasan al-Ashʿarī (d. 324/935), the founder and the eponym of the Ashʿarites, held that "all knowledge is derived by reason (*al-ʿaql*), but obligation is established by revelation." Al-Shahrastānī explains that this was stressed in order to deny rational obligation (*al-wujūb al-ʿaqlī*) not to deny the knowledge occurring by reason. (Al-Shahrastānī n.d., 371).

Nevertheless, it is important to note that not all the scholars who contributed to the development of the concept of *maqāṣid* were Ashʿarites. For example, al-Qaffāl al-Shāshī (d. 365/976) considered *al-ʿaql* to be capable of knowing good and evil. In his book, he considers that the goodness of the *Sharīʿa* is based on the reasons and the wisdom behind everything it enjoins. He considers some secular legislations related to politics and managing daily life as good and obligatory and asserts that its goodness is established by reason (*wājib bi al-ʿuqūl*) while adding that no good management is possible without adopting them (*la tatimmu al-siyāsatu al-fāḍila illā bihi*). (Shāshī 2007, 30). This position seems to have been shared by the early Ḥanafī jurists and the Shāfiʿites before al-Juwaynī. For example, the Shafiʿite Ibn Surayj (d. 306/918), who was also one of the teachers of al-Shāshī, asserted that thanking the benefactor is obligatory, and that unaided reason can discern the good and the bad of some things. (Reinhart 1995, 17, referring to al-Zarkashī's *al-Baḥr al-muḥīṭ,* MS Paris Bibliothèque Nationale, Arabe 811). It is evident that the works of al-Qaffāl al-Shāshī and other Shāfiʿīte scholars include clear references to Muʿazilite ethical thought as noticed also by Ahmed El-Shamsy. (Shamsy 2014, 20–25).

Some early references to the concept of *maṣlaḥa* (an essential concept in *uṣūl al-fiqh* and in *maqāṣidī* thought) associated the concept with a law finding

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of thanking a benefactor and so on. The Ashʿarites denied that. For example, see al-Juwaynī 1369/1950, 260.

13   Ibid.

outside of the revealed texts as in the work of Ibn al-Muqaffa' (d. 139/ 757) and the early Māturīdī Abū Bakr al-Jaṣṣāṣ (d. 370/980). For al-Jaṣṣāṣ, any issue that is not addressed in scripture can be decided by reason. According to Felicita Opwis, "that would be the area of independent reasoning and the resulting rulings fall outside the sphere of the religious law and religious accountability." (Opwis 2010, 31). Interestingly, it seems that a view similar to that of al-Jaṣṣāṣ was also accepted by Abū al-Ḥusayn al-Baṣrī (436/1044), the late Mu'tazilite. Like al-Jaṣṣāṣ, he considered that rulings that are not explicitly addressed in scripture and are based on intellect alone fall outside the realm of religion and are therefore exempted from religious accountability. (Ibidem, 41). He considered that only the revealed law imparts knowledge about legal *maṣlaḥa*. (Ibidem, 34).

The problem with the above view is that it undervalues ethical judgments and moral behaviour when those are not explicitly based on revelation. It also implies that the people who do not follow any revealed *sharī'a* will be exempted from divine reward and punishment. On one side this is troubling as it definitely limits the scope of the *sharī'a*. Yet, on the other side it is liberating since it means that no religious or political authority or power would be able to claim divine sanction for man-made laws. However, not all the Mu'tazilites agreed on the above view, since 'Abd al-Jabbār (d. 415/1024), for example maintained that "reward is deserved for the act which is characterized in itself by what necessitates its being obligatory or recommended." ('Abd al-Jabbār n.d., 12: 279). He and other Mu'tazilites before him distinguished between moral obligations that they called rational obligations (*taklīf 'aqlī*) and the religious obligations (*taklīf shar'ī*). The first is the obligation to adhere to moral principles known to all rational beings, and the second includes the obligations that one cannot know without revelation like the obligations to perform religious rituals and worship. For 'Abd al-Jabbār knowing God is considered grace (*luṭf*), since one then knows that punishment will be deserved for evil doing and reward will be deserved for good deeds. Thus a person (*al-mukallaf*) becomes closer to avoiding evil. In other words, knowing that God will reward good deeds and punish evil helps the believer to put his heart into what he is doing.

