

On Reading Shāṭibī in Rabat and Tunis

Ebrahim Moosa

University of Notre Dame

The ethical turn in Islamic jurisprudence known as the “*maqāṣidī* turn” has captured the imagination of many twentieth and twenty-first century practitioners and writers on Islamic law. Few places can rival debates related to “the purposes of the Sharī‘a” than North African thinkers, scholars and philosophers who have spilt much ink on this topic for more than a century in order to provide blueprints for the reconstruction and reform of Muslim moral philosophy. They range from Muḥammad al-Ṭāhir bin ‘Āshūr (1879–1973) of Tunisia to ‘Allāl al-Fāsī (1910–1974) of Morocco in the nineteenth and twentieth centuries to the contemporary Aḥmad al-Raysūnī (b.1953). Several others have voiced their opinion and support for this new way of interpreting Islamic law. But the debate on the purposes of the Sharī‘a has also enjoyed a trans-regional dimension as thinkers from Egypt, Syria, Iraq, Lebanon and those from the Indo-Pakistan subcontinent periodically weighed in along with scholars based in Europe and North America whose voices approve, disapprove or exhibit caution on this trend. Recently, however, philosophers have engaged Shāṭibī to and this chapter will address their take on the topic.

Shāṭibī’s book *Al-Muwāfaqāt fī uṣūl al-Sharī‘a*, *The Reconciliation of the Fundamentals of the Sharī‘a*, according to some accounts, was brought to the attention of the larger reading public by the Egyptian reformer Muḥammad ‘Abduh. The latter was intrigued to discover scholars at the Zaytuna mosque-university in Tunis reading such an interesting text. ‘Abduh was so impressed by the innovative thinking of the fourteenth century jurist from Granada in Muslim Spain, Abū Ishāq al-Shāṭibī (d.1388) that he personally carried a copy to Cairo. One of ‘Abduh’s disciples, Dr ‘Abd Allāh Darāz, a graduate of the al-Azhar who undertook graduate studies at the Sorbonne in Paris edited and published *Muwāfaqāt*, a task that posthumously allowed Shāṭibī to emerge from the shadows of obscurity.

Due to Shāṭibī’s own lofty scruples and ascetic qualities he made many enemies during his lifetime. But his legacy outlived his critics and he continues to transfix and inspire a global Muslim scholarly audience. His detailed elucidation of the theory of knowledge underlying a value-based approach to law found some echo with the needs of modern Muslims. Not only does a burgeoning scholarship now adorn Shāṭibī’s name but some Muslims view him as an unclaimed “renewer” of the spirit of the times (*mujaddid*) whose ideas found a fit with modern projects of social, intellectual and religious reform (*iṣlāḥ*) in Muslim thought.

Not only jurists but philosophers too at Muḥammad V University in the city of Rabat, Morocco have shown interest in Shāṭibī's writings. He features in a two decade-old spirited debate among North African scholars on the reconstruction of Muslim thought, especially the philosophical, historical and religious dimensions of how to renovate and energize a complex Muslim legacy and tradition (*turāth*). Their efforts have yielded uncanny insights and sparked earnest debates in scholarly circles around the Arab and Islamic world. While some orthodox scholars (ʿulamā) regularly apply Shāṭibī's insights in their rulings, how contemporary Muslim philosophers rework Shāṭibī's ideas have been less well studied.

A good place to begin with is Muḥammad ʿĀbid al-Jābirī (1936–2010), a philosopher-historian trained at Muḥammad V University whose writings spawned a minor canon of philosophical literature. His influential quartet generically called *Critique of Arabic Reason — Naqd al-aql al-ʿarabī* include titles such as the *Formation of Arabic Reason-Takwīn al-ʿaql al-ʿarabī*, *Construction of Arabic Reason — Binyat al-ʿaql al-ʿarabī*, *Arabic Political Reason-al-ʿaql al-siyāsī al-ʿarabī*, *Arabic Ethical Reasoning — al-ʿaql al-akhlāqī al-ʿarabī*. Challenging some of Jābirī's ideas is the Sorbonne-trained Ṭāhā ʿAbd al-Raḥmān, a leading Moroccan philosopher of language and ethics who also taught at the same university where Jābirī spent his career.¹

Of the two philosophers, Jābirī was for a long time the premier pan-Arab intellectual interlocutor who penned lengthy tomes that analyzed the crisis of Arabo-Islamic thought. Jābirī engages in meta-critique and invested a herculean effort in order to deconstruct the epistemological foundations of Arabo-Islamic thought. He is now famed for identifying and explaining how three forms of reasoning became embedded in Muslim culture and thought over the centuries. In his hierarchical scheme demonstrative reason (*burhān*) of the philosophers is at the top of the food chain. This is the kind of reason he favored and wished it had prevailed in Muslim thought for it contained, in his view, the seeds for the flourishing of Muslim civilization. To his great regret it was largely explicatory reasoning (*bayān*) that prevailed in the Muslim discursive tradition. *Bayān* to Jābirī's mind was a reductive, mechanical and a form of closed hermeneutical reasoning that was made popular by legions of Muslim jurists, theologians and grammarians. To Jābirī's mind mystical intuition (*ʿirfān*), the kind of reasoning advanced by mystics and some philosophers was the most damaging to the construction of Islamic thought and society. He was relentless in his critique of Persian philosophical, theological and mystical influences that in his view fatally wounded Arabic thought.

