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The Epistemology of *Qiyās* and *Ta'lil* between the Mu'tazilite Abū l-Ḥusayn al-Baṣrī and Ibn Ḥazm al-Ẓāhirī

By
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A Thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of the requirements for
the degree of Master of Arts

Institute of Islamic Studies
McGill University
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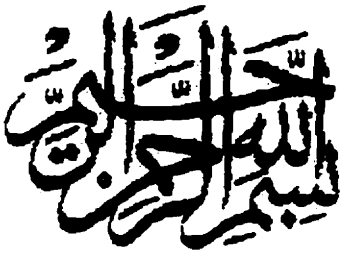

وما توفيقي إلا بالله

ABSTRACT

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Title:	The Epistemology of *Qiyās* and *Ta'līl* between the Mu'tazilite Abū l-Ḥusayn al-Baṣrī and Ibn Ḥazm al-Ẓāhirī
Department:	Institute of Islamic Studies, McGill University
Degree:	Master of Arts

This thesis seeks to sketch the outer contours of the epistemological universe in which the science of *uṣūl al-fiqh* was elaborated in classical Islam. The task is accomplished by analyzing arguments both for and against *qiyās* and *ta'līl* as presented by two major jurists of the 5th century of the Hijra representing opposite ends of the Islamic theological spectrum: (1) the Ḥanafite Mu'tazilite jurist Abū l-Ḥusayn al-Baṣrī (d. 436/1044) and (2) the Ẓāhirite Abū Muḥammad 'Alī ibn Ḥazm al-Andalusī (d. 456/1064). After detailing each author's stance regarding the justifiability of *qiyās* and *ta'līl*, the thesis analyzes the underlying theological and epistemological premises and assumptions that can be extrapolated from each author's position. This analysis focuses on three fundamental sets of questions, namely: (1) What can be inferred from each author's position regarding the nature and provenance of knowledge in general, and of the relative status of certain (*qaṭ'ī, yaqīnī*) versus suppositional (*ẓannī*) knowledge in matters of Sharī'a? (2) What, according to each author, was the moral-legal status of acts before the promulgation of the Sharī'a, and what can be inferred from this about the nature and provenance of moral-legal norms as conceived in the Islamic world view? Finally, (3) What can we conclude, on the basis of each jurist's arguments for or against *qiyās* and *ta'līl*, about the purposefulness of Divine acts in general and of the Sharī'a in particular?

RÉSUMÉ

Auteur : Carl Sharif El-Tobgui

Titre : L'Épistémologie du *qiyās* et du *ta'līl* entre le mu'tazilite Abū l-Ḥusayn al-Baṣrī et le ẓāhirite Ibn Ḥazm

Faculté : L'Institut des Études islamiques, Université McGill

Grade : Maîtrise ès Arts

Ce mémoire a pour objectif de dessiner les grandes lignes des prémisses épistémologiques à partir desquelles s'élabora la science des *uṣūl al-fiqh* à l'époque classique de l'Islam. Pour ce faire, nous examinerons les arguments pour et contre le *qiyās* et le *ta'līl* tels qu'avancés par deux juristes éminents du 5ème siècle de l'Hégire. Ces deux juristes, qui représentent des perspectives théologiques nettement opposées, sont: (1) le mu'tazilite hanifite Abū l-Ḥusayn al-Baṣrī (m. 436/1044) et (2) le ẓāhirite Abū Muḥammad 'Alī ibn Ḥazm al-Andalusī (m. 456/1064). À la suite d'une exposition détaillée sur la position de chacun de nos auteurs concernant la justification du *qiyās* et du *ta'līl* en soi, nous procéderons à une analyse des prémisses et des suppositions théologiques et épistémologiques qui sous-tendent la doctrine de chaque juriste. Notre analyse s'axera sur trois groupes de questions pertinents : (1) Premièrement, quelles conclusions peut-on tirer de la position de chaque auteur quant à la nature et la provenance de la connaissance ? Quelle est la position relative – par rapport à la Sharī'a – de cette connaissance qualifiée de « certaine » (*qaṭ'ī*, *yaqīnī*) par contraste avec celle qui ne constitue que de la supposition (*ẓann*) ? (2) Deuxièmement, quelle était la qualification morale et légale des actes avant la promulgation de la Sharī'a et quelles sont les implications qui en découlent pour la nature et la provenance des normes légales et morales telles que perçues dans la conception islamique de la réalité ? (3) En dernier lieu, quelles conclusions s'imposent pour ce qui est de savoir si les actes Divins – et surtout la Sharī'a – visent, oui ou non, la réalisation d'un certain bénéfice, dénommé « *maṣlaḥa* » ?

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C.S.E.

August 31, 2000

INTRODUCTION

Statement of Purpose and Background

This thesis explores the epistemological implications associated with the justification of juridical *qiyās*. While a good deal of attention is paid to the theoretical justification of *qiyās* and its *modus operandi*, *ta'līl*, in general, special emphasis is placed on justification of that subcategory of *ta'līl* concerned with determining the *ratio legis*, or *'illa*, of a Sharī'a ruling in the absence of explicit textual evidence.

Ta'līl is perhaps the most central component of *qiyās*, which itself constitutes the fourth major source of Islamic law. While the Qur'ān, the Sunna and, to an extent, consensus (*ijmā'*) of the scholarly community represent a fixed body of textual material providing the fundamental rules of the Sharī'a, *qiyās* is indispensable for extending the basic rules and logic of the Sharī'a to unprecedented cases. Without *qiyās*, the properly religious, or Islamic, part of the law would be confined to no more than those cases explicitly covered in the texts, while the vast majority of rules enacted to deal with the many vicissitudes of everyday life would have to be derived on a purely utilitarian, pragmatic basis with no direct grounding in the divine sources of Revelation. The various methods of reasoning subsumed under the category of *qiyās* were thus articulated and systematized by the classical jurists as the best means of ensuring that all positive law could be derived directly from the sources of Revelation. This not only guarantees the authenticity of the law thus derived, but also assures that such law

conforms as closely as humanly possible to the will of God as revealed in the primary sources of Islam.

Every instance of *qiyās*, therefore, is intended to uncover the most appropriate ruling for an unprecedented case by assimilating it to a case covered either explicitly or implicitly in the texts. The ruling of the original case is then transferred to the novel case based on a common occasioning factor, or *'illa*, judged to be present in both cases. No *qiyās* is possible if the *'illa* of the original ruling cannot be determined with sufficient certitude. It is this very involved process of determining the *'illa* that constitutes the portion of *qiyās* known as *ta'līl*. When the *'illa*, or occasioning factor, of a particular rule of law is given explicitly in the revealed sources or is the subject of juristic consensus, the jurist's task in assimilating a new case to an original case is fairly straightforward. In many cases, however, the exact *'illa* of a given rule is not enunciated unequivocally in the texts, leaving the jurist with the delicate task of determining, as accurately as possible, the occasioning factor of the original case on the basis of which he proposes to derive a ruling for the new case. Due to this absence of textual or consensual evidence, the determination of *'illa* in such cases must rely on extra-textual, that is to say, on largely rational considerations.

As might be expected, a wide spectrum of opinion arose among jurists regarding the justification, the scope and the proper modalities of *qiyās* and of *ta'līl* based on rational inference. Al-Ghazālī, for example, went to great lengths to justify the legitimacy of rationally inferring the *'illa* based on his elaborate theory of *munāsaba*, according to which a given feature of the original case may be considered the *'illa* of a

ruling if that feature is found to be "suitable," or "relevant," to the rule in question.[1] Ibn Ḥazm, on the other hand, rejected altogether the notion of hazarding any assessment of the *'illa* in the absence of the most unambiguous and explicitly stated textual indication. In fact, Ibn Ḥazm declared it illegitimate to transfer the ruling of a case covered in the texts to a new case *even if* the *'illa* of the original case was known with absolute certainty.[2] Among the Mu'tazilites figured not only those who affirmed and defended *qiyās* and the rationally inferred *'illa*, such as Abū l-Ḥusayn al-Baṣrī, but also those who rejected it outright, such as Ibrāhīm b. Sayyār al-Naẓẓām.[3] Such debate and divergence of opinion was certainly inevitable for, after all, allowing a jurist's own notions of what is most likely to be the occasioning factor behind a given Sharī'a ruling adds a measure of subjectivity and human fallibility which could never be admitted without rigorous and persuasive justification in a system of law which endeavors to embody the very Will of God for mankind. Indeed, the issue of deriving Sharī'a rulings based on *qiyās* – and especially when the *'illa* must be rationally inferred – takes us to the very heart of some of the most important and sensitive theological and epistemological considerations upon which the entire Islamic world view is based.

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[1] See Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī* Uṣūl al-Fiqh (Cambridge: Cambridge University Press, 1997), pp. 88-90 for a discussion of al-Ghazālī's method of "suitability" and pp. 82-107 for a lucid and comprehensive treatment of *qiyās* as a whole.

[2] See Fadel I. Abdallah, "Notes on Ibn Ḥazm's Rejection of Analogy (*Qiyās*) in Matters of Religious Law," *American Journal of Islamic Social Sciences*, 2 (1985): 207-24, esp. pp. 211-22 for an overview of Ibn Ḥazm's methodology and main arguments in refuting *qiyās*. See also Nabil Shehaby, "*'Illa* and *Qiyās* in early Islamic Legal Theory," Journal of the American Oriental Society, 102 (1982), pp. 29-33 for Ibn Ḥazm's rejection of the concept of *'illa* and for an informative treatment of the juridical doctrine – especially with regard to *qiyās* and *ta'līl* – of Abū Sulaymān Dāwūd b. Khalaf (d. 270/884), founder of the Ẓāhirite school of theology and law.

[3] See Shehaby, ibid., p. 36, where he refers to al-Naẓẓām (d. between 220/835 and 230/845) as "the first to

Theoretical Framework

This thesis seeks to sketch the outer contours of the epistemological universe in which the science of *uṣūl al-fiqh* was elaborated in classical Islam. The task will be accomplished by analyzing arguments both for and against *qiyās* and *ta'līl* as presented by two major jurists of the 5th century of the Hijra. The jurists in question, who represent opposite ends of the Islamic theological spectrum, are the Ḥanafite Mu'tazilite jurist Abū l-Ḥusayn al-Baṣrī (d. 436/1044) and the Ẓāhirite Abū Muḥammad 'Alī ibn Ḥazm al-Andalusī (d. 456/1064). By analyzing the treatises on *uṣūl al-fiqh* of authors with such widely divergent theological orientations, we seek to draw out and map the very crucial epistemological considerations which lie at the base of each author's position. The juridical methods of *qiyās* and *ta'līl* lend themselves particularly well to such an endeavor. Being neither strictly textual nor purely rational methods of deriving the law, they represent the delicate relationship between the incontrovertible and in some ways inscrutable – but nonetheless finite – dictates of Divine command, and the urgently felt need among jurists to capture somehow the essence of that command rationally and methodologically, so as to extrapolate therefrom general moral and legal principles which could be applied to all the multifarious details of human life.

In the main section of each chapter below, we shall provide a detailed exposition of each of our jurists' positions regarding the justifiability of *qiyās* and *ta'līl*. This will be followed, in the second part of each chapter, by a discussion and analysis of the underlying theological and epistemological premises and assumptions that can be

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reject the use of analogy in law."

extrapolated from each author's position. Our analysis shall focus on three fundamental sets of questions, namely: (1) What can we infer, from each author's stance with respect to *qiyās* and *ta'līl*, about the nature and provenance of knowledge in general, and about the epistemic status of that "knowledge" which results from the exercise of *qiyās*? (2) What, according to each author, was the moral-legal status of acts before the promulgation of the Sharī'a, and what can we infer from this about the nature and provenance of moral-legal norms as conceived in the Islamic world view? (3) What can we conclude, on the basis of our jurists' arguments for or against *qiyās* and *ta'līl*, about the purposefulness of Divine acts in general and of the Sharī'a in particular?

The Question of the Nature and Provenance of Knowledge

By analyzing Abū l-Ḥusayn al-Baṣrī's and Ibn Ḥazm's positions regarding *qiyās* and *ta'līl*, we shall seek to discover how each author perceives and defines knowledge. What is the provenance of different kinds of knowledge (*'ilm*),[4] such as sensory knowledge, rational knowledge, and knowledge mediated through revelation? What is the relationship of each of these three to the other two? Where does one begin and the other end and what is their order of logical priority?

More essentially, we shall seek to determine how each of our authors views different types of knowledge with regard to their position along the epistemic scale of

[4] The reader is advised to note that throughout this thesis, "knowledge" is to be understood strictly in the sense of "*'ilm*," and not in the sense of the intuitive, Gnostic concept of "*ma'rifa*" found predominantly among Ṣūfī writers. Whether or not such knowledge was considered real and legitimate by our two thinkers is a question which falls outside the scope of the present work. Mystical knowledge does not, at any rate, form part of the conceptual structure of knowledge which each of our thinkers expounds in his respective treatment of *qiyās* and *ta'līl*.

certainty. This discussion will center primarily around the dichotomy of certain (*qaṭ'ī, yaqīnī*) versus suppositional (*ẓannī*) knowledge. How are the different kinds of knowledge mentioned above divided between these two categories? Where exactly lies the border between certainty and supposition, and what attitude do our authors take towards each category? Is knowledge to be understood as a set of propositions which are objectively true in an absolute sense, that is, true from the perspective of God? Or rather, is what can be termed "*'ilm*" relative to some extent to the knowing subject, whereby "knowledge" is equated with the results of the subject's best efforts to arrive at the understanding of a thing? If one takes this second position, does "knowledge" then become an entirely subjective category defined strictly in terms of the individual knowing subject? Are there any factors or considerations which might prevent such a wholesale subjectification of knowledge? If we adhere to the first position – that is, if knowledge is defined by that set of propositions which are objectively true in an absolute sense, with both "objectivity" and "truth" here being constituted by and through God as the ultimate source and determinant of such categories – then that which is merely suppositional (*ẓannī*) would necessarily fall outside the range of what is considered knowledge proper, or *'ilm*. If this is the case, then what are the implications of *ẓannī* "knowledge" in terms of the Sharī'a? More specifically, what is the justification of deriving Sharī'a rulings through means which admittedly yield mere supposition rather than a conclusive knowledge which is concurrent (though not, of course, coextensive) with Truth as lodged in the mind of God, and then including such rulings among that set of directives and laws which are collectively referred to as the Law of God and an expression of the Will of God for mankind?

In addition to the questions raised above, we shall attempt to pinpoint and analyze each author's views regarding the status of acts before the promulgation of the Islamic Sharī'a. This will be done in an attempt to shed light upon a complex of questions intimately related to the nature and provenance of moral-legal-ethical norms as perceived in the Islamic world view.[5] The principal questions for which we hope to adumbrate a response include the following: (1) Do acts have an inherently good or evil nature, or is it their prescription or prohibition by Revelation which defines acts as good or evil? In the case of this second possibility, is it necessary even to classify acts as "good" and "evil" at all once we have determined their moral-legal status, or is it sufficient simply to know that certain things are lawful while others are prohibited, with licitness and illicitness as the only (relevant) criteria by which acts may be qualified? (2) If acts are seen to be inherently good or evil, do this goodness and evilness necessarily determine the acts' moral-legal status? That is, are good things prescribed (or at least permitted) and evil things prohibited as a *necessary* result of their being either good or evil? (3) If acts are *not* automatically permitted or forbidden according to their inherent goodness or evilness, then what determines their moral-legal status: reason, revelation, some combination of both? (4) If acts are inherently good or evil, can these qualities be discerned by the intellect or can they be known only through revelation? (5) If acts are *not* inherently good or evil, then what considerations – if any

[5] See A. Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (Albany: State University of New York Press, 1995) for an excellent in-depth study of the religio-historical development of the Muslim debate surrounding the status of acts before the Sharī'a and of the

– are seen to inform the divine prescription of some acts and the prohibition of others? (6) What role, if any, devolves upon the Qur'ānic concept of the *fiṭra*, or "primordial nature" of man,[6] with regard to the assessment of acts? (7) What conclusions can we draw, from the answers to the questions above, about the objectivity or the subjectivity of moral-legal norms as conceived in the Islamic world view?

The Question of Maṣlaḥa and the Purposefulness of the Sharī'a

Finally, we shall seek to round out our sketch of the fundamental premises and assumptions which underlie the conceptual framework of each of our authors by examining the notion of benefit, or "*maṣlaḥa*" – a concept which highlights perhaps more than any other the distance which separates, in certain instances, one end of the Islamic theo-juridical conceptual spectrum from the other. Among the questions we shall probe in this regard are the following: (1) Is there any such notion as *maṣlaḥa*, or "benefit," which informs Divine acts in general, and the Sharī'a in particular? If so, do we know this fact rationally or through textual means? (2) If *maṣlaḥa* does exist as an underlying principle of the Sharī'a, how are its specific contents known? That is, how can we determine what specific actions lead to the realization of *maṣlaḥa*? (3) More specifically, what is the relationship between reason and revelation on the one hand, and

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epistemological implications of this debate for Muslim thought regarding the nature and provenance of moral-ethical norms in general.

[6] See Qur'ān 30:30 where God is said to have created mankind on a "*fiṭra*," that is, a "pattern" or "primordial nature." The text of the verse reads: "So set thou thy face steadily and truly to the Faith. (Establish) God's handiwork according to the pattern [or "nature," i.e., "*fiṭra*"] on which He has made mankind. No change (let there be) in the work (wrought) by God. That is the standard Religion, but most among mankind understand not."

between conclusive and suppositional knowledge on the other, in the determination and the actualization of *maṣlaḥa*?

Abū l-Ḥusayn al-Baṣrī
(d. 436/1044)

Al-Baṣrī's Introduction to His "Kalām fī al-Qiyās"

Al-Baṣrī dedicates almost 200 pages of his *magnum opus* on legal theory, *Kitāb al-Mu'tamad fī Uṣūl al-Fiqh*,[7] to a detailed discussion of the theoretical justification of *qiyās* and *ta'līl*, as well as an exhaustive treatment of the technical details of these two processes. Al-Baṣrī begins this section of the *Mu'tamad* by stating that his purpose in discussing *qiyās* is to demonstrate that it is an activity decreed upon the Muslim community by the Lawmaker, and to clarify the various conditions which govern its practice. However, before demonstrating that *qiyās* has been prescribed in actuality, it is necessary first to discuss the theoretical justifications of this prescription. Both of these matters must in turn be logically preceded by a discussion of what *qiyās* actually is in its essence. Since *qiyās* in matters of law is, as al-Baṣrī describes it here, a "sign" (*amāra*), he must consequently explain first and foremost the nature of such a "sign" and its various components. From this point, al-Baṣrī then proceeds to a discussion of what *qiyās* is and what issues are closely related to it, followed by a discussion of the theoretical admissibility of *qiyās* being either decreed or prohibited. This discussion entails the theoretical justification of *qiyās* as a general concept, followed by an attempt to show that, in addition to its theoretical admissibility, *qiyās* has in reality been made

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[7] See "*al-Kalām fī al-Qiyās [wal-Ijtihād]*," pp. 689-867 in Vol. II, *Kitāb al-Mu'tamad fī Uṣūl al-Fiqh*, ed. Muhammad Hamidullah et al., 2 vols. (Damascus: Institut Français, 1964-5), referred to hereafter as

incumbent upon the Muslim community. Finally, al-Baṣrī dedicates the rest (approximately two thirds) of this chapter of the *Mu'tamad* to a discussion of the minute technical details of *qiyās* and *ta'līl*, which fall outside of the scope of this thesis.[8]

Chapter on the Definition of Qiyās

Al-Baṣrī defines *qiyās* as "establishing the judgement (*ḥukm*) of a thing by considering the cause (*'illa*, pl. "*'ilal*") which attaches to something else,"[9] with "*'illa*" defined as "that which effects, or brings about, a legal ruling."[10] This definition, al-Baṣrī points out, is inclusive of both *qiyās al-ṭard*, where the judgement of the original case (*aṣl*) is transferred to the assimilated case (*far'*) due to a shared *'illa* between the two, as well as *qiyās al-'aks*, in which the opposite of the ruling of the original case is established in the assimilated case due to the divergence of their respective *'illas*. An example of *qiyās al-ṭard* is the prohibition of taking interest on the sale of rice based on

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"*Mu'tamad*."

[8] See Hallaq, "A Tenth-Eleventh Century Treatise on Juridical Dialectic," *Muslim World*, 77 (1987), pp. 200-3 for an exposition of the most important technical aspects of *qiyās* and *ta'līl* as expounded by al-Baṣrī in his *Kitāb al-Qiyās al-Shar'ī*. Al-Baṣrī composed this latter treatise as a summary, with slight modifications, of his expanded treatment of *qiyās* in the *Mu'tamad*.

[9] See *Mu'tamad*, p. 699 for al-Baṣrī's discussion of various definitions of *qiyās* and of his justification for choosing this particular one over all the rest.

[10] See ibid., p. 704. The importance of this particular definition will become clear as our discussion of the *'illa* progresses. In fact, describing the *'illa* as efficacious (*mu'aththira*) in bringing about the ruling, rather than simply being habitually associated with it by the "*'āda*," or "habit," of God in creation was the subject of intense debate among jurists, based mainly on theological, rather than purely legal, considerations. Indeed, as it will be seen in the next chapter, Ibn Ḥazm vigorously opposed any notion of *'illa* in the Sharī'a if *'illa* is taken to mean that which is *efficacious* in producing a ruling. Similarly, an Ash'arite such as al-Ghazālī also did not allow the "*'illa*" of a ruling to be described as necessitating that ruling in a real sense and without qualification. See, *inter alia*, Ahmad Hasan, "The Legal Cause in Islamic Jurisprudence: An Analysis of *'illat al-ḥukm*," *Islamic Studies*, 19, IV (1980): 247-270 and Hasan, "The Conditions of Legal Cause in Islamic Jurisprudence," *Islamic Studies*, 20, IV (1981): 303-

this prohibition in wheat, due to the fact that both share a common *'illa* – either edibility, measurability by capacity or measurability by weight, depending on the scholarly interpretation taken – which is considered efficient in producing the prohibitive ruling. An example of *qiyās al-'aks* is the following: If fasting were not established as a condition of *i'tikāf*, it would not be a condition even if one included it in the vow to make *i'tikāf*. This would be similar to the case of prayer, which in fact is established *not* to be a condition for *i'tikāf*, even if the one making *i'tikāf* vows to do so with prayer. In this instance, the original case is prayer and the judgement is the fact of not being a condition for *i'tikāf*. The cause (*'illa*) on account of which prayer is known not to be a condition of *i'tikāf* is the fact that it is not a condition of *i'tikāf* even with vowing. The assimilated case here is fasting. Now, since it is established that fasting *is* a condition for *i'tikāf* with vowing, we must conclude, due to the diametrical opposition of these two *'ilal*, that fasting is also an independent condition of *i'tikāf*. In this instance, the *opposite* of the ruling of the original case is established in the assimilated case due to the divergence of their respective *'ilal*.

Topology and Definitions

Al-Baṣrī defines a "sign" (*amāra*) as that which, upon proper reflection, leads to suppositional knowledge (*ẓann*), while an indicant (*dalīl* or *dalāla*) is that which leads to certainty, or "*'ilm*."[11] Concerning the various types of signs, al-Baṣrī offers his own

342.

