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# A DEVOTIONAL THEORY OF LAW: EPISTEMOLOGY AND MORAL PURPOSE IN EARLY ISLAMIC JURISPRUDENCE

OMAR M. FARAHAT
Doctoral Candidate, Columbia University

ABSTRACT

The question of the sources of legal normativity continues to haunt legal theorists to this day. While it is largely uncontroversial that modern legal systems claim to produce normative propositions, whether or not there are independent reasons to obey the law remains a contested issue. Those views, as varied as they may be, appear to largely agree that the law is a social phenomenon of definite ontological presence. In this article, I argue, through an analysis of the theories of three prominent ninth- to eleventh-century Muslim jurists, that early Muslim theories of lawmaking did not incorporate any ontologically coherent concept of law. Rather, lawmaking was understood as the case-by-case formulation of legal opinions by individual jurists who were presumed to be driven by the same moral drive, and therefore occupy the same moral order, as all subjects of law. In spite of this ad hoc epistemological view, Islamic jurisprudence conceived of legal pronouncements as fully normative. The normativity of those unstructured ad hoc individual pronouncements, I maintain, is the result of the centrality of moral purpose to early Muslim theories of law. It was the presumption of a common moral drive that gave the legal system structural coherence and allowed the advancement of those pronouncements as normative claims. Whereas recent historical and anthropological work shows that moral motivation was central to the manner in which sharīʿa operated as a system of social regulation, this article argues, along the same lines, that the pietistic drive was both conceptually and structurally indispensable for the normative coherence of early Islamic jurisprudence.

KEYWORDS: normativity, law and morality, Islamic jurisprudence, *uṣūl al-fiqh*

## INTRODUCTION: CONCEPTUAL UNITY AND LEGAL NORMATIVITY

The understanding of the nature of normativity of a given legal system invariably depends upon the concept of law that one adopts. For example, in modern legal systems, the view that beyond the law's internal normativity consisting of its claims to create obligations and impose sanctions there is no external reason, moral or otherwise, to obey the law, is believed to follow best from a positivistic conception of law.[1] In fact, this view has been advanced by some of the most

1 David Enoch, "Reason-Giving and the Law," in *Oxford Studies in Philosophy of Law*, ed. Leslie Green and Brian Leiter (Oxford: Oxford University Press, 2011), 1:1–38.

prominent proponents of legal positivism today, including Joseph Raz.[2] It would seem that viewing the law as a social fact, which is a central tenet of legal positivism, allows one to maintain that the law is self-sufficient with regards to the production of normative propositions. By contrast, a naturalistic conception of law as a purposeful enterprise may result in a view of law's normativity that rests on the human need to organize communal life, or, more generally, on some view of the desirability of having a functioning legal system.[3] Generally, it has been argued that, in all cases, giving reasons for action can only occur in one of two ways: either by indicating an already existing reason or by creating a reason based on preexisting circumstances.[4] Suppose, for example, that a supervisor instructs an employee to perform a given task. In that instance, the supervisor would be *creating* a reason for action for the employee, assuming a normal hierarchical work relationship and the relevance of the task to the employee's job description. By contrast, if a third person informs the employee that the supervisor ordered the performance of a given task, she would be merely making the presence of a reason for action known, not creating one. This second type of reason giving is epistemic in the sense that the third person's role is restricted to knowing about the existence of a reason for action and making this fact known to others.

In all cases, it is argued that modern legal systems inevitably aim to *create* reasons for action, regardless of whether or not we believe that there is a separate moral obligation to obey the law.[5] When imposing taxes, creating conditions for legal transactions, or establishing sanctions for certain types of behavior, the law does not merely point to the preexisting reasons to act in one way or another; rather it purports to create a new and independent reason that may or may not coincide with those preexisting reasons. In fact, it appears that the idea that modern law always claims to generate reasons for action is hardly controversial. The real question is whether there are moral obligations to obey the law regardless of those claimed reasons that receive the most intense scholarly scrutiny. How could there be such agreement in spite of the multitude of concepts of law that have been and continue to be advanced in modern jurisprudence?[6] As suggested above, the fact that a broad range of theories was offered by way of explaining the concept of law is hardly doubtful. While some influential theories contend that the sources of law can be found in social facts[7] and that law primarily consists of a system of norms[8] that ultimately rests on a customary rule of recognition[9] or the commands of a sovereign,[10] other

2 See, for example, Joseph Raz, "The Obligation to Obey: Revision and Tradition," *Notre Dame Journal of Law, Ethics and Public Policy* 1, no. 1 (1984–1985): 139–156; see also M. B. E. Smith, "Is There a Prima Facie Obligation to Obey the Law?," *Yale Law Journal* 82, no. 5 (1973): 950–76.

3 For example, see Donald H. Regan's argument that the duty to obey the law is an "indicator-rule," not a robust rule in "Authority and Value: Reflections on Raz's Morality of Freedom," *Southern California Law Review*, 62, nos. 3 and 4 (1989): 995–1095. The argument that the existence of a legal system is in itself valuable is made in John Finnis, "The Authority of Law in the Predicament of Contemporary Social Theory," *Notre Dame Journal of Law, Ethics and Public Policy* 1, no. 1 (1984–1985): 115–38. This, Finnis argues, reflects the human need to coordinate collective action in society. Ibid., 133.

4 Enoch, "Reason-Giving and the Law," 1–38.

5 Ibid.

6 The view that "[t]he central problem of much of [modern] jurisprudence has been that of the definition of law or the specification of the appropriate meaning of the word 'law'" appears to be a largely accepted proposition. Roger Cotterrell, "The Sociological Concept of Law," *Journal of Law and Society* 10, no. 2 (1983): 241.

7 Joseph Raz, *The Authority of Law* (Oxford: Clarendon Press, 1979), 37–40.

8 An account of law as a union of primary and secondary norms can be found in H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), 79–99.

9 The concept of a customary rule of recognition was famously introduced in Hart. Ibid., 94–99.

10 John Austin, *The Province of Jurisprudence Determined, and The Uses of the Study of Jurisprudence* (London: Weidenfeld and Nicolson, 1968), 9–33. The distinction between law as identifiable by a socially accepted rule of recognition as offered by Hart, and law as the command of a sovereign as advanced by Austin, are often



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theories claim to find the source of legal norms in notions of innate human needs for flourishing and well-being at either the individual or social level[11] and view law as a purposeful social enterprise.[12]

This diversity notwithstanding, we can observe one somewhat basic commonality between all those theories. Whether it rests on notions of morality, social fact, or behavior of legal officials, modern jurisprudence invariably claims to elucidate, or adopt, *some* concept of law. Generally speaking, to maintain that a given term is associated with a particular concept is to suggest that it refers to a given set of coherently related ideas.[13] Thus, unless one maintains that law is conceptually identical to morality or some other reason-giving system—a position that, to my knowledge, no one presently defends[14]—it appears that the view that the term "law" is, or at least should be, intelligible, is a fairly uncontroversial assumption in modern jurisprudence. Importantly, however, attempts to elaborate a concept of law are not limited to explaining what is or should be understood from the intelligible term "law"; they aim to describe, explain, or interpret a particular observable phenomenon. The function of the formulation of the concept of law in modern jurisprudence, thus, is not the mere elucidation of an intelligible and coherent set of ideas but also the explanation of an existing reality with which those ideas are associated. The concept of law, therefore, in all the variety of ways in which it is presented in modern jurisprudence, always has an ontological and internally structured subject matter.[15]

The claim that the concept of law as formulated in modern jurisprudence necessarily refers to a coherent ontological matter warrants two further remarks by way of clarification. First, it must be noted that saying that jurisprudents assume the presence of a definable phenomenon that we refer to as "law" does not mean that their theories are necessarily descriptive. A normative position can be adequately advanced on the basis of an ontological conception of law.[16] It has in fact been

seen as representative of the "soft" and "hard" versions of legal positivism, respectively. For a helpful overview of this and other distinctions, see Brian H. Bix, "Legal Positivism," in *The Blackwell Guide to the Philosophy of Law and Legal Theory*, ed. Martin P. Golding and William A. Edmundson (Malden: Blackwell Publishing, 2005), 29–49.

11 For an elaborate account of the theories of natural law, see Robert P. George, "Natural Law," *Harvard Journal of Law and Public Policy* 31, no. 1 (2008): 171–96.

12 The concept of law as an instrument for the promotion of human good is expounded at lengths in John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 371–410 passim.

13 The notion that concepts are structured ideas is sometimes referred to as the "prototype theory" of concepts. This notion, it has been argued, "goes hand in hand with the claim that there is a relation between concepts and perceptual states." Kevan Edwards, "What Concepts Do," *Synthese* 170, no. 2 (2009): 293. Concepts of law are examples of prototypical structures coupled with conceptual empiricism. They advocate the presence of a given connection between the elements of the concept in question, many of which are based on empirical observation of social phenomena. Moreover, legal philosophers often claim to rely on a form of conceptual analysis, which presupposes that concepts are types of definitions.

14 For a helpful account of the different possible connections between law and morality, see Leslie Green, "Positivism and the Inseparability of Law and Morals," *New York University Law Review* 83, no. 4 (2008): 1035. John Finnis also confirms the weakness of this claim. See Finnis, *Natural Law and Natural Rights*, 351.

15 That this common and somewhat intuitive assumption does not appear to receive much attention from legal philosophers can be attributed to the tendency to view matters that pertain to the legal system "from the outside" as beyond the realm of jurisprudence and more pertinent to legal history, sociology, or political theory. See G. L. Field, "Law as an Objective Political Concept," *American Political Science Review* 43, no. 2 (1949): 229–49.

16 Joseph Raz argues that normative claims about the law can only be made on the basis of certain factual assumptions about it. See "Two Views of the Nature of the Theory of Law: A Partial Comparison," *Legal Theory* 4, no. 3 (1998): 249–82.



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argued that to advocate a notion of normative jurisprudence we would necessarily have to rely on some factual view of the concept of law.[17] In other words, in order for a legal theorist to advance a claim concerning how the law should be viewed, or, quite simply, how the law should be, she must depart from a certain assumption about what the law actually is. Perhaps more importantly, however, we must note that saying that we conceive of the law today as a phenomenon that exists in the social realm is not to say that legal norms are necessarily determinate. Even if we accept the position that there is a multitude of possible outcomes to any given legal case, this indeterminacy would still constitute part of the social phenomenon that we refer to as "law" and to which various theories attempt to provide coherent conceptual parameters. The ontological conception of law, therefore, is not the exclusive purview of legal positivism. Another possible objection to this idea of an ontological conception of the law can be made from the naturalist or Dworkinian standpoint. It could be argued that there are purely moral reasons to obey the law, and therefore its own conceptual consistency is not a precondition to its normativity. While solid arguments for external moral reasons to obey the law have been made, it remains the case that those theories conceive of the law as a conceptually independent entity that *ought* to follow their extra-legal ideals but does not do so by definition.[18] The conception of the law as a distinct social phenomenon, therefore, persists throughout, and in fact implicitly binds together the various inquiries into the concept of law in modern jurisprudence, as varied as they may be.

This supposed conceptual coherence of "law" as an ontological entity and the view that, at least internally, it always claims to produce reasons for action, are two necessarily linked propositions. It is fairly clear that, in order to claim to generate reasons for action, one must provide a coherent and comprehensible foundation for those reasons.[19] More to the point, it seems to be consistently the case that in order to advance a reason that can potentially dictate the course of action of an agent or group of agents, one must be able to make a claim about how the suggested course of action would fit into the schemes of this, the next, or any other possible world. To put it briefly, a lucid and effective reason for action must be supported by some view of reality. In order to constitute a reason, therefore, a certain directive, legal or otherwise, must be justified, and a directive cannot be sufficiently justified if its ontological foundations are obscure or inconsistent. As a result, unless law is seen as conceptually indistinct of morality, a position that even the most stringent of naturalists today does not hold, for legal directives to claim some kind of authority they must be backed by *some* coherent ontological concept of law.

The fact that in modern societies we invariably have some ontological concept of law is therefore understandable in light of the fact that legal systems need to have some claim to normativity. Even with the most robust naturalistic conceptions of law, the ontological distinctness of law persists for a simple reason: the normativity of the law must assert itself *categorically* in the most effective manner, and the adherence of individual subjects to the moral ideal of fidelity to law is not a uniform enough phenomenon to constitute a foundation for law's normativity as a social institution. For law to operate as a system of social regulation, therefore, it must enjoy a certain degree of

17 Frederick Schauer, "The Social Construction of the Concept of Law: A Reply to Julie Dickson," *Oxford Journal of Legal Studies* 25, no. 3 (2005): 495.

