OXFORD

Islamic Jurisprudence as an Ethical Discourse: An Enquiry into the Nature of Moral Reasoning in Islamic Legal Theory

Ezieddin Elmahjub*

ABSTRACT

This article seeks to develop a better understanding of the normative nature of moral reasoning in Islamic legal theory (*uṣūl al-fiqh*). This theory is built on a foundational proposition suggesting that moral evaluation must conform to the divine will, which aims to achieve an ethical state of affairs expressed as *maṣlaḥa* (social good). Jurists use notions of *maṣlaḥa* to interpret revelatory norms and make new rules to guide moral choices in applied ethics. However, very little is known about *maṣlaḥa*'s underlying nature of ethical value and normative content. In modern Islamic studies, *maṣlaḥa* is commonly understood in consequentialist/utilitarian terms. In situations of moral uncertainty, Muslims should aim to promote choices that maximize the good. In this article, I offer three insights into the nature of moral reasoning in Islamic legal theory. First, I show that the common consequentialist/utilitarian thesis of Islamic moral reasoning is unsustainable. Second, both classic and modern Islamic jurisprudence introduced two conflicting visions of Islamic moral reasoning. One is rooted in rudimentary consequentialist approach while the other seems to contemplate deontological normativity in the Islamic system of ethics. Finally, I argue that the way forward is to reconcile these conflicting views in one hybrid normative framework to guide our understanding of the content of ethical value and normativity in Islamic legal theory. In this framework, I understand *maṣlaḥa* as comprising first-order deontological principles to provide categorical protection for basic human needs while leaving room for consequentialist calculations of the right action.

I. INTRODUCTION

Islamic moral reasoning may at first blush seem to be a simple form of divine command theory, whereby morality is whatever God commands, and the validity of human actions and social norms depends on textual prescriptions framed in metaphysical

* Associate Professor, Qatar University.

terms peppered with promises of paradise or threats of hellfire[1]—'a kind of divine despotism . . . decreed and imposed without reason by the Celestial High Command'.[2] In this article, I argue that, on the contrary, the nature of moral reasoning in Islamic legal theory is more complex than this conception would have us believe. Indeed, like non-religious ethical discourse, it is characterized by multiple layers of highly abstract and often conflicting meta-ethical and normative propositions. True though it may be that Islamic morality is based on divine dictates, ethical uncertainties emerge when it comes to extrapolating value criteria and normative rules from God's commands.

This article aims to provide new insights into the nature of moral reasoning in Islamic legal theory. According to the theory of *uṣūl al-fiqh* (principles of Islamic moral knowledge), revelation is the first point of reference when drawing moral inferences. However, the solutions found in textual sources of revelation are limited in number and do not address all the moral issues encountered in applied ethics. Over the centuries, Muslim jurists have therefore developed methods of moral reasoning capable of offering answers to ethical questions that require an Islamic moral judgement (*ḥukm sharʿī*).[3] Conventional wisdom underlying Islamic theological and legal thought has it that God's ultimate purpose is *maṣlaḥa* and that this should guide both the locating and making of rules when engaging in moral reasoning. Modern scholarship tends to equate *maṣlaḥa* with what in English would be described as public interest or public welfare.[4] However, this fails to capture the technical complexity of *maṣlaḥa* when used as a term of art in Islamic jurisprudence. Broadly, it refers to an ethical state of affairs compatible with the divine will: God wills the *maṣlaḥa* of humankind. This is often understood to mean that moral choices should bring about good (*jalb al-manfaʿa*) and prevent harm (*dafʿ al-ḍarar*). Islamic legal theorists have invoked *maṣlaḥa* when applying textual authorities in situations they do not expressly cover, thereby extending the law by analogy and formulating prescriptions through normative analysis.[5]

Moral reasoning in Islamic legal theory can be traced back to the meta-ethics of Islamic theological philosophy (*ʿilm al-kalām*) in the late 9th century. Both Ashʿarite and Muʿtazilite scholars agreed that the essence of the divine scheme lay in the promotion of what is good, though they disagreed over mankind's ability to discern

---

1   In the field of comparative Christian and secular ethics, Jeremy Waldron strongly criticized secular theorists who oversimplified religious morality in this way. He maintained that the epistemology of religious ethics was complex and should not be reduced to rudimentary metaphysics. Jeremy Waldron, *God, Locke, and Equality: Christian Foundations in Locke's Political Thought* (CUP 2002) 20.