In Jābirī's view Shāṭibī was among a quartet of exemplary scholars who tried to reconstruct the epistemological edifice of Arabo-Islamic thought on stronger rational foundations. Given Jābirī's preference for demonstrative rational arguments he enthusiastically identified with his heroes from Muslim Spain, in what he called the Andalusian

¹ Ṭāhā ʿAbd al-Raḥmān, *Tajdīd al-manhaj fī taqwīm al-turāth*, 3 ed. (Casablanca: al-Markaz al-Thaqāfī, 1994).

resurgence. A reader will not miss a certain regional bias in the analysis given the proximity of Muslim Spain to the Islamic West, the Maghrib. The quartet was the jurist Ibn Ḥazm, the jurist, theologian and philosopher Ibn Rushd, the grammarian and legal theorist Shāṭibī and the polymath and historian Ibn Khaldūn.² What all four shared in common, argued Jābirī, was an epistemological edifice carrying the imprints of Ibn Ḥazm and Ibn Rushd, what he called the “Hazmi-Rushdi effect.”³ Each one of his four exemplars attempted to refurbish their respective disciplines by overhauling the knowledge foundations, epistemology, in order to find more convincing arguments. So, for instance, Ibn Ḥazm labored on the law front just as Ibn Rushd during his time crafted a new rational theology, while Shāṭibī remade legal theory and Ibn Khaldūn rewrote history, all striving to craft a better rational foundation for the discipline they engaged.⁴ These thinkers from the Islamic West especially says Jābirī preferred demonstrative rationality (*burhān*) drawing on Ibn Rushd’s clarion call and epitomized in his statement: “Whoever dismissed causation has also dismissed knowledge.”⁵

Just as Ibn Ḥazm unleashed his fusillade of frustration at the unreliable deductive reasoning (*bayān*) favored by the jurists who preceded him, so did Shāṭibī also express his frustration at the absence of categorical foundations in the discipline of legal theory. Shāṭibī was in search of what he called the “universal postulates of the Sharī’a.” Shāṭibī was in awe of arguments supported by natural reason, not Greek modes of reason. With that desideratum in mind he reconfigured Muslim legal theory (*uṣūl al-fiqh*) by building on the work of predecessors but crafting an elegant theory of moral purposes (*maqāṣid*) of the law. Shāṭibī attempted to displace the hermeneutical deductive reasoning of previous jurists by seeking to replace them with modes of reasoning that he deemed to be universal principles. However, Jābirī had to concede, that both Ibn Ḥazm and Shāṭibī, were not entirely averse to the closed-system of deductive reasoning prevalent among jurists, otherwise their work would not have made sense to their colleagues during their time. In other words, while they did engage in deductive reasoning in Islamic law, they nevertheless *aspired* to displace it with something better as part of a work-in-progress.

Yet, Jābirī’s four exemplary thinkers were distinctive from their peers in so far as they tried to bridge the closed hermeneutic or explicatory reasoning (*bayān*) of the jurist-theologians with the demonstrative reasoning (*burhān*) of the philosophers. Why were these thinkers so keen to keep knowledge of religion within the bounds of the

² Muḥammad ‘Ābid al-Jābirī and Mohammed ‘Abed] [al-Jabri, *Arab-Islamic Philosophy: A Contemporary Critique*, trans. Aziz Abbassi (Austin: Center for Middle Eastern Studies, University of Texas at Austin, 1999), 63–107.

³ Muḥammad ‘Ābid al-Jābirī, *Binyat al-‘aql al-‘arabī: dirāsah taḥlīliyah naqdīyah li-nuẓum al-ma‘rifah fī al-tbaqāfah al-‘arabīyah*, 6 ed., Naqd al-‘aql al-‘arabī 2 (Beirut: Markaz Dirāsāt al-Waḥdah al-‘Arabiyah, 1986), 536.

⁴ Muḥammad ‘Ābid al-Jābirī, *Al-‘aql al-akblāqī al-‘arabī: dirāsa taḥlīliya naqdīya li nazm al-qiyam fī al-tbaqāfa al-‘arabiya* (Beirut: Markaz Dirāsāt al-Waḥdah al-‘Arabiyah, 2001), 598; al-Jābirī, *Binyat*, 536.

⁵ al-Jābirī, *Binyat*, 536.

reasonable? One can speculate. Perhaps they thought knowledge had to sustain ethical postulates, which could best be attained with persuasive forms of reasoning. Jābirī does not comment whether in his view the pioneers of the Andalusian resurgence succeeded in making an impact on displacing explicatory reasoning or modifying it. The answer must be in the negative since explicatory reasoning has prevailed in subsequent centuries.