18 Ronald Dworkin's main formulation of his theory of law as an interpretive phenomenon can be found in his *Law's Empire* (Cambridge: Belknap Press, 1986), 44–86. For a critique of positivism that nonetheless advances a specific conception of law as a "purposeful enterprise" see Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), 98–151 passim.

19 On the justification of reason as a search for its source, or for a general principle from which it follows, see Joseph Raz, *Engaging Reason: On the Theory of Value and Action* (New York: Oxford University Press, 2002), 78.



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conceptual unity, and this is accomplished in modern systems by conceiving of law as a distinct system that consistently generates reasons for action. Those *internal*, consistent reasons, may or may not coincide with external, moral ones, but they are conceptually separable nonetheless.[20]

But is a concept of law as a structural, distinct, self-sufficient entity a necessity for the existence of any system of social regulation? And if such a system existed that did not rely on a conception of itself as a coherent ontological entity, how did it operate? Or, at least, how did it claim to have guiding potential? A central thesis of this essay is that early Muslim jurisprudents managed to develop a conception of normative lawmaking that was, on the one hand, entirely epistemological in nature and, on the other hand, devoid of any coherent ontological conception of law as a social entity. The type of normative authority that emerged from that system, therefore, was necessarily constructed and justified in manners radically removed from the forms of authoritative reason giving that are common in modern legal systems. Given their purely epistemological nature, the reasons for action that this system created transgressed the above-mentioned dichotomy between epistemic and generative reason giving. Legal pronouncements made by jurists were fully epistemic and yet claimed to *constitute* reasons for action. This particular understanding of the epistemological nature and normative potential of the law[21] could only have been possible as a result of the establishment of the law's devotional purposes, understood as the constant struggle to remain faithful to a divine and transcendent moral ideal, as structurally indispensable for the normative validity of the epistemological legal rulings. This central purpose that guided the process of both legal reasoning and compliance was presumed by this theory to be a moral drive shared by both jurists and laypersons to devote one's thoughts and actions to the attainment of knowledge of and acting in accordance with divine revelation. The devotional drive to comply with the moral model of revelation, I maintain, constituted both a source of self-motivation that justified the very enterprise of legal reasoning and an element of structural centrality that provided this epistemic edifice with its coherence. Significantly, this also meant that the expansion of the scope of legal knowledge through the various reasoning techniques advanced in those works of jurisprudence occurred in parallel with a tendency to accept the view, famously articulated by al-Shāfiʿī, that every aspect of human life can potentially be made to comply with the moral ideals of divine revelation. Importantly, also, those theories assumed that devotion to God and fulfillment of the purposes of divine revelation are the primary, if not only, ways in which a moral life can be achieved. In other words, both

20 The jurisprudence of John Finnis is a case in point. Like Fuller to some extent, Finnis argued at lengths that the existence and validity of the law depend on its ability to meet certain natural social requirements, but he formulated, nonetheless, a particular view of law as a distinct social phenomenon:

> The central case of law and legal system is the law and legal system of a complete community, purporting to have authority to provide comprehensive and supreme direction for human behavior in that community, and to grant legal validity to all other normative arrangements affecting the members of that community. Such large claims, advanced by or on behalf of mere men, would have no plausibility unless those said to be subject to legal authority had reason to think that compliance with the law and with the directions of its officers would not leave them subject to the assaults and depredations of their enemies, inside or outside of the community.

Finnis, *Natural Law and Natural Rights*, 260.

21 The understanding of normativity as the production of reasons for action is explained by Joseph Raz, who argues, "The normativity of all that is normative consists in the way it is, or provides, or is otherwise related to reasons. The normativity of rules, or of authority, or of morality, for example, consists in the fact that rules are reasons of a special kind, the fact that directives issued by legitimate authorities are reasons, and in the fact that moral considerations are valid reasons." Raz, *Engaging Reason*, 67.



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the legal aspects of this system, such as the collective regulation of social interaction, and its moral dimensions, such as the individual motivation to perform good actions, were fully subsumed under and identified with the overarching concern of faithfulness to the divine normative order.

While ontological coherence was reserved for the divine realm, the fact that juristic pronouncements represented humans' best chance at remaining devoted to divine morality constituted a sufficient justification for their normativity. To put it briefly, devotion to the divine moral order provided the otherwise ad hoc and contingent juristic lawmaking with an ontological backbone, thus rendering it a system of normative authority. For legal pronouncements, understood entirely as the products of epistemological states of specific jurists, to be able to advance a moral claim in themselves, a conception of the jurist as driven by the same devotional purpose as the legal subject was necessary for this form of legal theory to succeed.

More specifically, I argue, conceiving of legal pronouncements as case-by-case opinions of particular jurists on matters of compliance with revelation reflects three important matters about the process of formulation of legal rulings. First, the legal rulings (*aḥkām*) or pronouncements (*aqwāl*) that represented the end product of this process were purely epistemological entities. Second, achieving, or at least attempting to achieve, the moral purpose of divine revelation was a necessary condition of the coherence of legal reasoning and judgment and, in fact, was conceptually inseparable from the notion of legal ruling. Third, except for serving the moral needs of the community, no logical connection can be assumed between different instances of legal judgment; hence the lack of a unified conception of law in the social sense.[22] This can be clearly contrasted with the picture drawn in the above paragraphs of the modern conception of law. In the early Muslim theory of law, legal judgments were entirely subordinate to the common drive to remain devoted to the purposes of divine revelation, which was shared by the jurists and legal subjects, and, in fact, could not have been justified without this devotional aim. Furthermore, the primacy and preponderance of moral and devotional considerations led to the utter inseparability of internal and external reasons in the legal judgments. In fact, the "external" devotional reasons were the only raison d'être of those pronouncements, and the only reason they were socially relevant. To put it briefly, the moral unity of the law's devotional purposes in Islamic jurisprudence played the

22 The idea that the exercise of legal reasoning is in itself an act of obedience that follows the same moral ideal as any other act of compliance was expressed (albeit not in the context of systematic analysis of classical sources) by Khaled Abou El Fadl in the following terms:

> Islamic law is founded on the logic of a Principal who guides through the instructions set out in texts. Those instructions are issued to the agents who have inherited the earth and who are bound to the Principal by a covenant. The point of the covenant is not to live according to the instructions, but to *attempt* to do so. Searching the instructions is a core value in itself—regardless of the results, searching the instructions is *a moral virtue*. This is not because the instructions are pointless, but because the instructions must remain vibrant, dynamic open and relevant. It is impossible for a human being to represent God's Truth—a human being can only represent *his or her efforts* in search of this truth. The ultimate and unwavering value in the relationship between human beings and God is summarised in the Islamic statement, "And, God knows best."

Khaled Abou El Fadl, "Islamic Authority," in *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition*, ed. Kari Vogt, Lena Larsen, and Christian Moe (New York: I. B. Tauris, 2009), 129 (emphasis partially added after the first two sentences). As I argue in this article, the early epistemological discussions in Islamic works of legal theories and methodologies confirm this view on a number of accounts, particularly the fact that reasoning aimed at making a normative judgment is an act of obedience in itself, that one can only *attempt to approach* the ultimate divine moral ideal as much as possible, and that all judgments, *regardless of their degree of certainty*, were seen as fallible human constructs.



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normative role occupied by the law's ontological unity in today's jurisprudence. In those devotional theories of law, legal norms were nothing but attempts at reaching a central and shared moral purpose, and they were not seen to enjoy any presence independently of this purpose. Of course, this is not to say that Islamic legal theories were entirely devoid of ontological concepts. It is quite evident that Muslim jurisprudents of all ages viewed God and his words as existents in the profoundest sense of the term.[23] The human enterprise of formulation of legal rulings on the basis of God's moral system, however, was viewed as entirely constituted of epistemological elements.

This epistemological conception of the moral-legal enterprise and the absence of distinction between external and internal reasons led to a number of unique characteristics in those early theories. On the one hand, jurists were seen as occupying the same status as laypersons from a moral standpoint. Although jurists took up the role of making pronouncements on the moral-legal status of actions in relation to God's revelation, they did not necessarily do so as representatives of any distinct social entity, but primarily as human believers who happened to rise to the inevitable moral task of attempting to reach knowledge of the divine moral order, as necessarily fallible as this knowledge may be. On the other hand, this theory was quite indifferent to the distinction between legal and nonlegal matters. Any situation in which believers found themselves was potentially the object of moral reasoning and judgment.

A particular group of works represents some of the earliest extant theories in which efforts were made to elaborate systems of legal reasoning in Islam. These are *al-Risāla* (The Epistle) of Muḥammad b. Idrīs al-Shāfiʿī[24] (d. 820 CE), *al-Fusūl fī l-uṣūl* (Chapters on the Foundations [of Legal Knowledge]) of Abū Bakr al-Jaṣṣāṣ[25] (d. 981 CE), and the chapter on juristic reasoning in al-Qāḍī ʿAbd al-Jabbār's (d. 1024 CE) *al-Mughnī fī abwāb al-tawḥīd wal-ʿadl* (The Exhaustive [Treatise] on Matters of Oneness and Justice).[26] One of the advantages of taking some of the earliest available works of legal theory as case studies is the explicitly self-reflective nature of their arguments. The need to elaborate on the jurisprudents' most profound epistemological assumptions

23 An elaborate treatment of this notion of objectivity in the context of Islamic legal theories was offered by Weiss. See Bernard Weiss, "Exotericism and Objectivity in Islamic Jurisprudence," in *Islamic Law and Jurisprudence*, ed. Nicholas Heer (Seattle: University of Washington Press, 1990), 57.

24 Abū ʿAbdullāh Muḥammad b. Idrīs al-Shāfiʿī, a very prominent scholar and eponym of one of the four surviving Sunnī schools of law. He was most probably born in Gaza in AH 150/767 CE. He moved to Mecca as a child, and lived in Baghdad, Yemen, and finally Cairo. He is famous for his mastery of juridical sciences and erudition in sciences of the Quran, *ḥadīth*, linguistics, and poetry. He was also reportedly a strong opponent of speculative theology (*kalām*) and its scholars. Shāfiʿī died in Egypt in AH 204/820 CE. ʿAbd al-Raḥmān ibn Muḥammad Ibn Abī Ḥātim, *Ādāb al-Shāfiʿī wa Manāqibihi* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1953), 17–32.

25 Abū Bakr Aḥmad b. ʿAlī al-Rāzī al-Jaṣṣāṣ, a major Ḥanafī jurisprudent. He was born in AH 305/917 CE. Jaṣṣāṣ lived and studied with Ḥanafī scholars in Baghdad, including the famed al-Karkhī, who was his mentor. He attained the leadership of the school in Baghdad. Jaṣṣāṣ is known to have repeatedly declined prestigious judgeship offers. He wrote in various disciplines, including Quranic studies, *fiqh* (notably, his commentary on Kharkhī's *Mukhtaṣar*), and *uṣūl al-fiqh*. He died in Baghdad in AH 370/981 CE. ʿAbd al-Q̄dir ibn Muhammad ibn Abī l-Wafā al-Qurashī, *al-Jawahir al-Muḍiyya fi Ṭabaqāt al-Ḥanafiyya* (Cairo: Dar Iḥyāʾ al-Kutub al-ʿArabiyya, 1978), 1:220–24.

26 Abū l-Ḥasan ʿAbd al-Jabbār b. Aḥmad al-Hamadhānī al-Asadabādī, a prominent Muʿtazilī theologian who attained the top of the Muʿtazilī school in his lifetime. In law he was a follower of the Shāfiʿī school. Born around AH 325/ 937 CE, he lived in Baghdad, until called to Rayy, in AH 367/978 CE, by Ṣāḥib b. ʿAbbād. He was subsequently appointed chief *qāḍī* of the province; hence he is usually referred to in later Muʿtazilī literature as *Qāḍī l-quḍā*. He died in Rayy in AH 415/1024 CE. ʿAbd al-Wahhāb b. ʿAlī al- Subkī, *Ṭabaqāt al-Shāfiʿiyya l-Kubrā* (Cairo: ʿĪsā al-Bābī al-Ḥalabī, 1964), 5:97–98.