2   Jacques Maritain, *Moral Philosophy* (Scribner 1964) 91.

3   Shihāb al-Dīn al-Qarāfī, *Sharḥ Tanqīḥ al-fuṣūl* (Dār al-Fikr 2004).

4   In this study, I focus on *maṣlaḥa* as a normative framework for Islamic moral reasoning, my aim being to assess whether it amounts to/should be considered a deontological or a consequentialist approach to morality. I thus take a different stance from mainstream literature that studies *maṣlaḥa* as a source of Islamic law or an overarching objective for Islamic lawmaking. For a useful account of the meaning, scope, and development of *maṣlaḥa*, focusing mainly on pre-modern jurists, see Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law* (Brill 2010). In a more recent study, in which she describes new developments in modern jurisprudence on *maṣlaḥa*, Opwis examines growing calls by modern scholars, including Ibn ʿĀshūr and Yūsuf al-Qaraḍāwī, to transform *maṣlaḥa* into a means of embracing modern constitutional values such as justice, equality, freedom, and human rights. See Felicitas Opwis, 'New Trends in Islamic Legal Theory: *Maqāṣid al-Sharīʿa* as a New Source of Law?' (2017) 57 Die Welt des Islams 7, 14–20.

5   Ahmad al-Raysuni, *Imam al-Shāṭibī's Theory of the Higher Objectives and Intents of Islamic Law* (International Institute of Islamic Thought 2005) 280–81.

goodness without revelation and to create norms to guide human actions. Between the 10th and 12th centuries, jurists writing on *uṣūl al-fiqh* began to depart from the traditional meta-ethical discourse on goodness by exploring *maṣlaḥa* as a source of moral obligations in its own right. But it was in the 19th-century reform movement that *maṣlaḥa* came truly to the fore as a means of modernizing Islamic legal thought and challenging the secular legal theories that were being used to guide public choice and justify norms and institutions in colonial and post-colonial Islamic polities.

Despite the importance *maṣlaḥa* has acquired in Islamic theological and legal theory, there is much uncertainty and even controversy over the exact nature and scope of the concept. My reading of the work of prominent scholars, both ancient and more recent, reveals equivocal interpretations of the ethical values underpinning *maṣlaḥa* and its capacity to inform the norms that guide moral choices in applied ethics. For example, if *maṣlaḥa* denotes an ethical state of affairs, what value theory should be applied to guide its realization? Should intrinsic value be reduced to a hedonistic calculus of pleasure and pain? If so, should we rely on human perceptions or revelatory indicia of pleasure and pain? And, at a normative level, does *maṣlaḥa* lend itself to a consequentialist or a deontological approach to moral reasoning?

The purpose of the present article is two-fold. On the one hand, it considers whether claims of consequentialist/utilitarian rationality in Islamic legal theory are sustainable. On the other hand, and more ambitiously, it enquires into how we should go about understanding the nature of moral reasoning in Islamic legal theory. After showing the disconnect between divine command theory and the complexity of the Islamic system of ethics and exposing the weakness or exaggeration of consequential/utilitarian claims, I ask what ethical and normative approach adequately embraces the concepts and processes of Islamic moral reasoning.

In pursuing this task, I will use terminology derived from comparative ethical discourse to explain and analyse the concepts and processes of moral evaluation in Islamic legal theory. This approach seeks to position Islamic notions of moral reasoning in the context of meta- and normative ethics. There are two reasons for doing so. First, determining the nature of ethical value and its normative implications can provide much-needed clarity in applied ethics. For instance, Muslim jurists generally agree that human life is intrinsically valuable, and that moral reasoning must formulate normative positions that will preserve and promote it. However, there is disagreement about what moral choices are required to achieve that end. Is it important to protect the safety of the majority or to uphold the intrinsic value of every person's life regardless of the wider consequences for others? For instance, in situations similar to the trolley dilemma, would it be acceptable to end the life of a terminally ill person if their organs are transplanted to five others? Under a utilitarian approach to moral reasoning in Islamic legal theory, saving the greater number of lives would be the right thing to do. As we shall see, however, there are prominent Islamic legal theorists who do not support such a response.[6]

---

6 Think of similar questions in biomedical ethics, if we accept an overarching consequential\ utilitarian principle to explain Islamic moral reasoning, we would accept dangerous research on human subjects if its benefit to society outweighs its danger to the individual subjects. Again, this view will not stand up to critical assessment as I show below.

Second, an analysis of Islamic moral reasoning from the perspective of comparative ethics will feed into public debates on moral justification in plural societies, and particularly in liberal polities that seek a convergence of diverse moral doctrines around a shared conception of justice and justified state coercion.[7] It is reasonable to assume that in liberal polities with growing Muslim minorities, Muslim citizens will be expected to contribute to that moral convergence. Much of the literature on moral pluralism follows John Rawls in excluding reliance on metaphysics to justify moral positions.[8] Rawls theorized that it was possible to find an overlapping consensus on shared commitments to social good and a stable society in the comprehensive doctrines that coexist in liberal polities. Citizens of the liberal polity would discover that their vision of the social good had features in common with other doctrines, allowing convergence on a focal conception of justice.[9]