[11] Al-Baṣrī notes in passing that whereas theologians observe this distinction in both legal and rational matters, jurists consistently refer to Sharī'a-related "signs," like *qiyās* and solitary *ḥadīth* reports, as

refinement of a categorization which he reports of Abū l-Ḥasan. Sharī'a indicants can either be stated obviously and clearly in the texts or not so stated. Indicants which are not textually stipulated in an obvious manner are further subdivided into those indicants which cannot be discovered through the texts at all, such as the value of damages to be paid in a given situation, and those indicants which, while not patently stated in the texts, can nonetheless be extrapolated from them. This latter category of indicants must in every case correspond to a specific referent (*madlūl*), this referent being itself either a ruling or something which indicates a ruling. The activity by which one extrapolates an actual ruling is called *qiyās*. That which serves to uncover the indicant of a ruling, rather than the ruling itself, is in actuality an indicant of the *'illa*, since it is the *'illa* which in turn indicates the ruling. An example of this latter category is that which is adduced as evidence in determining that measurability by capacity is a more likely *'illa* than edibility in inducing the prohibition of interest in certain foodstuffs, or that which indicates that the word "*qurū'*" in Qur'ān 2:228 refers to a menstrual cycle.[12]

Al-Baṣrī then reports a variant subdivision of legal indicants and signs propounded by al-Shāfi'ī.[13] According to this classification, Sharī'a proofs are either extrapolated (*mustanbaṭa*) or not extrapolated. Those which are not extrapolated are the Qur'ān, the Sunna and consensus of the community. Those which are extrapolated are further subdivided into those instances in which the *'illa* is realized, or actualized (*tuḥaqqaqu fīhi l-'illa*), and those in which it is not actualized. This second category is

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"indicants," or *adilla*, with the implicit understanding that certain "*adilla*" lead to certainty while others engender mere supposition. Al-Baṣrī himself, however, observes fairly strictly the distinction between "*dalīl*" and "*amāra*" throughout most of his treatise.

[12] See *Mu'tamad*, p. 691. The relevant section of the verse in question reads: "Divorced women shall wait concerning themselves for three monthly periods (*qurū'*)," in reference to the waiting period (*'idda*) which must elapse before a divorced woman is permitted to remarry.

unlikely to be of any use in deriving rulings, since the *'illa*, as stated above, is that which leads to the ruling, with the result that when the *'illa* is not present – or at least not identifiable – there is no way to reach a ruling. Those instances in which the *'illa* is actualized give rise to two distinct types of *qiyās*. The first, called "*qiyās 'illā*" or "*qiyās ma'nā*," obtains when the assimilated case resembles only one original case, such as the assimilation of a male slave to a female slave in halving the punishment for adultery. The other type, known as "*qiyās ghalabat al-shabah*," includes those instances in which the assimilated case may resemble two or more original cases, requiring the jurist to refer it to that original case to which it bears the strongest resemblance (hence the designation "*ghalabat al-shabah*"). An example of this type of *qiyās* is the question of whether the amount of retribution paid to the owner of a killed slave should be fixed according to the liability due on property damage or, rather, on the amount of blood money due upon the killing of a free man, the ambiguity arising from the slave's resemblance to aspects of both categories.

Al-Baṣrī then cites at some length the opinion of 'Abd al-Jabbār regarding the various subdivisions of legal indicants. This classification is worth presenting in detail not only because al-Baṣrī seems to approve of and adopt al-Jabbār's topology, but also because it identifies specifically rational (*'aqlī*) and textual (*sam'ī*) categories of both rulings and *'ilal*, which takes us straight into the heart of our topic.

According to 'Abd al-Jabbār, then, signs other than those consisting of solitary reports fall into two main categories: those which are referred to an original case, or "root" (*aṣl*), and those which are not referred to a root. This second category is further

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[13] See ibid., p. 692.

subdivided into those instances in which the sign in question cannot be narrowed down with precision and those in which the sign can be identified with precision. An example of the first type is the elusive sign by which one might attempt to determine the exact circumstances under which a praying person's movements extraneous to the prayer are considered sufficiently great as to nullify that prayer. It is inadequate to stipulate, for example, that the acts in question should not be of such a nature as to lead a random observer to the conclusion that a person performing them could not possibly be in prayer at the same time. After all, he who randomly observes a person killing a snake or a scorpion would not normally imagine such a person to be in prayer, although performing these particular acts during prayer nonetheless falls short of nullifying that prayer. The sign which indicates that enough extraneous movement has occurred so as to nullify the prayer is, therefore, elusive and cannot be pinned down in a definitive manner.

Those signs which, although not referred to a specific root, can be determined with precision are themselves divided into two types: rational (*'aqlī*) and textual (*samʿī*). Rational signs, defined as those which are not derived from textual evidence, indicate rulings which may themselves be either rational or textual. An example of a rational ruling indicated by a rational sign is the determination of the amount of reparations to be paid on damaged property. The ruling itself, namely, the amount to be stipulated by the judge, is rational – that is, non-textual – as is the sign by which this amount is determined, namely, the customary practices of people in buying and selling, on the basis of which the judge determines the amount of damages due. An example of a textual ruling indicated by rational signs is the determination of the direction of

prayer, for although we infer this direction based on essentially rational indicators, the obligation to face Mecca during prayer can itself be established only through the texts.

In contrast to rational signs, textual signs require evidence from the revealed sources establishing them as signs. Also unlike rational signs, textual signs may only indicate textual rulings, to the exclusion of rational rulings. The reason for this, explains al-Baṣrī, is that rational knowledge is more immediate, and therefore prior – both logically and temporally – to knowledge gained from the texts (*li-anna l-'aqla asbaqu min al-sam'*).[14] Since that which leads to a thing (i.e., the sign) necessarily precedes that to which it leads (i.e., the ruling), it follows that although a rational sign may indicate both rational and textual rulings, a textual sign, being logically and temporally posterior to any rational category, may indicate only textual rulings to the exclusion of rational ones. An example of a textual sign which indicates a textual ruling is the requirement of those residing in remote villages to proceed to the Friday prayer should they hear the call to prayer. In this case, both the ruling (i.e., the obligation for villagers to attend the Friday prayer) as well as the sign upon which this ruling is dependent (i.e., the fact of hearing the call to prayer) have been established textually, not rationally.

It is requisite, in determining a sign and that which it indicates, that there be some clear connection between the two which makes the sign in question more likely to refer to that particular thing than to anything else. This connection can take one of two forms: either (1) the sign being efficient in producing that which it indicates, as a general rule and in the majority of cases; or (2) that which is indicated being efficient in

[14] See ibid., p. 694, ln. 19.

producing the sign. Al-Baṣrī gives both a purely rational and a legal example for both. A rational example of the first category – in which the sign is productive of that which it indicates – is the presence of a storm cloud in the winter, where the cloud both signifies and is the efficient cause of rain. Such an intimate relationship between the signifier and the signified, however, does not bar, as a rare exception, the presence of the former without the latter, as when a rain-laden cloud appears but rain does not actually fall. In legal matters, the equivalent of this would be the presence of the *'illa* of the original case in the assimilated case as a sign indicating that the ruling of the former is to be established in the latter. A rationally-based example of the second category – in which the sign is the product of that which it indicates, rather than vice versa – is the wailing which emanates from a house in which we know to have been a sick man. Such wailing would, as a general rule, indicate that the man had died, although al-Baṣrī does allow that the screaming may, as a rare exception, have been the result of some other factor. In this example, that which is indicated, i.e., the death of the sick man, is the efficient cause of that which indicates it, i.e., the wailing. Al-Baṣrī likens this situation to that in which a legal ruling is found to be present when a given characteristic (*waṣf*) is present and absent when that characteristic is absent. This coextensiveness of the characteristic and the ruling is a sign indicating the high likelihood that that particular characteristic is the *'illa* of the ruling. This would make the characteristic in question both productive of the *'illa* – in fact it would *be* the *'illa* – and a sign indicating the *'illa* at the same time.

Rational Arguments in Support of Qiyās and Ta'līl

The bulk of al-Baṣrī's rational arguments for the justification of *qiyās* – that is, of deriving legal rulings not explicitly stated in the revealed texts and considering them part of the Sharī'a, the Law of God – are to be found in a dense 15-pg. section entitled "Chapter on the Fact that Reason does not Judge *Qiyās* to be Repugnant in Legal Matters."[15] It is also in this chapter that the nature and position of the rational faculty vis-à-vis the revealed texts are most clearly and explicitly expounded. Given the great importance of this chapter for the understanding of our subject, we shall reproduce al-Baṣrī's arguments in full in the pages that follow. Throughout this exposition, we shall attempt to extrapolate from al-Baṣrī's arguments the underlying premises and assumptions which form the contours of his epistemological framework.

One of the arguments of those who deny the validity of *qiyās*, according to al-Baṣrī, is that the requirement to act on the basis of *qiyās* in legal matters is judged to be repugnant (*qabīḥ*) by the rational faculty. Al-Baṣrī responds that this is not so since reason, in fact, allows for the convergence of those conditions which, when taken together, render the use of *qiyās* in legal matters desirable (*ḥasan*). According to al-Baṣrī, there are four sets of conditions which must be simultaneously fulfilled for the prescription of a given act to be considered desirable. The first set of conditions is related to the legal-moral categorization of the act, specifically its being recommended (*mandūb*) or obligatory (*wājib*), as opposed to being reprehensible (*makrūh*) or prohibited (*ḥarām*). The second set of conditions relates to certain qualities inherent in

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[15] See "*Bābun fī anna l-'aqla lā yuqabbiḥu l-ta'abbuda bi-l-qiyāsi l-shar'ī*," ibid., pp. 705-719.

the doer of the act, such as his possessing the abilities and tools necessary to accomplish the act, his knowledge of the act's legal-moral categorization as either recommended or obligatory, or the possibility of his acquiring such knowledge by means of an indicant established to that end. The third set of conditions is related to the actual prescription of the act, such as when the issue at hand involves certain harm. Finally, the fourth set of conditions necessary for the prescription of a given act to be considered desirable is related to the Lawgiver Himself, such as His knowledge of the various circumstances connected to the act and to the doer, as well as the fact that He will reward those who are obedient and who faithfully discharge their moral responsibility. As the individual fulfillment of each of these sets of conditions with respect to *qiyās* is rationally admissible, according to al-Baṣrī, it follows that the requisite convergence of all four sets is also admissible, with the result that there are no rational grounds for ruling out the admissibility of *qiyās* being decreed upon human beings as moral agents.

To prove that *qiyās* fulfills the first set of conditions – namely, that it enjoys the moral-legal status of being at least recommendable – al-Baṣrī argues that it is admissible for our acting in accordance with what we judge to be a sign to constitute some sort of benevolence (*luṭf*), of which we would be deprived were we not to act on the basis of the sign. The implication here is that the mere possibility of capturing this benevolence suffices to confer upon *qiyās* a rank on the moral-legal scale of acts sufficiently high to render its prescription "desirable" (*ḥasan*). This requires, nonetheless, that we judge such signs to be pertinent to the condition in which we find ourselves at a given moment, for that which procures our benefit (*maṣlaḥa*, pl. "*maṣāliḥ*") may change according to our circumstances. The *maṣlaḥa* of the traveler with regard to prayer, for

instance, is different from the *maṣlaḥa* of one who is not traveling. Such is also the case concerning a menstruating versus a non-menstruating woman. Likewise, that which is incumbent upon a person may change, for example, in accordance with what dangers he estimates (*bi-ḥasabi ẓannihi*) to be present on a given voyage.

Regarding the second condition – namely, the possibility of a moral agent's having knowledge (*'ilm*) of the obligation of acting upon *qiyās* – al-Baṣrī advances the following argument: If God were to tell a moral agent: "If you estimate (*idhā ẓananta*), based on a sign, that the *'illa* behind the prohibition of grape wine is its intoxicating nature, then it is incumbent upon you to assimilate to it the case of date wine and to abstain from drinking this latter," this would be sufficient in producing in the moral agent knowledge – that is, *'ilm*, and not merely *ẓann* – of the repugnance (*qubḥ*) of drinking date wine, a knowledge which is ultimately dependent upon the agent's mere estimation (*ẓann*) of the sign in question, that is, his estimation that intoxication is in fact the *'illa* behind the prohibition of grape wine. The agent recognizes this estimation of the sign from within himself,[16] which leads him to a knowledge of the same order, al-Baṣrī seems to imply, of that which would be engendered if God were to tell him more explicitly: "Grape wine is forbidden because it is intoxicating; assimilate to it the case of date wine," or if He were simply to say: "Date wine is forbidden." Al-Baṣrī concludes from all this that since it falls squarely within the range of rational admissibility for God to confront a moral agent with statements similar to those above, it is also, therefore, rationally admissible for such an agent to be capable of knowing the obligation to act upon *qiyās*.

[16] "*wa-huwa ya'rifu hādhā l-ẓanna min nafsihi*." Ibid., p. 707.

As for the third condition – namely, the rational admissibility that prescribing *qiyās* does not constitute a detriment (*mafsada*) – al-Baṣrī remarks that there is nothing in the mind which necessitates that it should be a detriment. Thus, while it is *possible*, though not *necessary*, for acting upon *qiyās* to be detrimental, it is, by the same token, also possible for it to constitute a benefit (*maṣlaḥa*). And if it is possible for acting upon *qiyās* to be beneficial, then it is also admissible to hold that prescribing *qiyās* is beneficial, for it does not stand to reason that the doing of a thing should be beneficial while the prescription of that thing should constitute a detriment.

The fulfillment of the final condition – i.e., that of the Lawgiver having knowledge of the action in question and of its doer, as well as the fact that He will reward obedience – is guaranteed by the fact that God is by definition cognizant of all things which can be known. Since these matters are all things which can properly be known, it follows that God does, in fact, know them all. Therefore, concludes al-Baṣrī, since all four of the conditions necessary for the rational admissibility of prescribing *qiyās* have been shown to be possible individually, it follows that the convergence of these same conditions, which alone assures the desirability (*ḥusn*) of the prescription in question, also falls within the realm of that which is rationally admissible.

Al-Baṣrī then drives a similar argument from a slightly different direction. He begins by positing that the rational faculty judges favorably (*qad ḥasuna fī l-'aql*) the notion of being obligated to act upon the results of *qiyās* in cases where our knowledge of the *'illa* is certain. Now, if we were to consider acting upon *qiyās* to be undesirable (*qabīḥ*) in cases where the *'illa* is known only with probability, this undesirability could only be due to that in which the two aforementioned cases differ, namely, the fact that

the second instance, in contrast to the first, entails our acting upon mere supposition (*ẓann*) rather than certain knowledge (*'ilm*). But, al-Baṣrī continues, if acting upon merely suppositional knowledge were responsible for rendering a given instance of moral obligation undesirable, then there would be no instances – neither rational nor textual – of anything ever being prescribed based on suppositional knowledge. This, however, contradicts reality, both in the rational and the textual spheres. A rational example is the obligation (*wujūb*) to move out from under a wall which is leaning so heavily that one fears it may fall. A person is rationally obliged to move out from under such a wall even though it is possible that he be safe by sitting underneath it and be harmed by rising and seeking to move away. Likewise, it is considered undesirable (*qabīḥ*) for one to travel down a road which is suspected, on the basis of a sign, to harbor thieves, although the reality of the situation may be other than what the sign would lead one to judge probable. As for instances of textually based obligations which must be carried out based on merely suppositional knowledge, al-Baṣrī cites the obligation to judge based on the testimony of those *presumed* to be truthful (*man yuẓannu ṣidquhu*), the appointing of judges and commanders *presumed* to possess the necessary competence (*'inda ẓanni sadādihim*), the obligation to pray in the direction *presumed* to be that of the *qibla*, and so on. Furthermore, al-Baṣrī insists, as it is not inadmissible that judging matters on the basis of supposition could procure some type of benefit, it is therefore also not inadmissible for our acting upon such knowledge to have been made incumbent upon us.[17]

[17] See ibid., pp. 707-8.

In the next part of the chapter, al-Baṣrī advocates his position by citing a number of objections raised by various "opponents" and then responding to each of them in turn.

One objection holds that legal matters (*al-sharʿiyāt*) consist of *maṣāliḥ*. This being the case, if we were to allow them to be established by mere signs, although signs can be mistaken (*qad tukhṭiʾu*), then it would likewise be admissible for us to be informed (*jāza an yukhbara*) that Zayd is in the house provided there exists a sign indicating this fact, even though the sign could be either accurate or inaccurate.[18] Al-Baṣrī responds to this objection by citing the opinion of 'Abd al-Jabbār, who maintains that when we judge the resemblance of an assimilated case to an original case as *highly probable* (*ghalaba 'alā ẓanninā*) based on a sign established by God, this imposes upon us *knowledge* of the requirement to transfer the judgement of the original case to the assimilated case and to act accordingly. Likewise, God may establish a sign pointing to the fact that Zayd is in the house. If this sign leads us to believe Zayd's presence in the house to be *highly probable*, it is admissible for God to require that we move from a belief in the *probability* of Zayd's being in the house to a *knowledge* that this is so. Likewise, it is also possible for such a shift to be made incumbent upon us on the basis of a report (*khabar*) stating that Zayd is in the house.[19] This is an extremely interesting argument as far as the epistemic status of various types of "knowledge" is concerned. It is not altogether clear exactly how or why this shift from a judgement of high

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[18] The implication of the objector here, as I understand it, is that such a "sign" can only provide us with suppositional knowledge (*ẓann*), rather than certain knowledge (*'ilm*), that Zayd is in the house. The objection, then, would seem to be one concerning the justification of establishing norms and rulings of the Sharī'a based on mere supposition, rather than certainty. See *Muʿtamad*, p. 709, ln. 4 – p. 711, ln. 4 for al-Baṣrī's full treatment of the example of Zayd being in the house.

[19] "*Fa-kadhālika nujawwizu an yanṣuba (Allāhu) 'alā kawni Zaydin fī l-dāri amāratan, fa-idhā ẓanannāhu fī l-dāri jāza an yataʿabbadanā bi-an nantaqila 'an ẓanni kawnihi fīhā ilā l-'ilmi li-kawnihi fīhā, wa-yataʿabbadanā bi-l-khabari ['an kawnihi fīhā].*" Ibid., p. 709.

probability (*ghalabat al-ẓann*) to conclusive knowledge (*'ilm*) should occur in the cases cited by 'Abd al-Jabbār. Nor are the two examples strictly analogous either, for knowledge of the obligation to judge or act according to probability based on signs is *not* the same thing as holding that what we know with probability actually *becomes* in and of itself certain knowledge. Saying that we should act in accordance with our (presumably well founded) belief that Zayd is in the house is entirely different from holding that we may claim actual *knowledge* of his being in the house simply by establishing the high probability of this being the case. Al-Baṣrī, following 'Abd al-Jabbār, almost seems to be defining knowledge not as the establishment of the actual, objective, certain truth of a matter, but rather as simply that which our best estimation leads us to conclude on the basis of signs which, though perhaps productive of a high degree of probability, are not strictly conclusive in and of themselves. This particular conception of knowledge immediately raises a number of crucial questions. One may inquire, for example, to what degree this particular understanding makes knowledge a subjective category defined by what a knowing subject is in a position to ascertain, rather than by the actual, objective reality of a situation. On the other hand, however, we may also question to what degree this subjectivity may be tempered by considerations such as the requisite probity of the signs used, the safeguards provided against excessive subjectivity by the adherence to a reasonably well-defined juristic methodology, etc. Finally, what, if any, might be the theological motives – or implications – behind equating, for all intents and purposes, the ascertainment of high probability based on signs with what is considered to constitute certain knowledge in

and of itself?[20] We shall have more to say by way of attempting to answer these questions in the section entitled "On Knowledge" towards the end of this chapter.

Al-Baṣrī goes on to anticipate and respond to objections which might be, or were, raised against the foregoing argument. One may object, for instance, that the legal counterpart of a sign indicating Zayd's presence in the house is a sign which indicates the resemblance of an assimilated case to an original case with respect to the *'illa*. As one does not go from a judgement of the mere probability of this resemblance to a definitive knowledge about it, how then can one hold that God should prescribe, in the case of Zayd, that we move from an establishment of the probability that he is in the house to a knowledge of this fact, with the justification that this mirrors what is done in *qiyās* while this is not, in fact, what is done in *qiyās*? Furthermore, if it is possible for a sign, despite its liability of being either accurate or inaccurate, to be continuously correct in its indication that Zayd is in the house, it is likewise possible for the act of reporting (*ikhbār*), although similarly liable of accuracy and inaccuracy, to provide information which is continuously in conformity with the true state of affairs (*ḥaqq*).[21] In addition, given the possibility that, when a sign happens to be accurate with regard to a certain thing, it is incumbent upon us to establish definitively (*bi-l-qaṭ'*) the ruling indicated by the sign with regard to that thing, it is also possible for the same incumbency to result if it so happens that an instance of reporting is found to conform to

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[20] As will be seen in the following chapter, the effective equating of supposition (*ẓann*) with conclusive knowledge (*'ilm*), which al-Baṣrī seems here to be advocating under certain circumstances, is a concept which Ibn Ḥazm, due to the sheer rigor of his definition of "*'ilm*," rejects emphatically.

[21] "*fa-in jāza, ma'a kawni l-amārati qad tukhṭi'u wa tuṣību, an yastamirra l-ḥālu fī iṣābatihā fi dalālatihā 'alā kawni Zaydin fī l-dāri, jāza, ma'a anna l-ikhbāra qad yukhṭi'u wa-yuṣību, an tastamirra iṣābatuhu li-l-ḥaqq.*" *Mu'tamad*, p. 710. I have preferred "*ikhbār*," given in the footnotes of the text (see *Mu'tamad*, p. 710) as an alternative to "*ikhtiyār*," since this latter makes little sense in the context of al-Baṣrī's argument. The term "*ikhbār*," on the other hand, is fully consonant with his line of argument.

reality in a single instance.[22] Al-Baṣrī does note, however, that Abū Hāshim was reported not to have allowed for this incumbency on the basis of mere reports regarding Zayd's being in the house.

Al-Baṣrī then goes on to crystallize his argument further by defending it before a hypothetical interlocutor (*sā'il*).[23] If the interlocutor requires that one merely uphold the admissibility of reporting that we *believe* Zayd to be in the house as a matter of probability ("*naẓumnu*"), then al-Baṣrī, too, agrees that this is possible. This, in fact, is what he calls a "truthful report" (*khabaru ṣidq*). If, however, the disputant requires that we uphold the possibility of reporting that Zayd is in the house in an absolute sense (*'alā l-iṭlāq*), rather than as a mere supposition, it is not, argues al-Baṣrī, required for us to be able to do so, for one of the conditions for the "*ḥusn*" (roughly "acceptability" here) of a report is that it be truthful. It follows, therefore, that a report stating that Zayd is in the house would not be "*ḥasan*" unless it were truthful. Now, the fact that such a report is truthful does not mean that we act according to it while merely believing that Zayd is *probably* in the house. Rather, the truthfulness of the report entails not only that it reports Zayd as being in the house, but that Zayd actually is, in reality, in the house. Now, it may be that the transmitter of a report himself merely believes, based on

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[22] "*jāza mithluhu fī l-ikhbāri idhā ttafaqa iṣābatuhu l-ḥaqqa fī mawḍi'in wāḥid*." Ibid., p. 710. I take "*fī mawḍi'in wāḥid*" here to mean that if it can be shown that an act of reporting yields knowledge of the true state of affairs (*ḥaqq*) in one single instance ever, then it must be considered admissible for us to be held accountable, in a general sense, for the information conveyed to us through various acts of reporting. One is left to wonder, however, why the same criterion which applies to signs should not also apply to acts of reporting, namely, that if we ascertain that a certain report conforms to reality in a particular instance, we should consider the knowledge gained through that report to be definitive in that particular instance, rather than generally. Alternatively, al-Baṣrī here may simply be trying to establish the rational possibility of gaining definitive knowledge through these two particular avenues, i.e., signs and reports, without, however, implying that just because it is *possible* to gain definitive knowledge through reports, we must therefore consider every report we come across as conveying definitive knowledge.

[23] See Hallaq, "A Tenth-Eleventh Century Treatise," for a comprehensive presentation and discussion of

suppositional evidence, that Zayd is in the house, when in fact he is elsewhere. According to al-Baṣrī, whenever the reporter himself merely believes in the probable truth of what he is reporting, it is considered reprehensible (*qabīḥ*) for him to report the information in question as if it were definitively true, since the possibility always remains that the report could be contrary to reality.