Furthermore, Jābirī's polarized thinking of pitting the Muslim West (Maghrib) against the Muslim East (Mashriq) is exaggerated and is prefigured to produce a Western/Maghribi triumphalism.⁶ It is a rather hollow triumphalism if one were to take the story of the jurisprudence of moral purposes (*maqāṣid*) championed by Shāṭibī as an example. While Jābirī does acknowledge the contribution of Juwaynī, Ghazālī, and later 'Izz al-Dīn Ibn 'Abd al-Salām to the jurisprudence of moral purposes which finally culminated in the writing of Shāṭibī, it is ironic that Jābirī hardly gives any significant credit to the early influences.⁷ All of those thinkers came from the Muslim East and Jābirī had identified their epistemic frameworks as being poisoned by deductive reasoning and eastern mysticism. And while he credits Ibn Rushd and Ibn Ḥazm for the new inspiration to Western Islam, Shāṭibī hardly refers to Ibn Rushd, save once, but he made copious references to Juwaynī and Ghazālī. This is not meant to be a polemical gesture but only to give some push-back to Jābirī's questionable and sometimes excessive claims.

Yet, it will be an error not to acknowledge Shāṭibī's genius and originality in reconstructing the jurisprudence of moral purposes on a grand scale. Shāṭibī's major goal was to put Muslim jurisprudence on a sound epistemological foundation. His strategy was to rinse out all extraneous debates that were unrelated to jurisprudence proper and to craft sound epistemological principles based on certainty.

Another a Moroccan scholar, the philosopher Ṭāhā 'Abd al-Raḥmān continues Jābirī's fascination with Shāṭibī, albeit in a slightly different register.⁸ If Jābirī viewed Shāṭibī as pushing juristic thought in the direction of demonstrative reason, then 'Abd al-Raḥmān reads Shāṭibī's main contribution to be in the realm of epistemological coherence of Arabic-Islamic thought. Shāṭibī, in 'Abd al-Raḥmān's view, draws on sources internal to the Muslim tradition yet he is not closed off from external promptings, in order to design a more robust epistemological framework. 'Abd al-Raḥmān calls Shāṭibī's effort an "internal epistemological imbrication—interconnectedness or meshing" (*al-tadākbul al-ma'rifi al-dākbihi*).⁹ He identifies two kinds of epistemological imbrication or meshing: trivial (*ibtidhālī*) and procedural (*ijrā'i*).¹⁰ Shāṭibī's own words

⁶ For a critique of Jābirī see Jūrj Ṭarābīshī, *Waḥdat al-'aql al-'arabī al-islāmī*, al-Ṭab'ah 1. ed., Naqd Naqd al-'aql al-'arabī (Beirut: Dār al-Sāqī, 2002).

⁷ See 'Abd al-Majīd al-Ṣughayyar, *Al-fikr al-uṣūlī wa-ishkālīyat al-sulṭa al-'ilmīya fī al-islām: qirā'at fī nashb'at 'ilm al-uṣūl wa-maqāṣid al-sbarī'a*, 1 ed. (Beirut: Dār al-Muntakhab al-'Arabī, 1994), 494 fn 31.

⁸ 'Abd al-Raḥmān, *Tajdīd al-manhaj fī taqwīm al-turāth*, 93.

⁹ Ibid.

¹⁰ Ibid., 94.

best illustrates his rejection of trivial epistemological imbrication. “Any topic discussed in legal theory (*uṣūl al-fiqh*) that does not serve as a basis for the [generation] of secondary rules (*furūʿ fiqbīya*) or [advancing] an excellence of the revealed law (*ādāb sbarʿiyya*) or assists in these matters, then its place [in the genre] of legal theory is futile.”¹¹ So Shāṭibī streamlines legal theory, which is Muslim moral theory proper, and excludes all that he deemed extraneous debates, such as matters dealing with language, grammar, logic and philosophy from consideration in legal theory.

ʿAbd al-Raḥmān favors Shāṭibī’s knowledge project because it boosts a cumulative epistemology. Shāṭibī’s innovation is to argue that individual verses of the Qur’an or reports from the Prophet might only amount to probable strength in epistemic authority. But if these verses and reports are bundled then their cumulative reading can indeed result in epistemological certainty. In order to achieve this goal, Shāṭibī developed a fine-grained hermeneutic. He collected a variety of strands of prophetic reports (*ḥadīth*) on a particular topic, in order to eliminate, evaluate and weigh the cumulative message of the collection of reports on a particular topic. This allowed him to assess the total package of teaching and then adjudicate it as certain or in lesser degrees of certainty. Similarly, Qur’anic verses, Shāṭibī argues, should be viewed in a spectrum of Meccan and Madinan verses; the former represent universal claims whereas the latter are elaborations and refinements of the Meccan verses. Similarly, Shāṭibī works from certain cultural assumptions of culture and language that supported the Muslim revelation in history.

Among contemporary scholars ʿAbd al-Raḥmān is perhaps one of the first to do a fairly rigorous and at times radical re-reading of Shāṭibī’s project of the moral purposes of the law and offers several methodological interventions.