However, Rawls added a public reason proviso qualifying participation in political debates on justice. This proviso is particularly relevant to religious arguments in the public sphere. According to Rawls, metaphysical propositions not shared by other comprehensive doctrines are considered non-public reasons and therefore inadmissible when seeking an overlapping consensus. It is for this reason that the present article focuses on the ethical rather than the metaphysical foundations of Islamic moral thought. The Islamic ethical discourse presented here shows that it is possible to frame Islamic moral positions in a manner that uses a common moral vocabulary, thereby satisfying the Rawlsian public reason criterion. Moral choices are explained not in exclusively metaphysical or divine terms but rather from a rational moral perspective. For instance, a Muslim opposed to physician-assisted suicide would have to justify their position not by arguing that such a form of death is forbidden by God and therefore unacceptable, but rather by appealing to reasons accessible to non-religious citizens such as the deontological argument that each life has an intrinsic moral value that strictly forbids murder of any kind.

Our focus also satisfies the Habermasian translation requirement. Jürgen Habermas did not expect believing citizens to set aside the metaphysical foundations of their moral positions when engaging in debates about moral choices in the liberal public sphere, but he did expect them to express their moral positions in a language that would be accessible to a non-religious moral sensibility.[10] This would mean that when engaging in public justification debates, Muslim citizens should formulate their

---

7   John Rawls, *Political Liberalism* (Columbia University Press, 1993) 4; Michael Sanders, *Liberalism and the Limits of Justice* (2nd edn, CUP 1998); Joshua Cohen, 'Moral Pluralism and Political Consensus' in David Copp, Jean Hampton, and John E Roemer (eds), *The Idea of Democracy* (CUP 1993) 274–75. Liberal thinkers seem to agree that public justification for coercive laws across comprehensive doctrines is essential to the long-term stability and flourishing of liberal democracies.

8   John Rawls, 'The Idea of an Overlapping Consensus' (1987) 7 OJLS 8. Explaining his vision of public reason, Rawls argues that 'given the fact of pluralism, there is, I think, no better practicable alternative than to limit ourselves to the shared methods of, and the public knowledge available to, common sense, and the procedures and conclusions of science when these are not controversial'. For an informative survey of the literature opposed to the use of religious arguments in the public sphere, see Robert Audi, *Religious Commitment and Secular Reason* (Cambridge University Press 2000) 169.

9   Rawls (n 7) xlii.

10 Jürgen Habermas, 'Religion in the Public Sphere' (2006) 14 EJP 1, 10 (arguing that 'religious contributions can only enter into the institutionalised practice of deliberation . . . if the necessary translation . . . occurs in . . . the political public sphere').

input in non-metaphysical terms. In a debate on abortion or euthanasia, instead of arguing that Allah prohibits abortion and euthanasia so they are morally wrong, Muslims could take a deontological approach by submitting that abortion and euthanasia are morally wrong because they violate the moral duty to uphold the sanctity of human life that is a fundamental part of Islamic moral doctrine. Thus, provided other citizens in liberal polities are receptive to modern moral theories, they should be able to relate to notions of Islamic moral reasoning formulated in this manner. It is the approach that will be adopted in this article, where Islamic ethical values and normativity are presented in deontological or consequentialist terms.

Our analysis will start, in Section II, with a critical evaluation of the nature and scope of the consequentialist account of ethical value and normativity in Islamic moral reasoning. I trace its origins and explain some of the conceptual and practical problems it raises. Several influential jurists in both ancient and modern times sought to explain the Islamic system of ethics in consequentialist/utilitarian terms. They saw the good as having supremacy over the right and believed that moral choices should maximize the good. However, differences can be seen not only in their conceptions of consequentialism but also in their understanding of the content of value and its normative implications. Sections III and IV will analyse the contributions of Islamic legal theorists in respectively the classic and modern eras. My intention is to impart a clearer vision of how influential scholars of different eras understood the meta-ethical and normative nature of moral reasoning in Islamic legal theory. Faced with the difficult task of deciding whom to consider representative of the Islamic world-view, I have considered it most instructive for present purposes to focus on the seminal jurisprudence of the golden age in pre-modern Islamic legal theory and some of the significant reform figures from modern Islamic legal theory. Section V shows that it is difficult to ignore the profound influence of deontological ethics when trying to understand and explain the Islamic system of ethics. Finally, Section VI briefly concludes the article by pointing to the value of a more holistic approach to understanding Islamic moral reasoning.

II. ISLAMIC MORAL REASONING AND NORMATIVE ETHICAL THEORIES

In modern Islamic studies a growing trend has emerged that seeks to explain *maṣlaḥa* in consequentialist or utilitarian terms. George Harouni, for example, suggests that 'Muʿtazila might have developed a utilitarian type of ethics';[11] Sari Nusseibeh describes al-Ghazālī's theory of *maṣlaḥa* as 'a utilitarian version of a consequentialist theory of moral action';[12] and Andrew March claims that 'conceptions of *maṣlaḥa* are

---

11 George Hourani, 'Two Theories of Value in Medieval Islam' (1960) 50 Muslim World 269, 273. According to Hourani, the Muʿtazila version of ethics is very close to classic Benthamite utilitarian ethics: 'the end or interest (*maṣlaḥa*) of the Muslim community consists in the happiness of as many as possible in the next life; right action is that which promotes this end'. It is interesting to note that Majid Fakhry forms a very different view on the nature of moral reasoning in the Muʿtazilites' theory. According to Fakhry, Muʿtazilites developed 'quasi-deontological theory of right and wrong in which the intrinsic goodness or badness of actions can be established on purely rational grounds'. Majid Fakhry, *Ethical Theories in Islam* (Brill 1991) 35–43.