Ash'arite jurists (*fuqahāʾ*) reacted against the concept of *maṣlaḥa* as held by the early jurists and the Mu'tazilites. Opwis stated that "the Ash'arite's suspicion toward 'man made' law forced them to find methods that would enable the religious law to speak to all human experience, even if not expressly addressed in its textual sources. A pioneer on this front was the Ash'ari theologian and Shāfi'ī jurist al-Juwaynī." According to Opwis, "Al-Juwaynī tried to protect the prerogative of religious scholars to authoritatively pronounce rulings for

religious and mundane matters by laying out a clear methodology of deriving rulings for unprecedented situations, on which the sources of law are silent." (Opwis 2010, 42).

The Ashʿarites must have benefited from the work of their Muʿtazilite predecessors in finding what constitutes the *maṣlaḥa* according to human intellect (*ʿaql*), but by contending that the true meaning of the *maṣlaḥa* is to preserve divine purposes and not human beings' purposes they were able to sustain a religious legitimacy for any new ruling based on the principle of *maṣlaḥa* and the theory of *maqāṣid*. In *al-Mughnī*, the voluminous work which included the culmination of the Muʿtazilite doctrines ʿAbd al-Jabbār wrote: "In case of disagreement on the meaning of a certain text, [i.e. from the Qurʾān], it should be understood and interpreted in a way that conforms to Muslims' intentions or aims (*maqāṣid*)." (ʿAbd al-Jabbār n.d, 6-b: 331). Those *maqāṣid* are necessarily the purposes of law and the intended meaning. Moreover, they are moral universals and common goals shared by all human beings.

Concluding Remarks

El-Shamsy finds the fact that the systematic utilization of *maṣlaḥa* as a device in analogical rule derivation began after the decline of the Muʿtazila and with the rise of the Ashāʿira counterinitiative. (Shamsy 2014, 20). He is right, since on one hand they explicitly endorsed ethical voluntarism, rejecting rational obligation, assigning a secondary role to reason in moral matters and limiting it to interpreting texts, while, on the other hand, they established an ethical theory that clearly required an extensive reliance on reason, which does not commensurate with its subordinate role assigned by the Ashʿarites. Regardless of the fact that the late Ashʿarites who elaborated the *maqāṣid* theory remained faithful to the Ashʿarite creed in ethics, they have benefited a great deal from the Muʿtazilite contributions. They have established the *maqāṣid* theory on human objectives that are known by reason and supported by revelation. These objectives, as pointed out by al-Ghazālī are concealed and can be noticed only by those who truly investigate. Therefore, the objectives or purposes of the *sharīʿa* are not derived from scriptural source texts, as also noticed by Anver Emon who added that "source texts, at most, confirm and corroborate them."[14]

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14   Emon 2013, 135. In his book Emon argued that the Ashʾarites developed a certain version of natural law theory which relies on the concept of *maṣlaḥa* and *maqāṣid*. He distinguished it from the Muʾtazilite ethical theory which he called hard natural law theory. Yet nowhere in the book can one find a clear definition of what he means by natural law.

For al-Ghazali, it seems that these values are intuitively known. They are the kinds of values that any society or legal tradition would uphold if it values the preservation and flourishing of society. He stated that "it is impossible that any society (*milla min al-milal*) or any legal system (*sharīʿa min al-sharāʾiʿ*) which aims for the benefit of creation (*iṣlāḥ al-khalq*) would not include prohibitions against neglect of and restraint from these five values." (Al-Ghazālī, *al-Mustaṣfā*, 1:637, quoted in Emon 2013, 135).

This is also acknowledged by al-Shāṭibī, who adds: "and the knowledge of the five necessities, religion, life, progeny, property and intellect that the *sharīʿa* aims to preserve, is akin to necessary knowledge …" (Shāṭibī 1997, 1: 20). I have previously indicated the importance of the concept of 'necessary knowledge' in ethics and explained its meaning. Necessary knowledge here definitely indicates knowledge that is independent of revelation.

The Ashʿarite theory of good and evil is definitely consistent with the rest of the Ashʿarite theories in *kalām*, but it is not indispensable in the principles of jurisprudence *uṣūl al-fiqh.* Admitting and acknowledging human agency in formulating and establishing the 'five universal necessities' or *maqāṣid* requires a different meta-ethical foundation. A theory that would eliminate the contradiction noticed by classical and contemporary scholars, and open the door for ethical reflection on theoretical and practical matters from various perspectives taking into consideration the advancement of human knowledge.

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Throughout the book he keeps referring to the concept of "fusing fact and value," but that is also not clarified. In a recent article Andrew March exposed the concept of "natural law" arguing that it is ambiguous and can be applied to any interpretation of Islamic law, which seems to apply to Emon's interpretation as well. See: March 2015.

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