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appears to have become gradually less pressing in later more systematic works in which it can be observed that many of those foundational debates were largely taken for granted.[27]

An important qualification is in order. All those works, by their very nature, advanced theories that pertained to a particular form of legal reasoning, namely *ijtihād* in its absolute form. This form of reasoning was reserved for a type of jurist who, when faced with a legal question by a believer, proceeded to find answers by direct recourse to indicants revealed by God. This "absolute" jurist, therefore, is theoretically unbound by prior authority or loyalty to self-organized groups of jurists when proceeding to solve cases in this particular manner. It has been amply argued that this was not the only, or even the predominant, way in which legal opinions were reached in Islamic premodernity. Nevertheless, this type of absolute reasoning retained the distinction, at least in theory, that authority-dependent legal opinions continued to claim to ultimately rest on some process of absolute *ijtihād* that took place at some point in time.[28] Be that as it may, the epistemological foundations of legal pronouncements in authority-dependent types of reasoning in all their variety are beyond the scope of the present article.

## SHĀFIʿĪ'S *RISĀLA*

In his much-studied *al-Risāla fī uṣūl al-fiqh* (*Epistle in Jurisprudence*), Shāfiʿī elucidated the foundational concepts of his legal theory in explicitly epistemological terms. This epistemological conception of legal pronouncement was coupled, as I explain below, with two main assumptions. First, Shafiʿī viewed the process of reasoning that leads to knowledge of judgments as directly and explicitly motivated by a devotional moral purpose. This was true categorically with regards to all forms of reasoning, whether they led to certain or tentative forms of knowledge. Second, it followed that this moral purpose was shared by the jurists and nonjurists, which meant that no fundamental distinction was made between acts of lawmaking and acts of legal compliance: *ijtihād*, in the end, was an act of compliance to revelation's devotional ends.

The epistemology of Shafiʿī's theory was made clear in his differentiation between apparent (*ẓāhir*) and actual (*bāṭin*, literally, hidden) knowledge of proper moral outcomes.[29] For Shāfiʿī, all instances of judgment-inducing knowledge fall on a scale defined by, on one extreme, knowledge solely based on matters apparent to the human mind, and, on the other extreme, absolute

27 The fact that those works represent attempts to elaborate a legal methodology does not mean that they belong to the same genre of legal writing. The *Risāla*'s status as the oldest work in the genre of *uṣūl al-fiqh*, to which Jaṣṣāṣ's work belongs, has been challenged in Wael B. Hallaq, "Was al-Shafiʿī the Master Architect of Islamic Jurisprudence?," *International Journal of Middle East Studies* 25, no. 4 (1993): 587–605. In addition, while it is obvious that *uṣūl al-fiqh* was a well-established discipline in the time of al-Qāḍī ʿAbd al-Jabbār, the seventeenth volume of his encyclopedic *al-Mughnī*, which overall is a major treatise on Muʿtazilī doctrine, is referred to as *al-Sharʿiyyāt*, a reference to matters of legal-moral knowledge and compliance. This volume's structure is designed to fit into the larger structure of *al-Mughnī*, rather than follow the conventional orders of the genre of *uṣūl al-fiqh*, although it does treat extensively the major topics that *uṣūl al-fiqh* is concerned with.

28 On early *ijtihād* and the construction of authority in Muslim schools of law, see Wael B. Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 24–56. On the history of the schools of law generally, see Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden: Brill, 1997).

29 Muḥammad b. Idrīs Shāfiʿī, *al-Risāla*, ed. Ahmed Shakir (Cairo: al-Bābī al-Ḥalabī, 1940), 206. Here and elsewhere in this article, unless otherwise stated, all translations from the Arabic sources are mine. In translated passages, I ocassionaly provide transliterations of key words in parentheses.



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knowledge of the reality of things (*bāṭin*).[30] The significance of *bāṭin* knowledge, therefore, does not lie in its obscurity, but in the fact that it constitutes *actual* knowledge, or, in its absolute form, knowledge from God's perspective (*ʿilm al-ghayb*).[31] It is therefore assumed that knowledge of the truth of things is considered a priori hidden or unavailable to human minds, which can in principle attain knowledge only based on what they observe, which is, by definition, contingent. Although humans judge all matters, including legal-moral questions, based on what is apparent to them, Shāfiʿī argues, the only chance humans have at claiming to have attained *bāṭin* or actual knowledge of proper moral outcomes is through a revealed and unequivocal statement (*naṣṣ*) of indubitable authenticity. As has become commonplace in Muslim epistemology, for Shafiʿī, indubitable authenticity is established when knowledge of a given matter is transmitted by the masses to the masses (that is, *mutawātir*).[32] In those limited cases in which "no one can be doubtful or mistaken,"[33] humans are allowed to postulate (*qawl*) that they have attained an actual legal-moral judgment. Apart from this category of certain knowledge, all kinds of judgment-inducing knowledge are only based on contingent appearances.[34]

This categorization shows that Shafiʿī viewed juristic positions on matters of compliance to God's revelation as purely epistemological matters.[35] Those two epistemological categories subsume the entirety of the possibilities of legal reasoning and pronouncement. Even with regards to legal outcomes based on knowledge obtained through a revealed text of indubitable authenticity and clarity (*naṣṣ*), Shāfiʿī conceived of certain knowledge as the best possible epistemic state that human minds can attain, rather than absolute God-like knowledge of the truth of matters. This can be seen in Shāfiʿī's explanation of this type of knowledge as an instance of mental "surrounding" of the prospective legal pronouncement by the lawyer's mind, both in its apparent and actual

30 Ibid.

31 Ibid., 207.

32 Ibid., 206.

33 Ibid.

34 Tahanāwī clearly explains that *ẓāhir* is only obvious inasmuch as it directly conveys the conventional linguistic meaning of the term, rather than the meaning intended by the speaker, to which the category "*naṣṣ*" is reserved. See Muḥammad b. ʿAlī al-Tahānawī, *Kashshāf iṣṭilāḥāt al-funūn* (Beirut: Dār Ṣādir, 1980), 2:929–30.

35 The most elaborate study of Shāfiʿī's *Risāla* in modern scholarship is without a doubt Joseph Lowry's *Early Islamic Legal Theory: The Risāla of Muḥammad Ibn Idrīs Al-Shāfiʿī* (Leiden: Brill, 2007). Lowry cogently explains the centrality of the concept of *bayān*, which he translates as "announcement," to Shāfiʿī's theory. While the centrality of this concept is beyond doubt, it is not entirely clear that Shāfiʿi in fact used the term "to denote a mechanical or architectural feature of the divine law." Ibid., 24. In my reading, *bayān* is an important concept in Shāfiʿī's theory primarily for its epistemological implications, and not its structural features. In other words, *bayān* is the effect of the event of revelation by virtue of which proper behavior became potentially *knowable* to humans, rather than a once-and-for-all establishment of some persistent structure of the law. It is no coincidence that *ẓāhir* and *bayān* stem from synonymous roots (*ẓahara* and *bāna*) which denote becoming apparent or uncovered (in this context, *bayān* would be making something apparent *to the mind*). While this difference may appear minor, it is of importance for the understanding of the structural (or nonstructural) features of early legal theory, which is my concern here. The problem with the "architectural" understanding of *bayān*, in my view, is that it opens the door for the persistence of ontological language in our study of a purely epistemological phenomenon. Thus, because Lowry insists on *bayān*'s structural nature, he concludes that "Shāfiʿī's concept of *bayān* offers a description of the divine law as an all-encompassing system. The individual rules in this system derive exclusively from the two sources of revelatory material, the Qurʾān and the Sunna." Ibid., 32. While this is an accurate representation of the role of the Quran and Sunna in the process of formulation of legal rulings, the insistence on ontological concepts such as "system," "derivation," and "sources," I maintain, is anachronistic. For an elaborate premodern treatment of the notion of acquisition of knowledge as a consequence of *bayān*, see Muḥammad b. al-Ḥusayn Abū Yaʿlā al-Farrāʾ, *al-ʿUdda fī uṣūl al-fiqh*, ed. Aḥmad b. ʿAlī Sīr al-Mubārakī (Riyadh, 1990), 1:76–78.

forms (*iḥāṭa fīl-ẓāhir wal-bāṭin*). The concept of *iḥāṭa* (literally, mentally surrounding the matter in question from all possible sides),[36] indicates the inconceivability of understanding this matter in any other way, given the revelation of definitive signs by God. Even in its most pronounced form, therefore, certainty about legal outcomes does not imply that the jurist is producing *the law* in any ontological sense, but only the quasi-impossibility of error within the parameters of human intellectual abilities.[37] This distinction between claims of certainty and claims of objectivity is central to understanding this epistemological system of law-making.

The other type of judgment-inducing knowledge, by contrast, does not constitute *iḥāṭa* at all, but only the appearance of validity (*ḥaqqun fil-ẓāhir*).[38] Those cases in which a judgment "appears to be accurate" are of two types: (1) knowledge acquired by only a few (*ʿilm al-khāṣṣa*) that Shāfiʿī identifies as the legal scholars, which can be obtained by prophetic traditions of less than indubitable authenticity; and (2) knowledge sought after by approximation of novel situations to established ones (that is, *qiyās*). Thus, when doubt about a certain matter is not inconceivable, which is true in the overwhelming majority of cases, legal pronouncement is made on the basis of what appears to be accurate to a few scholars in the first case, or to the scholar performing inferential reasoning in the second case. In all cases, no one can claim to be pronouncing *the* legal outcome other than God.[39]

There is an important distinction to be made here between, on the one hand, the nature of the legal rulings as pronounced by jurists and presented to the community of believers, and, on the other hand, the existence of moral facts in their objective form. As previously indicated, there is absolutely no doubt that Muslim jurists ascribed the status of objective truth to God, his word, and the moral system that faithfulness to God entails. That, however, does not mean that the production of legal rulings by jurists, even in cases of utmost certainty, is equivalent to the divine law in its perfectly true form being present as a social truth.[40] The conflation of those two propositions

36 The etymological roots of *iḥāṭa* confirm this conclusion. *Iḥāṭa* stems from the root *ḥ-w-ṭ*, which, in its basic form, *ḥawaṭa*, means to safeguard and protect, which is why a wall built for protection is a *ḥāʾiṭ*. Thus, *iḥāṭa* is the act of surrounding a thing from all directions, in order to prevent any of it from being lost. Muhammad b. Mukarram Ibn-Manẓūr, *Lisān al-ʿArab* (Cairo: Dar al-Maʿārif, 1982), 1052. Loss, in the juristic sense, is of course a moral-epistemic one, namely the possibility of making a false pronouncement.

37 An equivalent of *iḥāṭa* can be found in Ghazālī's concept of *ḥaṣr*, or *manʿ*, which suggests that true knowledge sharply distinguishes between the object of knowledge and everything else, in a way that mirrors but does not equate its objective truth, or its truth in itself (*ḥaqīqatihi fī nafsihi*). Ghazālī, *al-Mustaṣfā min ʿilm al-uṣūl* (Baghdād: Maktabat al-Muthannā, 1970), 32–33.

38 Shāfiʿī, *Risāla*, 207.

39 Ibid. More on the *ẓāhir/bāṭin* distinction can be found in Robert Gleave, *Islam and Literalism: Literal Meaning and Interpretation in Islamic Legal Theory* (Edinburgh: Edinburgh University Press, 2012), 99–112. Gleave analyzes those concepts with respect to their place in Shāfiʿī's "hermeneutical system."

40 Bernard Weiss aptly explains the importance of the notion of "hidden" truths that become manifest to humans through language. Based on this analysis, Weiss moves to what appears to be an unwarranted conclusion:

> That which becomes manifest through the *dalīl ʿaqlī* and the *dalīl lafẓī* enters the public domain and thus stands in contrast to that which becomes manifest exclusively within the closed private world of individual experience. Accordingly, the word *ẓāhir* takes on in Muslim usage the sense of "exoteric," for the exoteric is precisely that which is manifest within the public domain. Since objectivity entails availability beyond the confines of an intrinsically private experience, "objective" becomes virtually synonymous with exoteric.

Bernard Weiss, "Exotericism and Objectivity in Islamic Jurisprudence," in *Islamic Law and Jurisprudence*, ed. Nicholas Heer (Seattle: University of Washington Press, 1990), 57, 62–63, 70.