12 Sari Nusseibeh, *The Story of Reason in Islam* (Stanford University Press 2017) 89.

the greatest single example of consequentialist-utilitarian reasoning'.[13] And, as pointed out by Malcolm Kerr and Wael Hallaq,[14] utility was notably a criterion used by 19th- and 20th-century reformers in their attempts to modernize Islamic law by appealing to value calculations based on *maṣlaḥa*.

Why, one may ask, has Islamic moral reasoning been depicted in consequential-ist/utilitarian rather than deontological terms? It is, after all, one thing to say that Islamic moral reasoning is based on *maṣlaḥa*, but quite another to interpret this as necessarily implying a consequentialist/utilitarian vision. Morality does not necessar-ily lie in creating the greatest good for the greatest number. As I show below, early Ashʿarite theologians and leading jurists of Islamic legal theory such as al-Ghazālī (d.1111) and al-Juwaynī (d.1085) proposed a form of 'textual deontology' in which revelation and revelatory norms, not utilitarian principles, were considered to be a measure of value. In their vision of moral reasoning, moral choices prescribed by revelation must take precedence. They thus understood Islamic moral reasoning in deontological terms: ethical choices are those that comply with revelatory norms, and there is no obligation upon moral agents to maximize what they believe to be good consequences. We will see how this deontic vision of morality is reflected in al-Ghazālī's categorical condemnation of the killing of innocent victims or the torturing of others even where such acts would maximize good and minimize evil.

Moreover, it may be questioned whether the two moral spheres—utilitarian ethics and Islamic moral reasoning—can indeed be linked. The claim that moral reasoning in Islamic legal theory has close links to utilitarianism calls for a demonstration of the grounds for such links. For instance, do they lie in common ethical value(s) and meth-ods of normative analysis? Furthermore, there are several variants of utilitarianism de-pending on the nature of value it promotes and the expected normative implications, so which form of utilitarianism is most compatible with Islamic moral reasoning? The claims concerning the utilitarian orientation of moral reasoning in Islamic theology and legal theory seem to be grounded in a limited perception of utilitarian morality. In its most crude form, utilitarianism is built on two propositions: a meta-ethical affirm-ation of some form of intrinsic good and a normative assertion that this intrinsic good should be maximized. However, while utilitarians agree on this simple form of moral reasoning, there are sharp disagreements on the nature of the intrinsic good affirmed at the meta-ethical level. There are those who propose a hedonist theory of value, claiming that the principal possessors of intrinsic value are happiness and pleasure. Humankind realize these values by achieving some pleasurable states of mind per-ceived through their sensations. A hedonist theory of some sort is often associated with classical utilitarians such as Jeremy Bentham, John Stuart Mill, and Henry

---

13 Andrew F March, 'Sources of Moral Obligation to Non-Muslims in the "Jurisprudence of Muslim Minorities" (*Fiqh al-aqalliyyāt*) Discourse' (2009) 16 Islamic Law and Society 34, 63.

14 Malcolm Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad ʿAbduh and Rashīd Riḍā* (University of California Press 1966) 114, 121 (arguing that utility is an inherent feature of ʿAbduh's and Riḍā's models of moral reasoning); Wael B Hallaq, *An Introduction to Islamic Law* (Cambridge University Press 2009) 116; Wael B Hallaq, *A History of Islamic Law and Legal Theories* (Cambridge University Press 1997) 42, 224.

Sidgwick.[15] On the other hand, some scholars propose a non-hedonistic theory of value. They argue that the intrinsic good should not be determined on the basis of a state of affairs that is pleasurable to the moral agent but rather on the basis of some objective ideal value such as virtue, knowledge, or beauty. This view of value is known as ideal-utilitarianism and can be found in the works of G. E. Moore and Hastings Rashdall.[16]

Besides, utilitarians differ over the normative implications of their theory of value. Some advocate ethical egoism, claiming that the right thing is the action that promotes the interests of the individual, while others advocate ethical altruism, claiming that the right action is that which brings good state of affairs to everyone or the majority. The meta-ethical and normative structures that underpin Islamic moral reasoning need some clarification to determine their degree of compatibility with consequentialist/utilitarian rationality. For instance, what are the possessors of intrinsic value from an Islamic perspective? Should we explain ethical value in hedonist terms, thereby seeking moral choices that increase happiness and pleasure? Or should we follow an idealist vision of value, detached from human perception and centred on promoting virtues, knowledge, and beauty? These questions remain unanswered. In the following sections, I analyse the work of some of the most prominent Muslim jurists to draw a clearer picture of how they understood ethical value and its normative implications.