Re-Reading Shāṭibī: Ṭāhā ʿAbd al-Raḥmān

Theorists of Islamic law, experts in *uṣūl al-fiqh*, have devoted considerable time, energy and resources in order to grasp the rules, assessments and judgments of the law known as *ahkām*, ʿAbd al-Raḥmān complains. But, he argues, they have rarely paid attention to what it means to call something the purposes of the Sharīʿa.¹² His re-reading of Shāṭibī and intervention centers around four critical points. ʿAbd al-Raḥmān views:

1. discourses of “moral purposes” (*maqāṣid*) as Muslim moral discourse proper (*ilm al-akhlāq al-islāmī*).¹³

¹¹ Abū Ishāq al-Shāṭibī, *Al-muwāfaqāt fī uṣūl al-sharīʿa*, ed. ʿAbd Allāh Darāz, 4 vols vols. (Beirut: Dār al-Maʿrifā, n.d.), 1:42.

¹² Ṭāhā ʿAbd al-Raḥmān, “Mashrūʿ tajdīd ʿilmī li mabḥath maqāṣid al-sharīʿa,” *al-Muslim al-muʿāshir: special issue, maqāṣid al-sharīʿa* 26, no. 103 (1422/2002): 41.

¹³ Although ʿAbd al-Raḥmān does discuss the difference between ethics and moral, he does not really clarify whether he accepts the distinction, therefore I have translated *akhlāq* as morals, see *Suʿāl al-akhlāq: musābama fī al-naqd al-akhlāqī lilḥ-ḥadātha al-gbarbīya*, al-Ṭabʿah 1. ed. (Casablanca: al-Markaz al-Thaqāfī al-ʿArabī, 2000), 17–24.

2. Muslim morals are constitutive of three distinctive but interlocking sub theories of “moral purposes.”
3. Some theories of “moral purposes” are in need of correction and rehabilitation
4. The Sharī‘a rules (*ahkām shar‘īya*) take as their grounds the moral dimensions embedded in duty-based (*fiqbī*) rules, just as the duty-based rules in turn also direct the moral dimensions. In other words, he believes a dialogic relationship is operative.

A. Redefining Purposes (*maqāṣid*) as Moral Values

Morals do not only determine human actions, in ‘Abd al-Raḥmān’s view, they also have implications for one’s existence (*wujūd*) or identity (*buwīya*), two terms that are used interchangeably in classical and post-classical Muslim discourses.¹⁴ All human conduct is either attached to a virtuous or debased moral value that either elevates or degrades the moral agent, respectively. Even mental acts do elevate and denigrate the moral agent. What distinguishes a human from a beast is not the capacity of reason or the mind, also evident in a lesser form in quadrupeds, but by the *moral* capacity that humans possess, he argues.¹⁵

The current definitions for the “study of moral purposes,” ‘Abd al-Raḥmān points out, are tautological. The proper goal of the law, he argues, is not to secure a benefit (*maṣlaḥa*) of the law since the real moral purpose is to secure “righteousness” (*ṣalāḥ*). So when one claims to seek knowledge of “moral purposes” then one is actually examining two things: what benefits humans will attain in this world and also what they will attain in the afterlife. In other words, seeking the moral purposes means to explore the multiple ways human beings can attain this worldly good as well as other-worldly good. It is wrongly understood, he argues, that benefits are the goal. The real objective is to attain modes of “right conduct” (*maslak* pl. *masālik*). Why? Because servitude to God is only attained through right conduct. In reality, says ‘Abd al-Raḥmān, to put it differently, seeking knowledge of the moral purposes of the law is actually to seek knowledge of righteousness. So *righteousness* is the primary moral value and centerpiece of morality, which is synonymous to “the good” or “happiness” except that “righteousness” surpasses the notion of “the good” in one sense; righteousness is intimately connected with right conduct, whereas “the good” plainly might not require accompanying conduct.

B. Need for Three Theories Related to Moral Purposes

‘Abd al-Raḥmān’s innovation is his proposal for the deepening and refinement of Muslim moral theory. He derives this insight from his inquiry and lexicographical exploration of the plurivocal sense of the term “purpose” (*maqṣad*). This forms the

¹⁴ Muḥammad ‘Alī (Alā) al-Tahānawī (ed) Rafīq al-‘Ajam, *Mausū‘a kashshāf iṣṭilāḥāt al-funūn wa al-‘ulūm*, 2 vols. (Beirut: Maktaba Lubnan, 1996), 2:1745–46.

¹⁵ Ṭāhā ‘Abd al-Raḥmān, “Mashrū‘ tajdīd ilmī li mabḥath maqāṣid al-sharī‘a,” *al-Muslim al-mu‘āṣir: special issue, maqāṣid al-sharī‘a* 26, no. 103 (1422/2002): 42.

grounds for his three complimentary theories undergirding Muslim moral knowledge as derived from the discussions on the moral purposes of the law. To be clear, on deriving semiotic meanings about “purpose” ‘Abd al-Raḥmān’s approach is not unprecedented. The eleventh century Shāfi‘ī jurist Abū al-Ma‘ālī al-Juwaynī had already discussed these linguistic registers in his writings.¹⁶ ‘Abd al-Raḥmān utilizes some of these insights in order to provide a new ethical and moral framework.