As for matters prescribed in the Sharī'a,[24] al-Baṣrī remarks that they consist of "*maṣāliḥ*," or "benefits." He goes on to argue that it is not inadmissible that our doing of an action based on our estimation, after proper investigation, of the probable resemblance between an original and an assimilated case should constitute itself a certain *maṣlaḥa*. If we were to fail even to investigate the matter properly so as to ascertain this probable resemblance, we would lose out on the potential *maṣlaḥa* that could be gained. Therefore, al-Baṣrī concludes, if God has made it incumbent upon us to do just this – that is, to investigate the resemblance of cases not stated in the texts with those which are explicitly stated so as to capture a certain benefit, – then we know by the very fact of this incumbency that *maṣlaḥa* consists in our acting according to what we judge most probable (*bi-ḥasabi ẓanninā*).

Another objection which al-Baṣrī seeks to rebut runs as follows: If Sharī'a rulings consist of *maṣāliḥ* and if these *maṣāliḥ* are known only through the texts and not inferentially (*bi-l-istidlāl*), then how could *qiyās*, which is essentially a matter of inference, be decreed in matters of Sharī'a? Al-Baṣrī responds that if what is meant is that knowledge of *maṣāliḥ* is not gained inferentially at all, then this is invalidated by

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the various components of the method of legal debate known as *al-jadal al-fiqhī*, or legal dialectics.

[24] Al-Baṣrī says here "*al-'ibādāt al-shar'iya*," which I take to mean, given the context, matters prescribed by the Sharī'a in general, and not just the acts of worship in a strict sense, such as prayer, fasting, etc.,

the fact that inference from the texts does take place and is legitimate. If, however, the objectors are referring to inference on the basis of signs, then if what is meant are those signs which have no basis in the texts, then al-Baṣrī would also agree that this is invalid. If, however, what is meant are those signs which do have a textual basis, then this is no different from the original point, namely, that knowledge of *maṣāliḥ* is derived only from the texts. The objectors in this case have attempted to prove their position by an essentially circular argument. What is of importance here is al-Baṣrī's own admission that our knowledge of *maṣāliḥ* has an ultimately textual basis. While we might rationally infer *maṣāliḥ* in some instances, it is crucial to note that this very inference, in order to be valid, must originate in the texts. In no way does al-Baṣrī imply that our cognizance of *maṣāliḥ* is derived from some purely rational realm of consideration which stands entirely independent of the texts of Revelation.

According to another objection, signs (*amārāt*) and judgements based on supposition (*ẓann*) are both prone to error, and it is not admissible to hold that the All-Wise should require us to act, in matters of *maṣāliḥ*, upon that which is liable to err in the identification of those *maṣāliḥ*. Al-Baṣrī's response to this objection is of great relevance here, for it reveals an important aspect of his thought concerning both *maṣlaḥa* and *ẓann*, as well as the relationship between the two. In his response to this objection, al-Baṣrī stresses, very significantly, that the matter is not one simply of judging a certain *maṣlaḥa* to be probable, in which case the objection might hold, but rather that *acting according to what we judge probable itself constitutes maṣlaḥa*.[25] This, according

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normally implied by the term "*'ibādāt*." See *Mu'tamad*, p. 710, ln. 20.

[25] "*lā naqūlu innā naẓunnu l-maṣlaḥata, wa-innamā naqūlu inna l-'amala bi-ḥasabi l-ẓanni huwa l-maṣlaḥa*." Ibid., p. 712.

to al-Baṣrī, is known by conclusive evidence, namely, the proof that *qiyās* has been decreed. Such proof is derived, among other things, from those instances in which we are indeed required to act according to suppositional knowledge (*ẓann*) in both rational and legal matters. One example of this is the question of legal testimonies discussed further above. Another example is the question of how we act habitually with regard to that which entails benefit and harm. We may, for example, act in a way which we presume (*naẓunnu*) will bring benefit, while the actual result of our acting in this manner turns out to entail harm. Furthermore, al-Baṣrī remarks, the incumbency for us to act according to suppositional criteria is "*ḥasan*," even though it would have been possible for God to indicate where our *maṣlaḥa* lies in every case with conclusive evidence or to have made it so that such knowledge would be known by necessity.

Another objection holds that conducting *qiyās* is the action of human beings, and that it is not admissible that knowledge of *maṣāliḥ* should be gained through something which amounts to a merely human activity. Al-Baṣrī responds by first restating his definition of *qiyās*, namely, that it is the establishment of the ruling of an original case in an assimilated case due to the fact that the two share in the *'illa* which produced the original ruling. *Qiyās* is only valid, al-Baṣrī points out, with the simultaneous presence of: (1) a sign (*amāra*) by which the *'illa* of the original case is inferred; and (2) an indicant (*dalīl*) of the requirement to transfer the ruling of the original case to an assimilated case which shares the *'illa* of the original ruling. Both the sign in question as well as the indicant can be known only through reflection (*naẓar*). Now, if the objection that *qiyās* is our action simply refers to our establishment of the ruling of the original case in the assimilated case, then al-Baṣrī concedes the point. If, however, the

objectors are referring to that which indicates the obligation of transferring the ruling of the original case to the assimilated case or referring to the sign which indicates the *'illa* of the original ruling, then this has nothing to do with our action since, al-Baṣrī implies, these factors lie outside of ourselves. That is, they are inherent in the original case, the assimilated case, the ruling and the *'illa*, and our only action is to discover and to identify them. If, on the other hand, the objectors are referring to the *investigation* which takes place regarding the indicant and the sign, then this certainly *is* our action, for it is we who investigate and reflect upon the texts. Furthermore, it is not inadmissible for us to gain knowledge of *maṣāliḥ* through such investigation, as long as our investigation is based on proper evidence (*dalīl*). As a matter of fact, it is only on the condition that we engage in reflective investigation of the texts that they lead us to knowledge of *maṣāliḥ* in the first place. Moreover, al-Baṣrī points out, all suppositional knowledge (*ẓann*) and all acquired knowledge (*'ilm muktasab*) is gained solely through investigation (*naẓar*), such investigation being, as stated above, perfectly ascribable to us as our action.

Another objection holds that since the conspicuous rulings of the Sharī'a (*jalīyu l-aḥkāmi l-shar'īya*) are known by the texts, the more implicit rulings (*khafīyuhā*) must also be established through the texts as well. The reasoning behind this is that whenever the conspicuous aspects of a thing are known by a particular way, the implicit aspects of that thing must also be derivable in the same fashion. For example, some instances of sense perception (*al-mudrakāt*), it is argued, are conspicuous, while others are implicit. Nevertheless, both are known through none other than perception (*idrāk*).[26]

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[26] See ibid., p. 713, ln. 20-1.

Al-Baṣrī responds that just because this principle may hold true for what is perceived through the senses, there is no warrant for holding that it automatically applies to domains other than sense perception as well. Moreover, al-Baṣrī argues, is it not true in all domains that what is conspicuous is known either by perception or necessity, while that which is implicit is known through inference (*bi-l-istidlāl*) rather than perception? In like manner, conspicuous rulings of the Sharī'a are mediated through explicit texts, while implicit rulings are mediated by non-explicit texts. An empirically-based illustration of this concept is the example of saffron falling into water. Whereas knowledge of a large amount of saffron having fallen into water is gained through direct sense perception, knowledge that a small amount has fallen into the water is acquired through the reporting of one who actually witnessed the small amount of saffron fall into the water. If it is objected that even knowledge of the small amount depends, in the final analysis, upon sense perception – that is, at least *someone* must have seen the saffron fall into the water to be able to report about it truthfully, – al-Baṣrī likens this to the rulings of assimilated legal cases in that these depend upon rulings which have been explicitly established in the texts. To bolster his argument, al-Baṣrī cites here the opinion of 'Abd al-Jabbār that "all rulings of the Sharī'a are known through the texts, except that some of them are known through explicit texts while others are known through inference based on those texts."[27] That which is known by means of *qiyās* is of this second category.

According to another objection, if rulings of the Sharī'a did have causes (*'ilal*), these causes would have to produce their effect in all cases, just like causes in rational

[27] Ibid., p. 714, ln. 6-7.

matters. For example, it is impossible for movement, as a cause, to exist without producing its effect, namely, the motion of the body in which it exists. This implies that Sharī'a rulings, if they had *'ilal*, would have to have been established – through the very agency of those causes – even before the promulgation of the Divine Law. Similar to the example above, al-Baṣrī simply denies that there is any warrant for automatically equating the causes of Sharī'a rulings with those of rational matters. Furthermore, if the objectors mean by "movement" (*ḥaraka*) in a body simply the fact that the body in question is in motion (*taḥarruk al-jism*), this is tautological, for to say that a body has motion in it is equivalent to saying that it is moving. If, however, "movement" is meant to refer to a separate entity (*ma'nā*) which necessitates (*yūjib*) that the body be in motion, then what is being referred to is what the Mu'tazilites[28] agree to be an actual separate essence (*dhāt*) which necessitates that the body be in motion. This motion-necessitating quality of the essence cannot itself be made to depend on any condition, for if it were to be present without its concomitant necessitation of motion, then there would be no difference between the presence of this essence and its absence. As for the *'ilal* of Sharī'a rulings, al-Baṣrī says that they may be seen either as constituting the cause (*wajh*) of *maṣlaḥa*, or as a sign which accompanies the *maṣlaḥa*.[29] Now, if the *'ilal* constitute the cause of *maṣlaḥa*, then it is possible for that cause to necessitate (*yaqtaḍī*) the *maṣlaḥa* depending upon a condition which may, for instance, be specific to certain moments of time to the exclusion of others. An example of this is the *maṣlaḥa* of a young boy, which may at times best be realized through gentleness and at other times through harshness. This fact is responsible for the difference observed in the laws and

[28] "*kamā yaqūlu aṣḥābunā*," ibid., p. 714.

rites instituted by different prophets, as well as the fact that certain rites (*'ibādāt*) may be abrogated by subsequent ones. This being the case, it is perfectly admissible to hold that the condition necessary for legal causes to engender *maṣlaḥa* simply does not obtain before the coming of the Sharī'a, and that *maṣlaḥa*, consequently, also is not established before the Sharī'a.[30] If, however, the *'ilal* are taken to be signs which merely accompany the cause (*wajh*) of *maṣlaḥa*, and if this cause may depend upon a condition connected to the circumstances of the moral agent, implying that it could possibly be specific to certain moments of time to the exclusion of others, then the sign which accompanies this cause would also only be such a sign at specific times, in accordance with the actual, efficient cause. If it is asked: "How do you know that a given ruling is connected with a particular *'illa*?," al-Baṣrī answers that we know this by the Prophet's having connected the ruling to it, either explicitly (*naṣṣan*) or implicitly (*tanbīhan*), a fact which did not obtain, by definition, before the promulgation of Divine Legislation (*al-shar'*).

According to another objection, the rational faculty (*'aql*) resembles the revealed texts in that it passes a judgement concerning a specific event or situation. Just as it is not admissible that God should make binding upon us an instance of *qiyās* which contradicts a specific text, it is likewise inadmissible that we should be bound by an instance of *qiyās* which contradicts a judgement of the rational faculty. As a rational judgement exists with regard to every event, it follows that *qiyās* cannot have been decreed with respect to any of them, for in cases of contradiction, the rational

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[29] Ibid., p. 714, ln. 20-1.

[30] "*fa-lam yamtani' an yakūna l-sharṭu fī kawni l-'ilali l-shar'iyati mūjibatan li-l-maṣlaḥati lā yaḥṣulu qabla l-sharī'ati, fa-lā tathbutu l-maṣlaḥatu qabla l-sharī'a.*" Ibid., p. 715, ln. 4-5.

judgement would prevail and in cases of concurrence, *qiyās* would simply be redundant. Al-Baṣrī responds that this contention is nullified by the case of solitary *ḥadīth* reports, which may not be used to contradict a verse of the Qur'ān but which can override a judgement of reason. Nevertheless, the objection raised does not, according to al-Baṣrī, preclude the possibility of instances of *qiyās* whose contents are identical to those found in the judgement of the rational faculty. In this case, it is not *qiyās*, but the rational judgement, which would be superfluous, since *qiyās* takes precedence over rational judgements in matters of Sharī'a. We may not, however, abandon a specific text[31] in favor of *qiyās*, for this would amount to no less than rendering the Word of God irrelevant. This is so because Scripture makes a ruling obligatory in an absolute sense, while the judgement of reason is only binding as long as it is not overridden by a proof from the Sharī'a.[32] As *qiyās* constitutes such a proof, it follows that it may override a rational judgement. However, as it remains a derivative proof based on mere supposition (*ẓann*), *qiyās* may never overrule a clear textual directive.

The next objection holds that God in His wisdom would not "shortchange," as it were, the moral agent by hinting at rulings through an avenue of lesser perspicuity, such as *qiyās*, when He is capable of doing so through more patent means, such as an explicit text. Al-Baṣrī responds by saying that this argument is an admission that *qiyās* does, in fact, constitute *an* avenue through which rulings may be made known, and that it is not inadmissible for it to contain some added measure of *maṣlaḥa*, even though it is less explicit and more equivocal than other avenues, such as a text. Al-Baṣrī then goes on to

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[31] Al-Baṣrī uses the term "*naṣṣ mu'ayyan*" here, which I take, given the context, as equivalent to "*naṣṣ ẓāhir*," or obvious, conspicuous text.

[32] See ibid., p. 715, ln. 19-20.

make a very interesting point, namely, that if the incumbency of legal rulings could be based on only the most patently clear indicators, then rulings would have to be defined as either logically necessary or, alternatively, could only be derived from explicit texts that are *mutawātir*, that is, from the Qur'ān and that part of the Prophetic Sunna which has been transmitted through *tawātur*, to the exclusion of solitary *ḥadīth* reports.[33]

The last objection states that if it were possible for it to be made incumbent upon us to declare a thing forbidden based on a probabilistic judgement that it sufficiently resembles an original case of prohibition, it would be possible for us to do this even in the absence of a sign (*amāra*), or if we simply believed (*i'taqadnā*) it to have such a resemblance without conducting a proper investigation, or if we simply desired or chose to forbid it, or perhaps only suspected (*shakaknā*) that it had a resemblance to the original case. Al-Baṣrī's response to this objection is that acting upon *qiyās* is built upon what is lodged in the mind (*mā taqarrara fī l-'aql*) regarding the desirability (*ḥusn*) of managing one's affairs in the world in accordance with what one judges most likely ("*ẓann*") to bring about benefit and repel harm, on condition that this judgement issue forth from a sign. It is also lodged in the mind that to embark upon an action which one suspects may bring harm can be considered "*ḥasan*" only after one has thoroughly looked into the matter. If ever a person were to engage in such an action without the requisite preliminary investigation, al-Baṣrī assures, he would certainly be subject to criticism on rational grounds. This is not the case, however, if he esteems, based on a legitimate sign (*amāra ṣaḥīḥa*), that the action in question may ward off some greater

[33] For an excellent treatment of why *tawātur*, or wide-scale transmission, is considered by Muslim jurists to engender certain, rather than merely suppositional, knowledge, see Bernard G. Weiss, "Knowledge of the Past: The Theory of *Tawâtur* according to Ghazâlî," *Studia Islamica*, 61 (1985): 81-105. See also

harm or procure some benefit. If, however, a person has reason to suspect some aspect of repugnance (*qubḥ*) in a matter, such as suspecting that a given report might be false, it is undesirable (*qabīḥ*) for him to carry out this action, for in this case he would have acted based on suspicion – as opposed, al-Baṣrī implies, to conclusive knowledge (*'ilm*) or at least an estimation of high probability (*ẓann*). Al-Baṣrī holds that acting upon suspicion is undesirable as a general rule, though nonetheless legitimate in some instances.[34]

On the Impermissibility of Acting Upon Qiyās in All Sharī'a Matters and the Permissibility of Acting Upon the Texts in All Sharī'a Matters[35]

In a short, but very important section of the text, al-Baṣrī seeks to prove that although some matters of the Sharī'a may be known through *qiyās*, it may not be held that the entire Sharī'a can be derived through *qiyās*.[36] It is, however, theoretically possible for all rulings of the Sharī'a to be known through the texts. This is due to the possibility that God should, for instance, stipulate rulings with regard to certain general characteristics, with each particular instance of the manifestation of that characteristic being subsumed under the general category. Moreover, remarks al-Baṣrī, stipulating

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Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 1992), 273-291.

[34] Al-Baṣrī cites, by way of example, the opinion of Mālik regarding whether or not it is necessary to repeat ablutions before prayer if one is in doubt regarding one's state of ritual purity. Mālik requires ablution to be repeated in this instance, a requirement which entails acting upon suspicion (*shakk*), while the other three schools of law consider the original ablution still intact, a ruling which al-Baṣrī describes as being in accordance with the "*aṣl*," namely, the undesirability (*qubḥ*) of undertaking an action based on mere suspicion.

[35] See "*Fī annahu lā yajūzu l-ta'abbudu bi-l-qiyāsi fī jamī'i l-shar'iyāti wa-yajūzu l-ta'abbudu fī jamī'ihā bi-l-nuṣūṣ*," *Mu'tamad*, p. 723.

[36] It will be seen below that for Ibn Ḥazm, the universally conceded fact that not *all* of the Sharī'a can be derived through *qiyās* entails, precisely, that *none* of it can be.

rulings in this manner could contain some sort of benefit, or *maṣlaḥa*. An example of this would be God stating that all substances which are measurable by weight are usurious, and therefore may not be exchanged in unequal quantities. This general prescription would suffice to prohibit the selling of each and every measurable substance in unequal quantities, without the need for each substance to be mentioned by name. It is therefore theoretically possible that the entire Sharī'a, in all its details, could have been legislated through the texts in this manner.

It is not, however, admissible that the entire Sharī'a should have been legislated by means of *qiyās*, for if *all* rulings of the Sharī'a were derived through *qiyās*, this would entail that the Sharī'a would be entirely constituted of assimilated cases derived on the basis of extra-revelational considerations. Such considerations would be related to either: (1) the various aspects of goodness (*ḥusn*) or undesirability (*qubḥ*) of a given act, or (2) rational signs based on the habitual patterns (*'ādāt*) according to which the world runs. However, argues al-Baṣrī, there is no principle (*aṣl*) in the mind which indicates the obligation to pray, nor the number of cycles required in each prayer, nor the various elements which constitute a valid prayer, nor the different timings of the prayers. With regard to signs arising from the habitual patterns in the way the world runs, these also do not indicate the moral-legal obligatoriness or prohibitedness of a given act. Rather, they indicate either the imminence of some event, as in the case of a cloud being the harbinger of a coming rainstorm, or else a specified amount of something, such as that sign which indicates the amount of damages to be paid in a given situation.[37] The obligatory nature of prayer, however, does not fall under either of these two categories,

[37] See discussion on the definition of rational signs, p. 15-16 above.

nor are there any signs originating from the habitual pattern of things to indicate the obligation to pray or the various modalities of valid prayer. If such signs did exist, al-Baṣrī points out, then the obligatoriness of prayer would not, in that case, be considered a Sharī'a ruling in the first place, but rather, one may surmise, some type of "natural" rule or law inferred from the habitual pattern of things referred to above. As this is not the case, it follows that it is impossible for the Sharī'a in its entirety to be delineated by means of *qiyās*.

On Whether or Not Qiyās has Actually been Decreed: Textual Evidence in Support of Qiyās and Ta'līl

After his extensive argumentation aimed at establishing the rational admissibility of the Lawgiver having decreed *qiyās* upon the Muslim community, al-Baṣrī shifts focus in order to demonstrate that, above and beyond this mere admissibility, *qiyās* has in actuality been made incumbent upon the community and, by this very fact, not only legitimized but sanctioned as an integral component of delineating the Law. The bulk of al-Baṣrī's argument regarding the actual prescription of *qiyās* – and its mode of operation, *ta'līl* – consists of Qur'ānic verses and Prophetic *aḥādīth*, as well as "situational" evidence arising from the actions and decisions of the Companions and the Successors of the Prophet. The most important of these verses and *aḥādīth* will be discussed in the pages that follow.

Al-Baṣrī cites a number of Qur'ānic verses in support of *qiyās*, defending each citation against arguments which have been raised against them.[38] The first verse al-

[38] Most of the arguments in question seem to be such as were advanced by proponents of the Ẓāhirī

Baṣrī cites is Qur'ān 59:2, which reads: "*fa'tabirū yā ulī l-abṣār.*" "*I'tibār*" in this verse means, according to al-Baṣrī, "the consideration of one thing with regard to another and the application of this latter's ruling to the former."[39] In support of this interpretation of the word "*i'tibār*," al-Baṣrī cites Ibn 'Abbās as saying, with regard to the amount of compensation due for knocking out a person's teeth: "*I'tabir ḥukmahā bi-l-aṣābi'*," that is, "Consider the ruling [for teeth] on the basis of [the ruling pertaining to] fingers." Al-Baṣrī further maintains that if a person says, for instance, "Indeed, in this is an *'ibra*," what is meant is that the thing referred to possesses some quality which necessitates that it serve as the basis upon which other things are to be considered or evaluated (*fihi mā yaqtaḍī ḥamla ghayrihi 'alayhi*). An example of this is an unjust man who meets an untimely demise, and so it is said: "In this is an *'ibra*." What is meant is that the early perdition of the unjust man should serve as a basis for the consideration of other unjust men, who should mend their ways for fear of a similar fate. Consideration, or *i'tibār*, is not, according to al-Baṣrī, to be understood in the sense of taking admonition (*itti'āẓ*) or restraining oneself from an act (*inzijār*), as these are the end goal of *i'tibār* and not *i'tibār* itself. In other words, proper consideration is that which leads to the learning of a lesson or the holding back from an act.

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school, such as Ibn Ḥazm (see next chapter), although it must be kept in mind that a number of prominent Mu'tazilites rejected the notion of *qiyās* as well. We have already mentioned, as an example, al-Naẓẓām (see text p. 3 as well as note #3 above). For a fairly extensive treatment of various groups and individuals who opposed the use of *qiyās* in legal matters, see Ahmad Hasan, "The Critique of *Qiyās*," *Islamic Studies*, 22, III (1983): 45-69 continued in IV (1983): 31-55, where the author cites, among the Mu'tazilites of Baghdad who opposed *qiyās*, Yaḥyā al-Iskāfī, Ja'far b. Mubashshir and Ja'far b. Ḥarb. In addition to the Ẓāhirites and the Mu'tazilites, Hasan also cites among the opponents of *qiyās*: the Shī'ites in general, the Ḥashwīya, the Ibāḍiya and the Azāriqa, in addition to Abū Hāshim al-Jubbā'ī, al-Qāshānī and al-Nahrawānī, the three of whom allowed for the use of *qiyās* only in very limited circumstances (see Hasan, p. 47). See also Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 1991), 198-99.

[39] "*wa-l-i'tibāru huwa 'tibāru l-shay'i bi-ghayrihi wa-ijrā'u ḥukmihi 'alayhi*," *Mu'tamad*, p. 737, ln. 20.

Another verse which al-Baṣrī adduces as proof of the validity of *qiyās* is Qur'ān 4:59: "O ye who believe! Obey God, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to God and His Messenger . . ." The obvious meaning of "refer" ("*radd*") here, according to al-Baṣrī, is none other than the activity of *qiyās*. Al-Baṣrī defends this interpretation by arguing that if "referring to God" (*al-radd ilā Allāh*) were intended simply to mean inference (*istidlāl*) on the basis of the obvious meaning of the Qur'ān, then the phrase would be redundant, since this meaning is already subsumed under the order to obey God with which the verse opens. As the command to obey God constitutes an order to submit to His word in its entirety, including both its apparent and its less obvious, inferred meanings, it follows that the referring of affairs to God and the Prophet can mean none other than performing *qiyās* on the basis of the Qur'ān and the Sunna. Related to this verse is Qur'ān 4:83, which reads: ". . . If they had only referred it to the Messenger or to those charged with authority among them, the proper investigators (*alladhīna yastanbiṭūnahu*) would have known it from them (directly) . . ." Similar to "*radd*" in the previous verse, al-Baṣrī understands "*istinbāṭ*" here as referring to the derivation of Sharī'a rulings by means of *qiyās*.