Utilitarian interpretations of *maṣlaḥa* have not gone unchallenged. Despite Nusseibeh's claim that al-Ghazālī's theory of *maṣlaḥa* was utilitarian, Rami Koujah argued that 'al-Ghazālī adopts a deontic conception of *maṣlaḥa* which serves to safeguard the law's objectives'.[17] And Khaled Abou El Fadl strongly objected to reducing moral reasoning in Islamic legal theory to 'a superficial utilitarian calculation',[18] maintaining that '[a]n overriding utilitarian exception would be inconsistent with the objectivity of the shari'a and to its claim of any absolute moral values'.[19] For Daniel Brown, a competing deontological approach could be observed in Islamic ethics:

> Islamic ethics . . . has the structure of a deontological system grounded in and restricted by theological voluntarism. Ethical judgements are based on rules derived from revelation by carefully circumscribed methods. It should not come as a surprise, then, to find that the teleological arguments of secular Western ethicists seem to find little support in Islamic ethics.[20]

---

15 See generally Anthony Meredith Quinton, *Utilitarian Ethics* (Palgrave Macmillan 1973) 4. In modern ethical discourse, Jeremy Bentham is normally credited with having articulated the standard position of consequential/utilitarian ethics. In his words, 'pleasures then, and the avoidance of pains, are the *ends* which the legislator has in view: it behoves him therefore to understand their *value*. Pleasures and pains are the *instruments* he has to work with: it behoves him therefore to understand their force, which is again, in another point of view, their *value*'. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (JH Burns and HLA Hart eds, Methuen 1970 [1789]) 38.

16 GE Moore, *Principia Ethica* (Amherst 1988); Hastings Rashdall, *The Theory of Good and Evil: A Treatise on Moral Philosophy* (Clarendon 1907).

17 Rami Koujah, 'Maṣlaḥa as a Normative Claim of Islamic Jurisprudence: The Legal Philosophy of al-ʿIzz b. ʿAbd al-Salām' in Sohaira Siddiqui, *Locating the Sharīʿa: Legal Fluidity in Theory, History and Practice* (Brill 2019) 136.

18 Khaled Abou El Fadl, 'The Place of Ethical Obligations in Islamic Law' (2004) 4 UCLA Journal of Islamic and Near Eastern Law 1, 31.

19 ibid 9.

20 Daniel Brown, 'Islamic Ethics in Comparative Perspective' (1999) 89 Muslim World 181, 188.

It may seem surprising that mainstream Islamic legal theorists have adopted deontological or consequentialist approaches to Islamic normative ethics rather than the older approach of virtue ethics.[21] At the risk of oversimplification, the doctrine of virtue ethics could be described as a normative framework consisting of a collection of ethical notions that urge moral agents to seek human flourishing (*eudaimonia*). In virtue ethics, the normative frame of reference for morality lies not in actions that maximize good consequences or that conform with a pre-established higher imperative, but in the character, identity, motivations, and disposition of agents. As such, virtue ethics is an agent-centred vision of morality, whereas consequentialism and deontology are both are act-centred.[22] The Islamic forms of moral reasoning addressed in this article are based on a different conception of morality from that of virtue ethics; they consider morality to consist in complying with existing norms to do the right thing or to maximize intrinsically good consequences. As will become clear, the jurists to which I refer below are concerned not so much with the foundational question of virtue ethics, 'What sort of person should I be?' as with the act-centred question, 'What should I do?'[23]

III. MORAL REASONING IN PRE-MODERN THEOLOGY AND LEGAL THEORY

Given the massive body of literature on pre-modern Islamic theology and jurisprudence that has built up over the centuries, it would be unreasonable to expect it to be homogeneous, especially as it expresses widely divergent ideologies and approaches. Influential works of theology and jurisprudence contain conflicting views on the source of value and what constitutes an intrinsically good state of affairs. And

