

Islamic Law and Ethics

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Continuing engagement with Islamic legal scholarship does not seem to have resulted in satisfactory attention being paid to the interplay of philosophical considerations and theological principles in relation to the ethical component of Islamic Law. This explains why any scholarly and properly guided attempt to extend the frontiers of knowledge on the subject of Islamic Law and Ethics is always welcome. David Vishanoff's edited volume examines Islamic ethics in the context of Islamic law. The book comprises an introduction by the editor, a foreword by the publishers, followed by the chapters contributed by the editor and no fewer than six other eminent scholars on various aspects of the subject, which are presented in an elegant, lucid, and highly intelligible prose. The editor's introduction, *Islamic Law and Ethics: From Integration to Pluralism* (pp. ix-xiii) provides the rationale for the book, exposes the gap that the book seeks to fill, and offers a panoramic picture of the central theme as addressed by the various contributors in their respective chapters.

The editor's introduction is followed in immediate succession by his own chapter entitled "The Ethical Structure of Imam al-Haramayn al-Juwayni's Legal Theory" (pp. 1-31). This chapter underscores the ethical dimension of al-Juwayni's legal theory and relies on his definition of law

(*fiqh*) as knowledge of legal values (*aḥkām*), his interpretive principles, and others which expose the ethical implications of various Islamic legal provisions. The author demonstrates an excellent grasp of the subject as well as remarkable familiarity with the scholarship of al-Juwayni. This is evident in his engagement with the text of al-Juwayni's *Kitāb al-Waraqāt*, whose translation and analysis he handles with the dexterity of a thorough scholar, especially with regard to the legal and ethical implications of the book, as contrasted with another notable work by al-Juwayni, namely *Kitāb al-Burhān*. However, the author's claim that "one remains unsure whether it is the phrase *uṣūl al-fiqh* that is divided into two parts, the discipline of *uṣūl al-fiqh* itself, or the *Kitāb al-Waraqāt fī Uṣūl al-Fiqh*, deserves some attention. Relying on Ibn al-Firkah's reconstruction of the text and Jalal al-Din al-Mahalli's commentary, the author argues that "this ambiguity may be deliberate, because all three are composed of two parts in some sense: the first word in the phrase, the first part of the discipline, and the first half of the book all have to do with the roots or sources of the law – the stuff or material of revelation – while the second part of each deals with the construction of law by reasoning based on those sources" (p. 6).

While the author's attempt at a critical engagement with this aspect of the text of *al-Waraqāt* is applauded, it should be noted that a careful look at the text in question in its original Arabic version reveals that the question of ambiguity does not arise, as the reference to "Uṣūl al-Fiqh" could not have been to do with anything other than the subject or discipline of Uṣūl al-Fiqh. *Hādhihi waraqāt tashtamilu 'alā fuṣūl min uṣūl al-fiqh wa-huwa lafẓ mu'allaf min juz'ayn mufradayn...* that may be concisely translated as "Here are pages comprising sections of The Roots of Islamic Jurisprudence (the roots of legal science)", without prejudice to its translation by the author as, "Here are some pages encompassing information on various subdivisions of 'the roots of 'legal science'" (p. 5). Besides, the author repeatedly refers to the text as *Kitāb al-Waraqāt fī Uṣūl al-Fiqh*, whereas it is captured in the literature as *Matn al-Waraqāt*. Indeed, it is only described as *Kitāb* in two instances, namely where reference is made to its commentary, as is the case in *Kitāb Sharh al-Waraqāt*, or where *Matn* is preceded by the word, *Kitāb* as is the case

in *Kitāb Matn al-Waraqāt*. Thus, the author's characterization of the text is not consistent with the tradition and practice. Also of interest is the author's claim that "the chapter does not look beyond legal theory" while claiming at the same time that "the chapter attempts to imagine what the discipline might look like if it were structured around different ethical categories" some of which he identifies. One is therefore tempted to ask how logically sound is the conclusion that a chapter that casts an imaginative look at ethical concerns over a discipline has not really crossed the boundaries of legal theory.

In Chapter Two, "Neither Desiring It, nor Transgressing Its Limits:" Ethical Hierarchy in Islamic Law", Samy Ayoub examines the interconnectedness of hardship (*mashaqqah*), relaxation of requirement (*taysīr*) and necessity (*ḍarūrah*) in the late Hanafite juridical tradition. He highlights the central place accorded to moral considerations with regard to the concept of lesser evil in the Hanafite legal formulations concerning hardship and necessity. In this chapter, two issues seem to have earned the most attention, and the author himself has not equivocated in identifying them. These are the boundaries of hardship and necessity, as well as the place of individual and collective rights in such circumstances (p. 35). The author demonstrates throughout his analysis how necessitous circumstances permit the unlawful, how hardship brings about relaxation of a requirement and the hierarchy of hardship, the levels of relaxation of requirement, as well as the moral dilemmas involved. The author is at his best where he alludes to Ibn Nujaym's *al-Ashbāh wa-al-Nazā'ir*, which forms the basis of significant parts of the author's analysis in the chapter. While the specific details and relevant examples provided by the author in his analysis, especially on how *mashaqqah* (hardship) is examined and considered in the absence of textual evidence constitute a major strength of the chapter, the author's excessive reliance on Ibn Nujaym whose views he often presents uncritically (pp. 39-43) leaves much to be desired. An attempt to subject Ibn Nujaym's views to comparative evaluation alongside other leading authorities on the subject, would have been more deserving of plaudits.