The final verse which al-Baṣrī mentions in vindication of *qiyās* is Qur'ān 17:23, in which God commands the believers with regard to parents: "Say not, 'Fie!' to them." According to al-Baṣrī, the Muslim community has collectively understood (*'aqalat al-umma*) from the interdiction of uttering "Fie!" to parents the prohibition of hitting them as well. This understanding, maintains al-Baṣrī, can obtain only by means of *qiyās*, whereby one infers that the *'illa* behind the proscription of saying "Fie!" to parents is

the imperative not to cause them any harm (*adhā*) whatsoever, the least degree of which is the utterance of the relatively innocuous exclamation "Fie!" Al-Baṣrī admits, however, that one may object to this interpretation by arguing that the prohibition of hitting parents is understood from this verse not by means of *qiyās*, but rather from the wording of the verse itself. Under this interpretation, "Do not say 'Fie!' to them" would be similar to someone saying: "I do not owe so-and-so a single grain (*mā li-fulānin 'indī ḥabba*)," which is immediately understood by virtue of linguistic convention to mean that the person in question is not owed anything at all, neither the derisory amount figuratively represented by a grain, nor any amount smaller or greater than that. Although al-Baṣrī mentions this objection, he does not undertake to refute it in any definitive manner. Nevertheless, he advances the example of uttering "Fie!" to parents as proof of the validity of performing *qiyās* in deducing rulings of the Sharī'a.

In addition to verses from the Qur'ān, al-Baṣrī also argues for the legitimacy of *qiyās* on the basis of several Prophetic *aḥādīth*. One such *ḥadīth* relates the instructions given by the Prophet to Mu'ādh b. Jabal upon appointing him as governor of Yemen. According to the *ḥadīth*, the Prophet asked Mu'ādh upon his departure for Yemen, "By what shall you govern [judge] (*bima taḥkum*)?" to which Mu'ādh replied, "By the Book of God." The Prophet then inquired, "And if you do not find [therein a ruling]?" Mu'ādh replied, "Then by the Sunna of the Messenger of God." "And if you do not find [therein a ruling]?" pursued the Prophet. "Then I shall exercise my opinion (*ajtahidu ra'yī*)," answered Mu'ādh, a response which is reported to have met with the approbation of the Prophet. While this *ḥadīth* can hardly be said to authorize directly the use of *qiyās* as it was known by the time al-Baṣrī quoted it in the fifth century, it

nevertheless serves the purpose of vindicating in a general manner the practice of judging legal matters based on considered opinion when the issue under scrutiny is not directly addressed in the revealed texts. At any rate, al-Baṣrī goes on to quote another *ḥadīth* in which the verbal root "q-y-s," from which the word "*qiyās*" is derived, actually appears explicitly. According to this *ḥadīth*, the Prophet is reported to have asked both Mu'ādh and Abū Mūsā, upon commissioning the two of them to Yemen: "According to what will you judge (*bima taqḍiyān*?)" to which they responded: "If we do not find a ruling in the Sunna, we will 'measure' (*qisnā*) one thing in light of another. Whatever we find closest to the truth, we shall act according to it."[40]

Al-Baṣrī also cites two additional *aḥādīth*, each of which relates an instance in which the Prophet answered a question by striking an analogy, implying, in al-Baṣrī view, that the questioner himself was expected – or at the very least would have been authorized – to make a similar inference. According to the first *ḥadīth*, 'Umar asked the Prophet whether the act of kissing while fasting violates a person's fast. The Prophet replied by asking 'Umar in turn: "Do you not see if you were to rinse with water then spit it out?" According to another *ḥadīth*, a woman asked the Prophet whether she could perform pilgrimage on behalf of her deceased father. The Prophet responded by asking: "What if your father owed a debt; would you discharge it?" The woman replied, "Yes," upon which the Prophet remarked, "God is more entitled to the repayment of His debt." In the first example, explains al-Baṣrī, the Prophet likened (*shabbaha*) kissing without intercourse to rinsing the mouth without swallowing. While swallowing water is known to violate the fast, rinsing the mouth is only a prelude to swallowing. As such,

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[40] "*In lam najid il-ḥukma fī l-sunnati qisnā l-amra bi-l-amri fa-mā kāna aqraba li-l-ḥaqqi 'amilnā bihi.*"

the *ḥadīth* leads us to infer, rinsing the mouth falls short of breaking the fast. Likewise, while sexual intercourse unquestionably violates the fast, kissing, we may infer, is to be considered a mere prelude to intercourse and, for this reason, does not vitiate the fast. Due to this likeness between rinsing the mouth and kissing, the ruling of the first – that is, the fact of not breaking the fast – is transferred to the second. In the case of the second *ḥadīth*, a similar analogy is made when the Prophet likens the pilgrimage of a deceased person to a monetary debt owed to a human being. Just as the monetary debt must be discharged by a surviving relative, even more so should such a relative acquit the deceased person's "debt" to God by performing pilgrimage on his behalf. Both of these instances, al-Baṣrī holds, demonstrate that the Prophet was paving the way for *qiyās* in the Sharī'a (*tamhīd al-qiyās fī l-sharī'a*).

Al-Baṣrī then lists a number of Qur'ānic verses which the opponents of *qiyās* regularly cite as proof that *qiyās* is strongly censured in the Qur'ān and therefore illegitimate. Such verses include: Qur'ān 49:1: "O ye who believe! Put not yourselves forward before God and His Messenger;" Qur'ān 2:169: "For he (Satan) commands you what is evil and shameful, and that ye should say of God that of which ye have no knowledge;" Qur'ān 17:36: "And pursue not that of which thou hast no knowledge;" Qur'ān 16:116: "But say not – for any false thing that your tongues may put forth – 'This is lawful, and this is forbidden,' so as to ascribe false things to God;" Qur'ān 6:38: "Nothing have We omitted from the Book;" Qur'ān 16:89: "And We have sent down to thee a Book explaining all things;" Qur'ān 29:51: "And is it not enough for them that We have sent down to thee the Book which is rehearsed to them?" and Qur'ān 4:59: "If

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Ibid., p. 735, ln. 15-16.

ye differ in anything among yourselves, refer it to God and His Messenger."[41] Al-Baṣrī responds by asking the objectors in turn: "On what basis do you claim that *qiyās* falls within these verses?" On the contrary, argues al-Baṣrī, the fact that we know *qiyās* to be legitimate on the basis of definitive evidence (*dalāla qāṭi'a*) guarantees us that rulings proffered thereby do not constitute "putting ourselves forward" before God and His Messenger, saying of God that of which we have no knowledge, declaring things lawful and prohibited by way of false ascription to God, or anything of the sort. Rather, al-Baṣrī pursues, the fact that *qiyās* has been prescribed by God entails that relying on it to infer rulings *itself constitutes* judging by what God has revealed. The definitive – as opposed to merely suppositional (*ẓannī*) – proof that *qiyās* has been made incumbent assures us that the results of *qiyās* fall squarely within what God has made clear in His Book. This argument is further bolstered by the verse describing God as having sent down the Qur'ān "explaining all things" (*tibyānan li-kulli shay'*), which must be taken either to mean all things specifically and individually, or all things in a general manner. Since it is clear that all things are not included in the Qur'ān in a specific manner – a fact attested to by the indispensability of the Prophetic Sunna in the clarification of a great deal of matters – it follows that the Qur'ān explains "all things" in a general manner, leaving the specifics to be provided for by means of extra-Qur'ānic sources legitimated through the Qur'ān. Such sources include the Sunna of the Prophet, as well as *qiyās*.

[41] All of the above verses, in addition to others, are cited by Ibn Ḥazm as proof against the validity of

Analysis of al-Baṣrī's Underlying Epistemological Framework

On Knowledge

The importance of the question of knowledge in al-Baṣrī can be reduced to one fundamental issue: Wherein lies the justification of deriving Sharī'a rulings through means which admittedly yield only supposition and not actual, conclusive knowledge concurrent with what is lodged in the mind of God, and then ascribing such rulings as constitutive of the Sharī'a? Does this make God's Law – and even more significantly, His will – relative? Or are we to understand "relative" here as meaning simply relative to us as human beings? Alternatively, perhaps, we may say – in fact, this is exactly what al-Baṣrī's whole epistemology seems to be based on – that God's Will is absolute, and that one of the things He wills absolutely is that human beings should judge in matters of the Sharī'a, as in purely rational matters, according to whatever conclusions are yielded by their best efforts in arriving at the highest degree of suppositional knowledge (*ẓann*) possible. These efforts, however, may not proceed randomly or whimsically. Rather, they are to be based on signs which, apparently, must themselves have some defined standard of probity. The issue of the nature and strength of such signs raises, in turn, another important question, namely: What specific criteria define a sign as being reliable enough to lend itself to juridical use in deriving the Sharī'a? What are the implications of two qualified scholars disagreeing, which is often the case, about whether a certain thing even constitutes a legitimate "sign" to begin with? Are we to

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qiyās. (See next chapter.)

conclude that the definition of a sign is also suppositional (*ẓannī*), rather than definitive (*qaṭ'ī*)? And if this is indeed the case, then is the entire premise from which al-Baṣrī proceeds in his defense of *qiyās* undermined?

In his attempt to build a solid case for the validity of *qiyās*, what al-Baṣrī seems to be doing is first – that is, first as a matter of logical priority, and not chronologically – establishing that God has decreed *qiyās* upon Muslims and that this fact is known with certainty (*dalāla qāṭi'a*). Now, if the prescription of *qiyās* is a matter of certitude, then it follows that whatever conclusions result from *qiyās* are likewise valid, although still not independently and objectively "true," in an ontological sense, in and of themselves. That is, if we derive ruling *x* through *qiyās* and then say that it forms part of the Will of God with regard to human actions as embodied in the Sharī'a, then this would be true not in the sense that the actual ruling derived is directly the Will of God – in the sense that that specific ruling formulated in that specific manner was directly decreed by Him in the same way, say, as the rulings regarding the distribution of inheritance or other such clearly stipulated matters – but rather, only in the sense that it is a (humanly derived) product of an activity – *qiyās* – which is known with certainty to flow directly from His will in a definitive manner. If this analysis is accurate, then rulings derived through *qiyās* can almost be said to be God's will "by extension," that is, through the proxy of human agents responsible for delineating the details of that will according to the best of their abilities. Rulings derived in this manner are, therefore, *ontologically* different from those rulings which God Himself has explicitly stated, whereby the latter are direct and unmediated objects of the Divine Will, while the former are objects of that will by virtue of their mode of derivation, but not with regard to their specific

content. In other words, when we say that consuming date wine is forbidden by the Law of God, this statement is ontologically different from when we say that consuming grape wine is forbidden by the Law of God. Despite this ontological difference regarding the relationship of the object forbidden with the Will of God, however, the two statements are *morally and legally* equivalent with respect to their implications for human life. That is, the fact that a sufficiently strong case can be made for the prohibition of date wine on the basis of *qiyās* confers upon this prohibition, vis-à-vis the human subject, an imperative force identical to that of the prohibition of grape wine. The ontological "gap" between a ruling's having been directly willed by God and a (*qiyās*-derived) ruling's being only indirectly willed by God, as it were, disappears in the realm of their imperative force by virtue of the fact that the activity of which these latter rulings are the result – namely, *qiyās* – itself forms an object of the direct prescriptive will of God.

These seem, at any rate, to be the basic assumptions underlying the whole of al-Baṣrī's argumentation for the validity of *qiyās* and *ta'līl*. If our analysis has been accurate so far, then it would appear that the legitimacy of rulings derived through *qiyās* – which constitute a significant bulk of the Sharī'a – rests almost exclusively on the strength of the evidence adduced to prove that *qiyās* has, in reality, been prescribed by God in a definitive and unambiguous manner, that is, that the activity of *qiyās* – conducted according to the theoretical framework which al-Baṣrī and others laid down for it in the 5th century of the Hijra – constitutes a discrete object of God's prescriptive will in an unambiguous, fully conclusive manner. This would imply, on a certain level, a two-tiered ontological division of the Sharī'a into: (1) rulings which were explicitly stipulated by God and, as such, leave no room for (juridical) difference of opinion

(*ikhtilāf*). This implies that only one "answer," or ruling, exists for a situation which has been specifically and explicitly addressed, unless, of course, God Himself has stipulated a number of alternatives, as is the case in certain instances of expiation (*kaffāra*), which can take the form either of two months' consecutive fasting, feeding sixty indigent persons or manumitting a slave; and (2) rulings which have been arrived at through the efforts of highly competent, though nonetheless fallible, human beings through a process which has been directly decreed by God. In these cases, then, it seems that rulings derived through *qiyās* are like those in which God has stipulated several alternatives with regard to their *plurality*, and, significantly, the correlative implication that not all cases countenance only one correct answer, but that, in many instances, several answers may all equally enjoy the status of being correct. This similarity as regards plurality does not, of course, nullify the ontological difference between the two kinds of rulings pointed out above. The ontological difference remains due to the fact that each of the alternatives given in the case of expiation was individually established by God in a direct and absolute manner, whereas the individual elements (i.e., the rulings) of that plurality of opinion which arises from juridical speculation based on *qiyās* arises from the less than absolute, possibly erroneous (from the perspective of absolute truth) judgements of fallible human beings. Far from compromising the integrity of the rulings thus derived, however, al-Baṣrī seems to understand this state of affairs as deriving from the assumption that, in those numerous cases where God has not directly legislated a particular ruling, His will consists precisely in that human beings act according to the results of their best and most scrupulously expended efforts. For God to hold us responsible for the contents of a Will which consists entirely of specific,

absolute propositions regarding right and wrong, lawful and prohibited – but of which He has made only some available to us in a conclusive manner, with the rest being left to us to approximate based on our fallible efforts – would, in fact, constitute laying upon human beings a duty which would be effectively impossible to fulfill. From this perspective, one may perhaps consider God's promise not to do so[42] as lending additional support to al-Baṣrī's view that, where God has established signs pointing to rulings but has not spelled those rulings out explicitly nor indicated them by means of conclusive evidence (*dalīl*), that His will itself in such cases consists of none other than that qualified human beings should expend their best efforts in deriving the ruling based on the signs established for them for this purpose. If they do this, they will be considered to have fulfilled the will of God in these instances, regardless of the material or formal details of the rulings they have thereby deduced. The question still remains, however, as to why al-Baṣrī, following 'Abd al-Jabbār, speaks about the move (*intiqāl*) from supposition (*ẓann*) to knowledge (*'ilm*) upon the establishment of sufficiently convincing signs, as we have seen in the case of Zayd being reported to be in house. In such instances, al-Baṣrī actually seems to equate *'ilm* with *ẓann* in a manner which, as we remarked earlier, seems to relativize unnecessarily the concept of knowledge altogether.

[42] See Qur'ān 2:286, where God says: "God does not place upon any soul a burden greater than it can

In one particularly illuminating passage, al-Baṣrī divides the ruling (*ḥukm*) regarding a given act into three categories. An act can be either: (1) undesirable/bad (*qabīḥ*), in which case abstaining from it is preferable to performing it; (2) desirable/good (*ḥasan*), in which case performance is preferable to abstention; or (3) required (*wājib*). A number of questions immediately come to mind concerning this particular moral-legal categorization of acts. For example, how would al-Baṣrī classify the categories of the forbidden (*ḥarām, maḥẓūr*) and the permitted (*mubāḥ*)? Why does he depart from the normal 5-category classification of Sharī'a rulings – i.e., obligatory (*wājib*), recommended (*mandūb*), permitted (*mubāḥ*), reprehensible (*makrūh*) and forbidden (*ḥarām*)? Or perhaps "*qabīḥ*" here should be equated with "*ḥarām*" since al-Baṣrī speaks for one or two paragraphs of the "*qubḥu*," or "repugnance," of selling wheat in unequal quantities, but subsequently refers to such a transaction as being "*ḥaram*," or "forbidden." But it would be imprudent to assume that the two concepts are interchangeable for al-Baṣrī, for in that case there would be no reason to use two different terms. Do we then have warrant to hold that al-Baṣrī views usurious sale as *ḥarām* because it is *qabīḥ*, i.e., God decreed for it a ruling which concurred with a repugnance intrinsic to its ontological nature? Are the categories of "*ḥasan*" and "*qabīḥ*" rationally determined, or are they textually based? Are we to understand al-Baṣrī as referring to some ontologically intrinsic good and evil of acts in a manner typical of the Mu'tazilites, or rather, qualities that are assigned to acts based on the

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bear." (*Lā yukallifu Llāhu nafsan illā wus'ahā*).

command of God, as the Ash'arites hold? The answers to these questions are essential for grasping the structure of al-Baṣrī's underlying epistemological assumptions.

We can gain some insight into the questions raised above by a close examination of al-Baṣrī's discussion regarding the original case (*aṣl*). After discussing what it means to consider wheat itself as an "*aṣl*"[43] in the prohibition of selling rice at unequal quantities, al-Baṣrī remarks, almost in passing, that this by no means entails that wheat be described as an *aṣl* before the coming of revelation. The reason for this is that wheat only becomes an *aṣl* once a ruling is established for it which, upon examination, leads us to the establishment of the ruling in new cases.[44] As it is known that the quality of usuriousness was not established in wheat before the coming of revelation, al-Baṣrī reasons, it is clear that wheat could not have been an *aṣl* before revelation either. The importance of this short and almost tangentially included passage should not be underestimated, for it strongly suggests that in al-Baṣrī's view, the moral status of acts is not only mediated through, but actually determined by, the *shar'* as a textual, revelatory phenomenon and *not* by the *'aql*. Al-Baṣrī seems to view the qualification of wheat as a usurious substance to be a strictly textual qualification, rather than a rationally discernable quality which inheres in wheat, as it were, by nature. As usuriousness was apparently not a quality of wheat prior to the promulgation of the *shar'*, one can only conclude that it is revelation itself that, according to al-Baṣrī, *made of wheat* a usurious substance. It is worth repeating here that al-Baṣrī does not maintain simply that our *knowledge* of the usuriousness of wheat is mediated by revelation, but

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[43] as opposed to considering as the "*aṣl*" either the ruling whereby selling wheat in unequal quantities is forbidden, on the one hand, or the textual report through which this ruling is made known, on the other.

[44] Baṣrī's exact words are: "*Wa-laysa yalzamu 'alā hādhā an yūṣafa l-burru qabla l-shar'i bi-annahu aṣlun,*

rather that the *very fact that wheat is usurious* is itself a direct product of revelation. Indeed, al-Baṣrī states explicitly that usuriousness – and not merely our knowledge of it – was established with regard to wheat only with the coming of revelation.[45] However, the fact that it is revelation which has defined certain substances, like wheat, as usurious still leaves three very central, closely related questions unanswered. First, is usuriousness as a quality to be understood as "inherently" repugnant (*qabīḥ*), or rather as having been determined and defined as such through direct divine agency? Second, can the repugnance of usuriousness be rationally discerned, or does our knowledge of this repugnance depend strictly on textual mediation? Third, does al-Baṣrī understand the legal-moral prohibition of usury as a natural and inevitable consequence of its repugnance, or rather as a direct consequence of the Divine Will which may or may not have chosen to proscribe repugnant things in general, and usury in particular?

Further evidence for the conclusions drawn in the beginning of the preceding paragraph can be found in the next section of the text,[46] where al-Baṣrī anticipates a question to which he attempts to respond preemptively. The argument, put in the mouth of a hypothetical opponent, runs as follows: The fact that wheat is forbidden (*ḥarām*) must be a result of either: (1) our actual act of selling wheat in unequal quantities or (2) our belief that it is repugnant (*qabīḥ*) to do so. In other words, it appears that the *'illa* of the ruling here, which is the repugnance of selling wheat in unequal quantities, is either our act of selling it in unequal quantities, which implies that the prohibition (or repugnance) of an act is determined *by our committing of the act*, or

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li-annahu innamā kāna aṣlan idhā thabata fihi l-ḥukmu lladhī idhā naẓarnā fihi wa-fī ṣifātihi yūṣilnā ilā ḥukmi ghayrihi." *Mu'tamad*, p. 702.

[45] "*wa-ma'lūmun anna l-ribā lam yakun thābitan fi l-burri qabla l-shar'i fa-lam yakun idh dhāka aṣlan.*"

our belief that it is repugnant to do so, which entails that if we did not believe it to be repugnant, it would not be so. Al-Baṣrī responds that the repugnance of selling wheat in unequal quantities (*qubḥu bay'ihi mutafāḍilan*) is due, in reality, neither to our doing the act nor to our belief regarding its moral-legal status, but rather, al-Baṣrī seems to be saying, to the actual quality of repugnance inherent in the thing itself. He likens this to the example of assimilating lying with some benefit or purpose to lying without such benefit. In such a case, we do not assimilate purposeful to purposeless lying based on the mere fact that purposeless lying constitues an act, nor due to our knowledge that such lying is repugnant, since our knowledge itself is not repugnant and therefore cannot be the effective cause in making something else repugnant. Furthermore, al-Baṣrī states that the repugnance of purposeless lying (and of trading wheat in unequal quantities) is brought about, or "caused," by an indicant.[47] Similarly, the *qiyās* in neither of these cases can be said to depend upon the objective existence (*wujūd*) of the phenomenon of trading in unequal quantities or lying without purpose, because even if such trade did not exist, we could still say that if it were to exist, it would be repugnant because (*li-annahu* – i.e., *'illa*) it is of the genus of that which is measurable by capacity, a property which is found in rice and on account of which selling rice at unequal quantities is necessarily repugnant as well. Similarly, even if lying as a genus did not exist, we would still be able to say that lying without purpose, if it did exist, would be repugnant, because it is lying, a fact which is true of lying with a purpose as well. Al-Baṣrī then underlines that the fact that a given act is forbidden (*ḥarām*) is something added on to

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Ibid., p. 702.

[46] See ibid., p. 702, ln. 11 – p. 703, ln. 13.

[47] "*wa-laysa qubḥuhu ma'lūlan bi-dalīlin fa-yuqāla: inna l-qiyāsa yaqa'u 'alā dalīlihi.*" Ibid., p. 702-3.

its merely being an act. He also points out, perhaps more significantly, that when legal scholars speak of "*taḥrīm al-f'il*" – literally "making or declaring an act forbidden" – what they really mean is "*kawnahu ḥarām*," that is "the fact that it is forbidden." Al-Baṣrī seems to be saying here that just as neither our *doing* of a given act nor our *belief* that that act is forbidden actually *makes* it forbidden (i.e., is the effective cause, or "*'illa*," of its being forbidden), similarly the legal scholars do not make acts forbidden by their pronouncements, but rather simply declare to be forbidden that which already is so. What al-Baṣrī seems to be doing here is insisting on the non-subjectivity of legal and moral norms in the Sharī'a by vitiating those points of view according to which the legal-moral status of acts would be dependant either on the act being committed by human beings or, more significantly, by the *belief* (*i'tiqād*) of human beings that a given act is repugnant (and therefore, presumably, forbidden). Even those textual indicants which impart to us knowledge of the repugnance of acts such as selling wheat in unequal quantities do not themselves *engender* this repugnance, but merely indicate it to us. This seems to be what al-Baṣrī means when he says: "*wa-laysa qubḥuhu ma'lūlan bi-dalīl*."[48] That is, the repugnance of the thing in question, although perhaps *made known* to us by the indicant (*dalīl*), is not actually *caused* by it (*ma'lūl*). All of these considerations seem to support further the conclusions drawn in the preceding paragraph concerning al-Baṣrī's view of the strictly revelational, and therefore objective, origin of legal-moral norms, although the three questions raised at the end of that section still await an adequate response.