---

21 The roots of virtue ethics are normally traced back to Greek philosophy, in particular to Aristotle's *Nicomachean Ethics*. Virtue ethics lost its pre-eminence when Enlightenment philosophers introduced consequentialism and deontology as the principal sources of moral normativity. In 1958, Anscombe began to restore the balance by drawing attention to virtue ethics as a rival framework to deontology and utilitarianism; see GEM Anscombe, 'Modern Moral Philosophy' (1958) 33 Philosophy 1. In *Virtues and Vices* (Blackwell 1978), Philippa Foot later defended the central importance of virtue ethics, which she considered as more rational and coherent than consequentialism and deontology. However, the most influential work that sought to reinstate virtue ethics in contemporary ethical theory was Alasdair MacIntyre's *After Virtue*, in which the author argued that the Enlightenment philosophical project embodied in deontological and consequentialist approaches to morality failed to provide a coherent rational framework for ethics, but instead reduced ethical inquiry to subjective moral positions whose relative merits could not be tested. He advocated adopting the Aristotelian version of virtue ethics in order to 'restore intelligibility and rationality to our moral and social attitudes and commitments'. According to McIntyre, the content of virtue had to be derived from practices and traditions within communities. See Alasdair McIntyre, *After Virtue: A Study in Moral Theory* (3rd edn, University of Notre Dame Press 2007) 54–69, 222. Macintyre's vision of virtue ethics differs from the Islamic approaches discussed in this article, which consider morality to be epitomized in the performance of duties, the promotion of good consequences, or a combination of both.

22 Michael Slote, *Morals from Motives* (Oxford University Press 2001) 14; Linda Zagzebski, *Divine Motivation Theory* (Cambridge University Press 2004) 160.

23 This is not to say that virtue ethics has no place in Islamic ethical discourse; it simply does not feature prominently as a normative vision in mainstream Islamic jurisprudence, particularly the work of the jurists discussed in this article. Aspects of virtue ethics can be found scattered in the teachings of some Muslim jurists, including Yaʿqūb ibn Miskawayh (d.1030 CE), who sought to incorporate the Aristotelian doctrine of virtue ethics into Islamic sources of moral obligation. See Elizabeth M Bucar, 'Islamic Virtue Ethics' in Nancy E Snow, *The Oxford Handbook of Virtue* (Oxford University Press 2018).

when it comes to normativity, some jurists have understood moral reasoning as a deontological construct while others have framed morally required choices in terms of a consequential pain/pleasure equation.

A. Moral Reasoning in Islamic Theological Philosophy (*kalām*)

The early Ashʿarites had no clear normative intentions. For them, ethical value was inherently scriptural; it did not refer to human-based welfare. Nor did their writings express the idea that utility had to be maximized in a consequentialist sense. Their approach can best be summed up as textual deontology: moral choices depended not on consequential value calculations but on conformity with a preformed moral norm. Good derived from scripture, and duty lay in whatever norm scripture was seen to promote. This was the vision that informed the Ashʿarites' perception of ethical value in Islamic legal theory. According to al-Juwaynī, scripture was the guide in determining whether something was good and should be promoted as part of the divine scheme or was evil and should be prohibited. The good was what God declared as such and for the pursuit of which he provided a reward; likewise, evil was what he declared as such and for which he meted out punishment.[24]

The Muʿtazilites, unlike the Ashʿarites, proposed a rational account of the content of ethical value that closely resembled a crude form of consequentialist/utilitarian normativity.[25] In his manual *al-uṣūl al-khamsa*, the prominent Muʿtazilite theologian and jurist al-Qāḍī ʿAbd al-Jabbār (d.1025) argued that humankind was created to live in an ideal state of affairs (*niʿma*), which he described as some form of good (*manfaʿa*). He suggested that *manfaʿa* lay in pleasure and happiness (*ladhdha* and *surrur*), and he appealed to human senses to explain *ladhdha*, which he located in physical pleasures such as food, drink, and personal property or the avoidance of sources of pain such as life-threatening dangers.[26] He and other Muʿtazilites believed the human intellect was ontologically capable of creating value. But in this intuitionist account of ethical value it is not clear why ethical value should be associated with calculations of pain and pleasure. ʿAbd al-Jabbār provided no justification for drawing from his understanding of value as *niʿma* and *manfaʿa* the consequence that ethical value was to be perceived in terms of pain and pleasure. It is well known that hedonic assumptions were an established part of Greek ethical discourse,[27] and Ashiʾrites have long accused Muʿtazilites of grafting notions of value taken from Greek philosophy onto the Islamic worldview.[28] It is quite likely, therefore, that Muʿtazilite scholars, including ʿAbd al-Jabbār, were here subject to Greek influences.

---

24 ʿAbd al-Malik b. ʿAbdallāh al-Juwaynī, *al-Burhān fī uṣū l al-fiqh*, (Salah b. Muhammad ʿAwida ed, Dār al-Kutub al-ʿIlmiyya 1997) vol 2, 1–10.

25 Hourani (n 11) 273.

26 Al-Qāḍī ʿAbd al-Jabbār, *Sharḥ al-uṣūl al-khamsa* (ʿAbd al-Karīm ʿUthmān ed, Maktabat Wahba 1996) 77–80.

27 Quinton (n 15) 11.

28 Muhammad Muṣṭafa Shalabi, *Tᶜalil al-Ahkām* (Matḅaʿat al-Azhar 1947) 98. In his discussion of the historical rivalry between Muʿtazilites and Ashʿarites, Shalabi notes that the Muʿtazilites' heavy reliance on the intellect to establish objective value independently of revelation might have been a result of their having access to translated works of Greek philosophers during the early Abbasside era, in particular during the reign of al-Maʾmūn.