However, nothing in the writings of the jurists we are concerned with here, nor in the evidence provided by Weiss, suggests any conception of public as opposed to private domain. As I discuss later, it was emphasized



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may lead us to consider that the assumption that there exist objective legal-moral truths justifies the conclusion that "the objects of legal discourse are 'not simply the extension of human mind.'"[41] In order to make this move, one must first establish that divine legal-moral truths and "the objects of legal discourse" are, or at least can be, identical. My point is precisely that the early Muslim jurists under study made no claim of that sort. Rather, Shāfiʿī conceived of the exercise of legal reasoning and pronouncement of judgments as a process of production of knowledge. The end result of the process, namely the legal judgment, represents the state of knowledge of a jurist or community of jurists, not *the law* in an ontological sense.[42]

A significant implication of the lack of an ontological concept of law is the lack of distinction between legal and nonlegal matters. This conflation of legal pronouncement and legal compliance can be explained by the fact that all of those actions are tied together by a common moral purpose. In that sense, the jurists, in their attempt to find answers to questions raised within the community of the believers pertaining to the shared will to remain devoted in every aspect of their lives to the moral model of divine revelation, are working towards achieving the same moral goal. It follows from that view that any question that pertains in any way to compliance with the moral model of revelation is potentially the object of a juristic exercise of epistemic exertion of effort (*ijtihād*) and, ultimately, a legal ruling. Accordingly, the boundaries between the legal and the factual, the expert and the commoner, the sacred and the profane, become blurred and give way to the idea of a collective drive to remain faithful to the way of life sanctioned by the Creator. Matters that may be viewed as purely factual in nature, such as the establishment of a witness's trustworthiness or finding the most likely direction of the *qibla* (that is, the direction of the *Kaʿba*) for the sake of performing prayers are also questions of juristic relevance that are judged according to what is most apparent to the mind.[43] The conception of legal reasoning as an epistemological effort that potentially applies to any occurrence that may befall the legal subject is most obvious in Shāfiʿī's reliance on the search for the direction of the *Kaʿba* as the chief example of inferential reasoning in his *Risāla*.[44]

Identifying the direction one ought to face during prayer is clearly not a matter that concerns the knowledge of a rule that pertains to prayer. The rule is clear: Muslims ought to face the direction of the *Kaʿba* during prayer. This factual-normative divide, however, is a matter of no consequence to

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that a legal ruling must be *communicable* in the form of an argument, which constitutes the currency that can be exchanged within the social realm of collective reasoning. However, a matter that is cogently arguable and fathomable is not necessarily "objective" in the sense employed by Weiss.

41 Joseph Lowry quotes B. Leiter and J. Coleman to argue that Shāfiʿī was a "metaphysical realist": see Lowry, *Early Islamic Legal Theory*, 247. But in modern law, the "objects of legal discourse" are all that there is, which justifies the identification of legal discourse with metaphysical realities; there is no transcendent law elsewhere beyond what is produced by legal institutions. This is clearly not the case in Islamic law.

42 Presenting the highest level of certainty (*yaqīn*) as a matter internal to the agent's mind is amply evident in the work of Abū Ḥāmid al-Ghazālī (d. 1111 CE), which suggests that this view of legal reasoning may have persisted well after the period with which this study is concerned. In his *Mustaṣfā*, Ghazālī explains, "certainty, understood as the state in which the mind settles on believing a certain matter, occurs in three forms: being certain of this matter in addition to being certain that this certainty in that case is valid, and cannot be the result of oversight, error or confusion … believing in the matter strongly without sensing the possibility of the opposite … or tending to believe and feel confident in this conviction" Ghazālī, *Mustaṣfā*, 61–62.

43 Shāfiʿī, *Risāla*, 207, 208.

44 Ibid., 16–17. According to Joseph Lowry, "finding the correct direction in which to pray (*qibla*) represents *the example par excellence* of this kind of legal interpretation." Lowry, *Early Islamic Legal Theory*, 32 (emphasis added).

Shāfiʿī's conception of *ijtihād*. Conducting legal reasoning on the basis of revealed indicants is one among many ways in which believers should exert their utmost effort to act morally. Reasoning aimed at determining the *proper* action in a given situation is an effort that takes into consideration all available indicants, whether of a factual or normative nature, in order to reach what appears to be the most suitable outcome in a given situation.[45] This constant struggle in search for the path of the law is, like all other acts of obedience, viewed as a test: "God has tested [the Muslims'] obedience in performing *ijtihād* like he tested their obedience in other obligatory matters."[46]

Such matters that relate to the specifics of compliance are also dealt with according to the same epistemological concepts elucidated above. There are things that we can indubitably know (that is, with *iḥāṭa*), such as the direction of the *Kaʿba* when we can see it, and our own trustworthiness with regards to matters of faith, and there are matters that we can only know with reference to apparent signs, such as the direction of the *Kaʿba* when we cannot see it, or the faith of another person. This distinction is expressed by Shāfiʿī as follows: "[W]hat we have been obliged to do with regards to the unseen object is unlike what we have been required to do with regards to the seen object … Likewise, we have been required to accept the trustworthiness of someone on the basis of what is apparent of it."[47] In this theory, revealed utterances, physical objects, and any other observable signs are invariably seen as potential guiding elements towards reaching the most likely ethical conduct. In all cases, "each person performs what he or she is required to the extent of his or her knowledge" (*ʿalā qadri ʿimihi*).[48]

The notion that different obligations befall the believers according to the applicable category of knowledge is of paramount importance to understanding Shāfiʿī's concept of legal reasoning. On the one hand, this is further evidence of the purely epistemological nature of legal positions. On the other hand, this shows that, from a moral standpoint, the act of legal reasoning is of exactly the same order as any human action. In other words, the exertion of intellectual effort to reach moral judgments is seen as an act of attempted compliance to revelation, just like any other action that a believer would take in accordance with such moral judgments. This further shows that the devotional purpose operated as the only structural link between instances of legal reasoning and legal compliance.

Another important consequence of the lack of a uniform conception of law is the adherence to a fully dynamic, case-by-case conception of legal judgment.[49] In those early theories, it was assumed that each factual situation warrants a new exercise in *ijtihād*. In each such situation, the human mind takes all relevant indicants into consideration in order to find a convincing outcome. Shāfiʿī, applying this to the example of finding the *qibla*, argues that, in each individual attempt to face the *Kaʿba*, the believers in question, finding themselves physically removed from it, are

45 The absence of a conceptual separation between the factual and the normative in those early theories is indeed a matter that caused perplexity in modern studies of Islamic jurisprudence; a perplexity, I believe, that stems from the persistence of the assumption of ontological notions of law. On the "conflation of problems of law and fact," see Lowry, *Early Islamic Legal Theory*, 247.

46 Shāfiʿī, *Risāla*, 16. This idea was aptly expressed by Khaled Abou El Fadl as follows: "God knows the righteous path, but humans do not—they need God's guidance and revelation to reach out towards what the Quran describes as '*al-sirat al-mustaqim*' (the righteous path)." Khaled Abou El Fadl, "The Place of Ethical Obligations in Islamic Law," *UCLA Journal of Islamic and Near Eastern Law* 4, no. 1 (2004–2005): 4.

47 Shāfiʿī, *Risāla*, 208.

48 Ibid., 209.

49 The reverse of this is also true. Just as each factual situation warrants a search for the relevant indicants, each legal-moral pronouncement can be founded using a wide range of signs and arguments. In Shafiʿī's words, "the same judgment may be reached in different ways" on the basis of "different justifications." Ibid., 219.



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required to seek guidance "using the minds that God installed in them (*rakkaba fihim*) which are capable of distinguishing things from their opposites, and the signs He has clarified for them, other than the *Kaʿba* itself."[50] Thus, in each situation, the direction of the *Kaʿba*, the indicants in question, as well as the direction in which prayers will be performed is unique to this group of prayers and this particular location. By extension, in each case in which the proper outcome is unclear from the revealed indicants, the most favorable outcome that results from *ijtihād* could be entirely novel and unique. What matters, according to Shāfiʿī, is that "[the believers] persist in their efforts (*mujtahidīn*) without deserting God's commands."[51] The ad hoc nature of *ijtihād*, therefore, is justified and made possible by reference to the coherence and centrality of the common moral purpose, namely the persistence in constantly seeking knowledge of the course of action that would constitute obedience to God.

The theory that jurists (1) make no ontological claim about *the law*, (2) should always be striving towards the revelation's moral ideal, and (3) exercise a new instance of *ijtihād* with regards to each new occurrence,[52] largely informs the notion and operation of the process of inferential reasoning (*qiyās*). Shāfiʿi explains that *qiyās*-based knowledge falls short of the level of certainty enjoyed by knowledge induced by indubitable revealed indicants, and yet is more trustworthy than mere speculation.[53] Thus, the ethics of legal reasoning necessitate that *qiyās* functions within two extremes: the self-evident category of explicit divine or prophetic statement (*naṣṣu khabar*), and the unethical category of reasoning that is not grounded in *khabar* at all, which Shāfiʿī refers to as *istiḥsān*.[54] In line with the above analysis, *qiyās* must always strive towards yet never overlap with *khabar*-obtained knowledge. This is evident in Shāfiʿī's assertion that *qiyās* is a process through which the jurist attempts to "face" the ethical ideal of the Quran and the Sunna, which are viewed as "a goal sought-after by the scholar in order to face it, just like a person away from the *kaʿba* faces it [during prayer]."[55] The only ethically prudent manner to find a resolution for a novel case without "losing sight" of the ultimate goal would be to approximate it to a similar case that has already been resolved by *khabar*. A central condition for the validity of this process, according to Shāfiʿī, is for the new case "to raise the possibility of similarity in [at least] two different ways, thus making it necessary to associate it with one case rather than another."[56] This is an important condition because, if a novel case can be associated with an established one in only one conceivable way, this would constitute a case directly resolved by the word of God and the Prophet, and thus would entirely collapse in the category of *khabar*-based knowledge.[57] What is most important to note is the fact that, whether the jurist resorts to *khabar* or *qiyās*, in both cases reasoning would primarily rely on solutions epistemically assigned to specific situations, and not on the systematic application of ontologically definable universal rules. In each unique situation of legal reasoning, the jurist, much like the legal subject, is motivated by the devotional purpose of the whole enterprise of legal reasoning, which is the only constant and coherent element that justifies and binds together instances of reflection and compliance in Shāfiʿī's theory.

50 Ibid., 17.
51 Ibid.
52 As has been repeatedly mentioned, this excludes the widespread cases in which reasoning was based on prior authority.
53 Ibid., 205.
54 Ibid., 219.
55 Ibid.
56 Ibid., 224.
57 Ibid.



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## JAṢṢĀṢ'S *AL-FŪṢŪL FĪ L-UṢŪL*

As I have offered above, Shāfiʿī's theory of legal reasoning exhibited the following three characteristics: (1) legal rulings were seen as entirely epistemological matters; (2) legal rulings were not seen as logically linked together or collectively forming coherent conceptual entities; and (3) the activity of juristic formulation of legal positions was seen as profoundly devotional and fundamentally moral in nature, which constituted the only coherent element binding together epistemological instances of legal pronouncement. In this section, through an analysis of *al-Fūṣūl fī al-uṣūl* of Abū Bakr al-Jaṣṣāṣ, I argue that, in spite of the emergence of more complex logical and epistemological categories that became characteristic of Islamic jurisprudence in its developed form, the basic moral-epistemological framework that we find in Shāfiʿī's *Risāla* continued to inform Jaṣṣāṣ's legal theory.[58]

While Jaṣṣāṣ's concern remained with the regulation of juristic reasoning that leads to the formulation of epistemic legal rulings, his categories focused closely on the methods of acquisition of knowledge and not only the types of knowledge that are generally available to the human mind. This is not surprising given that, by the time of Jaṣṣās, Islamic jurisprudence had evolved into a full-fledged science of legal methodology.[59] The classification of the tools of juristic acquisition of knowledge was introduced by Jaṣṣāṣ in his explanation of the two intertwined and epistemologically foundational concepts of sign (*dalīl*) and cause (*ʿilla*). For Jaṣṣās, a sign is an element that, when contemplated, can help achieve knowledge of the sought-after subject.[60] Thus, a sign in Jaṣṣāṣ's sense is an epistemic element whose entire function consists of guiding human minds

58 For an elaborate account of the role of reasoning in establishing legal rulings, see Anver M. Emon, "Toward a Natural Law Theory in Islamic Law: Muslim Juristic Debates on Reason as a Source of Obligation," *UCLA Journal of Islamic and Near Eastern Law* 3 (2003–2004): 13–27. While my analysis confirms Emon's conclusions regarding the expansive role Jaṣṣāṣ attributes to revelation-independent reasoning, as I discuss below, I believe the claim that reason was seen as fully independent in the process of construction of legal positions should be qualified. The role of revelation-independent reasoning in Jaṣṣāṣ's jurisprudence was further elaborated in Emon's *Islamic Natural Law Theories*. Emon explains that Jaṣṣāṣ held the view that actions prior to (that is, independently of) revelation should be considered permissible, and that some actions are evidently evil with or without revelation, and the status of those cannot change through revelation. He concludes that Jaṣṣāṣ "started from a view of God and nature that allowed him to fuse fact and value in the created world to render reason an authoritative source of law." Anver M. Emon, *Islamic Natural Law Theories* (New York: Oxford University Press, 2010), 49. I suggest that we should consider this, possibly, is too broad a conclusion. On my reading, Jaṣṣāṣ was not offering an apodictic view of what God or nature are like objectively in an absolute sense; rather, he offered a view of what *presumptions* about *epistemic* elements obtained through, among other methods, empirical investigation of the natural world, the jurist could *morally* make in the process of constructing norms. On this reading, Jaṣṣāṣ is not saying that there are values "out there" that we can simply discover (which would still not be the same thing as saying that reason is an "authoritative source of law") but only saying that, in the absence of proof to the contrary among indicants revealed by God, we can *morally*, as jurists, adhere to the *presumption* that actions are permissible by default or to the *presumption* that obviously harmful acts are prohibited. It is an argument in moral-epistemology intended for the purposes of juristic methodology, not an absolute claim about the world. For an extensive study of the question of the status of actions prior to (and independently of) revelation, see A. Kevin Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (New York: State University of New York Press, 1995).