Chapter Three, "Structural Ijtihad: A Radical Paradigm Shift in Twelver Shi'i Legal Theory" was contributed by Hamid Mavani, whose

main argument is that though *Ijtihād* is generally regarded as a useful tool for a meaningful response to the challenges of modernity, this optimism and confidence cannot be accepted as valid altogether. The reason he gives for this concern is that “the traditional *ijtihād* paradigm that is in current usage to deal with present-day challenges has reached its limits and is unable to deal methodically with contemporary contingencies” (p. 52). He argues that the perturbing nature of these challenges has compelled the traditional *ijtihād* system to formulate secondary juridical devices such as public welfare (*maṣlaḥah*), imperative necessity (*darūrah*), distress (*ḥaraj*), and averting difficulty (*‘usr*). The high points of the chapter are the relevant, practical examples cited by him in demystifying the various technical concepts involved in his analysis. However, there is a verbatim production on page 55 of content from page 52, to the tune of almost one full page. There also is a reproduction on page 62 of a statement from pages 52 and 55, concerning “the risk of providing only partial, patchy, and petty formal modifications to existing legal rulings”. Nonetheless, these observations are not sufficient to mar the quality of the sophisticated chapter.

In Chapter Four, “The Application of *Maqasid al-Shari‘ah* in Islamic Chaplaincy”, Kamal Abu-Shamsieh discusses the scope of Islamic spiritual care services and the understanding of the theological foundations which, according to him, “remain in their infancy, despite the emergence of Islamic chaplaincy training programs and professional associations in the United States” (p. 76). In articulating the rationale for the chapter, the author argues that chaplaincy remains non-existent, underdeveloped, or misunderstood in Muslim countries. He finds this strange in view of the enormous provisions for caring, for care seeking, healing, worship obligations, legal considerations during sickness, as well as ethics of care, in the rich sources of the Islamic heritage. The author engages critically and analytically with the sources and purposes of *Shariah* in the context of the theory of *Maqāsid al-Sharī‘ah*, with a view to exposing the interplay of Islamic law and ethics. In this chapter, the author’s contribution to scholarship lies in the key Islamic legal terminologies that shape and give directions to the services provided by the chaplain to patients. He is systematic in his approach to the issues involved in the subject of his

chapter as he addresses related questions in separate clusters, and the greatest strength of this chapter lies in the author's successful analysis of the practices and activities of chaplaincy in the context of the goals of *Maqāṣid al-Sharī'ah*, Islamic jurisprudence, and the *Qawā'id al-Sharī'ah* principles of ethics.

Chapter Five is entitled, "The Developmentalist Ethic in Islamic Charity: *Fiqh al-Zakāh* and the Applied Ethics of Muslim Charity Organizations in India", and contributed by Christopher B. Taylor. The chapter discusses the emerging face of *zakāh* as a developmentalist framework for Islamic charity in India. The author addresses the concern involved in the gradual shift from the Islamic teaching that charity is best given in secret and argues that "this shift to *zakāh* as development is not merely the result of Western influence and imported NGO practices replacing authentic Islamic rituals, nor is it to be seen as the kind of inexorable rationalization of religion..." (p. 109). He analyses the place of *zakāh* as a major feature of Muslim social practice in India. Yet, he argues that more Muslims give *zakāh* worldwide (76%) than perform daily ritual prayers, even though the researchers who conducted surveys that reveal such findings did not survey Muslims in India, probably due to the lack of "political" permission. Nonetheless, Islamic charity remains central to public discourse in India and has earned considerable attention. The author deserves plaudits in his analysis of such *zakāh* related variables as purification, secrecy, contexts for the purity ethic, as well as the developmental ethic in *zakāh*, which covers work ethic (pp. 120-123), public institutionalization (pp. 123-125), and debating the developmentalist ethic in the *madrasah* (pp. 126-129). There is no denying that this chapter is an excellent piece that makes an interesting read.