When it comes to creating ethical norms, there are conflicting views among Muʿtazilites scholars. Badr al-Dīn al-Zarkashī (d.1392) and al-Kamāl Ibn al-Humām (d.1457) saw no connection between the intellect's capacity to determine value and its capacity to draw normative inferences therefrom (i.e to maximize value). They accused the Ashʿarites of misrepresenting their normative position. On the contrary, their position was that norms could be created only through revelation, and that the human intellect was simply capable of discovering ethical value.[29] However, this conclusion seems to contradict an early Muʿtazilite position advanced by ʿAbd al-Jabbār, who submitted that if the human intellect is considered capable of determining good and evil, ethical obligations rationally follow as the means of bringing about good and preventing harm.[30] In this respect, ʿAbd al-Jabbār's position bears some resemblance to classical utilitarianism: human intellect can objectively determine good and evil as defined in terms of pleasure and pain, and the right thing to do is maximize the good and prevent the evil.

B. Moral Reasoning in the Pre-modern *Uṣūl al-Fiqh*

Moral reasoning in the pre-modern *uṣūl al-Fiqh* was predominantly normative.[31] Jurists sought above all to construct a body of knowledge on moral choices and, to that end, they enquired into the source, content, and nature of ethical value in the Islamic worldview and its normative force in guiding human action. In this section, I critically examine contributions made by major figures in Islamic legal theory. In doing so, I do not intend to reproduce their arguments on the sources of Islamic moral obligation, as previous studies have done. My purpose here is rather to offer conceptual insights into their normative methodologies and assess juristic uses of consequentialist and deontological approaches to Islamic moral reasoning.

Interestingly, moral reasoning in Islamic legal theory was strongly influenced by concepts of Islamic theological philosophy (*kalām*). Although some jurists followed the standard Muʿtazilite thesis by arguing that reason is capable of determining good and evil independently of revelation, the dominant position, as defended by the Ashʿarites from the Abbasid period (750–1258 AD), was that our knowledge of a state of affairs that is intrinsically good must stem from revelation.[32] Most pre-modern jurists distanced themselves from the ethical objectivism of the Muʿtazilites, appealing instead to the Ashʿarites' views on the scriptural origins of ethical value and rejecting the idea that human reason could determine good and evil.[33]

Ashʿarite legal theorists used revelation as the locus of their analysis of ethical value and its normative implications, introducing concepts such as *ḥikma* (wisdom underlying revelation), *ʿilla* (ratio of scriptural stipulations) and *munāsaba* (suitability of scriptural instruction to human nature). It is assumed that revelatory commands,

---

29   Badr al-Dīn al-Zarkashī, *al-Baḥr al-muḥīṭ fī uṣūl al-fiqh*, 6 vols (ʿAbd al-Qādir ʿAbd Allāh al-ʿĀnī ed, Dār al-Ṣafwa li'l-Ṭibāʿa wa'l-Nashr wa'l-Tawzīʿ 1992) 1134–35.

30   ʿAbd al-Jabbār (n 26) 564–65.

31   Opwis, *Maṣlaḥa* (n 4) 32.

32   Hourani (n 11) 269.

33   It should be noted, however, that some aspects of Muʿtazilite ethical rationality continued to have some influence on jurists of the Ashʿarite tradition, as reflected notably in the jurisprudence of ʿIzz b. ʿAbd al-Salām (d.1261), who accepted that human reason could determine the content of worldly interests.

instructions, and narratives are linked to underlying design principles and normative signals, the purpose of which is to promote human flourishing. Generally, Ashʿarite jurists suggest that the human intellect is capable of deriving moral knowledge from these underlying design principles and normative signals, particularly in connection with worldly moral reasoning (*muʿāmalāt* and *ʿādāt*).[34]

(i) The Textual Deontology of Al-Juwaynī and al-Ghazālī

Imām al-Ḥaramayn al-Juwaynī (d.1085) and Abū Ḥāmid al-Ghazālī (d.1111) made foundational contributions to moral reasoning in Islamic legal theory. Both sought to uphold a strictly revelatory conception of ethical value and normativity. In his seminal treatise *al-Burhān*, al-Juwaynī claims that the content of ethical value depends solely on revelation. He was one of the earliest jurists to define good (*maṣlaḥa*) as the objective of revelation (*maqṣūd al-sharʿ*).[35] Taking a purely Ashʿarite line, he argued that good and evil could be derived from textual commands and prohibitions only, not by a process of extra-scriptural reasoning.[36] He admits an element of normativity, however, by suggesting that legal analogy (*qiyās*) can be used in connection with *maqṣūd al-sharʿ*. Thus, once ethical value has been determined from a particular textual reference, the moral positioning derived from that ethical value can be extended to similar, textually unqualified moral questions.[37] The oft-cited example is wine and other forms of intoxicating substances. The Qurʾān prohibits consumption of wine because intoxication is perceived as evil. Accordingly, any substance that leads to intoxication, such as marijuana, is prohibited, and Muslims are required to abstain from consuming it. Al-Juwaynī otherwise categorically ruled out relying on textual moral values to address novel situations that have no equivalent in textual sources, and he even criticized Mālik b. Anas (d.795),), the eponym of the Mālikī school, for doing so.[38]