Firstly, the word “purpose” (*maqṣad*) has the sense of “meaning or outcome” (*maqṣūd*) as in when we say: “the meaning of the statement.” Here ‘Abd al-Raḥmān conceives the outcome to mean the requisite “action.” For this reason moral knowledge must also deepen one’s reflection on a theory of action.

Secondly, “purpose” can also mean the “intention” which in turn signifies the emotional content. Without emotional or intentional content a statement can be rendered nonsense. Following Shāṭibī’s lead, ‘Abd al-Raḥmān proposes that one has to be in a position to decipher the intention of the Lawgiver (God) as well as get a sense of the required intention the moral subject *ought* to display. For this reason, ‘Abd al-Raḥmān says that moral theory should have an elaborate theoretical exploration of intention so that intention and sincerity of a moral agent, in other words the normative aspects, can be subject to adjudication.

Thirdly, “purpose” can also mean the desired “end.” As in, “the end the speaker aims at in his statement and wishes to realize it.” In the sense of “end” the word “purpose” means “value” (*qīma*), signifying the value-based aspect of the theory of moral purposes, he explains. For without a value-dimension, a moral claim can be fruitless. So in this sense, if someone says “moral purposes of the Sharī‘a-*maqāṣid al-Sharī‘a*” then it could also mean, says ‘Abd al-Raḥmān, values of the Sharī‘a. Experts in theoretical jurisprudence (*usulis*) also use the term *maṣlaḥa* in a moral sense. Somewhat idiosyncratically he points out the term “*maṣlaḥa*” can also be used in the sense of “improving or making better a person’s life” which is identical to the function the word “value” plays in moral deliberation.¹⁷ Furthermore, he explains, knowledge of the moral purposes of the law also requires some theorization of values. Sharī‘a values operate on concepts of “innate nature” (*fiṭra*) and “improvement” (*iṣlāḥ*) and can therefore not be ignored.

Acts, intention and value are three are indispensable elements that will deepen the theorization of Muslim moral theory. An act ought to be related to its intent; and intentions target certain values provided by moral theory. No moral action is free from intention and no intention is free from a value. ‘Abd al-Raḥmān then places these theories in a hierarchical relationship where value enjoys prominence, followed by

¹⁶ See ‘Abd al-Malik ibn ‘Abd Allāh Imām al-Ḥaramayn al-Juwaynī and ‘Abd al-‘Azīm Dīb, *al-burbān fī usūl al-fiqh: makḥṭūṭ yunsharu li-awwal marrab*, al-Ṭab‘ah 1. ed., 2 vols., Maktabat Imām al-Ḥaramayn (Doha: Ṭubī‘ā ‘ala nafaqat Khalīfah ibn Ḥamad āl-Thānī, 1399).

¹⁷ ‘Abd al-Raḥmān, “Mashrū‘,” 45.

intention, which is succeeded by action. The theory of value, in his view, enjoys primacy. He explains why he differs from traditional scholars, contemporary and past ones in this matter. The cardinal error of traditional scholars was not to distinguish between the various linguistic registers in the term *maqṣad* such as “outcome,” “intent” and “end.” Failure to recognize these differences caused them to miss significant consequences. Hence, traditional scholars gave priority to making *actions* the driving element, followed by intention and lastly, they gave a place to the role of values. In ‘Abd al-Raḥmān’s view, such a move inverted the pyramid.

But he also wants to change the orientation and approach crafted by the classical tradition of duty-based ethics, called *fiqh*. Definitions of *fiqh* place the ethical emphasis on the adjudication of human acts with a view to make humans comply to some acts or to make them abstain from certain acts. *Fiqh* gives Muslim ethics a legal tonality. ‘Abd al-Raḥmān believes that the traditional jurists have failed to give attention to the moral and ethical apparatus underlying the system of duty-based ethics. Drawing on arguments available in the writings of Shāṭibī, he argues that there are suggestive and nuanced linguistic clues to reach a moral meaning or purpose (*maqṣūd*). There are multiple layers of complexity in the architecture of the theory of moral purposes such as identifying an act, intention and value that need separate consideration and to which traditional jurists were inattentive. A moral agent “gains access” (*tawassul*) to an act at the lowest rung of a three-step hierarchy. This is followed by intention as the moral agent’s “subtle means” (*taḥayyul*-as in legal stratagems) pitched to the second rung of the three-step hierarchy and finally, values do the “mediation” (*tadbarru*) to reach the apex.

‘Abd al-Raḥmān also makes a plea for a greater concordance between causal reasoning and teleological reasoning in moral philosophy. Most juristic discussions allow causal reasoning (*al-ta’līl al-sababī*) to be guided by teleological reasoning (*ta’līl al-ghā’ī*), yet they are not consistent in attaining this objective. He pleads for greater consistency in order for legal causes to conform to the underlying wisdom and reasoning of the rules.