"The Concept of *Riḍā* in the Qur'an: Popular Misunderstanding and the Westernization of Jews and Christians" is the title of Chapter Six and contributed by Asaad Alsaleh. The author makes it clear that the chapter seeks to investigate the multiplicity of representations associated with the injunction contained in chapter 2, verse 120 of the Qur'an. He identifies the Arabic concept of *riḍā*, which he renders into English as "approval" as the subject involved in the Qur'anic injunction in question. It may not be inaccurate to characterize this chapter as an attempt by

the author to challenge the popular representations of *riḍā* (approval) in the verse which has largely promoted the perception that the Qur'an is not favourably disposed to a Muslim's friendship or cordial relationship with a Jew or Christian. According to the author, "both the verse and the concept of *riḍā* therein have been taken out of context and misunderstood as part of a reactionary discourse against the West" (p. 136). He demonstrates the growing instrumentality of the popular view of the verse to misrepresentations, which have contributed to the contemporary disapproval of the West among some Muslims, as well as the implications of the growing practice of quoting the Qur'an as a political reaction. His extensive analysis in that regard is followed by an exegetical look at the concept, which is contextualized in the corpus of Qur'anic exegesis. The author's versatility becomes visible in the section entitled 'Contextualizing *Riḍā*' where he draws on relevant scholarship from such disciplines as philosophy, psychology, history, Arabic language, Islamic jurisprudence, Qur'anic exegesis and others (pp. 146-153). The various questions raised by the author in this section receive attention later, where he asks, "Is *Riḍā* a Universal and Timeless Reality?" (p. 153). Through a rigorous analysis, the author notes that "some latter exegetes, not the first-generation ones", posit that it is only the second part of the verse that is addressed to the Prophet and all Muslims. Yet, he maintains that al-Baghawi, al-Khazin, Ibn Kathir, and al-Qurtubi are of the view that the message is for the Prophet and, by extension, the ummah (p.154).

The final chapter is titled, "Social Justice and Islamic Legal/Ethical Order: The Madinah Constitution as a Case Study from the Prophetic Period' is contributed by Katrin Jomaa. The chapter addresses the perception of social justice from the Islamic perspective and its implementation in a legal setting. The chapter examines the 47 decrees of the Madinah Constitution and situates them in the modern context, especially with regard to how to legally and politically handle or relate to the question of diversity in a pluralistic society. With special attention to the Qur'anic ethical understanding of diversity, the chapter pursues a line of argument that offers a new perspective on social justice and that the public manifestation of difference does not affect social harmony, even though they are not hidden in private. The author challenges John Rawls'

theory on interaction based on the “veil of ignorance”, which advocates that people’s public interaction in the political realm pay attention only to their commonalities, while disregarding or ignoring their differences to avoid conflict. The author argues that despite the general acceptance and recognition accorded to the theory in the West, the fact that it lacks a sense of community, social cohesion, and social justice for minorities makes it deficient. The author contrasts such a theory with the Madinah charter, which is replete with provisions for religious and ethnic diversity in public through the constitution and legal pluralism, and maintains common standards among diverse communities. The author compares and contrasts the Madinah Constitution with Western Thought under various subheadings such as Community versus Ummah (pp. 164-170), Decrees Addressing the Believers (pp. 170-173), Individual versus Collective Responsibility (pp. 173-175), Majority versus Minorities or Elite versus Marginalized (pp. 175-178), Public Norm and Individual Choice (pp. 178-180), Decrees Addressing the Jews (pp. 181-185), as well as Decrees Addressing *Ahl al-Ṣaḥīfah* (the People of the Constitution). The author’s insights are remarkable. For instance, she highlights that the Madinah Constitution implies that the Jews were an ummah ‘alongside’ the Muslims (p. 164), and that the inclusion of Jews and their law in the ummah and in the constitution is a reflection of Islam’s desire to interact with earlier traditions rather than break away from them. This just one instance of the author’s sophisticated analysis, which makes her contribution a masterpiece. However, there are several avoidable repetitions with potential to mar the sophisticated nature of the chapter. For instance, the first three lines on p.162 are repeated verbatim in the first three lines of paragraph 2 of p.163. Also, lines 8-11 of page 162 are repeated verbatim in lines 6-8 of paragraph 2 of p.163. Also, lines 11-14 of p.162 are repeated verbatim in lines 11-14 of paragraph 2 of page 163. There is a pattern of textual repetition in this highly valued book.

Ultimately, the edited volume deservedly earns the status of a very useful reference work for scholars of Islamic Law and Ethics. However, more generally speaking, it has two minor weaknesses for which the editor might ultimately be held responsible. The first is that each chapter is replete with long sentences, which have to be read and re-read in order

to have a grasp of the central idea or message involved. The second one is a weakness that may also pass for a strength: the fact that despite the interlinked nature of the chapters that make the work a harmonized whole as they are conceptually interconnected, each of the seven chapters has a clearly defined specialized audience for which it is of direct interest. The edited volume is therefore recommended to scholars in those interconnected specialized disciplines, and general readers with a voracious appetite for modern Islamic learning.

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