59 Wael Hallaq argues that *uṣūl al-fiqh* did not emerge as a genre until the AH fourth/tenth CE century. Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997), 30–35.

60 In *Lisān al-ʿArab, adalla* and *tadallala* mean "to spread," "to expand." The verb form *dalla* means to assist someone in the direction of something, and *dalīl* is precisely what accomplishes that action: a sign or a guide. If we keep the root in mind, it should be understood that the point of guiding, indicating, helping attain knowledge, is essentially ethical: to reach a state of balance, serenity, and righteousness. Ibn Manẓūr, *Lisān*, 1413–14.



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towards knowledge.[61] For a sign to properly perform this function it has to be generated outside of the mind of the knowing agent, and be communicable to other knowing agents in a manner that raises the potential of leading to the same type of knowledge in their minds. In other words, signs in this sense are epistemic elements that have the potential of being communicated as convincing arguments.[62] Being communicable, it must be noted, does not entail its independence from the state of knowledge of the scholars involved, but only the reliance on accepted linguistic conventions and logical methods. This conception of sign shows us the continuation of the notion that the process of juristic pronouncement on legal matters operated primarily within the scholars' minds. Presenting legal positions as arguments reflected the understanding that those positions were seen as specific to particular jurists or groups of jurists, and their normative possibility was contingent upon their potential for communication.[63]

In addition, Jaṣṣāṣ was indifferent to the idea of an ontological structural coherence of those signs and, consequently, of the legal pronouncements that they induced. Instead, Jaṣṣāṣ established the search for knowledge of God and of action that reflects obedience to God as the central structural backbone of this epistemological system.[64] The absence of an ontologically coherent notion of signs is evident in his assertion that a sign can be "anything in the heavens or earth [that] indicates [the presence of] God."[65] Jaṣṣāṣ's reliance upon an extremely expansive and nonstructuralist notion of sign as a basis for legal knowledge is quite telling. First, we can see that knowledge of God's presence and knowledge of moral action (that is, legal knowledge) in its absolute form are of the same epistemic order. Those are not purely this-worldly matters that are available for absolute control and mastery by human minds, but matters of transcendent moral truth that, at best, can be the object of a deliberate exercise of intellectual exertion that ultimately centers on moral and devotional purposes. Second, this nonstructuralism denies any conception of a sovereign self-justifying law that independently generates reasons for action. The revealed utterances are each treated as

61 Jaṣṣāṣ, *Uṣūl al-Jaṣṣāṣ al-musammā al-fuṣūl fī l-uṣūl* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 2:198. For an example of joining both *dalīl* and *ʿilla* under the rubric of *sabab* (literally, "cause") see Abū Yaʿlā al-Farrāʾ, *ʿUdda*, 182–83. Another common distinction is the one between signs that can lead to certainty (*dalāla*) and those that can lead to probability (*amāra*). See Usmandī, *Badhl al-naẓar*, 8.

62 Jaṣṣāṣ, *Fuṣūl*, 199.

63 The view that legal rulings are arguments was presented most elaborately by Ghazālī, who holds that "articulating meanings in a way that warrants belief or disbelief . . . stems from reason's ability to join the knowledge of two separate entities by attributing one to the other. . . . Jurists call one of them a judgment (*ḥukm*) and the other an object of judgment (*maḥkūman ʿalayh*)." Ghazālī, *Mustaṣfā*, 50–51.

64 A modern formulation of this principle was offered by Khaled Abou El Fadl:

> Each and every human being has a moral obligation or responsibility to seek out and recognize *al-sirat al-mustaqim* (the righteous path) or objective ethical precepts, which are inseparable from divinity itself. The Qurʾan describes the realization or recognition of the path, which includes believing in God, as an act rising out of rational cognition or a matter of common sense. The Qurʾan describes itself as a book of remembrance (*dhikr*), and maintains that its most essential function is to remind people of the reality of Divinity—a reality that includes the presence of God and all that this presence implies. The Qurʾan emphasizes repeatedly that the instruments for realizing or recognizing the truth is cognition (*fikr*), reason (*ʿaql*), and remembrance (*dhikr*). In this context, the truth is Divinity and Divinity is the truth, but, as already mentioned, recognition of Divinity necessitates the recognition of the values that attach themselves to the Divine—values such as justice, fairness, compassion, mercy, honesty, and goodness.

Abou El Fadl, "The Place of Ethical Obligations in Islamic Law," 5.

65 Jaṣṣāṣ, *Fuṣūl*, 199.



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individual indicants whose sole legal function is to move human minds to a state of knowledge of proper thought and action in particular circumstances.

The second concept of epistemological importance that Jaṣṣāṣ introduces is cause (*ʿilla*).[66] The introduction of a notion of causality that, as I discuss below, is entwined with yet separate from the concept of epistemic sign, highlights the significant innovation that Jaṣṣāṣ's theory represents in comparison to Shāfiʿī's. Epistemic cause, Jaṣṣās explains, is "a notion upon whose existence judgment arises."[67] In other words, it is a necessary condition to the rise of a given intellectual position, without which this position would not be justified. An informative analogy that Jaṣṣāṣ provides is illness (literally, *ʿilla*), which is a necessary condition for the appearance of the symptoms associated with it. Similarly, speculative judgments and descriptions arise by virtue of causes without which they would be impossible. Thus, Jaṣṣās establishes that epistemic signs and causes are conceptually distinct. A sign is an indicant that can lead to knowledge through contemplation, which means that sign-based reasoning (*istidlāl*) is nothing but the attempt to reach knowledge through the search for signs. Making a judgment based on cause, on the other hand, amounts to finding the cause that, not only guides human minds to a certain type of knowledge, but effectively gives rise to the phenomenon in question. In that sense, cause would be a particular kind of sign that not only justifies claims to knowledge but has an actual causal connection with the judgment in place.[68]

The introduction of a concept of epistemological cause according to which knowledge is inevitably and consistently obtained in particular situations is a clear departure from Shāfiʿī's theory. However, the development of a general theory for the methods of acquisition of knowledge did not affect Jaṣṣāṣ's assumptions with regards to the devotional nature and purpose of the process of formulation of legal rulings. The overlap between the two concepts becomes clear once Jaṣṣās anchors this methodological classification into an epistemological scale distinguishing certain from dubitable knowledge in a way reminiscent of, but not identical to, Shāfiʿī.[69] Jaṣṣāṣ argues that any kind of reasoning is made either on the basis of causal and noncausal indicators (*istidlāl*) or on the basis of causal indicators alone, which he refers to as *qiyās* in the general, nonlegal sense.[70] Jaṣṣāṣ explains that each of those two methods of reasoning can either be definitive or probabilistic. Thus, the distinction based on the degree of certainty cuts across the categories of methods of acquisition of knowledge. Irrefutable arguments are the ones constructed on the basis of signs and causes that cannot be denied.[71] This category of knowledge reflects a degree of trust in human reason's ability to observe and understand the causal occurrences that surround it without any further aid.

66 I use the rather literal "cause" to denote *ʿilla*, as opposed to the more common "rationale" because my intention is to highlight the technical epistemic role an indicant of the sort plays in the generation of particular forms of knowledge. "Rationale" is often used to liken *ʿilla* to an overarching standard or purpose (usually prudential in nature) from which particular norms can follow. My argument is precisely that pronouncements were not seen to linearly follow from some objective overarching principles or reasons but were constructed on a case-by-case basis using the epistemic tools at hand.

67 Ibid.

68 An example of a general sign would be the claim "it is going to rain because meteorologists said so." This is a sign that justifies knowledge, but it has no causal link with the phenomenon in question. A cause that also works as a sign would be the claim "it is going to rain because I see dense clouds." In that case, clouds function as a cause for rain and, for the same reason, a basis for the knowledge claim that it is going to rain.

69 Ibid., 200.

70 In this typology, the example, offered in note 68, of anticipating rain on the basis of seeing the clouds would constitute a *qiyās*.

71 Jaṣṣāṣ, *Fuṣūl*, 200.



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Jaṣṣāṣ's application of this scheme to the legal sciences, however, reflects a significant similarity with Shāfiʿī's epistemology in matters that pertain to the elaboration of rulings. As we have seen, *ʿilla* in its primary sense is a condition that gives rise to a ruling without interference from a human mind. However, Jaṣṣāṣ maintains that with regards to legal matters, epistemic causes do not immediately and unquestionably give rise to legal knowledge, but do so only by approximation to already known cases. Unlike the general form of *qiyās*, therefore, Jaṣṣāṣ is clear that, in juridical *qiyās*, the epistemic cause functions exactly in the same way as a sign, and not as a necessary logical cause. The ultimate conclusion is that, even though human reason is capable of grasping causal links and constructing definitive arguments on their basis, knowledge of moral action that is designed to conform to revelation is not based on natural, conclusive causes, and thus remains probabilistic. The relevant passage from Jaṣṣāṣ's *Fūsūl* is as follows:

> All causes that we use to reach rulings on novel circumstances were pre-existing, without necessarily giving rise to those new rulings. Those causes were conditions of the established cases, and those conditions were present before the advent of the new ruling, without making it necessary. [Therefore] they are merely the signs and indications of rulings, that one may use to find them, like names indicate the named objects, without entailing them . . . but is merely a sign and indication of a ruling that may indicate this ruling in one case, and not indicate it in another. This is true of the legal causes (*ʿilal al-sharʿ*).[72]

That the ultimate goal of legal reasoning is reaching a particular epistemic state with regards to the case at hand should be evident. The fact, therefore, that Jaṣṣāṣ saw observations about what is good and evil as a "sign" does not necessarily lead to the conclusion that he saw the resulting knowledge as "objective," in the sense that the jurist's pronouncement is *the truth* that exists independently of anyone's knowledge.[73] Rather, Jaṣṣāṣ sees the process of reasoning leading to legal judgment as the constant search for indicators, some of which are non-revelatory, that ultimately lead to contingent knowledge.[74] Jaṣṣāṣ holds that any type of legal pronouncement arrived at by legal reasoning is the result of *istidlāl* that has to be of one of two kinds.[75] If this reasoning is based on "a sign established by God," it is a plain and direct form of *istidlāl*,[76] whereas if this is based on a search for signs elsewhere, it is *ijtihād*. This exertion of mental effort can be made by searching for "causes" (*ʿillal*) in established legal matters, and joining novel ones to them, or through a more general search of indicants that appear to point towards the proper outcome. In both of those situations, the ultimate aim of this process of *ijtihād* by *istidlāl*, whether or not through the recourse to *ʿillal*, is "to establish sufficient conviction [in the truthfulness of this judgment], rather than actually finding a [single] correct conclusion."[77]

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72 Ibid., 201. For a similar view of *ʿilla*, see Ghazālī, *Mustaṣfā*, 527; Juwaynī, *Burhān*, 2:24. A similar distinction between natural and legal causes can be found in Usmandī, *Badhl al-naẓar*, 588. For a modern account of legal judgment as a *dalīl*-based epistemic enterprise, see Wael B. Hallaq, *Sharīʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 82.

73 For an account of the formation of objective knowledge (that is, knowledge that claims independence of the state of knowledge of any particular individual) that relies on the concept of "uniformity of nature" and persistence in time, see Gal Yehezkel, "Objectivity and Natural Laws," *Analysis and Metaphysics* 12 (2013): 116–32. It is clear from the present analysis that Jaṣṣāṣ nowhere claims that legal rulings are universal truths that should apply uniformly at all times.