He also draws attention to another area of confusion among traditional scholars. Often scholars, in his view, are inattentive to the different forms of reasoning at work in ethical and moral judgments. For instance, if one can rationally discern the descriptions for certain rules provided by the divine legislator then surely reason provides an “explanation” (*mufassir*) for the specific acts and practices. On other occasions reason can fathom the ends and values embedded in the rules, then on such occasions reason is “directive” (*tawjīhī*) and hence one can grasp the normative criteria involved when rules are applied to specific human acts. Often scholars missed the difference as to how “explanatory and descriptive reasoning” differs from “directive and normative reasoning,” ‘Abd al-Raḥmān points out. This only adds to the confusion in moral and ethical thought.

‘Abd al-Raḥmān points out how the hierarchy of moral purposes labeled as “necessary” (*darūrī*), “required” (*ḥājī*) and “refinement” (*taḥsīnī*) were arrayed in a

diminishing order of importance and were associated with hierarchical categories such as “priority” (*itibār*), “caution” (*iḥṭiyāt*) and excellence (*makārim*), respectively.¹⁸ This arrangement, in his view, was erroneous and required serious and revision and correction. The “necessary” category was unusually restricted to the five primary purposes, listed as the preservation of religion, life, reason, property and offspring. If these values were arrived at by way of induction, he explains, then surely they will be fungible as changes in human existence occur over time. Similarly, in the “refinement” category “excellence in character” is viewed as some kind of afterthought. In ‘Abd al-Raḥmān’s view the traditional classification was in need of serious attention. In summary, he says, values cannot be reduced to a small number; the difference in values should be ranked in terms of their moral and ethical strength; “excellence in character” is a norm that should be integrated in all rungs of the hierarchy of moral purposes.

Reconfiguring Values

He proposes some ideas for a new configuration of values. One category is what he describes as organic value or the values of beneficence and malevolence. We experience pleasure when we are beneficiaries of a good thing and we experience displeasure with pain. Under this broad category the traditional values of moral purposes listed as the preservation of religion, life, health, family and property can easily be scaled as values of beneficence and malevolence. But such a category would contain a more descriptive typology. Another category he devises includes rational values or aesthetic values of beauty and ugliness. These are rational and psychological values that coincide with experiences of happiness and sadness. The third category he designs are spiritual values or values of the good and the detestable. The moral values associated with the latter are happiness when being a beneficiary of the good and to feel wretched when one experiences something that is corrosive.

The traditional method of interpreting Islamic law, ‘Abd al-Raḥmān points out, gave priority to the material aspect of life instead of the spiritual dimension. It went so far that one could reasonably mistake the Sharī‘a as being as material as the materiality of reason, when in fact, the Sharī‘a only had a “relation” to materiality. In ‘Abd al-Raḥmān’s revised hierarchy only those values that enabled human beings to realize their humanity would enjoy pre-eminence. So spiritual values or the values of the good and bad would all enjoy the highest rank because they promote the excellence of a human being and make us recognize our servitude to God.¹⁹ In his schema this is followed by the rational values or the aesthetic values of beauty and disgust, followed by the values of benefit and harm.

¹⁸ Ibid.: 50.

¹⁹ Ibid.: 53.

Relationship between Law and Morality

‘Abd al-Raḥmān insists that Shari‘a rules must perfect their dialogical relationship so that “law-face” (*al-wajh al-qānūnī*) synchronizes with its “moral-face” (*al-wajh al-akhlāqī*). He seems to accept *fiqh* as positive law and therefore, it functions like law (*qanūn*).²⁰

The moral face consists of three elements viz., value, intention and action. Each of these, in turn, corresponds to deeper metaphysical propositions and psychological dimensions. For instance, values are intrinsically related to an innate human nature (*fiṭra*). Intention in this moral construction is intimately tied to the notion of sincerity, which he describes as “a divine secret located in the hearts of humans.”²¹ Finally, actions are firmly embedded in revealed rules, and they enable humans to ascend to higher levels of moral advancement.

The “law-face” consists of three elements or parts, viz, the directive of the rule, the ratio of the rule and the case. The first part is the directive of the rule (*jiba-t al-ḥukm*), denoted as the legal value associated with the discourse of the Lawgiver, be it obligation (*ijāb*), prohibition (*taḥrīm*) and permissible/indifferent (*mubāḥ*). The second part is the ratio of the rule (*illa-t al-ḥukm or ratio legis*), the descriptive aspect that serves as the grounds for the Lawgiver to make it the *cause* for a particular direction. And the third part is the content that is subordinate to the rule (*al-maḍmūn al-maḥkūm ‘alayhi*), namely, the descriptive “case” involving the action of the one who is morally obligated by the directive legal value.

The “act” in the legal construction, he explains, is crucially different from the “act” in the moral construction of moral discourse. An “act” is stripped of any legal value in the law, where it is correctly described as a “case,” whereas an “act” in moral discourse is always linked to a moral directive as well as a value.