[48] See ibid., p. 702.

As is evident from the arguments presented above under the heading "Rational Arguments in Support of *Qiyās* and *Ta'līl*," al-Baṣrī relies fairly extensively on the notion of "benefit," or *maṣlaḥa*, in proving the rational admissibility of *qiyās*. In a number of cases, al-Baṣrī argues for the validity of *qiyās* based on the fact that it may possibly contain some *maṣlaḥa* (sometimes "*luṭf*"), which we would forgo were we not to engage in *qiyās*. In several cases, this alone – that is, the mere *possibility* that acting according to *qiyās* could contain some benefit – is enough, at least in al-Baṣrī's view, to respond adequately to the objection of an opponent.[49]

Be that as it may, it is essential to note that for al-Baṣrī, our knowledge of *maṣlaḥa* has an ultimately textual basis and is not based on some rational category which stands independent of the revealed texts. While we might infer *maṣāliḥ* in some instances, this very inference, in order to be valid, must originate in the texts. That is, our knowledge of *maṣāliḥ*, at least in moral-legal matters, is derived from the texts, although al-Baṣrī makes it clear throughout his discussion that the texts (and through them *qiyās*) somehow inevitably lead us to *maṣāliḥ*. There seems, then, to be some sort of symbiotic relationship between the texts on the one hand, and *maṣlaḥa* on the other. For al-Baṣrī, *maṣlaḥa* as a general concept appears to be an overarching category which, on one level, stands outside – and almost above or in the backdrop of – the texts of Revelation. Al-Baṣrī, in proper Mu'tazilite fashion, appears to conceive of *maṣlaḥa* –

[49] Refer to the section "Rational Arguments in Support of *Qiyās* and *Ta'līl*" earlier in this chapter (pp. 18-36) for numerous instances where al-Baṣrī argues on the basis of *maṣlaḥa* to prove the rational admissibility of *qiyās*.

and the legitimacy of whatever leads to or engenders it – as an independent, self-justifying imperative which pervades, as it were, the entire created order. *Maṣlaḥa* is presented in al-Baṣrī as an irreducible category to the dictates of which even Revelation seems bound to a certain degree. This holds for *maṣlaḥa* as a general category, as a general imperative undefined, as of yet, in terms of any specific thing or action through which it is realized in the world.

When it comes to determining that which actually embodies *maṣlaḥa* in a given instance, at least in the moral-legal realm, the relationship between the texts and *maṣlaḥa* is somewhat different. Here, our knowledge of where *maṣlaḥa* actually lies appears to be fully dependent on the revealed texts. Al-Baṣrī in fact states explicitly on several occasions that *maṣlaḥa* can only be known via the texts, and not through rational means. Thus, while *maṣlaḥa* is the underlying *principle* which informs and gives meaning to the Sharī'a, the tools used to determine where that *maṣlaḥa* lies and to actualize it are unmistakably textual. Definitive texts (what al-Baṣrī refers to as "*naṣṣ mu'ayyan*") enjoy the highest rank on al-Baṣrī's scale of epistemic certitude with respect to matters of the Sharī'a, followed by suppositional (*ẓannī*) knowledge based on textual evidence, such as that knowledge engendered by *qiyās* or solitary *ḥadīth* reports, and only in third place comes rational knowledge acquired independently of the texts. More succinctly, al-Baṣrī's epistemic hierarchy with respect to moral-legal knowledge may be formulated as follows: (1) definitive textual knowledge; (2) suppositional knowledge based on textual evidence; and (3) knowledge based on rational judgements. It is important to keep in mind, however, that the goal towards which all three avenues of knowledge tend remains under all circumstances the realization of *maṣlaḥa*. If textual

knowledge in the moral-legal realm take precedence over purely rational judgements, this appears to be simply because the texts – given that they are revealed by God – are more apt than the unaided intellect to lead us to the realization of our benefit. The fact that the texts lead us inevitably to *maṣlaḥa* entails, of course, that the Sharī'a as a whole is purposeful. Its purpose, it would seem, is not to impose upon mankind an arbitrary set of obligations and prohibitions, but rather to lead man to the realization of benefit – a benefit which is more or less intelligible to the human mind.

Ibn Ḥazm al-Andalusī
(d. 456/1064)

Overview of Ibn Ḥazm's Views on Qiyās

In Book 38 of his 40-part *Al-Iḥkām fī Uṣūl al-Aḥkām*, entitled "On the Refutation of *Qiyās* by Means of Necessary Proofs,"[50] Ibn Ḥazm begins by declaring that there is no disagreement that prior to the rise of Islam, there was no legislation in the "*dīn*" to begin with, neither in the form of obligation nor of prohibition. God then revealed the moral-legal rulings of the Sharī'a through direct revelation in the Qur'ān and through the words and directives of the Prophet. Whatever God prescribed is obligatory and whatever He forbade is prohibited, and that which He neither prescribed nor forbade is permissible and lawful in an absolute sense *as it was before*.[51] This, according to Ibn Ḥazm, is known of necessity by every person through the very nature of the rational faculty.[52] What need, then, is there for *qiyās* and opinion (*ra'y*)? It follows that anyone who, after conceding the foregoing premises, makes obligatory or forbidden anything which is not made so by an explicit text is guilty of legislating (*qad sharra'a*) in religious matters that for which God has not sent down any authority or permission. This, according to Ibn Ḥazm, is a clear and sufficient proof to which none can object.

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[50] See "*Fī ibṭāli l-qiyāsi bi-l-barāhīni l-ḍarūrīya*," starting on p. 1049 of *Al-Iḥkām fī Uṣūl al-Aḥkām*, ed. Aḥmad Muḥammad Shākir, 8 vols. (Cairo: Maṭba'at al-Imtiyāz, 1398/1978), hereafter referred to as "*Iḥkām*."

[51] "*mubāḥun muṭlaqun ḥalālun kamā kāna*," *Iḥkām*, p. 1049.

[52] "*hādhā amrun ma'rūfun ḍarūratan bi-fiṭrati l-'uqūli min kulli aḥad*," ibid., p. 1049

Ibn Ḥazm takes to task those who advocate *qiyās* for talking about the reference of a *far'*, defined as an assimilated case not covered by a text or an *ijmā'*, to an *aṣl*, defined as an original case covered by a text or an *ijmā'*. Ibn Ḥazm rejects this very division between "*aṣl*" and "*far'*" in the Sharī'a, citing Qur'ānic verses which he advances as proof to the effect that the entirety of the Sharī'a consists of *uṣūl* only, without any "*furū'*."[53] For Ibn Ḥazm, then, all Sharī'a rulings are *uṣūl* and all of them are stipulated explicitly in the texts.

According to our author, all rulings of the Sharī'a, without exception, fall into three categories: obligatory (*farḍ*), prohibited (*ḥarām*) and permitted (*mubāḥ*). That which is recommended (*mandūb*) and that which is reprehensible (*makrūh*) fall into the third category – namely, that of the permitted – since they are not technically commanded or prohibited. Based on Qur'ān 2:29: "It is He Who hath created for you all things that are on earth" and Qur'ān 6:119: "He hath explained to you in detail what is forbidden to you, except under compulsion of necessity," Ibn Ḥazm concludes that everything on the face of the earth, every possible action, is permitted and lawful (*mubāḥ ḥalāl*) except that which God has expressly forbidden *by name* either in the Qur'ān or in the Sunna of the Prophet, or by means of a consensus (*ijmā'*) of the Muslim community, adherence to which is made incumbent in the Qur'ān itself. Once again, the important point here is that Ibn Ḥazm demands that the prohibition – or command, for that matter – refer to a given thing *by name* (*bi-smihi*) in the texts. That which is not

[53] Among the verses Ibn Ḥazm cites are Qur'ān 5:3: "This day have I perfected your religion for you and completed My favor upon you;" Qur'ān 6:38: "Nothing have We omitted from the Book;" and Qur'ān 16:44: "And We have sent down unto thee the message, that thou mayest explain clearly to men what is sent for them." He also cites the Prophet, who is reported to have said to his followers during the Farewell Pilgrimage: "'By God! Did I deliver (to you) the message?' They said, 'Yes.' He said, 'O God! Bear witness!'"

prohibited or commanded by name can never be made so through analogy based on matters which the texts do explicitly mention. This principle is further reinforced by Qur'ān 5:87, which states: "O ye who believe! Make not unlawful the good things which God hath made lawful for you, but commit no excess; for God loveth not those given to excess," and also Qur'ān 5:101-2, which reads: "O ye who believe! Ask not questions about things which, if made plain to you, may cause you trouble and which, if ye ask about them while the Qur'ān is being revealed, they will be made plain to you; God has passed over them, for God is Oft-Forgiving, Most Forbearing. Some people before you did ask such questions, and on that account lost their faith." It is clear, according to Ibn Ḥazm, that the matters referred to here are the rulings of the Sharī'a, as rejecting them constitutes disbelief. As there is no circumstance (*nāzila*) in the world about which one cannot say "Such and such is obligatory" or "Such and such is forbidden," the only way accurately and definitively to distinguish what is truly obligatory and prohibited is through unambiguous textual proof or consensus, this latter ultimately amounting to textual proof itself since it is mandated in the Qur'ān. Ibn Ḥazm concludes from the foregoing that the texts are fully inclusive of every ruling that has occurred or will occur until the Day of Judgement.[54] In another passage, he goes even further, stating that *qiyās* has no purpose since all circumstances (*nawāzil*) until the Day of Judgement have been covered in the texts *by name*.[55]

To the argument that rulings in some instances are known through explicit texts while others are known through indicants (*bi-l-dalīl*), Ibn Ḥazm agrees, provided that the

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[54] "*fa-ṣaḥḥa anna l-naṣṣa mustaw'ibun li-kulli ḥukmin yaqa'u aw waqa'a ilā yawmi l-qiyāma*." *Iḥkām*, p. 1060.

[55] "*Fa-ayna li-l-qiyāsi madkhalun wa-l-nuṣūṣu qad istaw'abat kulla mā khtalafa l-nāsu fīhi wa-kulla*

indicant in question allow for only one single interpretation or, if it can individually be taken to mean more than one thing, then there must be another text, or an *ijmā'*, which makes clear the one – and only one – meaning that was intended by God in a clear and unambiguous manner. Ibn Ḥazm rules out altogether the possibility of an indicant bearing more than one interpretation without being specified by another indicant, as this would constitute ambiguity and vagueness, rather than the absolute clarity with which God has revealed matters of religion on the tongue of His Messenger.

Ibn Ḥazm likewise rules out any possibility of a real contradiction between two Qur'ānic verses, two *aḥādīth*, or between a verse and a *ḥadīth*. This follows from the fact that all of these constitute definitive texts which must all be acted upon and submitted to equally. Any apparent contradiction can be resolved in one of two ways, with no third possibility: (1) clear evidence in the Sharī'a proves that one *ḥadīth* or verse abrogates the other; or (2) one of them is more inclusive or wider in scope (*zā'id*) than the other, in which case the one which is wider in scope is taken over the more restrictive one, since it not only includes this latter but also contains additional material which would be ignored if the more restricted one were taken over the more inclusive one. This is not, however, the case with conflicting instances of *qiyās* or *ta'līl*, since these do not contain any element of abrogation nor, in most cases, is the contradiction involved a matter of one instance of *qiyās* or *ta'līl* being more inclusive than the other.[56]

The argument which holds that similarity, or *tashābuh*, between two cases is an indicant that God has intended the ruling of one to be applied to the other has, according to Ibn Ḥazm, no independent justification, neither in the texts nor by having been

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nāzilatin tanzilu ilā yawmi l-qiyāmati bi-smihā." Ibid., p. 1061.

subject to consensus. The fact that those who practice *qiyās* differ as to what the specific *'illa* of individual rulings actually is further weakens their position, since, as stated above, Ibn Ḥazm does not allow on principle for there to be any ambiguity in the Sharī'a whatsoever. That is, any indicant which bears more than one possible interpretation is of necessity particularized by some other irrefutable indicant which identifies the one – and only one – possibility which was actually intended by the Lawmaker.

Finally, the concept of *ẓann* for Ibn Ḥazm refers not to the highly likely, probabilistic kind of knowledge which al-Baṣrī considers it, but rather is always interpreted in an uncompromisingly negative light. Alternatively, we may say that *ẓann* may very well imply probabilistic – and perhaps even highly likely – knowledge, but that this does not make it any less objectionable within Ibn Ḥazm's epistemological framework. That is, anything less than absolute certitude (*'ilm yaqīnī*) has no place in matters of Sharī'a. Ibn Ḥazm, in support of this position, cites Qur'ān 53:23, which states: "These are nothing but names which ye have devised – ye and your fathers – for which God has sent down no authority. They follow nothing but conjecture (*ẓann*) and what their own souls desire!"

General Arguments against Qiyās

According to Ibn Ḥazm, some argue that God and the Prophet have legislated certain matters "by name" (*bi-smihi*), that is, explicitly, while others have been

[56] See ibid., pp. 1082-3 for this discussion.

implicitly indicated by means of hinting at the *'illa* behind explicit rulings, this latter case being the domain and subject matter of *qiyās*. Thus, wherever a given *'illa* applies, the rule associated with it in an original case equally applies. Moreover, the argument goes, this represents that very succinctness and "*jawāmi' al-kalim*" with which the Prophet, according to a well-known *ḥadīth*,[57] was endowed. Ibn Ḥazm rejects this argument as baseless, arguing that the "*dalāla*," or that which indicates the meaning of whatever is identified as the *'illa* in a given instance, is either: (1) established lexically in the language as referring to that specific meaning (*mawḍū'a fī l-lugha*),[58] in which case the ruling would fall under the first category of that which is explicitly mentioned in the texts; or (2) not established lexically with the meaning (*dalāla*) in question, in which case deriving rulings from it is entirely invalid. Besides, argues Ibn Ḥazm, if rulings were to be merely hinted at indirectly in the manner referred to above, this would not constitute the succinctness (*ikhtiṣār*) and clarity of expression (*bayān*) which the advocates of *qiyās* claim, but rather hopeless confusion, obscurity and an

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[57] The *ḥadīth* in question, reported by al-Bukhārī (volume 9, #141 and 378), reports on the authority of Abū Hurayra that the Prophet said: "I have been sent with '*jawāmi' al-kalim*' (i.e., the sweetest expression with the widest meaning) and have been made victorious with awe (cast into my enemies' hearts), and while I was sleeping, the keys of the treasures of the earth were brought to me and were put into my hands." When questioned about the meaning of "*jawāmi' al-kalim*," Abū Hurayra is reported to have replied: "*Jawāmi' al-kalim* means that God expresses in one or two statements the numerous matters that used to be written in the books revealed before (the coming of) the Prophet."

[58] For a brief discussion of Ibn Ḥazm's concept of language as instituted by God (*mawḍū'a*) rather than as a conventional phenomenon, see Shehaby, "*'Illa* and *Qiyās* in Early Islamic Legal Theory," pp. 31-33, as well as George F. Hourani, "Reason and Revelation in Ibn Ḥazm's Ethical Thought," in *Islamic Philosophical Theology*, ed. Parviz Morewedge (Albany: State University of New York Press, 1979), pp. 143-147. For an exhaustive treatment of Ibn Ḥazm's views regarding language, see Roger Arnaldez, *Grammaire et théologie chez Ibn Ḥazm de Cordoue : Essai sur la structure et les conditions de la pensée musulmane* (Paris: Librairie Philosophique J. Vrin, 1956), esp. "Première Partie," pp. 37-97. For the notion of "*waḍ' al-lugha*" among Muslim jurists and theologians in general, see Bernard G. Weiss, "*'Ilm al-Waḍ'*: An Introductory Account of a Later Muslim Philological Science," *Arabica*, 34 (1987): 339-56; Weiss, "Language and Tradition in Medieval Islam: The Question of *al-Ṭarīq ilā ma'rifat al-lugha*," *Der Islam*, 61 (1984): 91-9; Weiss, *Language in Orthodox Muslim Thought: A Study of "Waḍ' al-lugha" and its Development* (Ph.D. dissertation: Princeton University, 1966); and Weiss, *The Search for God's Law*, pp. 117-150.

undermining of the meaning intended. For example, there is no eloquence or clarity of expression in the case of one who wants to instruct someone concerning the minimum amount to be paid for dowry (*ṣadāq*) but, rather than mentioning dowry explicitly, indicates instead the minimum amount of stolen property for which the hand is cut off, expecting the one instructed to connect the two cases and apply the amount in one situation to the other situation. The same goes for one who means to lay down a certain expiation (*kaffāra*) for eating during fasting hours by mentioning the expiation for having intercourse during this time, or intends to legislate against selling walnuts in unequal quantities by stipulating salt, or proposes to legislate retribution in the case of unintentional manslaughter by decreeing retribution for intentional murder.[59] This, according to Ibn Ḥazm, would constitute obligating that which it is impossible to carry out, making incumbent knowledge of the unseen, and making rules obligatory based on nothing but false conjecture (*al-ẓann al-kādhib*).

Rather, the real essence of concision, eloquence and "*jawāmi' al-kalim*" is, according to Ibn Ḥazm, to express that which normally requires many words in only a few words, but without leaving out any of the intended meaning, so that the ruling can still be said to have been explicitly stated in all respects. An example of this is Qur'ān 2:194, which reads: "If then anyone transgresses [the prohibition of the forbidden month] against you, transgress ye likewise against him." This verse, explains Ibn Ḥazm, covers the entire set of various injuries an aggressor might cause, a set which is constituted of so many discrete elements that mentioning all of them individually would take up countless pages of text. By contrast, however, leaving out intended meanings

[59] Ibn Ḥazm is referring here to a number of well-known rulings reached by jurists on the basis of *qiyās*.

and not mentioning them explicitly by the words, or lexical "names" (*asmā'*), established for them in the language in which the interlocutor is being addressed, but rather seeking to indicate them by words other than those established for them in the lexicon is nothing short of what the devil would do seeking to confuse the believers and corrupt their religion, not what God and His Messenger would do. In another passage of the text, Ibn Ḥazm reiterates that "we know with certainty the coining of each word in the language for that referent to which the word has been assigned,"[60] such that wheat is not referred to as "fig," nor is salt known as "raisin," nor again are dates named "rice." Similarly, having intercourse is not called "eating," and vice versa, nor is the murderer referred to as a "*muẓāhir*," and vice versa, such that the rule which applies to the first of each pair may also be considered to apply to the second. Given that the Qur'ān was sent down in a clear Arabic tongue,[61] the same language in which the Prophet also delivered the various rulings and directives which constitute the Sunna, it follows that a given ruling must be understood to include all of what is entailed by the words (*ism*) in which it is expressed and only what is entailed thereby. The error of extending a ruling beyond the lexical purview of its wording is called *qiyās*, while limiting the ruling to only a part of what the wording entails is known as *takhṣīṣ*, or particularization (that is, of the *'illa*), both of which Ibn Ḥazm condemns strongly.

A further proof against *qiyās* is the very large number – in fact a majority, according to Ibn Ḥazm – of cases in which *qiyās* would have been possible, but in which those who advocate *qiyās* themselves do not carry it out. For example, the *ḥadd*

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[60] "*wa-qad 'alimnā yaqīnan wuqū'a kulli smin fī l-lughati 'alā musammāhu fīhā*" *Iḥkām*, p. 1064.

[61] Ibn Ḥazm is using here the idiom of the Qur'ān itself, which God describes as having been revealed "in a clear Arabic tongue" (*bi-lisānin 'arabīyin mubīn*). See Qur'ān 26:195; also, 16:103.

punishment is lifted for a warrior (*muḥārib*) who kills illegitimately while conducting war but who repents before being apprehended, while this dispensation is not extended to someone who commits murder outside the context of war. Similarly, the punishment of cutting off the hand of a thief (*sāriq*) is not extended by *qiyās* to a usurper (*ghāṣib*), although both are guilty of intentionally taking property which is not theirs. Although it may be argued that these are matters of *ḥadd* punishments to which *qiyās* does not apply even according to the analogists themselves, Ibn Ḥazm argues that, in fact, the vast majority of legal issues are equally not subject to *qiyās*, a fact which he claims is agreed upon by both the advocates and the opponents of *qiyās*. If *qiyās* were valid, reasons Ibn Ḥazm, then there could not have been such vast consensus on its abandonment in such a large number of cases.

A further example in which it is agreed that *qiyās* is not to be carried out is the Qur'ānic declaration that the wives of the Prophet are the "mothers" of the believers. In this context, the Qur'ān forbade that anyone should marry the Prophet's widows after his death. Nevertheless, we do not, Ibn Ḥazm points out, make *qiyās* on the basis that the Prophet's wives are our mothers and deduce, for example, that it would have been permissible for us to look at them as we look at our natural mothers[62] or that their own children should be ineligible for marriage by the believers, as proper *qiyās* would require that they be considered our brothers and sisters. This example further illustrates Ibn Ḥazm's point that if God dictates a certain ruling, then that ruling is incumbent by the very fact that it was dictated and without any *ta'līl*. Furthermore, *all* rulings derived

[62] that is, without the mandated *ḥijāb*, or head covering

through *qiyās* are invalid, as that which has been dictated applies only within the lexical parameters of the text with no possibility of being extended to other cases.[63]

Textual Evidence against Qiyās (Qur'ān, Ḥadīth, Āthār)

Ibn Ḥazm defends his radical rejection of any and all forms of *qiyās* by calling to witness a significant bulk of textual evidence. Most of this evidence consists of Qur'ānic verses, although Prophetic *aḥādīth* and *āthār* of the Prophet's Companions are by no means lacking. In this section, we shall discuss Ibn Ḥazm's interpretation of the more pertinent textual evidence he cites against the validity of *qiyās*.

Regarding the admissibility of God making *qiyās* incumbent upon us,[64] Ibn Ḥazm states, interestingly enough, that this possibility is not to be ruled out on strictly rational grounds, for God does say in Qur'ān 2:220: "And if God had wished, He could have put you into difficulties." Indeed, commanding us to perform *qiyās* would have been quite admissible (*jā'iz*), were it not for the textual indicants forbidding it, a number of which have already been discussed. Besides these, Ibn Ḥazm cites as particularly conclusive two additional verses, namely, Qur'ān 22:78: "He has imposed no difficulties on you in religion" and Qur'ān 2:286: "On no soul doth God place a burden greater than it can bear." Enjoining us to act upon and judge according to *qiyās* – and the *ẓann* upon which it is based – would have constituted "laying upon us a burden like that which was laid on those before us and a burden greater than we have the strength to bear."[65] Ibn

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[63] See *Iḥkām*, p. 1065.

[64] "*hāl yajūzu an yata'abbadanā Llāhu ta'ālā bi-l-qiyās?*"

[65] Ibn Ḥazm is referring here to a later section of Qur'ān 2:286, in which God instructs the believers to

Ḥazm also mentions numerous other verses in support of his thesis. Among them are: Qur'ān 49:1: "O ye who believe! Put not yourselves forward before God and His Messenger;" Qur'ān 17:36: "And pursue not that of which thou hast no knowledge; for every act of hearing, or of seeing, or of (feeling in) the heart will be inquired into (on the Day of Reckoning);" Qur'ān 6:38: "Nothing have We omitted from the Book;" and Qur'ān 19:64: "and thy Lord never doth forget." Another other obvious and oft-cited verse is Qur'ān 5:3: "This day have I perfected your religion for you." And to that which God has perfected and completed ("*akmaltu*"), concludes Ibn Ḥazm, no one has the right to add anything by way of opinion (*ra'y*), *qiyās*, or any other means.[66]

Even more pertinent for grasping the contours of Ibn Ḥazm's epistemological framework, however, is his interpretation of an additional verse cited as evidence that his rejection of *qiyās* is founded upon none other than firm knowledge (*'ilm*), text (*naṣṣ*) and certitude (*yaqīn*). The verse in question, Qur'ān 16:78, reads: "And God brought you forth from the wombs of your mothers not knowing anything." This verse makes it clear that we are born with no knowledge of any kind whatsoever. All knowledge that we subsequently acquire, Ibn Ḥazm seems to suggest, is mediated to us strictly through revelation, as is made clear in Qur'ān 2:151: "A similar (favor have ye already received) in that We have sent among you a Messenger of your own, rehearsing to you Our signs, and purifying you, and instructing you in Scripture and Wisdom, and teaching you that which you did not know." Despite what may appear to be a categorical rejection of the possibility of gaining any knowledge through extra-textual means, Ibn Ḥazm seems to

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beseech Him in the following words: "Our Lord! Lay not on us a burden like that which Thou didst lay on those before us. Our Lord! And lay not on us a burden greater than we have strength to bear."