74 Jaṣṣāṣ, *Fuṣūl*, 201. Emon reaches a different conclusion in that regard. See Emon, "Toward a Natural Law Theory in Islamic Law," 13–27.

75 Jaṣṣāṣ, *Fuṣūl*, 201.

76 Ibid., 202.

77 Ibid., 201–02.



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There is another important implication of this conception of legal causes. According to this view of lawmaking, the causes of legal rulings do not have any structural consistency, and therefore do not result in persistent rules in the ontological sense. In other words, the fact that a given cause gave rise to a particular legal ruling does not mean that a general rule under which new cases can be subsumed simply *exists*. Similarly to Shāfiʿī, the ad hoc nature of legal rulings is linked to their potential application to all categories of occurrences. As was the case with Shāfiʿī, for Jaṣṣāṣ there is also no question of, and no interest in, making apodictic statements about the law as a set of determined abstract rules. It should come as no surprise, therefore, that the assumption of a central, persistent, moral purpose consisting of adherence and devotion to God's revelation operated as the ultimate structural link that justified all instances of reasoning and pronouncement. What legal reasoning consists of, for Jaṣṣāṣ, is a search for clues in order to attain *guidance* on a case-by-case basis, which can potentially occur with regards to any situation with no distinction between legal and nonlegal matters. This is clear from the examples mentioned by Jaṣṣāṣ. These included such matters as the Quranic injunction to pay child support, which should be "amicably determined" (Quran 2:233), and the amount of settlement for divorce which ought to be done in a "satisfactory" manner. In both of those cases, it is left to the human intellect to exert its utmost efforts to determine what would satisfy the standards of "amicability" and "satisfactoriness."[78] Significantly, Jaṣṣās also uses the obligation to face the *Kaʿba* during prayers as an example of *ijtihād*.[79] Any situation in which a devotional concern may be in question is deserving of juristic reasoning and pronouncement, since it is this devotional concern that gives the exercise of legal reasoning its purpose and structural coherence in the first place.[80]

Thus far I have attempted to show that Jaṣṣāṣ's elaborate methodological schemes did not affect his adherence to the conception of juristic legal pronouncement as an epistemological exercise with a devotional end. This profound similarity with Shāfiʿī can be observed in spite of their apparent disagreement with regards to the specific elements that can be incorporated in a valid process of legal reasoning. Jaṣṣās appears to adopt an expansive view of what speculative reasoning is capable of accomplishing by way of finding the correct moral path. This is obvious in his unequivocal assertion that reasoning on matters not settled by divine revelation, although guided by it, takes place independently from it, and according to the methods specific to human speculation.[81] In other words, it is clear that Jaṣṣāṣ, while he shares the view that conclusive knowledge of the law is in the very limited purview of unambiguous revealed verses, does not share Shāfiʿī's insistence that legal reasoning should be narrowly guided by the immediate meaning of revealed utterances. For Jaṣṣāṣ, speculation beyond the decisive language of revelation can incorporate elements of common sense or reasonableness. To illustrate this argument, Jaṣṣās interprets Quran 4:59 "if you dispute a matter return it to God and the prophet" to be a reference to matters for which no definite statement (*naṣṣ*) has been given in the Quran or the Sunna.[82] The apparent meaning (*ẓāhir*) of the verse

78 Ibid., 207.

79 Ibid., 208.

80 An interesting illustration of the principle that all acts driven by faithfulness to revelation are acts of worship regardless of their normative status comes in the writing of Ghazālī, who maintains that "if they said: the judge cannot be required to *worship* (*taʿabbada*) by [knowing] the truthfulness of both witnesses because this is beyond his capacity, rather he must issue a judgment when he believes that they are truthful; we say: he similarly has to face the direction he believes to be the *qibla*, rather than the *qibla* itself. The same applies to the *worship* of the jurist who has to pronounce that the indicant leads to the conclusion if that is what he believes." Ghazālī, *Mustaṣfā*, 526 (emphasis added).

81 Jaṣṣāṣ, *Fuṣūl*, 209.

82 Ibid., 211.



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is that the believers only disagree on matters not settled by the Quran or the Sunna. The justification of the claim that this is the *ẓāhir* meaning, however, is made in a way that clearly departs from Shāfiʿī. Jaṣṣāṣ argues that this is so because, as a matter of observation, it is habitual that disagreements only occur among Muslims on matters regarding which no clear judgment is made by the Quran or the Sunna.[83] This is a significant illustration of an instance in which Jaṣṣās resorts to what is socially common, usual, and obvious in order to interpret what a central revealed sign means. The ultimate conclusion, however, remains similar to Shāfiʿī's: disagreement cannot arise in matters made clear by the Quran and the Sunna, and if it did, it would only signify ignorance.[84] Therefore, both jurists clearly differed as to what would constitute a clear pronouncement, and the manner in which speculative reasoning can morally operate. Nevertheless, their analyses reflect no disagreement on the assumption that juristic reasoning must be geared towards a moral end.

The conception of juristic legal pronouncement as a nonstructural epistemic exertion geared towards a devotional end informs Jaṣṣāṣ's theory of *qiyās* in a way similar to Shafiʿī's treatment of the same concept. He appears to be aware of the tendency to resist the notion of inferential reasoning as a process of continuous intellectual effort rather than a formalistic application of logical steps.[85] This inclination to fixate legal reasoning in structural premises and conclusions is exemplified in Dawūd al-Ẓāhiri's quest, related by Jaṣṣās,[86] for clear points of logical origin or premises (*aṣl*, plural *uṣūl*) and conclusions (*farʿ*, plural *furūʿ*), something that Ẓāhiri believes *qiyās* cannot provide: "tell me about *qiyās*. Is it a premise or a conclusion? If it is a premise, there should be no disagreement in its regard, and if it is a conclusion, then what is its premise?" Jaṣṣās remarks that the question "indicates [al-Ẓāhirī's] ignorance of the meaning of *qiyās*."[87] Jaṣṣās at this point makes explicit the claim that inferential reasoning on legal matters is defined in terms of juristic action, not in terms of a formal structure of reasoning: "*qiyās* is nothing but the action of those involved in reasoning, whose action cannot be called a premise or a conclusion."[88] Ẓāhirī's alleged ignorance notwithstanding, Jāṣṣās is willing to answer a slightly improved question: "if he had said 'tell me about the obligation to approve the exercise of *qiyās* or the permissibility of *qiyās*,' the response would be: '[it stems from the fact that it] has as a justification the Quran, the Sunna and the consensus of the community, as previously shown, and its conclusions are all the cases in which judgment is made by *qiyās*.'"[89] Jaṣṣās then concludes: "we would then ask him 'tell us: why do you assume that a matter can only be either a premise or a conclusion?'"[90] Jaṣṣās thus reinforces the idea that legal reasoning was not conceived of as a mere formalistic derivation of conclusions from their premises, but a

83 Ibid.

84 Ibid.

85 Ibid., 262.

86 Dawūd b. ʿAlī al-Ẓāhirī (d. 884 CE) is known as the founder of the Ẓāhirī school. He advocated strict adherence to the letter of revealed texts and rejected inferential reasoning. For a brief biography and an elaborate bibliography of Ẓāhirī, see Muḥammad b. Isḥāq Ibn al-Nadīm, *Kitāb al-Fihrist* (Tehran: Maktabat al-Asadī wa-Maktabat al-Jaʿfarī al-Tibrīzī, 1971), 271–72. For more on Dawūd's anti-*qiyāṣ* doctrines, see Aron Zysow, "The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory" (PhD diss. Harvard University, 1984), 174–82.

87 Jaṣṣāṣ, *Fuṣūl*, 262.

88 Ibid.

89 Ibid.

90 Ibid. A similar point on the premise-conclusion dichotomy in relation to *qiyās* can be found in Rāzī, *Maḥṣūl*, 2:217–18; see also Fakhr al-Dīn al-Rāzī, *al-Maʿālim fi ʿilm uṣūl al-fiqh*, ed. ʿAlī Muḥammad ʿAwaḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd (Cairo: Muʾassasat Mukhtār, Dār ʿĀlam al-Maʿrifah li-Nashr wa-Tawziʿ al-Kitāb, 1994), 154.



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constant intellectual effort in which logical values and structures are subordinate to the devotional ideal of remaining faithful to the Quran and the Sunna of the Prophet.

As we saw, Shāfiʿī's argument stops at the point of holding that inferential reasoning needs to rely on divinely revealed indicants, and must use the most obvious signs to the scholar's best abilities. Jaṣṣāṣ, on the other hand, extends the valid premises of legal argument to the apparent causes of already established rulings, which can be used to resolve new cases. This expansion must be understood in conjunction with Jaṣṣāṣ's distinction between cause and sign in order for us to see that, in spite of this difference, Jaṣṣāṣ and Shāfiʿī shared the same model of legal reasoning that was ultimately centered on devotional compliance as the only coherent structural element. We have previously seen that, for Jaṣṣāṣ, what appears in revelation as an element causing a given judgment does not act as an effective cause in the process of legal reasoning, but as an indicant like any other. Therefore, it would be a mistake to assume that Jaṣṣāṣ's recourse to a notion of causality in legal reasoning is a reflection of some sort of naturalist position by virtue of which rulings mechanically follow from empirical observations. Rather, Jaṣṣāṣ holds that what appears as a cause in revelation can be used by the jurist as a *sign* to guide him in his quest towards the moral ideal of the law, without its being a decisive justification of a pure ontological nature.

To sum up, in spite of significant differences with regards to the methods of reasoning, Jaṣṣāṣ and Shāfiʿī relied on the same conception of lawmaking that views juristic reasoning as an ad hoc exercise with a moral aim, and viewed this moral aim as the primary reason for which those instances of reasoning and the theories and methodologies surrounding them existed. In the end, the assumption that revelation-independent reasoning can discern the causes of revealed judgments did not lead Jaṣṣāṣ to a notion of *qiyās* in which rulings are derived from universal rules that govern all instances of juristic reasoning. The revealed cause remains a dynamic guide that potentially provides indication to the active scholar with regards to the proper established case to which the new case should be joined.

## AL-QĀḌĪ ʿABD AL-JABBĀR'S *AL-MUGHNĪ FĪ ABWĀB AL-TAWḤĪD WAL-ʿADL*

While al-Qāḍī ʿAbd al-Jabbār took the reliance upon revelation-independent reasoning to new extremes, he still did not conceive of the law as produced by a dynamic juristic reasoning on the basis of revealed indicants as an ontological concept of structural unity. Significantly, in spite of this heightened sense of confidence in revelation-independent reasoning, ʿAbd al-Jabbār defended the ad hoc nature of legal pronouncements on the basis of a clear conception of devotional moral purpose as a central unifying factor in a manner that is more elaborate and explicit than both Shāfiʿī and Jaṣṣāṣ. Overall, ʿAbd al-Jabbār's chapter on legal methodologies titled "*al-Sharʿiyyāt*" (literally, legal matters, or matters of practical conduct) in his encyclopedic *al-Mughnī fī abwāb al-tawḥīd wal-ʿadl* appears designed to address two main concerns. First, he attempted to establish a classification of legal signs on the basis of their epistemic potential. Second, he sought to formulate a general framework for the methods in which legal knowledge can be acquired based on those signs. The supreme premises and starting points of this scheme consist of cosmological-theological postulates as well as rational imperatives that are immediately obvious to the human mind. Thus, the first step in this system is acknowledging God's oneness and justice:

> Speech cannot signify something upon which depends its identification as an indicant in the first place. That would entail the dependence of the premise upon its conclusion, which is absurd … For that reason, [God's]



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> speech cannot indicate his oneness and justice and their implications, since we cannot acknowledge the veracity of [God's] speech before we have established those matters.[91]

It is clear that for ʿAbd al-Jabbār the organization of epistemological elements in a manner that is both logically valid and consistent with law's moral-cosmological premises was a primary concern.[92] However, logical and epistemological validity does not entail ontological uniformity. In fact, in ʿAbd al-Jabbār's theory, similarly to the two previously studied jurists, the value of revealed indicants was strictly limited to their status as potential guides to legal knowledge. Revealed signs were neither sources that create the law, nor sovereign texts that contain the law, but simply indicants that guide human minds to moral knowledge: "It does not matter, therefore, whether the signification [of those indicants] is a judgment, a qualification of its apparent meaning, a specification or a clarification of an ambiguous statement."[93] The exact role of an indicant in the process of production of legal knowledge does not matter, as long as it fulfills its function as indicant. Similarly, it does not matter whether an indicant is valid a priori by virtue of its unique cosmological status (for example, the Quran), or established on the basis of other signs (for example, *qiyās*): "There is no difference between the signs' signification in themselves or by virtue of other signs ... whereby each sign would need another sign to indicate the necessity to act on its basis."[94] What matters is the indicant's ability to move the jurist's mind closer to attaining knowledge that would likely lead to moral action. The ultimate goal of devotion to divine revelation, therefore, persists even in ʿAbd al-Jabbār's highly systematic jurisprudence as the only notable element of coherent structural unity and as a solid justification for the jurisprudential enterprise altogether.