So the legal face regulates the external or formal aspects of the *legal subject* whereas the moral face deals with the interior subjectivity of the *moral subject*. For the same act can be both legal-*fiqhī* and as well as a moral act (and vice versa), since both law and morality aspire to the same end: to realize one’s humanity in the service of God. This mutual dialectic of practice and reflection retains the integrity of each in order to keep the law from becoming stagnant and keeps both dimensions honest. ‘Abd al-Raḥmān is particularly concerned about the polarization of literalist partisanship vs. esoteric partisanship resulting from what he calls “the great textual sedition” (*al-fitna-t al-naṣṣīya al-kubrā*).²² He thinks the obsession with the literal text of tradition and regarding it as paramount above all other consideration is deeply problematic. Instead, he calls for balance and invites for the careful observation of both the legal and moral components of rules and regulations.

²⁰ Ibid.: 54–56.

²¹ Ibid.: 54.

²² Ibid.: 57.

In summation ‘Abd al-Raḥmān invites scholars to pay attention to method in the study of morals in contemporary Islam as well as to complicate and deepen the theorization of this subject. He urges a closer theoretical and practical relationship between law and morality while simultaneously correcting some aspects of the traditional framework in order to make it more robust. The downside of ‘Abd al-Raḥmān’s theory is that it is highly abstract and theoretical with little demonstration of how this would apply in practical terms and a task I suspect he would leave to others to accomplish.

If the theory of the moral purposes of the law has enjoyed a warm response from a variety of quarters then it has also received very little critical appraisal. However, a prominent contemporary Tunisian philosopher has been bold enough to offer critique.

Abū Ya’rab al-Marzūqī

Abū Ya’rab al-Marzūqī is a French-trained Tunisian philosopher. He was nominated to his country’s post-revolutionary parliament by the Renaissance party but resigned more than a year later in frustration. Marzūqī writes extensively about politics, law and philosophy but his impenetrable style makes it hard to understand him clearly. Drawing extensively from classical authors including Ghazālī, Ibn Taymiyya and especially Ibn Khaldūn he often provides a critical perspective against secularists (*almāniyūn*) as well as against, “authentics” (*aṣlāniyūn*), his code for Islamic fundamentalists who search for an elusive authenticity. Both camps, secular and fundamentalists, he complains allege he belongs to the other side. Fundamentalists call him a secularist and the secularists suspect him to be an Islamist, charges that he advertises as a badge of honor. Yet, he comes across as an *enfant terrible* of contemporary Arabic philosophy taking unpopular positions and raising difficult questions.

He is however, among the few contemporary Muslim thinkers who believe contemporary Islamic thought must take knowledge in the humanities, social sciences, science and aesthetics seriously for without these insights the possibility of creative thought is doomed from the get go. And he is unsparing in his criticism of the scholars of Islam, especially the ulama, who do not fulfill their ethical commitments to Islamic learning. Like many modern scholars, Marzūqī takes the Qur’an as an ontological starting point as did Malik Bennabi, Muḥammad Iqbal and Fazlur Rahman to mention but a few people before him. Humanity is in a state of loss (*kbusr*), a term Marzūqī draws from the exegesis of the Qur’an. This condition of loss can only be remedied by acts of humanity such as repeatedly offering counsel in order to strive to attain the truth and to persevere with patience in times of adversity. Humanity, in his view, has a purpose namely, to grow and flourish in practices of truth-seeking and mutual caring.

What is characteristic of Marzūqī’s thought is that he at least takes the time to subject some of the strongest and most popular currents of contemporary Islamic thought to radical critique. One area he addresses is Islamic law and he subjects it to strong

philosophical critique. The vaunted and increasingly popular moral purposes (*maqāṣidī*) approach to Sharīʿa is a topic Marzūqī views as extremely problematic and as the very antithesis of revelation.

In his own words, he writes: “The outcome of a purposive exegesis is to effectively repeal a heavenly legislation (*tashrīʿ samāwī*) at its roots and to return to a posture of pure political instrumentalism in matters of private and public rights. So claims of moral purposes (*maqāṣid*) logically and historically only goes back to assert legislative instrumentalism that in turn relies only on calculating worldly interests, nothing else . . . There is no third possibility [i.e. no difference] between [first] a heavenly norm-making process (*al-tashrīʿ al-samāwī*) that incorporates afterworldly interests by way of devotional practices (*taʿabbudīyan*) and where the latter are made subservient to worldly interests by way of social transactions (*taʿāmulan*), and, [the second] is a secular norm-making process principally based on calculating worldly interests, nothing else. Every claim that purports a transcendent norm-making process in history is not a religious one, is nothing but self-deception, for it claims to have absolute knowledge which [in turn] elevates a natural contractual right philosophically-speaking, to the level of a sacred contractual right, religiously-speaking: that is true atheistic humanism.”²³