[66] See *Iḥkām*, p. 1057.

interpret this particular verse as referring strictly to knowledge of religious matters (*umūr al-dīn*), and not to all knowledge, such as logical principles mediated to us through our rational faculty or empirical knowledge mediated through the senses.[67] What is essential here, however, is that no knowledge of anything connected with religious matters – a category which includes the legal-moral rulings of the Sharī'a *par excellence* – can be mediated to us through the rational faculty by any means. Such knowledge is available to human beings strictly through the obvious and unambiguous texts of revelation, both Qur'ān and Sunna. Ibn Ḥazm goes on to point out that whereas the general principle in the Sharī'a is the default permissibility (*ibāḥa*) of all matters not explicitly prohibited by a text, it *has* been strictly prohibited to affirm matters in religion about which one has no knowledge. This is based on Qur'ān 2:169, which reads, "For he (Satan) commands you what is evil and shameful, and that ye should say of God that of which ye have no knowledge," and Qur'ān 7:33, which states, "Say: The things that my Lord hath indeed forbidden are: shameful deeds, whether open or secret; sins and trespasses against truth; assigning of partners to God, for which He hath given no authority; and saying things about God of which ye have no knowledge." Bearing in mind Ibn Ḥazm's conception of knowledge and its provenance in matters of religion, it follows that since it is prohibited to "say about God" except that of which we have (explicit) knowledge, *qiyās* – and any other matter related to religion – must be *specifically mandated* for it to be valid, as opposed to being permissible (*mubāḥ*)

[67] This three-fold division of the avenues available for gaining different types of knowledge – specifically, sensory knowledge, empirical knowledge and revelational knowledge – is confirmed by G.F. Hourani in "Reason and Revelation," pp. 143-6 and p. 162-3.

because it is not *specifically forbidden*.[68] Since *qiyās* is not specifically mandated anywhere in the Qur'ān or Sunna, according to Ibn Ḥazm, it is therefore invalid by definition.

Other verses which Ibn Ḥazm cites in refutation of *qiyās* include: Qur'ān 42:21: "What! Have they partners (in godhead) who have established (*shara'ū*) for them some religion for which God has given no permission?;" Qur'ān 65:1: "And any who transgresses the limits of God does verily wrong his (own) soul," arguing that transgressing the limits of God is exactly what one does when declaring something lawful or prohibited on the basis of *qiyās*; Qur'ān 2:140: "Say: Do ye know better than God?," arguing that the *qā'is* is presumptuously filling in what he sees as gaps or blanks which God somehow failed to account for explicitly; and Qur'ān 16:89: "And We have sent down to thee a Book explaining all things," in reference to the Qur'ān itself. Ibn Ḥazm further cites Qur'ān 75:18-19: "But when we have promulgated it, follow thou its recital (as promulgated) / Nay more, it is for Us to explain it (and make it clear)," and Qur'ān 16:44: "And We have sent down unto thee the Message, that thou mayest explain clearly to men what is sent for them" as proof that God has reserved exclusively for Himself and the Prophet the right to make clear matters of the Sharī'a and that He did not delegate (*lam yakil*) this task to any human being, nor to any opinion (*ra'y*) or *qiyās*, but rather to the Arabic text of the Qur'ān and to the sayings of the Prophet recorded in the *ḥadīth*. Thus, not only do we not have clear textual evidence in support of *qiyās*, which is already enough to invalidate it in Ibn Ḥazm's view, as mentioned

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[68] " *Wa-bi-hādhā baṭula kullu qawlin bi-lā burhānin 'alā ṣiḥḥatihi ḥattā law lam yaqum burhānun bi-ibṭālihi; fa law lam yakun lanā burhānun 'alā ibṭāli l-qiyāsi la-kāna 'adamu l-burhāni 'alā ithbātihi burhānan fī ibṭālihi, li-anna l-farḍa 'alaynā an lā nūjiba fī l-dīni shay'an illā bi-burhān.*" *Iḥkām*, p. 1056.

above, but we actually have positive evidence to the contrary, e.g., the numerous verses and *aḥādīth* which explicitly direct us not to go beyond the words of God and His Messenger. In another passage, Ibn Ḥazm explains Qur'ān 29:51: "And is it not enough for them that We have sent down to thee the Book which is rehearsed to them?" by saying that "the rehearsal of the Book being sufficient for us" consists of taking it according to its literal meaning.[69] This includes the invalidation of any interpretation (*ta'wīl*) other than what is explicitly stated in the texts or has been the subject of consensus, and not seeking out anything other than what is entailed by the wording of the Qur'ān alone. Another important verse which Ibn Ḥazm cites repeatedly in this regard is Qur'ān 4:59: "If ye differ in anything among yourselves, refer it to God and His Messenger." He also cites Qur'ān 16:116: "But say not – for any false thing that your tongues may put forth – 'This is lawful, and this is forbidden,' so as to ascribe false things to God," and Qur'ān 10:59: "Say: 'See ye what things God hath sent down to you for sustenance? Yet ye hold forbidden some things thereof and (some things) lawful.' Say: 'Hath God indeed permitted you, or do ye invent (things) to attribute to God?'" Ibn Ḥazm goes on to remark, with respect to this last verse, that the characteristics described therein are exactly those of the people who perform *qiyās*, declaring things lawful and prohibited and making obligatory through *qiyās* that in regard to which God has sent down no such permission.

In addition to the numerous Qur'ānic verses mentioned above, Ibn Ḥazm also cites a number of *aḥādīth* which he advances as proof of the invalidity of *qiyās*. The most conclusive of such *aḥādīth* is the one reported in the context of the Farewell

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[69] "*al-iktifā'u bi-tilāwati l-kitābi, [wa-] hādhā huwa l-akhdhu bi-ẓāhirihi*," ibid., p. 1063.

Pilgrimage, where the Prophet calls the Muslim community to testify that he has indeed delivered the message, thereafter beseeching God Himself to bear witness to the same fact.[70] Another relevant *ḥadīth* which Ibn Ḥazm repeats in a number of passages is: "Verily, the Muslim guilty of the greatest wrong is he who inquires about a matter which was not forbidden and it becomes forbidden on account of his inquiry."[71] A third *ḥadīth*, which Ibn Ḥazm also mentions a number of times, is the following: "Verily, God has imposed (upon you) certain obligations so do not neglect them, and He has set certain limits so do not transgress them. (Likewise,) He has established certain prohibitions so do not violate them, and He has remained silent about (or "passed over") certain things – not out of forgetfulness but out of mercy for you – so do not inquire into them."[72] Finally, a fourth pertinent *ḥadīth* is the Prophet's response to a questioner who, upon learning that the pilgrimage had been made obligatory, kept on asking whether it was obligatory to be performed each and every year.[73] The Prophet replied to the man's insistent inquiry by saying: "Leave off (other than) that which I have left you,[74] for those who came before you were destroyed by their excessive questioning and by their differing with regard to their prophets. Therefore, if I command you something,

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[70] See note #53 above.

[71] "*Inna a'ẓama l-muslimīna jurman man sa'ala 'an shay'in lam yuḥarram fa-ḥurrima min ajli mas'alatihi.*" See *Iḥkām*, p. 1061.

[72] "*Inna Llāha faraḍa farā'iḍa fa-lā tuḍayyi'ūhā wa-ḥadda ḥudūdan fa-lā ta'tadūhā wa-nahā 'an ashyā'a fa-lā tantahikūhā wa-sakata (*or "*afā*" in another narration*) 'an ashyā'a min ghayri nisyānin lahā – raḥmatan lakum – fa-lā tabḥathū 'anhā.*" Ibid., p. 1067.

[73] See ibid., p. 1061 for details.

[74] Hourani translates this section of the *ḥadīth*, which reads "*dharūnī*[or '*da'ūnī*' as cited in the *Iḥkām*] *mā taraktukum*," as: "Let me off [passing judgment] on what I have left for you [to do freely]," a translation which seems very à propos given the context of Ibn Ḥazm's citation of the *ḥadīth*. See Hourani, "Reason and Revelation," p. 161. For the full Arabic text of the *ḥadīth* in question, see next note.

then fulfill thereof what you are able to, and if I forbid something to you, then avoid that thing."[75]

Ibn Ḥazm adduces the various *aḥādīth* above further to buttress his argument that all circumstances of legislation (*nawāzil*) are stipulated explicitly in the revealed sources (*manṣūṣ 'alayhā*). Therefore, whoever claims that something is obligatory or forbidden is required to bring an explicit Prophetic pronouncement or a Qur'ānic verse to that effect, in which case the only acceptable response is to say "we hear and we obey."[76] If no such evidence is forthcoming, the person's claim must necessarily be considered invalid. This argument leads Ibn Ḥazm to the now familiar conclusion that whatever God or the Prophet have stated explicitly to be obligatory, forbidden, recommended or reprehensible is such, while everything else is permitted (*mubāḥ*) unconditionally, with no possibility of prohibition, obligation or either of the other two concomitant categories being extendable through *qiyās* to matters not specifically covered in the texts.

As for *qiyās* with respect to the Companions of the Prophet, Ibn Ḥazm argues that while it is true that we have many *fatwās* from the Companions in which they made judgements based on their opinion (*bi-l-ra'y*), they never turned any such judgements into binding matters of religion, nor did they ever claim that their opinions were

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[75] "*Da'ūnī mā taraktukum, fa-innamā halaka man kāna qablakum bi-kathrati masā'ilihim wa-khtilāfihim 'alā anbiyā'ihim, fa-idhā amartukum bi-shay'in fa'tū minhu mā staṭa'tum wa-idhā nahaytukum 'an shay'in fa-jtanibūh.*" See *Iḥkām*, pp. 1052-3.

[76] in reference to the Qur'ānic phrase "*sami'nā wa-aṭa'nā*," describing the response of true believers when confronted with a command from God or the Prophet. See Qur'ān 2:285, 4:46, 5:7 and 24:51. This last verse, for example, reads: "The answer of the believers, when summoned to God and His Messenger, in order that He may judge between them, is none other than this: they say, 'We hear and we obey.' It is such as these that will attain felicity."

necessarily in conformity with the truth.[77] Ibn Ḥazm cites a number of *āthār*, or sayings, of the Companions in which they explicitly or implicitly condemn the practice of making *qiyās* based on opinion (*al-qiyās bi-l-ra'y*). If the advocates of *qiyās* were to object that they, too, do not accept *qiyās* based on mere opinion rather than on deducing the *'illa* or establishing a strong resemblance (*tashābuh*) between two cases, Ibn Ḥazm replies that even in these two cases, *qiyās* constitutes baseless opinion (*ra'y*) since there is, by definition, never an entirely clear, unambiguous text to back it up. If there were such a text, then the ruling in question would not need to be derived through *qiyās* in the first place, as it would simply be a clear textual ruling just like any other. Interesting, and perhaps somewhat more relevant with regard to epistemological considerations, is Ibn Ḥazm's citation of the following saying of 'Abdallāh b. 'Umar: "Knowledge (*al-'ilm*) is three things: the articulate Book of Allah, past Sunna, and 'I do not know.'"[78] This is very much in line with Ibn Ḥazm's own concept of moral-legal-ethical knowledge and how humans acquire it, as expounded several pages above.[79] In addition, he also cites Abū Isḥāq Sulaymān al-Shaybānī as saying: "I heard 'Abdallāh b. Abī Awfā say: 'The Prophet – may peace and blessings be upon him – forbade [the drinking of] green *jarr* wine.' I asked him, 'What about white *jarr* wine?' He said, 'I do not know.'"[80] Ibn Ḥazm also gives a list of *āthār* from the Successors, likewise condemning *qiyās*.[81]

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[77] See *Iḥkām*, pp. 1067 - 1072 for Ibn Ḥazm's discussion of *qiyās* with respect to the Companions of the Prophet.

[78] "*al-'ilmu thalātha: kitābu Llāhi l-nāṭiqu wa-sunnatun māḍiyatun wa-'lā adrī.*'" See ibid., p. 1071, ln. 14-17 and p. 1071, ln. 24 - p. 1072, ln. -4.

[79] See pp. 68-70 above.

[80] *Iḥkām*, p. 1071, ln. 24 - 1072, ln. 4.

[81] See ibid., pp. 1073-6 for Ibn Ḥazm's enumeration and discussion of various *āthār* in which the Successors are reported to have condemned *qiyās* either explicitly or implicitly.

After the textual evidence presented above, Ibn Ḥazm seeks to demonstrate the invalidity of *qiyās* by what he refers to as rational proofs (*barāhīn al-'uqūl*). The first such proof is based on what he calls a "universally agreed upon fact,"[82] namely, that whereas it is possible for the entirety of the Sharī'a to have been made known through the texts alone, it is not possible for the Sharī'a, in its entirety, to have been made known through *qiyās* alone. Now, it is known by necessity, argues Ibn Ḥazm, that what is true regarding the whole must also hold for a part of that whole. As it is agreed upon that the whole of the Sharī'a cannot be derived by means of *qiyās*, it follows necessarily that part of it also cannot be derived through *qiyās*. Ibn Ḥazm is quick to point out that his own line of reasoning does not itself fall under *qiyās*, but rather, that it constitutes a necessary, conclusive proof (*burhān ḍarūrī*) in and of itself. In fact, this argument is no different, contends Ibn Ḥazm, from the argument which holds that if all human beings are alive and rational (*nāṭiqīn*), then each one of them is also, of necessity, alive and rational. Lest one should try to cloud the issue by arguing, for example, that it is possible for only some people to be one-eyed without all people being so, Ibn Ḥazm points out that this is a different argument altogether. While only *some* people may be one-eyed in reality, it is nonetheless *possible*, rationally speaking, for all of them to have been so. The rational possibility of all people being one-eyed does not entail the *necessity*, but merely the *possibility*, that all of them actually be so. The reverse side of this possibility, of course, is that only *some* people be one-eyed, a possibility which

[82] See ibid., p. 1079, ln. 12.

happens to correspond to the reality of the world. The case of the Sharī'a is different, however, in that not only is the entirety of the Sharī'a not *actually* derived through *qiyās*, but that it is universally agreed upon that such a situation is not even *possible*. Since it is not even theoretically possible for the whole of the Sharī'a to depend on *qiyās*, it follows, according to Ibn Ḥazm's line of reasoning, that it is impossible for individual parts of it to depend on *qiyās* as well.

Ibn Ḥazm's second rational argument centers around the agent behind commanding and prohibiting in cases where, for example, expiation is declared to be obligatory for intentionally eating during the fasting hours of Ramadan based on the expiation required for intentional intercourse during this period or, for instance, shaving of the private parts while in a state of ritual purity for pilgrimage is declared forbidden based on the prohibition of shaving the head while in this state. As every act is necessarily performed by an agent, then who, questions Ibn Ḥazm, is the obligator and the prohibitor in cases – such as the ones mentioned above – where rulings are derived through *qiyās*? As it cannot be claimed that it was God and/or the Prophet who instituted such rulings – for this would imply that the rulings in question were explicitly stated in the texts, rendering *qiyās* superfluous – it must be concluded that it is those who perform *qiyās* themselves – or, at any rate, someone other than God or the Prophet – who are the agents of such obligating and prohibiting. The agency of any agent other than God or the Prophet with regard to establishing legal-moral norms and judgements entails the innovation of a "*sharī'a*" other than that authorized by God and brought to mankind by His Messenger.

On the Comprehensive Refutation of 'Illa and Ta'līl

Ibn Ḥazm proposes to undertake a comprehensive refutation of *ta'līl* in Book 39 of the *Iḥkām*, entitled (roughly) "On the Refutation of *'Ilal* with Regard to All Rulings of the Sharī'a."[83] We shall present and analyze the main arguments of this section of his text in the remaining portion of this chapter.

According to Ibn Ḥazm, God in no way does anything – neither with regard to establishing legal-moral judgements nor with regard to anything else – on account of an *'illa*. If God or the Prophet stipulate explicitly that a certain ruling is because of reason *w*, or for the sake of *x*, or because *y* was the case, or on account of *z*, then we know that God has made these things reasons (*asbāb*) for those rulings precisely and only in those instances with regard to which they were stipulated as being the reasons for the rulings in question. In no way do these reasons occasion anything of the rulings in question in other than the instances explicitly mentioned in the texts.[84]

Arguments Against Ta'līl in General

Ibn Ḥazm cites as evidence against *ta'līl* in general Qur'ān 21:23, which states: "He is not questioned for His acts, but they are questioned (for theirs)." Ibn Ḥazm interprets this verse as a clear prohibition of asking the question, "Why?" with respect to any of God's acts or laws, ruling out by necessity the ascription of any causes (*'ilal*)

[83] See "*Fī ibṭāli l-qawli bi-l-'ilali fī jamī'i aḥkāmi l-dīn*," *Iḥkām*, pp. 1110-1155.
[84] See ibid., p. 1110.

or reasons (*asbāb*) to these latter – except, once again, in those instances where the text clearly states that a particular thing has been made the reason of a particular ruling. But even in this case, it is impermissible to ask, for example, why reason *x* was established for ruling *y* and not for another ruling, or why *x* was established as a reason while *z* was not. Although it would seem possible to understand God's not being questioned about what He does as His not being *accountable* to anyone for His actions and decrees, rather than as a strict prohibition against seeking out the motives or probing the reasoning behind these, Ibn Ḥazm concludes that this verse constitutes irrefutable proof against the existence of any sort of *'ilal* in connection with any act or decree of God, including and especially His establishment of the moral-legal norms of the Sharī'a. The reason for this is that *'ilal* only apply to that which is compelled.[85] This being the case, holding that God acts on the basis of *'ilal* would be tantamount to holding that He is somehow "compelled" to act in a certain way by these very *'ilal*.

Additional evidence from the Qur'ān is verse 5:102, which reads: "Some people before you did ask such questions, and on that account lost their faith."[86] This is clear evidence that we are obligated to follow the obvious meaning of the texts, for if otherwise were expected of us, we would be obliged to ask, seek and investigate – which is, incidentally, exactly what the *qā'isūn*, as well as the legal scholars in general, do. All such investigative activity, however, is proscribed by the verse cited above.[87] Ibn Ḥazm also cites Qur'ān 20:12, in which God tells Moses: "So put off thy shoes, for thou art in the sacred valley Ṭuwā." This verse proves that God makes something the *sabab*, or

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[85] "*li-annahu lā takūnu l-'illatu illā fī muḍṭarr*," ibid., p. 1131.

[86] This is the verse immediately following the one, cited earlier, in which the believers are exhorted not to ask questions while the Qur'ān is being revealed about matters which, if they were to be made plain to

reason, for a ruling in one particular case without necessarily making that same thing a reason for the same ruling in another case, for we are not required to take off our shoes in any of the holy places, be it Mecca, Medina, Jerusalem or the Valley of Ṭuwā.

Ibn Ḥazm also makes use of a rational argument – namely, the impossibility of an infinite regress – to argue for the invalidity of holding that any ruling of the Sharī'a was promulgated based on an *'illa*. Ibn Ḥazm argues as follows: If it is held that God establishes a ruling based on an *'illa*, the question arises as to whether His establishment of this rule on account of the *'illa* in question is itself caused by a prior *'illa*. If we respond in the affirmative, then we must ask whether this more prior *'illa* was itself caused by another, even more prior, *'illa* or not, and so on *ad infinitum*. This position, which implies an infinite series of effects and of existents which have no beginning, constitutes for Ibn Ḥazm clear disbelief and a departure from the religion of Islam. If we respond in the negative, then we will simply have proved the point that God does things – at least in some instances – independently of any *'illa* or *'ilal*. This being the case, there is nothing which necessitates that Sharī'a rulings, which are secondary, must be caused by *'ilal*, whereas the act by which God would have established these very *'ilal* are not themselves caused by *'ilal*. This proves in a definitive and necessary manner (*ḍarūratan*), according to Ibn Ḥazm, that God does what He wants without any *'illa* of any kind whatsoever. Moreover, none of the Companions, the Successors or the Successors of the Successors ever held that God established a certain ruling of the

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them, would cause them harm or distress. See p. 60 above.

[87] See *Iḥkām*, p. 1137, ln. 18-21.

Sharī'a on the basis of an *'illa*. Rather, maintains Ibn Ḥazm, this notion is an innovation of the 4th century of the Hijra, when some among the jurists began talking about *qiyās*.[88]

Topology and Definitions

Approximately half way through his chapter on the refutation of *ta'līl*, Ibn Ḥazm defines four closely related, though nonetheless distinct, categories which are essential for an understanding of both his epistemological topology and his conception of the Sharī'a. These four categories are: (1) cause (*'illa*); (2) reason (*sabab*); (3) purpose (*gharaḍ*); and (4) sign (*'alāma*). While each of the four is legitimate within the purview of its definition, Ibn Ḥazm is quick to point out that none make necessary (*yūjibu*) any sort of *ta'līl* or *qiyās* in the Sharī'a in any way.

According to Ibn Ḥazm, the word "*'illa*," which we shall translate here as "cause,"[89] applies to any characteristic or quality (*ṣifa*) which causes something in a necessary manner. As such, a cause can never be separated from its effect (its *ma'lūl*). An example of this is fire, which Ibn Ḥazm identifies as the "*'illa*," or necessary and inseparable cause, of burning. Fire gives rise to burning necessarily and, as such, can never be separate from burning, which is its necessary effect. Neither fire nor burning can exist without the other, except where God decides, in rare circumstances, to separate the cause from the effect, as in the case of Abraham.[90] Barring such

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[88] See ibid., pp. 1126-7.

[89] The word "*'illa*" was generally translated as "occasioning factor" in connection with our discussion of al-Baṣrī in the previous chapter of this thesis. Here the English word "cause" has been preferred, as this term approximates more closely than "occasioning factor" the sense in which Ibn Ḥazm defines "*'illa*."

[90] Ibn Ḥazm is referring here to Qur'ān 21:68-9, which reads: "They [the idol worshipers] said, 'Burn him

exceptional circumstances, both the *'illa* and the *ma'lūl* are fully concomitant, with neither one preceding the other in time.

A reason, or "*sabab*," according to Ibn Ḥazm, is any matter on account of which a free agent (*mukhtār*) chooses to do an action which he could equally have chosen not to do. An example of this is the case of anger which leads a man to fight, seeking victory over another. In this case, the anger is the reason for seeking victory. If the angry person had chosen not to seek victory, he simply would not have (in which case, there would be nothing left for which anger would be the reason). It is important to note that a reason (*sabab*), unlike a cause (*'illa*), is never *necessarily* productive of its effect.

The purpose, or "*gharaḍ*," on the other hand, is that which the doer of an act aims to achieve by performing that act. It is, in other words, the final goal of the doer in performing a given act. As such, the purpose necessarily follows the act. To pursue the example of an angry man seeking victory, the man's purpose in seeking victory is to quell his anger. In this manner, the anger itself is the *reason* for seeking victory, while assuaging the anger is the *purpose* of doing so. Seeking victory lies between the anger and its removal, being the *musabbab* of the former and the means of achieving the latter, which is its purpose.