After having explained the role of utterances obtained through God's speech as indicants that lead to the knowledge of proper action, ʿAbd al-Jabbār moves to the following step, namely the determination of the methods through which meaning can be obtained based on those signs. Even though ʿAbd al-Jabbār, unlike Shāfiʿī and Jaṣṣāṣ, adopts a notion of meaning that stems from the intention of the speaker, in the sense that what revealed signs indicate corresponds to what was intended by God, his epistemological position with regards to the juristic comprehension of those signs is also anchored in the notion of apparent meaning:

> God's speech can be general or specific ... understood with further evidence or on its own, and all that applies whether it is an affirmation, a command, or a prohibition ... If all this is true, if a legally competent person who knows the meaning of this speech receives specific speech from God ... it must be taken to mean what its appearance signifies.[95]

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91 Abū al-Ḥasan ʿAbd al-Jabbār al-Asadābādī, *al-Mughnī fī abwāb al-tawḥīd wal-ʿadl*, ed. Taha Husayn (Cairo: Wizārat al-Thaqāfah wal-Irshād al-Qawmī), 17:93.

92 An explanation of ʿAbd al-Jabbār's theory that the rational proof of divine revelation must be established before revealed indicants can be used as evidence is found in Mohd Radhi Ibrahim, "Immediate Knowledge According to al-Qāḍī ʿAbd al-Jabbār," *Arabic Sciences and Philosophy* 23, no. 1 (2013): 112–13. On the centrality of epistemology to ʿAbd al-Jabbār's moral concepts in general, see Kambiz GhaneaBassiri, "The Epistemological Foundation of Conceptions of Justice in Classical *Kalām*: A Study of ʿAbd Al-Jabbār's *al-Mughnī* and Ibn Al-Bāqillānī's *al-Tambīd*," *Journal of Islamic Studies* 19, no. 1 (2008): 71–96. For more on the necessity of reflection for the attainment of knowledge of obligations, see Mariam Attar, *Islamic Ethics: Divine Command Theory in Arabo-Islamic Thought* (New York: Routledge, 2010), 70–75.

93 ʿAbd al-Jabbār, *Mughnī*, 17:87.

94 Ibid., 88.

95 Ibid., 81.



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The reliance on what is apparent to the mind from a linguistic utterance is, for ʿAbd al-Jabbār, a matter that corresponds to the logical order of revelation and comprehension. Since God is perfectly just, it is not possible that he could intentionally disclose matters that would be understood by human minds in one way while intending another.[96] Similarly to Jaṣṣāṣ, but unlike Shāfiʿī, apparent meaning for ʿAbd al-Jabbār encompasses matters that are made reasonable by social context or linguistic usage: "While speech indicates what is apparent from it, it might either indicate what is strictly within its purview, but may also exceed it by virtue of language or custom. Thus there is no difference between the literal meaning (*ṣarīḥ*) and the contextually understood meaning (*faḥwā*) of a statement."[97] Like the previously studied jurisprudents, ʿAbd al-Jabbār adheres to an epistemic conception of the human relationship to legal injunctions, while incorporating a wide range of techniques within the spectrum of methods available to the mind in attempting to reach acceptable legal outcomes. For legal outcomes to be "acceptable," as we have repeatedly seen, they need to stem from an intent to comply with the law's overall devotional purpose.

Thus far, ʿAbd al-Jabbār's classification of juristic indicants and methods reveals a conception of legal reasoning as entirely epistemic and nonstructural.[98] Just like the other jurisprudents we studied, ʿAbd al-Jabbār views *ijtihād* primarily as a devotional act with a moral purpose, and not as a mere mechanical process of deduction. The assumption that some legal knowledge is by its very nature reserved for those who, on behalf of the community of believers, seek to actualize the law's potential through reasoning is described by ʿAbd al-Jabbār as a consequence of the fact that legal reasoning is *itself a moral obligation*: "[legal reasoning] is a task only imposed upon scholars, for it is one of their obligations. Plenty of the branches of legal ruling (*aḥkām*) pertain to the scholars alone ... since, while some of the legal rulings are necessary and acquired, others depend upon probability."[99] This effort to obtain knowledge of legal judgments not readily available is, as this statement clearly indicates, itself an act of compliance with the law's ultimate moral purpose. The kind of legal knowledge known by everyone regardless of their involvement in intellectual effort to reach it, on the other hand, is assumed to be knowledge that no one can reasonably ignore: "The necessary among [those judgments] are imposed upon everyone since this is inevitably known from the Prophet's message."[100] Of course, we should bear in mind that "reasonable knowledge" is a concept that Shāfiʿī and ʿAbd al-Jabbār define in very different terms. Still, like Shāfiʿī, ʿAbd al-Jabbār saw this as a minute part of the entire potential of legal knowledge: "most of it consists of knowledge exclusive to the scholars rather than the common man, who is only a follower in that regard."[101] While the non-jurist is a follower due to the *epistemological* unavailability of some aspects of moral knowledge, both jurists and non-jurists occupy the same order with regards to the need for compliance. Jurists are not producers or discoverers of values and

96 Ibid., 82.

97 Ibid., 86.

98 The notion that all legal concepts are purely epistemic was emphatically put by ʿAbd al-Jabbār's contemporary Ashʿarī rival al-Bāqillānī as follows: "everything (except knowledge itself) that we deal with and define its essence, including the existent and nonexistent, the old and the created, the definition and the defined, the indicant and the indicated, rational and revelational verdicts, their effective cause (*ʿilla*) and proof (*dalīl*), statements and stated matters, are all kinds of knowable matters, and some of the branches of knowledge." Abū Bakr Muḥammad b. al-Ṭayyib b. al-Bāqillānī, *al-Taqrīb wal-Irshād al-Ṣaghīr*, ed. ʿAbd al-Ḥamīd b. ʿAlī Abū Zunayd (Beirut: Muʾassasat al-Risāla, 1998), 1:173.

99 ʿAbd al-Jabbār, *Mughnī*, 17:276.

100 Ibid.

101 Ibid.



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norms, but only legal subjects who have access to a broader realm of knowledge by virtue of their vocation.

Thus, this distinction between scholar and layperson is predicated upon a purely epistemic difference, not a difference in moral status. In fact, ʿAbd al-Jabbār expounds the idea that juristic reasoning is itself an act of *obedience* more extensively and explicitly than either Shāfiʿī or Jaṣṣāṣ. In his polemics against a hypothetical denier of *qiyās*, ʿAbd al-Jabbār finds it necessary to take to the extreme the idea that legal reasoning is an act of compliance by arguing that "being on the right path" is a concept that can only attach to actions of the believers, whether physical or intellectual, and not to abstract concepts:

> It is our position with regards to *qiyās* and *ijtihād* that they belong to the right path (*dīn*). Thus, we reject as ignorant (*istajhalnā*) anyone who asks "how can [reasoning] belong to the right path if it is a mere human act?" This man thinks that the right path cannot be obtained by the action of a legal subject, while ignorant of the fact that it can *only* obtain through the actions of the legal subject (*mukallaf*), just as obedience is nothing but the legal subject's action.[102]

ʿAbd al-Jabbār is very clear about the notion that making legal-moral pronouncements on the basis of legal reasoning is, in itself, an act of legal compliance to revelation's devotional purpose. However, being an act of devoutness does not theoretically preclude the possibility that it could act as a mediator between two separate and definable realms of norm and fact. ʿAbd al-Jabbār is quick to reject this possibility. For ʿAbd al-Jabbār, human reasoning is not only the point of departure in the logical scheme of legal indicants, as described above, but also the only way through which the law becomes actualized and followed. In brief, there is no such concept as law in a pure and abstract form: "[This hypothetical dissenter] also thought that the jurist's action cannot give rise to knowledge of legal judgments. That is great ignorance. A scholar knows the judgments in both legal methods (*uṣūl*) and in substantive law (*furūʿ*) using his thought and speculation."[103] Employing the methods of *uṣūl al-fiqh* is not a neutral act of discovery or extraction of rules, but a *moral* action in its own right that brings about legal rulings.

Reasoning is the only way of turning the potential of divine law into a human actuality that is comprehended and followed. However, as confident in the potential of revelation-independent human reason as ʿAbd al-Jabbār may have been, he emphasized the centrality of the ethical requirement of ensuring that legal reasoning remains focused on legal indicants revealed by God: "An object of speculation is required. If [our opponent] thinks that we allow *qiyās* on the basis of desire and whim alone, he is an ignorant. We only allow *qiyās* based on sign (*dalīl*) and indication (*amārah*)." As committed as he was to the employment of refined logical models of reasoning, ʿAbd al-Jabbār maintained that, ultimately, performing proper legal reasoning is a matter of morality. Legal reasoning, being as we saw the realm within which the law becomes actual, is inevitable even in situations in which the jurists claim that there is only a single possible meaning to the sign in question. Therefore, since "the law" in itself has no means of ensuring its own interpretative

102 Ibid., 279 (emphasis added). For more on the attainment of legal rulings through human action, see Usmandī, *Badhl al-naẓar*, 588.

103 ʿAbd al-Jabbār, *Mughnī*, 17:279. The view that all legal rulings, including definitive ones, are the result of a process of reasoning, is clearly explained by Usmandī: "opinion is a conviction or belief attained through reasoning or reflection on the basis of a rational evidence or indecisive sign. What is *attained through investigation (istidlāl) on the basis of a clear or ambiguous text* is not called an opinion." Usmandī, *Badhl al-naẓar*, 596. See also Abū Bāqillānī, *Taqrīb*, 1:172.



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dynamics, the commitment of jurists to the moral ideals that govern legal reasoning is the only way to ensure the validity of this process:

> There is no way available for the various scholars other than [thought and speculation], for often they base judgments on signs that they claim only have a single meaning. Therefore, their thought and reflection must be considered an act of obedience, and must depart from mere desire and whim. The same applies to *qiyās* and *ijtihād*. Thus, imposition of obligation is only conceivable when there is legal reasoning based on signs.[104]

ʿAbd al-Jabbār's attribution of a wider scope of possibility to revelation-independent reason is reflected, among other things, in his minimization of the scope of probabilistic knowledge, including that which is obtained by *qiyās*. For ʿAbd al-Jabbār, there is a wide variety of cases and methods in which revealed signs immediately indicate the proper legal judgment. These should not be confused with the knowledge that is necessarily acquired by all believers. Knowledge obtained by revealed indicators belongs to the category of knowledge reserved for those who engage in reasoning on the basis of those indicators: "methods of acquisition [of legal knowledge] are diverse. Some are signified by the Quran, some signified by the Sunna, some are inferred from those two, since the ways in which they signify legal judgments are diverse."[105] Beyond this category, ʿAbd al-Jabbār adopts the view elucidated above in relation to Shāfiʿī and Jaṣṣāṣ that exertion of intellectual effort in search for signs can lead to probabilistic legal knowledge: "some [knowledge] is obtained by mere probability, which is *ijtihād*, in which case we can only say that all struggle to obtain knowledge is valid as long as it is done in the proper methods of *ijtihād* and fulfills its conditions."[106]

The specific method of performance of *ijtihād* is *qiyās*, which ʿAbd al-Jabbār takes to higher levels of systematization compared to Jaṣṣāṣ, and, *a fortiori*, to Shāfiʿī. Nevertheless, ʿAbd al-Jabbār remains faithful to the view that *qiyās*, as logically systematic as it may be, is ultimately an epistemic process aimed at approximating the outcome of a novel case to an established one as much as possible. ʿAbd al-Jabbār pushes Jaṣṣāṣ's argument on causation a step further by assuming an exact identity between legal reasoning employing techniques of *qiyās* with logical reasoning in matters of natural sciences: "the methods of legal *qiyās* do not differ in their form from the methods of speculative *qiyās*."[107] It is of utmost importance, however, that while ʿAbd al-Jabbār insists on the employment of the logical methods of the natural sciences in legal reasoning, he is also clear about the fact that the validity of those methods in legal matters does not stem from their correct form alone, but from the attempt to approach the judgments that are clearly provided by revelation. Thus, he illustrates legal *qiyās* with the following example: "we know that it is prohibited to have sexual relations after divorce. If we reflected upon [other situations] we would find that they resemble divorce, and would therefore make the same pronouncement in their regard, if we can find a sign for this."[108]

It is clear that ʿAbd al-Jabbār, unlike Jaṣṣāṣ, treats the *ʿilla* of a given ruling as a proper cause. Just as one provides for his children with a specific amount based on his general observation of prices and needs experienced in his own life,[109] one takes grape wine to be prohibited on the

104 ʿAbd al-Jabbār, *Mughnī*, 17:279.
105 Ibid., 277.
106 Ibid.
107 Ibid., 280.
108 Ibid., 281.
109 Ibid.