Denouncing the moral purposes of the law thesis Marzūqī resorts to arguments of history and philosophy where elements of Zāhirī nominalism also raises its head. The aporia (insoluble problem) in his view is this: in Islam there is an end to revelation and hence there is no need for humans, especially for the jurists (*fuqahāʾ*) to act as pseudo legislators.²⁴ Echoing some of Ibn Ḥazm’s criticism without reference to the Andalusian scholar, Marzūqī argues for a total fealty to the Qurʾanic teachings. According to the Qurʾan mortals as individuals are denied the liberty to extend the logic of the revelation. Only in a tradition where revelation was continuous could one anticipate a situation where the law was repeatedly updated in order to end any contradiction that might exist between a text and a changing context. Such scenarios are thinkable in what he calls extreme Shīism where a jurist acts on behalf of a hidden leader (*imām*) or in an institution like a church in Christianity, but not in a version of Sunnī Islam as he imagines it. In his view the error of Sunnī Muslim jurists was to pretend to make rules as if they were recipients of ongoing revelation when in fact they were not awarded any such a privilege. In his words, they are accustomed to trade in a “corrupt revelation” (*wahy fāsīd*).²⁵

Muslim jurists, going back centuries, in his view, “abducted the legislative process” and continued to devise new Sharīʿa rules even when revelation had ended. They either extended the ambit of revelation via analogy and interpretation or they delimited the

²³ Abū Yaʿrub al-Marzūqī and Muḥammad Saʿīd Ramaḍān al-Būṭī, *Isbkālīyat tajdīd usūl al-fiqh* (Damascus: Dār al-Fikr, 2006), 98.

²⁴ *Ibid.*, 21.

²⁵ *Ibid.*, 22.

revelatory legislation by allowing the purposes of the law to trump all other forms of reasoning.²⁶ The jurists, he charged, played loose and fast with the revealed texts (*nuṣūṣ*) to effectively keep a mode of revelation going when in fact there was none!

But where he does introduce a radical idea is his argument that ongoing normative work must take place in the voice of the Muslim community, with their participation and consent. He does not apportion any exclusive legislative role for the jurists apart from enforcing existing rules. The obligation to make rules rightfully belongs to the community of Muslims (*umma*). And to pretend that revelation was continuous was theologically egregious in Marzūqī's view. It was damaging in many respects, of which at least two propositions deserve mention. First, it denies the end of revelation criterion by pretending that revelation is continuous by means of juristic hermeneutics. Second, it denies the infallibility of the Muslim community as promised by the Prophet. In other words, what Muslims as a community accomplish via an informed consensus receives divine blessings, grace and infallibility for what they view as beautiful and good was also good in the eyes of God, according to tradition.

Marzūqī's main theological objection to the moral purposes of the Sharī'a theory is directed at the assumption that human beings can definitively know God's purposes. Only one who was omniscient could make such a claim, which would be a preposterous claim in his view.²⁷ Furthermore Marzūqī says it ironically appears that humans need these benefits (*maṣāliḥ*) and moral purposes after God had created them. It will appear odd for God to create human beings and then attempt to equip them with the requisite benefits, he taunts. In an attempt to rebut some of Marzūqī's charges, the late Shaykh Sa'īd Ramaḍān al-Būṭī of Syria argued that the moral purposes were conditional and tied to God's revealed law and was not tied to the creation of humans. The symposium of essays between Marzūqī and Būṭī on the problematic of renewing legal theory deserves separate and closer attention and study.

But Marzūqī's main point is that Islamic law cannot really function outside a viable social context of political society. Governance and the political community should, in his view, remedy much of what Muslim jurists are trying to address via the theory of the moral purposes of the Sharī'a. Political community involves all people within the Muslim polity. Without a viable political community it is almost certain that Sharī'a and its multiple discourses and value systems will be perverted and distorted. His major fear is that religious morals and values will be distorted by the contingencies of politics. He wishes to preserve the sacred law and keep it tied to its designed function, namely to keep humans within a mode of divinely prescribed practices in a defined number of issues. All further contingencies that were not addressed by the divine revelation falls on humans to resolve and to find answers to them, but they are not authorized to extend the voice of God by means of analogy.

²⁶ Ibid.

²⁷ Ibid., 92–3.

Conclusion

The growing interest in the purposes of the Sharīʿa in modern times is quite understandable. One reason for its growth is that traditional Sharīʿa research is still very much in the grips of Muslim traditionalists who are caught up in the minutiae of *fiqh* literature with little innovation, creativity and engagement with the social reality in which Muslims live. The purposes of the Sharīʿa approach is a utilitarian approach that allows jurists and practitioners to by-pass some elements of the traditional *fiqh*-model of the Sharīʿa by offering a big-picture approach to God's purposes. Yet, the question arises: will the existing tradition of *fiqh* have to be euthanized out of existence by the moral purposes of the Sharīʿa approach? A large part of the Qur'an and hadith materials were wedded to a very detailed hermeneutic tradition where the divine intentions were extended to new contingencies in the various law schools. Marzūqī vehemently objects to this process while 'Abd al-Raḥmān thinks there are ways in which the same method can serve as a resource for ethics and morality as well as calibrate the law. The key question to be addressed is this: how does the big-picture version of the Sharīʿa relate to the traditional practice of Islamic law? Will the one eclipse the other over time?