As for the sign, or "*'alāma*," Ibn Ḥazm defines it as any characteristic (*ṣifa*) upon which two people agree, such that if either one of them sees this characteristic, he acquires thereby knowledge of what it had been agreed upon that the sign would

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[Abraham] and protect your gods, if ye do (anything at all)!' / We said, 'O Fire! Be thou cool, and (a means of) safety for Abraham!'" This instance represents, as a matter of fact, an example of the only form of particularization, or *takhṣīṣ*, of the *'illa* which Ibn Ḥazm considers legitimate. See *Iḥkām*, p.

indicate. One example Ibn Ḥazm gives to illustrate the meaning of a sign is the following *ḥadīth* of the Prophet: "I know the voices of the companions of the Ash'arīyīn[91] (reciting) the Qur'ān when they enter during the night. I know where they stop by the sound of their voices (reciting) the Qur'ān at night, even if I did not see their camp sites [or "way stations"] when they took them up during the day."[92] In this instance, explains Ibn Ḥazm, the Prophet took the voices of those reciting the Qur'ān as a sign (*'alāma*) indicating their place of rest. This is the same principle which governs the placing of signs along a desert road to guide travelers or the erecting of a flag for soldiers to recognize the headquarters of their chief.

Now, while Ibn Ḥazm accepts cause, reason, purpose and sign as legitimate each in their own domain, he argues that none of them proves the existence of *'ilal* for Sharī'a rulings nor necessitates any form of *qiyās* in delineating the Law. This even applies to a clearly articulated *'alāma*, for when some sign is established for a particular thing, it is impossible for that sign simultaneously to indicate something else other than that for which it was made a sign. If this were to happen, the sign in question would no longer be an indicant of that for which it was originally established, and confusion would result. While Ibn Ḥazm has no more than this to say regarding the category of signs, he treats in quite a bit of detail the other three categories, especially those of cause and reason. We shall enumerate his discussion of these topics in the pages that follow.

1134, ln. 1.

[91] Though the context of the *ḥadīth* is not entirely clear, I take "Ash'arīyīn" to refer simply to members of the Ash'arī tribe (whence, presumably, Abū Mūsā al-Ash'arī, for instance).

[92] "*Innī la-a'rifu aṣwāta rafaqati l-ash'arīyīna bi-l-Qur'āni ḥīna yadkhulūna bi-l-layli wa-a'rifu manāzilahum min aṣwātihim bi-l-Qur'āni bi-l-laylī wa-in kuntu lam ara manāzilahum ḥīna nazalū bi-l-nahār.*" Ibid., p. 1129, ln. 3-5.

Cause ('Illa) and Reason (Sabab)

Ibn Ḥazm denies the existence of any type of *'illa* in the Sharī'a whatsoever, which is not surprising given his definition of *'illa* as that which *necessarily produces* a particular effect, and not merely accompanies, or is associated with, that effect. To predicate the existence of *'ilal* for Sharī'a rulings would be tantamount to affirming the existence of some sort of compelling factor (i.e., the *'ilal* themselves) which binds God to establish the rules He establishes, a belief which clearly constitutes apostasy according to Ibn Ḥazm. With regard to the category of reason (*sabab*), Ibn Ḥazm does not deny that some rulings were indeed instituted for particular reasons. This only applies, however, to those instances in which the texts clearly indicate that a certain thing is the reason behind a particular ruling. Significantly, Ibn Ḥazm points out that such reasons as do exist in the Sharī'a were chosen to be such by God in an essentially arbitrary fashion, His establishment of them as reasons being itself entirely non-dependent on any further cause (*'illa*) or reason (*sabab*). Examples of reasons in the Sharī'a include: disbelief and dying a disbeliever having been made the reason for a person's abiding eternally in the Hellfire; dying a believer as the reason for entering Paradise; theft as the reason for the cutting off of the hand; slander as one reason for flagellation; or sexual intercourse in certain circumstances as a reason for either flogging or stoning.[93]

[93] See ibid., p. 1129, ln. 14 – p. 1130, ln. 17.

On the Inextendibility of the "'Illa"[94] Even When Explicitly Stated

To illustrate that the *'illa* is inextendible even when explicitly stated, Ibn Ḥazm mentions the example of someone owning a number of black slaves who gives the instruction: "Set free my slave Maymūn, for he is black (*li-annahu aswad*)." A person so instructed would, under these circumstances, only release Maymūn as he had specifically been instructed, and would not generalize the *'illa* of blackness,[95] releasing all of the man's black slaves. Now, if a person would avoid extending the "ruling" in this case – even though the *'illa*, or *ratio*, has been explicitly stated – out of fear of contravening the master's orders, then how much greater should be one's restraint regarding the extension of rulings established by God or His Prophet. And if this holds even when the *'illa* is explicitly mentioned, then how much more imperative is it not to extend the ruling when the *'illa* is *not* explicitly stated.[96] Even if the command to release Maymūn were followed by the additional exhortation: "and consider (*fa'tabirū*)," it would still not be legitimate for one to set free all of the master's black slaves, for his exhortation to consider could mean any of a number of things, including that one should, for example, consider the master's old age and weak health and therefore make haste to fulfill his orders and not to disobey him. And even if this exhortation did justify setting free other black slaves, it would not automatically apply, the following day, to all the

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[94] I have put the word "*'illa*" here in quotes because it is clear that throughout the coming discussion, Ibn Ḥazm, according to his own definitions, is not talking about *'illa* at all, but rather about *sabab*. He seems to have reverted to using the term "*'illa*" in this section as it is more commonly employed among jurists rather than according to his own definition of the term, perhaps in order to make his argument seem more cogent and persuasive in the eyes of those whose position he is seeking to discredit.

[95] Once again, the reader is cautioned here to take the word "*'illa*" in the sense of "*sabab*" as defined by Ibn Ḥazm. (See previous note, as well as the foregoing section entitled "Topology and Definitions.")

[96] See *Iḥkām*, p. 1135, ln. 3 – p. 1136, ln. 6.

master's lame sheep if he ordered a particular sheep to be slaughtered on account of its lameness.

Ibn Ḥazm next offers a Qur'ānic example to disprove the extendibility or universal applicability of an *'illa* which is stipulated as being the reason for a given ruling in a particular case. The example given relates to Qur'ān 5:32, in which God says: "On that account, We ordained for the Children of Israel that if anyone slew a person – unless it be for murder or for spreading mischief in the land – it would be as if he slew the whole people." Ibn Ḥazm cites this verse as clear proof against those who advocate *qiyās*, for it is abundantly clear that God did not make this commandment incumbent upon any other than the Children of Israel. If the *'illa* alluded to in the verse[97] were extendible, then the ruling in the verse would of necessity be binding for all. Now, if the proponents of *qiyās* hold that the ruling is, indeed, binding for all, then they must further hold one of two positions with regard to major sins (*kabā'ir*), some of which necessitate that their perpetrator be put to death and some of which do not. They must hold either: (1) that all major sins are to be counted as instances of "spreading mischief in the land," or (2) that only that which has been specifically defined as spreading mischief – namely, waging war (*muḥāraba*) – is to be counted as such. Now, if all major sins were to be grouped under the category of spreading mischief *and* we were to deduce from the verse cited that spreading such corruption, in addition to committing murder, is truly an *'illa* which provokes the death penalty, then this same penalty would have to be imposed as a punishment for the commission of all major sins.

[97] See Qur'ān 5:27-32. The verse cited above immediately follows the narration of Cain having killed his brother Abel in a manner which suggests that this primordial act of murder is what occasioned the dictate that "if anyone slew a person . . . it would be as if he slew the whole people."

This, however, would contradict the actual parameters of the Sharī'a, as it would require that anyone who drinks wine, steals, accepts interest, misappropriates the property of orphans, commits adultery, consumes pork, blood or dead flesh, slanders a chaste woman – all considered major sins – would all have to be put to death for these crimes. Not only is this not the case in the Sharī'a, but in fact, remarks Ibn Ḥazm, any who would kill such a person retributively would himself be put to death for his unlawful taking of a life. The fact that not all major sins provoke the death penalty proves that the verse in question applies only to the Children of Israel and not to us, *if we assume* that all major sins are to be considered instances of spreading corruption in the land.

If, on the other hand, one were to hold that major sins are *not* to be equated with spreading mischief in the land *and* if we simultaneously hold the ruling in question to apply to other than the instance specified in the verse, then how to explain the Sharī'a's stipulation of the death penalty for some crimes and sins other than murder or waging war, which, judging from the verse, should be the only two crimes for which retributive execution is justified? If it is argued that such crimes as do call for this penalty – such as adultery, apostasy or drinking wine after having received the *ḥadd* penalty for this offense three times – are to be considered spreading corruption in the land to the exclusion of all other major sins, Ibn Ḥazm simply rejects this line of argument as being arbitrary and without proof. Furthermore, Ibn Ḥazm points out, the Prophet defined as the worst of those who engage in illegal sexual intercourse (*zinā*) three particular categories, namely: (1) an old man who commits *zinā*; (2) one who has intercourse with the wife of his neighbor; and (3) one who has intercourse with the wife of a man who is out on *jihād* in the path of God. These three categories, whether the perpetrator is

married or not, have been declared as the worst of those who commit *zinā*. Nevertheless, the unmarried perpetrator of one of these crimes is *not* put to death, although he is considered worse than the married adulterer, while the married adulterer *is* put to death, even if his crime is considered somewhat less abhorrent than that of a person belonging to one of the three specified categories. Furthermore, the one who carries out the execution of the married adulterer is not considered as if to have killed all of humanity,[98] although he did take a life for a reason other than murder or spreading corruption, which are the parameters laid down by the verse. Ibn Ḥazm seems to be arguing here not only for the invalidity of extending rulings beyond the strict limits of the instance for which they are promulgated in the texts, but also for the futility of trying to deduce or to extend a given ruling based on rational considerations. After all, Ibn Ḥazm argues, why should the married *zānī* be put to death to the exclusion of the non-married *zānī*, even in cases where the circumstances of the latter's crime are such as to make it a more grievous offense than that of the former?[99]

Mistakenly Identified 'Illa Even in "Obvious" Cases

In Qur'ān 5:90-1, God states: "O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows are an abomination – of Satan's handiwork; eschew such (abomination), that ye may prosper / Satan's plan is (but) to excite enmity and hatred among you, with intoxicants and gambling, and hinder you from the remembrance of God and from prayer: Will ye not then abstain?" For many a

[98] a reference to verse 5:32, cited above.

casual reader, it may seem quite "obvious" in these verses that intoxicants and gambling were prohibited *because of* Satan's plan to use them as a means for accomplishing his ignominious ends. In fact, the connection between the plan of Satan and the prohibition of the items mentioned seems almost too intimate to allow for any other deduction.

Be that as it may, Ibn Ḥazm argues, with respect to these verses, precisely that the desire of Satan to sow enmity and hatred between the believers through wine and gambling, and to distract them from the remembrance of God and from prayer is *not* the cause (*'illa*), nor even the reason (*sabab*), for the prohibition of wine and gambling. First, Ibn Ḥazm argues, other matters, such as the acquisition of wealth and prestige, are even more apt to distract one from remembering God and from prayer and to incite enmity and hatred between people than wine or gambling. Nevertheless, these things are not forbidden if they are sought in the proper manner and within due limits. Ibn Ḥazm further argues (although one could certainly disagree here) that gambling was never known to incite enmity on its own accord before its prohibition. Similarly, a small amount of wine does not provoke the negative consequences enumerated in the relevant verse. Therefore, Ibn Ḥazm concludes, these effects cannot be taken as the *'illa* for the prohibition of wine and gambling, for on the one hand, these effects are not fully coextensive with the objects of prohibition (as they are not engendered, for example, by small quantities of wine) and, on the other hand, to the extent to which these effects are inherent in the proscribed activity (as in the case of consuming large amounts of wine), they have always been so, even prior to the prohibition of the activity in which they inhere. If these characteristics were the true *'ilal* for the prohibition of wine and

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[99] See *Iḥkām*, p. 1114, ln. 19 – p. 1116, ln. 3 for Ibn Ḥazm's discussion of this example.

gambling, then wine and gambling – in as far as these qualities have always inhered in them – could have never existed *without* being prohibited. This is, of course, a necessary conclusion of Ibn Ḥazm's insistence that causes (*'ilal*) in legal matters would have to be *necessarily productive* of their effects, just like causes in rational and empirical matters are. Moreover, Ibn Ḥazm does not even concede that the qualities mentioned in the verse may be considered the reason (*sabab*) of the prohibition.[100] Rather, God simply desired to prohibit wine and gambling at a particular point in time, so He prohibited them. In this manner, the verse which states: "Satan's plan is (but) to excite enmity and hatred between you with intoxicants and gambling" is to be taken solely as God informing us of the low esteem in which Satan holds human beings,[101] for in no place does He say explicitly that the desire of Satan to do the things mentioned is the *'illa* or the *sabab* of the prohibition in question. In fact, Ibn Ḥazm reports that according to some of the Ẓāhirīs, the desire of Satan to sow enmity and hatred among people *by means of wine* only came about *after* the prohibition was instituted, arguing that the drinker of wine only after the prohibition is distracted from prayer and the remembrance of God, scorned by the pious and hostile to them.

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[100] Ibn Ḥazm does not state explicitly why the harmful qualities of wine and gambling may not even be considered the reason for, as opposed to the cause of, their prohibition. While a reason (*sabab*) does not produce its effect of necessity, Ibn Ḥazm nevertheless seems reluctant to classify qualities which had always inhered in wine and gambling as the true *sabab* for a prohibition which ensued only after the first sixteen years of Islam. See ibid., p. 1118, ln. 16 – p. 1120, ln. 2 for this entire discussion.

[101] "*ikhbārun 'an sū'i mu'taqadi l-shayṭāni fīnā faqaṭ,*" ibid., p. 1119, ln. 16.

Purpose (Gharaḍ) with Regard to Divine Acts

With respect to purpose (*gharaḍ*), Ibn Ḥazm allows that it may be attributed to God – or considered integral to the Sharī'a – only where this is obvious in the texts. God's purpose in certain instances may consist, for example, of causing to enter Paradise whomever He wishes, causing to enter the Hellfire whomever He wishes, or that mankind should consider and take a lesson from certain phenomena.[102] Very significantly, however, Ibn Ḥazm points out that all such purposes, as well as the making of some things dependent upon certain reasons, all constitute actions and rulings of God *which themselves are entirely devoid of any reason or purpose* other than constituting them and making them apparent.[103] The proof of this is the impossibility of an infinite causal regress starting from the most proximate reasons and purposes, including reasons and purposes stipulated in the texts. As we cannot hold that each reason and purpose is the result of some other, more anterior reason or purpose *ad infinitum*, we must necessarily reach the conclusion that God simply does as He pleases, with *no* ultimate reason or purpose. The only exception to this, once again, are those instances in which God has mentioned a particular purpose or associated a particular reason with a given ruling. These, however, are only proximate purposes and reasons which God has chosen to establish in the Sharī'a, but with no *ultimate* purpose or reason for so establishing them, as explained above. It is noteworthy that Ibn Ḥazm does not simply say that we have no way of knowing what God's purpose or reasons are in the

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[102] "*wa-l-gharaḍu fī ba'ḍihā ayḍan an ya'tabira bihā l-mu'tabirūn*," ibid., p. 1131, ln. 18.

[103] "*lā sababa lahā aṣlan wa-lā gharaḍa lahu fīhā l-batta, ghayra ẓuhūrihā wa-takwīnihā faqaṭ*." See ibid., p. 1131, ln. 20-3.

absence of textual evidence, but that where the texts are silent, God actually *does not have* any purpose or reason.[104]

Analysis of Ibn Ḥazm's Underlying Epistemological Framework

On Knowledge

From the foregoing presentation of Ibn Ḥazm's arguments, it is clear that our author's strongest and most persistent accusation against *qiyās* and *ta'lil* – that to which almost his entire argument can be reduced – is the fact that they yield only supposition (*ẓann*) rather than absolute certainty (*yaqīn*), and for this reason can be allowed no role in the delineation of the Law of God. For Ibn Ḥazm, knowledge is of three types: rational, sensory and revelational.[105] The boundaries which separate each of these three from the other two are very clearly drawn and rigidly maintained. While reason may provide the framework necessary to understand and, more importantly, to verify the claims of Revelation to truth, its function beyond this is limited strictly to that type of ratiocination characteristic of logic, mathematics and other formal disciplines, as well as, perhaps, inductive inferences made on the basis of sensory or experiential data. Once reason has led us – as inevitably it must – to accept the truth of Revelation, its role regarding the content of that revelation is limited to a strict interpretation "in

[104] This is, at least, what I have been forced to conclude, based on numerous passages throughout Ibn Ḥazm's work (see particularly ibid., p. 1132, ln. 9-13). In fact, it is in vain that one searches his entire discussion of *qiyās* and *'illa* for the slightest indication that perhaps God's actions are purposeful and do have reasons, but perhaps reasons that we cannot always discern or which God, in many instances, has simply chosen not to make known to us.

accordance with the laws of logic and the evidence of philology and the senses."[106] Natural reason, for Ibn Ḥazm, is incapable of discerning any type of moral-ethical knowledge on its own, most notably with regard to the institution of moral and legal norms to be observed by human beings in the conduct of their lives. Rather, the role of reason in this domain is to lead us to the conviction that revelation is true and that revelation alone has the prerogative of both defining and making known to us the entire gamut of moral-ethical evaluations, not in a general manner with details to be filled in through the efforts of human beings, but rather in all their specificity and detail. If one were to object hypothetically, for instance, that the Qur'ān and the Sunna – the material sources of revelation in the Islamic world view – do not, in fact, contain a ruling for each and every eventuality of daily life, thereby necessitating that the law be expanded or that general moral principles be extrapolated from the texts and used to derive further norms and rules not stipulated in the texts, Ibn Ḥazm would simply hold, to the contrary, that whatever the texts do cover explicitly exhausts, by definition, the entire set of legal and moral judgements which can be made. Whatever the texts do not explicitly cover by name (*bi-smihi*) was left out intentionally and is not, therefore, to be assigned any moral value other than that of unconditional permissibility (*ibāḥa*), the default status which characterized all acts before the coming of the *shar'*.[107]

As alluded to above, the basis of Ibn Ḥazm's insistence on the exhaustiveness and absolute unequivocal nature of Revelation seems to be his rigorous adherence to the view that all knowledge (*'ilm*) that can legitimately be called such is entirely one and

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[105] See once again Hourani, "Reason and Revelation," pp. 143-6 and in general.
[106] Ibid., 162-3.
[107] See discussion below, "On the Status of Acts before the Sharī'a," for a more exhaustive treatment of

absolute, that is, all *bona fide* knowledge is both defined by and concurrent (though, once again, not coextensive) with what is true from the perspective of God. In fact, to say "from the perspective of God" would probably be redundant for Ibn Ḥazm, as there is no other legitimate "perspective" when it comes to determining matters such as truth and knowledge, of which God alone is the absolute and final determinant. Now, while God has provided us with senses through which to gain empirical knowledge of the world and a rational faculty with which to discern demonstrative truths, all matters of morality, ethics and law are strictly and uncompromisingly the domain of revelation alone. God has spoken to mankind in words which human beings can understand according to clearly defined, largely fixed semantic patterns.[108] The fact that God Himself has coined (*waḍa'a*) each word in the language with a specific meaning and has made this linguistic knowledge available to humans through the innate ability to acquire language with which He has endowed them, guarantees that what human beings understand from the words of which revelation is composed counts as authentic – that is to say, definitive – knowledge. As such, it is a perfect and exhaustive representation of exactly that which God has defined as true and has desired that human beings should be cognizant of. Once again, it is worth repeating that in the spheres dealt with by revelation – and especially the sphere of moral-legal norms and ethical judgements – only that which is understood through direct linguistic extrapolation from the revealed texts counts as knowledge (*'ilm*). The rigor of the conditions which Ibn Ḥazm lays down for the cognition and interpretation of revelation-based knowledge ensures that

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the implications of Ibn Ḥazm's views regarding the moral-legal status of acts prior to the coming of the *shar'*.

[108] See Arnaldez, *Grammaire et théologie*, pp. 74-76, which are given in the table of contents with the

this knowledge is really true in an absolute sense. Anything less than this constitutes mere supposition (*ẓann*), none of which may be ascribed in any way to the Sharī'a, or to religious precepts as a whole.

This, at any rate, is what the arguments advanced by Ibn Ḥazm in his relentless opposition to all forms of *qiyās* and *ta'līl* would initially lead one to conclude. There is, however, one instance which Ibn Ḥazm discusses in the context of his refutation of *qiyās* which forces us to modify somewhat the view presented above. The issue in question is related to our author's stance regarding solitary *ḥadīth* reports (*khabar al-wāḥid*), which one may very well expect him to reject outright, given his unrelenting rigor in accepting in matters of Sharī'a only those elements which, in his system, enjoy the highest possible epistemological status, that of absolute certainty (*yaqīn*) with no ambiguity or possibility of equivocation whatsoever. Interestingly enough, however, Ibn Ḥazm position regarding solitary *ḥadīth* reports is that God has made forbidden, obligatory or permitted all that which has been transmitted through any *ḥadīth* report – even a solitary one – which has been judged authentic, or "*ṣaḥīḥ*," based on the probity (*'adl*) of its transmitters and on the traceability of the report all the way back to the Prophet. This position is based on the commandment of God concerning the acceptance of the testimony of reliable witnesses in passing legal judgements in court.[109] It is of note here that Ibn Ḥazm stipulates here simply "*shahādat al-'udūl*," that is "reliable witnesses," and not something like "*shahādatu man yuẓannu 'adluhu*," i.e., "witnesses esteemed to be reliable." This raises the question of *ẓann* in matters of Sharī'a. It seems that one of the following three propositions must be true for Ibn Ḥazm: either (1)

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subheading: "Question de la mobilité de la langue ; conditions des déplacements de sens."

he believes it possible to attain knowledge of another's probity in a conclusive manner allowing for no possibility of error, in which case both the testimony of witnesses in court and the contents of solitary reports would enjoy the same epistemological status, in and of themselves, as other forms of definitive knowledge (*yaqīn*); (2) neither the testimony of witnesses nor solitary *ḥadīth* reports engender knowledge which is definitive of its own accord, but both may nonetheless legitimately be accepted because God has commanded their use through conclusive texts; or (3) such knowledge somehow "becomes" definitive (*yaqīnī*) (recall al-Baṣrī) – or at least as good as definitive – by God having defined it as such. In the latter two cases, the knowledge may not itself be absolutely certain (*yaqīnī*), but the obligation to act according to it – in the cases covered by the texts, of course – is known definitively, which would presumably be sufficient to legitimize it from our perspective as followers of the Sharī'a.

In another passage,[110] Ibn Ḥazm relates that some among the Mu'tazila and the Khawārij reject solitary reports based on the possibility of negligence, absent-mindedness, error or intentional falsification which they contain. He refutes these objections with the argument that accepting solitary reports from trustworthy transmitters (*khabar al-wāḥid al-'adl*) is obligatory through clear evidence (*burhān*) – i.e., the requirement of accepting the testimony of reliable witnesses, both in court and in general, – and that the objection of those who reject solitary reports on this basis is therefore itself based on nothing but "*ẓann*." But are we to understand Ibn Ḥazm here as meaning that since we have been commanded to accept and act upon such testimony, we are to conclude that error is impossible in the transmission of solitary reports (with the

[109] "*kamā naqūlu fīmā amara Llāhu bihi min qubūli shahādati l-'udūli fī l-aḥkām*," *Iḥkām*, p. 1080.

assumption that otherwise God would not have commanded us to accept them), or, rather, that error is possible in them, but that we accept them nonetheless simply because God chose to order us to accept them regardless of the margin of error they contain? In other words, is it admissible within Ibn Ḥazm's framework that God should require us to act according to merely suppositional knowledge – not only in our practical affairs, but also in matters of Sharī'a, which, after all, depend to a large extent on solitary *ḥadīth* reports? The passages referred to above are very illuminating, for they illustrate that for all Ibn Ḥazm's constant insistence on relying, in matters of the Sharī'a, on only the most conclusive and certain knowledge, he still does not erect this criterion as a self-evident, self-justifying, necessary condition, but rather subordinates even it strictly to the dictates of revelation. To the extent to which he insists that we rely on fully conclusive knowledge (*'ilm*), Ibn Ḥazm derives the justification for this from the texts themselves. As it is the texts which are epistemologically prior to any other consideration or category, these texts may, without posing any difficulties for Ibn Ḥazm's system of thought, themselves require judgement to be based, in certain cases, on knowledge which is less than absolutely conclusive. The most fundamental and irreducible component of Ibn Ḥazm's epistemological framework, therefore, is not the inherent, all-compelling primacy of definitive knowledge (*yaqīn*), as this may still be subject to circumscription by the texts, but rather the literal, face-value reading of these texts themselves.