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basis of its intoxicating effects given that the same effect led to the prohibition of date wine.[110] This, however, does not mean that, for ʿAbd al-Jabbār, intoxication effectively renders grape wine prohibited with no intervention from the jurist. The pronounced reliance on the notion of causality here only reflects a methodological aspect of human reasoning, rather than an ontological claim about the law. While ʿAbd al-Jabbār does in fact place great emphasis on the employment of proper thinking methods that are rationally acceptable and organized, he also maintains that the ultimate test for the propriety of legal reasoning is not its formal features alone, but its compliance to the ethical standards of the law. While some cases of obvious similarity may warrant great confidence in the process of *qiyās* (the intoxication of different types of wine is a case in point), *qiyās* remains a method of *ijtihād*, which, by its very definition, is an effort aimed towards the acquisition of probabilistic knowledge. As explicitly stated by ʿAbd al-Jabbār, all instances of *ijtihād* are nothing other than acts of compliance with the devotional imperative of revelation.

## CONCLUSION: DEVOTIONAL PIETY AND REASONS FOR ACTION

By analyzing three of the earliest extant Muslim attempts to theorize the exercise of juristic pronouncement of legal rulings, I have attempted to demonstrate that, in spite of significant developments in logical and theological complexity, as well as divergent views with regards to what qualifies as a valid argument, there were profound common assumptions that remained present in the work of those jurists. Those intertwined common features of early Islamic jurisprudence can be summarized as follows: (1) juristic rulings on matters of compliance with God's revealed law, and the processes leading to them, were conceived of in purely epistemological terms; (2) the scholarly enterprise of formulation of legal rulings based on revealed indicants was free of any unified conception of law as a this-worldly ontological matter; and (3) this effort was driven by the presumed desire to be as faithful as humanly possible to the divine moral order, and this common devotional purpose constituted the only coherent element that tied together various instances of legal reasoning and pronouncement.[111] It must be reiterated that those conclusions

110 Ibid., 280. A similar discussion of the manner of operation of *ʿilla* can be found in Usmandī, *Badhl al-naẓar*, 590.

111 It is noteworthy that the same view was advanced in a prescriptive rather than analytical context by Khaled Abou El Fadl, who argued that, in the context of Muslims in the modern state "given the purpose of Islamic law, Muslims should not treat the technical legal determinations of Islamic law as the objective truth of God. In this context, I assume that the God-given truth is by nature objective in that it is unconditional, unwavering, absolute, and eternal. Meanwhile, human beliefs and judgments, regardless of how firmly and absolutely they may be held or asserted, are by nature subjective in that they are relative, conditional, and imperfect." Abou El Fadl, "Place of Ethical Obligations in Islamic Law," 2. Abou El Fadl, based on this prescription, argued that "those [divine] objective moral principles are subjectively realized and understood. Islamic law attempts to subjectively implement those objective principles, and thus, there is no moral duty to obey the subjectively based Islamic law." This is a very interesting argument, albeit pertaining to a question that is slightly different from the one presented in the present article. My analysis has shown that, in the classical legal theory of the jurists studied in this essay, jurists and non-jurists alike were seen to be bound to a central devotional aim, which Abou El Fadl refers to as divine and "objective." His view is that, at a horizontal level, legal subjects have no independent obligation to obey *specific* injunctions formulated by jurists because any such injunction is agent-specific and limited. Abou El Fadl's characterization of pronouncements as "subjective," with minor variation in terminology, is largely in line with my findings with respect to the classical theory, although his prescriptive propositions to modern Muslims are outside of the scope of the present study. Abou El Fadl himself appears to admit the fact that his observations, while formulated as prescriptions to modern Muslims, are largely in line with the classical theory: "the purpose of this essay, while ironically not original by traditional standards, is novel by modem standards." Ibid., 4.

are based on an analysis of theories pertaining to a specific type of legal reasoning, namely absolute *ijtihād*. The manner in which this conception of juristic reasoning changed in conjunction with the evolution of the schools of law as self-organized communities of jurists is beyond our scope. Be that as it may, I hope that this analysis has made it sufficiently clear that it was *conceptually* possible to elaborate a system of social regulation that does not conceive of itself as a distinct and unified social entity, but as a collective effort to follow as faithfully as possible a transcendent ideal.[112]

The depth and consistency of this moral-epistemological conception of legal pronouncement in those early theories demonstrate that it played a crucial role in defining the way in which jurists understood the exercise of legal reasoning in relation to the quest for compliance with divine revelation. The utter lack of a coherent conception of law as a distinct ontological phenomenon suggests that social regulation was understood by those jurisprudents in a manner radically removed from the dominant models in contemporary jurisprudence. In modern law, I argue, some coherent ontological concept of law is necessary to claim the possibility of generation of reasons for action and the potential for social regulation. By contrast, if the positions that early Muslim jurists took with regards to questions of law were seen as nothing but fallible ad hoc opinions on individual cases, the establishment of a functional system that guided human behavior must have followed very different conceptual designs. The answer, I believe, lies in the structural centrality of the devotional purpose to this otherwise nonstructural juristic activity. As we have seen, faithfulness to the divine moral order was arguably the only element that linked together the otherwise ad hoc pronouncements of jurists. A transcendent moral purpose, understood not as a fixed code of conduct, but as the existential necessity of compliance with the moral designs of the universe as intended by its Creator (that is, as worship), constituted the prime matter of ontological coherence in that system. This moral order, however, is not knowable by human minds in an absolute manner. The best that humans can aim for is to exert their best intellectual efforts to reach knowledge of the proper ways to remain faithful to such order.[113]

As I have shown through this analysis, making the claim that a ruling represented the utmost possible degree of certainty that human minds ideally put together can attain is not equivalent to saying that a ruling is objective, in the sense that it exists in that particular form regardless of the state of juristic knowledge. Rather, those rulings represented the jurists' epistemological contribution to a collective effort to constantly approach, but never attain, the perfection of divine morality. In this system, it was the ascription of coherent ontological status to a transcendent moral order that granted the status of reason for action to the purely epistemological enterprise of legal reasoning.[114] Juristic legal pronouncements created reasons for action by virtue of their being the best humans can do to meet the pressing imperative of remaining faithful to the morality that was considered to be at the heart of all existence.[115] Since this collective intellectual striving offered believers the best chance they had at attaining righteousness, it only stood to reason that

112 The view that reflecting about God's revelation is an act of worship was in fact a matter expounded in works of theology. For example, see Muḥammad b. al-Ṭayyib al-Bāqillānī, *al-Insāf fī mā yajibu ʿtiqāduh wa-lā yujawaza al-jahl bihi* (Cairo: Maktabat Nashr al-Thaqāfah al-Islāmīyah, 1950), 79.

113 This, precisely, is what is meant by Islamic jurisprudence as a "moral epistemology." See Edward Omar Moad, "A Path to the Oasis: *Sharīʿah* and Reason in Islamic Moral Epistemology," *International Journal for Philosophy of Religion* 62, no. 3 (2007): 135–48.

114 For an account of *ijtihād* as exertion of the scholar's best intellectual efforts, see Zysow, "The Economy of Uncertainty," 459–83.

115 The problem of seeing legal formulation through the lens of the narrow dichotomy of either arbitrarily creating or mechanically discovering the law was aptly identified by Emon, "Toward a Natural Law Theory in Islamic Law," 4.



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the outcome of this process was regarded as generative of normative propositions. As a matter of practical rationality, legal rulings did not derive their normative potential from their being presented to the legal subjects as propositions that happen to represent *the law*, but as the learned opinion of certain jurists who, like the legal subjects, happen to share the same aim of dedication to a certain moral-cosmological worldview. Unlike modern legal systems in which a multilayered system of principles is believed to self-sufficiently generate normative propositions understood as *the law*, the early Muslim conception of juristic lawmaking claimed no internal self-sufficiency with regards to the production of normative claims. The validity of *ijtihād* as a system of production of norms in which a group of scholars undertook an epistemological task on behalf of their communities depended upon no less than the collective acceptance of a particular cosmological view of the source of all existents, a view that, by its very nature, warranted a corresponding moral stance with regards to how to conduct one's life in accordance with this cosmology. Thus, not only was the exercise of legal reasoning driven by moral considerations, the whole juristic quest for legal knowledge would have been utterly meaningless without this particular moral cosmology.

While the argument that Islamic legal theories can be viewed as theories of ethics has been systematically advanced in the past,[116] it is fairly recently that the normative role of the moral purpose of Islamic legal thought has been highlighted.[117] Those recent theses emphasized the role that moral-devotional motivations played in the functioning of *sharīʿa* as a social system from a historical and anthropological standpoints. Although it is beyond this article's purpose to attempt to establish any kind of causality between those historical accounts and the present conceptual claim, the similarity is unmistakable. Those studies, which focused on the practical dimensions of legal dealings, such as those reflected in court records, attempted to challenge the view that the lack of distinction between legal and moral matters in Islamic law was a sign of immaturity by positing that it is precisely the moral dimension of the system that gave it its normative power. This essay claims, by contrast, that several of the early theorists of Islamic law effectively succeeded in formulating theories of and law-making in which devotional purposes were conceptually indispensable for those theories' ability to claim any sort of normative potential. While it is quite certain that those premodern jurisprudents were not involved in any form of descriptive sociological analysis

116 For example, the claim that Islamic legal theories must be seen as Islamic ethics has been elaborately made in A. Kevin Reinhart, "Islamic Law as Islamic Ethics," *Journal of Religious Ethics* 11, no. 2 (1983): 186–203. This view was adopted by John Kelsay, who argued that al-Shāfiʿī was "a pivotal figure in Islamic ethics." John Kelsay, "Divine Command Ethics in Early Islam: Al-Shafiʿi and the Problem of Guidance," *Journal of Religious Ethics* 22, no. 1 (1994): 101–26. More to the point, the argument that *uṣūl al-fiqh* is a "moral epistemology of obligation" was directly made by Moad, "A Path to the Oasis."

117 This conclusion was reached by Leslie P. Peirce in *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003). The same view was formulated in Wael Hallaq's historical account of the development of the *sharīʿa* in emphatic terms: "It turns out that Islamic law's presumed 'failure' to distinguish between law and morality equipped it with efficient, communally based, socially embedded, bottom-top methods of control that rendered it remarkably efficient in commanding willing obedience and—as one consequence—less coercive than any imperial law Europe had known since the fall of the Roman Empire." Hallaq, *Sharīʿa*, 2. Hallaq most recently elaborated on this argument in an explicitly comparative context. See Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 110–35. On the question of the nature of legal reasoning, Hallaq's historical findings also coincided with what this essay attempts to argue from the standpoint of legal theory: "God did not reveal a law but only texts containing what the jurists characterize as indications (or indicants: *adilla*). These indicants guide the jurist and allow him to *infer* what he thinks to be a particular rule for a particular case at hand. And since each qualified jurist (*mujtahid*) employs his own tools of interpretation in undertaking the search for God's law, his conclusions may well differ from those of another." Hallaq, *Sharīʿa*, 82.



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in the manner common in modern jurisprudence, it is also the case that they conceived of the nature of juristic reasoning that leads to the pronouncement of legal rulings in a manner that coincides with the picture of legal compliance in premodern Muslim societies as presented by recent anthropological and historical research. The exact connection between those two accounts, however, is a matter that would require another study. In any event, we would be gravely mistaken to dismiss considerations of piety as irrelevant to the juristic methods and concepts of early Islamic thought. As we have seen, faithfulness to a particular moral cosmology was not a contingent matter, but, at least as far as those early theories of absolute *ijtihād* were concerned, was structurally indispensable for the operation of the law as an effective system of regulation.

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