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[110] See ibid., p. 1085.

As we saw in the very opening paragraph of this chapter, Ibn Ḥazm clearly states that all acts before the promulgation of the Sharī'a were permissible and lawful in an absolute sense.[111] This means that there was no moral-legal prescription – at least with respect to command and prohibition – before the coming of the *shar'*. Be that as it may, we may very well ask why Ibn Ḥazm classifies all acts before the Sharī'a as permissible (because none had yet been forbidden by the *shar'*) rather than forbidden (since none had yet been specifically permitted). Is not the principle that all things are permissible (*mubāḥ*) unless specifically prohibited itself a principle articulated by the Sharī'a? If so, then what warrant is there to hold that this principle retroactively applies to all acts before the coming of the *shar'* itself? But perhaps it would be unreasonable to take Ibn Ḥazm to task for not providing rigorous justification in defense of this particular position, for after all, there seem to be only three possible positions regarding the status of acts before the Sharī'a. Either all things before the *shar'* were: (1) permitted by default; (2) prohibited by default; or (3) did not have any legal-moral status at all.

Holding that all acts were prohibited before the Sharī'a seems to be the least defensible of these three possibilities, if only because the fact of something's being forbidden normally implies the presence of some sort of coercive or retributive force that non only has the power to impose sanctions for disobedience, but who actually *will* do so in cases of noncompliance. However, to hold that God would have punished human beings for every action they undertook before the revelation of the Qur'ān and

[111] Refer to p. 58 above.

the normative Prophetic mission of Muhammad fits ill with God's promises in the Qur'ān not to punish a people except after sending to them a messenger.[112] Now, while this argument may be open to the same criticism we raised above – namely, that the Qur'ān here is being made to apply retroactively with no specific warrant to do so – one can only reply that the verses in question would be little intelligible were they taken to apply only to the time following their revelation as part of the Qur'ān, since this would entail countless numbers of human beings being punished for acts "committed" before any revelation had reached them. This argument also fails to take into account past revelations, such as the Torah, the Psalms and the Gospels – all confirmed by the Qur'ān as previously revealed scriptures – which were presumably still in force for their respective communities up until the revelation of the Qur'ān.

Of the two remaining positions – namely, that of all acts having been permitted or of all acts having had *no* moral-legal qualification before Islam – why would Ibn Ḥazm have chosen the first? After all, holding that acts before the coming of the *shar'* were simply unassessable from a moral-legal standpoint does not entail the difficulties encountered above with respect to the position that all acts were forbidden before the Sharī'a. Nevertheless, holding that human *acts* were morally unassessable before the Islamic Sharī'a strongly implies that human *beings* themselves were amoral creatures before the *shar'*, and that a radical ontological shift from a purely physical to a morally responsible (*mukallaf*) creature occurred in the human species at some point between the years 610 and 632 of the Christian era. This, of course, flies in the face of all Qur'ānic teaching concerning the pre-Islamic spiritual history of mankind, which is

[112] See, for instance, Qur'ān 17:15, in which God states: "nor would We visit with Our wrath until We had

marked by a long line of past prophets and revelations, not to mention the undeniably moral nature of mankind's primordial ancestor Adam himself.

The elimination of the two foregoing possibilities leaves only the supposition that all acts must have been permitted before the Sharī'a, *if one insists that a rational appreciation of the moral status of acts is impossible.* For if one were to uphold that at least some rudimentary assessment of the moral status of acts grounded either in the rational faculty or, perhaps, in some notion of a divinely instilled primordial nature (*fiṭra*) – complemented for members of certain communities by past revelation, – one might then hold that acts before the *shar'* did have at least *some* kind of moral assessment (from the point of view of the human being) in light of which, perhaps, God judged people in pre-Islamic times. Be that as it may, such a resolution to the question of the status of acts before the *shar'* cannot, of course, be countenanced within the boundaries of Ibn Ḥazm's epistemological system, since he patently denies the possibility of acquiring *any* moral knowledge through avenues other than textual revelation. It is likely that such comparatively vague notions as innate "rational" knowledge in non-demonstrative realms such as morality, or the notion of some "natural" moral knowledge stemming from man's primordial nature (*fiṭra*) were too inconclusive and left too much room for the ever mistrusted notion of "*ẓann*" to have fallen within the boundaries of Ibn Ḥazm's world view. Although none of these considerations are discussed explicitly in Ibn Ḥazm's refutation of *qiyās* and *ta'līl*, we may quite reasonably infer that such are the underlying factors which most likely led our

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sent a messenger (to give warning)."

author to take the stance he did regarding the unconditional permissibility of all acts prior to the promulgation of the Sharī'a.

On the Question of Maṣlaḥa and the Purposefulness of the Sharī'a

We saw above, in the section "Purpose (*Gharaḍ*) with Regard to Divine Acts," that Ibn Ḥazm emphatically rejects the notion that specific, intelligible purposes can be attributed to the acts of God. To do so would be to place a limit on the possible actions of God by demanding that they be in conformity with the alleged purposes which give rise to them. Now, in the final ten pages of his 100-pg. refutation of *qiyās* and *ta'līl*, Ibn Ḥazm launches a vigorous attack on the notion that any of the actions of God or any part of the Sharī'a may be described as necessarily or automatically engendering benefit, or *maṣlaḥa*. The proponents of *ta'līl*, remarks Ibn Ḥazm, try to defend the reality of *'ilal* in Sharī'a rulings by maintaining that God clearly acts for specific reasons (*'ilal*), as acting without reason or purpose is characteristic of foolishness. Ibn Ḥazm responds that this "baseless claim" is, in fact, the root of practically all disbelief. For example, this contention is one of the main arguments put forth by the Dahrīya, or Materialists, as proof against the existence of God, as things in the world do not run according to what they perceive of as right, or "good" (*ḥasan*) based on rational considerations.[113] It is also an argument used by those such as the Manicheans, who contend that the world has two creators: one who created all the good in it and one who created all the foolishness, evil and harm in it. The notion that God must – or at least always does –

[113] "*limā ra'aw ul-umūra lā tajrī 'alā l-ma'hūdi fimā yaḥsunu fī 'uqūlihim*," *Iḥkām*, p. 1145, ln. 19

act in a manner which conforms to human notions of justice is likewise claimed by Reincarnationists, who argue that all the apparent evil in the world can only be understood in terms of responsible agents receiving their just deserts for past misdeeds. In this manner, children who suffer from smallpox, ulcers and hunger, as well as animals that are tortured at the hands of other animals, are all reincarnations of human beings receiving just punishment for sins committed in a past life. It is also an argument put forth by the Brahmans, who argue that it is unjust for God to send a prophet to a people He knows will not believe. Finally, Ibn Ḥazm accuses the Mu'tazilites as well of having fallen into a similar trap and, in their haste to rid God of all "blame" for human actions, ended up affirming many a creator besides Him Alone.

The only group to have escaped this pitfall are the adherents of the Ẓāhirite school, whom God has guided with His perfect light – the intellect (*'aql*),[114] – then with the text of the Qur'ān and the explanatory Sunna of the Prophet, these last two sources constituting the only path to salvation on the Day of Judgement. Ibn Ḥazm reports that he has definitively refuted all of the arguments above in his work "*Kitāb al-Faṣl fī l-Milal wa-l-Niḥal*." He provides in the *Iḥkām*, however, a summary of the most important aspects of this refutation.

The first mistake these groups make, according to Ibn Ḥazm, is that they strike an analogy (*qiyās*) between themselves and God. Their argument runs thus: As the wise man amongst us only acts for a reason (*'illa*), it follows that God as well, the All-Wise, must also act on the basis of reasons. But on what grounds, challenges Ibn Ḥazm, do they permit such an analogy? As *qiyās* by their own definition is based on a similarity

[114] "*fa 'htadaw bi-nūri Llāhi l-tāmmi lladhī huwa l-'aqlu lladhī tu'rafu bihi l-umūru 'alā mā hiya 'alayhi*

(*tashābuh*) between two things, their analogy is refuted by the Qur'ān itself, in which God assures us that there is none like unto Him.[115] In fact, it would have been closer to the truth, remarks Ibn Ḥazm somewhat sarcastically, to have held that since we human beings do act for reasons, then precisely on that account God does not do so, since by definition He is different from us (*bi-khilāfinā*). Furthermore, such groups have made God subject to certain limits (*ḥudūd*) and laws (*qawānīn*) implying that if He were to "violate" them, this would entail a certain impudence or a lack of wisdom on His part. If those who hold such a position were consistent in their analogy, argues Ibn Ḥazm, they would have held that since the active agent (*fā'il*) among mankind is made up of a composite body with a conscience and with thought, then the First Active Agent, namely God, must also be composed of a body, with conscience and thought.

Ibn Ḥazm undertakes a definitive refutation of these positions by arguing, first of all, that the wise one among us is only wise by virtue of his compliance with the commands and prohibitions of God. It is this compliance which is the reason (*sabab*) for which the wise among us act according to what will procure their benefit and protect them from harm in the Afterlife.[116] Since God is the Absolute, however, there is no entity above Him which has the power to set conditions with which He must comply. It follows from this that whatever God wants to do He does, and whatever He does not want to do he does not do. Furthermore, pursues Ibn Ḥazm, we do not call God "wise" (*ḥakīm*) by inference in the first place, neither because the rational faculty (*'aql*)

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wa yamtāzu l-ḥaqqu min al-bāṭil." See ibid., p. 1146, ln. 26 – p. 1147, ln. 3.

[115] See Qur'ān 42:11, which states: "There is none like unto Him" (*laysa ka-mithlihi shay'un*).

[116] "*fa-hādhā huwa l-sababu l-mūjibu 'alā l-ḥakīmi minnā an lā yaf'ala illā li-manfa'atin yantafi'u bihā fī ma'ādihi aw li-maḍarratin yastadfi'uhā fī ma'ādihi*," *Iḥkām*, p. 1147.

necessitates that we call Him so, but simply because God has referred to Himself (in the Qur'ān) as being wise, and so we affirm this appellation.

As far as the position which holds that God acts for the benefit, or *maṣlaḥa*, of His creatures, Ibn Ḥazm holds that God Himself has refuted this notion in a number of verses of the Qur'ān. Such a verse is Qur'ān 17:82, which reads: "We send down (stage by stage) in the Qur'ān that which is a healing and a mercy to those who believe: To the unjust it causes nothing but loss after loss." What benefit, asks Ibn Ḥazm rhetorically, is there for the unjust in the sending down of something which only causes them loss after loss? To the contrary, revelation for them represents the greatest harm and the most serious detriment, and it would have been better (*aṣlaḥ*) for them had it not been sent down in the first place. Indeed, remarks Ibn Ḥazm, God did not intend or desire any benefit for such people whatsoever. In fact, they are among those about whom God says, in Qur'ān 18:17: "... but he whom God leaves to stray – for him wilt thou find no protector to lead him to the Right Way." A similar example is Qur'ān 3:178, which reads: "Let not the unbelievers think that Our respite to them is good for themselves: We grant them respite that they may grow in their iniquity: But they will have a shameful punishment." In this instance, Ibn Ḥazm points out, God states unequivocally that His granting them respite is for their detriment and not for their benefit.

Ibn Ḥazm then asks whether the upholders of *maṣlaḥa* contend that God acts in the benefit of all His creatures, or only some of them. If they reply that He acts in the benefit of all His creatures, they are, once again, belied by evidence from the Qur'ān itself, for God did not send Moses for the benefit of Pharaoh, nor did He send Muhammad for the benefit of Abū Jahl. Once again, it would have been better for these

two individuals – and others of their ilk – had God not sent messengers and prophets on account of which they will be called to account for their disbelief.

In addition to the arguments above, Ibn Ḥazm remarks that God, the All-Wise, does many things which we would consider pure insolence and foolishness (*safāh*) if done by a human being. If the proponents of *maṣlaḥa* are true to their analogy, then they are forced to declare God insolent and foolish, which contradicts the fact that He is the Wisest of the Wise (*aḥkam al-ḥākimīn*). Goading animals, such as roosters, so that they fight each other or killing animals for reasons other than food would invoke upon a human agent of such actions strong condemnation and censure. Yet, remarks Ibn Ḥazm, God does all of these things and more, and is all along the Wisest of the Wise. This fact disproves definitively, for Ibn Ḥazm, the argument that God acts only in the best interests of His creation. Rather, He does what He wishes for the good or the bad, for the benefit or the harm of whomever and whatever He wills. There is nothing which necessitates (*yūjib*) that He benefit those He benefits, harm those He harms, guide those He guides or misguide those He leads astray. Rather, God simply does as He pleases and is not "asked" about what He does.[117] God afflicts with leprosy the righteous as well as the unrighteous, just as He grants health to both the righteous and the unrighteous. He has tested various peoples some of whom, on account of their tribulation, showed forbearance while others became disbelievers. He has granted the longest of lives to both the righteous and the unrighteous, just as He has carried off both righteous and unrighteous in the prime of youth. Furthermore, if God necessarily acted for the benefit (*maṣlaḥa*) of His creatures, then it would have been more beneficial

[117] in reference to Qur'ān 21:23, quoted earlier on in this chapter, which states: "He is not questioned for

(*aṣlaḥ*) for them had He rewarded them with Paradise without charging them with moral responsibility and with the hardship involved in properly discharging this responsibility.

Ibn Ḥazm ends this section by reiterating that all judgements of right and wrong, lawful and prohibited are known solely through the texts of revelation. If one were to think that being thankful to God or to a human benefactor is known to be good or right through natural reason or any other means, one would be mistaken because such a thing only becomes good and right *upon God declaring it so*. Likewise, if one were to consider it bad or wrong to eat swine flesh based on the rational appreciation of a pig's filth, this too would be erroneous since the consumption of pork becomes wrong *only upon God's forbidding it*. An independent assessment of the rational faculty, coupled with the type of analogical reasoning championed by the advocates of *qiyās*, would, as a matter of fact, oblige us to hold the consumption of chicken to be forbidden *a fortiori*, as chickens have even filthier eating habits than pigs (*al-dajājatu ākalu li-l-qadhari min al-khinzīr*). This is so because obligation and prohibition require a doer to bring them about and reason, being nothing but an accident caused to exist in an animate being, has no power to "do" anything properly speaking.[118]

His acts, but they are questioned (for theirs)."

[118] Ibn Ḥazm's exact words here, after citing Qur'ānic verses and *aḥādīth* requiring thanks to be given in return for a favor or service, are: "*wa-law lā hādhihi l-nuṣūṣu mā lazima l-shukru aḥadan, idh il-luzūmu yaqtaḍī fā'ilan lahu mulziman iyyāhu 'alaynā wa-l-'aqlu 'araḍun maḥmūlun fī l-nafsi wa-l-'araḍu lā yaf'alu shay'an*," *Iḥkām*, p. 1154.

SUMMARY & CONCLUSION

In this thesis, we have attempted to shed light on a number of the most important theological and epistemological premises which underlie the edifice of classical Islamic thought. We have endeavored to do this by examining as a case study the contentious issue of *qiyās* and *ta'lil*, methods of legal reasoning which lie somewhere between the unconditional compliance demanded by the imperatives of Divine Revelation on the one hand, and the unguided use of human reason in the determination of moral-ethical-legal norms on the other. As such, *qiyās* constitutes the primary method in legal theory which endeavors to bring the human mind to bear on the data of Revelation in order not only to discern the discrete dictates of that Revelation, but more importantly to peek behind the texts in an attempt to discover patterns of rationale behind the Revelation's imperatives. As pointed out in the introduction, the motivation behind this activity was not mere curiosity on the part of jurists, but rather a deeply felt need to "capture" Revelation rationally in order to derived from it general moral and legal principles applicable to the myriad details of life.

As we have seen, the opinions of jurists regarding the legitimacy of this activity were sharply divided. While all the jurists involved in the debate were, of course, Muslims and for that reason can be said to have shared a common *Weltanschauung*, this fact alone did not preclude the advocacy of sharply divergent positions on a number of issues central to any world view. In this thesis, we have concentrated on three of these pillars which are of central importance to an understanding of the premises underlying the Islamic vision of reality. By contrasting two preeminent legal scholars representing

positions which tend towards opposite ends of the Islamic theological spectrum, we have attempted a rough sketch of the outer boundaries of classical Islamic thought with respect to the nature and provenance of knowledge, on the one hand, and of moral-legal norms on the other.

At the base of any world view lies the question of epistemology in the broadest sense of the term: namely, what constitutes knowledge and how do human beings acquire it? In a religious world view, which takes as the most fundamental premise of all the existence of God as an Omniscient and Absolute Being in terms of which all universal notions such as knowledge, truth and reality derive their existence and their definition, the question becomes: What can legitimately be considered knowledge with respect to human beings as finite creatures? As evidenced in the pages above, the position on this issue varies widely within classical Islam. Ibn Ḥazm, we have seen, took an uncompromisingly rigorist position regarding what qualifies as knowledge, or "*'ilm*". Knowledge for Ibn Ḥazm is defined as that which carries absolute certainty (*yaqīn*) and, as such, is concurrent with what it true in an absolute sense, true from the perspective of God. While the senses may provide us with true knowledge of the empirical world and the rational faculty with true knowledge of logical and demonstrative principles, all knowledge of moral-legal precepts is mediated exclusively by the linguistic data of Revelation.

Ibn Ḥazm's *a priori* assumption that no moral knowledge is possible without – or before – Scripture is corroborated by his position on the status of acts before Revelation. As there were no criteria for deciding what was licit or illicit before Revelation, all acts prior to the Sharī'a are to be qualified as unconditionally permitted – their default status

in the absence Scriptural judgements to classify them otherwise. The essence of Ibn Ḥazm's position on knowledge may best be summed up in the phrase: "*al-ḥaqqu fī wāḥid*," or "the truth is [found] in one." Truth is to be found in one – and only one – answer to a given moral or legal matter. Knowledge, to be considered genuine, must possess the quality of perfect unicity, for plurality implies imperfection and compromises certitude and is therefore to be fully excluded from the domain of the Sharī'a.

If Ibn Ḥazm's position on the nature and provenance of knowledge is best represented by the phrase "*al-ḥaqqu fī wāḥid*," then al-Baṣrī's position can best be summed up in the contrasting principle: "*kullu mujtahidin muṣīb*," or "every *mujtahid* is correct." That is, every *mujtahid* – or perhaps we may say every instance of *ijtihād* – is not only valid, but also positively correct (*muṣīb*). Like Ibn Ḥazm, al-Baṣrī is fully conscious of the difference between definitive knowledge (*'ilm*) and mere supposition (*ẓann*). Certain rulings of the Sharī'a can be known definitively by means of explicit and unequivocal textual evidence, and one of these rulings, in al-Baṣrī's view, is that when definitive knowledge about the Law is not forthcoming, human beings are required to extrapolate the occasioning factor behind explicit rules and extend these rules to similar cases, attempting to identify the Will of God in such circumstances to the best of their ability. Though the moral-legal norms derived in this manner may have a different ontological status from those rulings given explicitly in the revealed texts, the two are equally imperative and binding vis-à-vis the human follower of the Sharī'a. This equivalence derives precisely from the fact that the *manner* in which suppositional rulings were arrived at – namely, *qiyās* – has been prescribed in a conclusive manner,

doing away with the need for insisting on the absolute unicity and objective certitude of the positive rulings which result from this process. If Ibn Ḥazm were to argue that it is illogical to hold that two, perhaps diametrically opposed, juridical opinions could be true at one and the same time, al-Baṣrī's response would be that since God did not choose to make the issue unequivocally clear through the Qur'ān or the Sunna, then His very will in this case is that qualified individuals follow their most well founded supposition, regardless of the material contents of the rulings thus derived.

Al-Baṣrī's position on the status of acts before the Sharī'a is somewhat more complex and difficult to grasp with precision than Ibn Ḥazm's. We have seen that for al-Baṣrī, the Sharī'a is ultimately purposeful, in that its end goal is to lead human beings to the realization of benefit, or *maṣlaḥa*. We have remarked that the all-pervasive notion of *maṣlaḥa* in many ways stands above – and in the backdrop, as it were – of the texts. It is significant, however, that al-Baṣrī does not defend the notion of *maṣlaḥa* by adducing textual evidence in its favor. Rather, he simply assumes *maṣlaḥa* and, in fact, relies on it heavily in arguing for the rational admissibility of *qiyās* as an activity decreed upon the Muslim community. Nevertheless, our knowledge of the specific modes of conduct in the moral-legal realm which will lead us to the realization of *maṣlaḥa* cannot be ascertained by the intellect alone, but is fully dependent on the texts of Revelation. Although al-Baṣrī seems to view acts as having an inherently good or evil nature, the question of whether or not these qualities can be ascertained by the rational faculty or only inferred based on what Revelation prescribes and prohibits remains somewhat unclear from our study.

What is important to note for all practical purposes, however, is that al-Baṣrī's notion of the fundamental purposefulness of the Sharī'a seems to coincide with his view on the inherent goodness or evilness of acts. If the Sharī'a assures the realization of benefit, then it follows quite naturally that it would command what is good and forbid what is evil, assuming, as al-Baṣrī seems to do, that such categories can even have a meaning independent of the Sharī'a itself. While the notion of an inherent moral quality of acts was a doctrine commonly held by the Mu'tazilites and therefore somewhat predictable in al-Baṣrī, it is crucial to mark a distinction in al-Baṣrī's thought which seems to form a break with more mainstream Mu'tazilite thought. For while al-Baṣrī does seem to hold that there is an inherent good and evil in acts and that the Sharī'a is purposeful, and indispensable, in the realization of *maṣlaḥa*, one does not get the impression that he holds that God *must* act in the benefit of His creatures, but rather that God simply *does* so, perhaps because God Himself is Merciful, Wise, etc. That the Sharī'a is indispensable in the realization of *maṣlaḥa* is clear from al-Baṣrī's insistence that *maṣlaḥa* itself, as a category, did not exist before the coming of the *shar'*. From this we may conclude that the notion of *maṣlaḥa* – rather than being a self-standing determinant of the Sharī'a – actually forms an irreducible, integral component of the nature of the Sharī'a as a moral-legal phenomenon.

This view, of course, contrasts sharply with Ibn Ḥazm's contention that God not only does not have to act in the best interests of His creatures, but that He actually does not do so in a great many cases in the world. While Ibn Ḥazm speaks of God acting against the *maṣlaḥa* of His creatures as that *maṣlaḥa* is perceived in human terms, God Himself is nonetheless the Wisest of Wise and the Just One by definition, regardless of

how particular actions of His may be regarded by human beings, for God is not "asked" about what He does. While there seems to be reasonable agreement between our two authors regarding the justice – by definition, as it were – of God's actions, Ibn Ḥazm displays a striking lack of interest in rationalizing this proposition in such a way that it would be brought more in conformity with conventional human notions of justice and benefit. As there is none like unto God in any respect, not only His actions, but also His decrees as represented in the Sharī'a, are perfectly inscrutable and completely unfathomable to the human mind.

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