Al-Ghazālī closely followed his teacher al-Juwaynī in considering ethical value to be synonymous with *maqṣūd al-sharʿ*. However, his understanding of scriptural ethical value and its normative force was marked by significant developments. Distancing himself from the Muʿtazilite thesis and aligning with the traditional Ashʿarite position, he held that revelation was the exclusive source of ethical value. He contended that revelation nourished a general ethical and normative vision favourable (*munāsiba*) to the interests of humankind by promoting the good of and preventing evil from moral agents (*mukallafun*).[39] Ethical values in the Islamic worldview could not depend on rational calculations of benefit and harm but were instead determined through textually inspired inductive and deductive processes. Al-Ghazālī's taxonomy of ethical value identified five primary objectives: the promotion of religion, human life, lineage, intellect, and wealth.[40]

34   Al-Raysuni (n 5) 21–23.
35   ibid 48.
36   Al-Juwaynī, *al-Burhān fī uṣū l al-fiqh* (ʿAbd al-ʿAẓī m al-Dīb ed, Dār al-Anṣār 1980) 91.
37   ibid 743–44.
38   ibid.
39   Abū Hamid al-Ghazālī, *Shifāʾ al-ghalīl* (Ḥamd ʿUbayd al-Kubaysī ed, Maṭbaʿat al-Irshād 1971) 221.
40   Abū Hamid al-Ghazālī, *al-Mustaṣfá* (Ḥamza b. Zuhayr Ḥāfiẓ ed, Sharikat al-Madīna al-Munawwara lil-Ṭibāʿa, n.d.) vol 2, 481–82.

Al-Ghazālī built on this taxonomy when discussing issues of normativity. Unlike al-Juwaynī, who limited applications of ethical value to legal analogy, al-Ghazālī suggested that his conception of scriptural ethical value could be used to address ethical questions on which no moral position could be derived directly from scripture (*al-maṣāliḥ al-mursala*). Al-Ghazālī illustrated his remarks with the famous example of the captives. He first asserted that, as an intrinsically good ethical value, the promotion of human life could serve as a basis for addressing textually unqualified moral issues. In his example, non-Muslim invaders contemplate using Muslim prisoners as a human shield to carry out their incursion. According to al-Ghazālī, there are two options for the Muslim population under attack: either they do not resist, which would allow the foreign enemy to conquer the land and kill everyone including the innocent captives, or they defend their land by striking at the human shield and killing the captives. Al-Ghazālī argued that it was possible the innocent captives would be killed either way and that protecting the entire Muslim community against invasion by non-Muslims would conform with the intention of the Lawgiver as affirmed by countless scriptural authorities.[41]

At first sight, this moral choice would seem to be based on a typically consequentialist analysis: preserving human life is intrinsically good, so the right thing to do is to save the greatest number of besieged Muslims, even at the expense of the few innocent captives. Indeed, the consequentialist nature of al-Ghazālī's reasoning here can hardly be denied and indeed may well have fuelled claims about the utilitarian orientation of Islamic moral reasoning in general and that of al-Ghazālī in particular.[42] However, closer examination shows that there are no grounds for such a claim.

First, al-Ghazālī was himself ambivalent about the conclusion he reached, admitting that the right thing to do was open to value judgement (*amr Ijtihādi*). He referred to possible objections prompted by the Islamic belief in the sanctity of every single human life, so it cannot be said that he was wedded to a consequentialist analysis of moral choices.[43] This assessment is borne out by his overarching perception of *maṣlaḥa* as a duty-creating norm. For al-Ghazālī, *maṣlaḥa* necessarily meant 'preservation of the objectives of the law' (*al-muḥāfaẓa ʿalā maqsūd al-sharʿ*):[44] *maṣlaḥa* is brought about not through teleologically weighing harms and benefits, but by complying with the divine intentions expressed or implied through revelation.[45]

Second, the captive scenario was not the only example he provided to support his position on textually unqualified moral reasoning. In other examples, he showed no interest in the standard utilitarian calculus of achieving the greatest good for the greatest number, as when he considered it wrong to throw one passenger from a sinking boat to save the majority (the life of that one person was sacred and could not be sacrificed to the good of the other passengers),[46] or when he decried the use of torture to obtain information from a suspected thief (the social good required that the safety and dignity of the alleged thief be protected).[47] We can see here that the

---

41   ibid 488.
42   For an example of such claims, see Nusseibeh (n 12) 89.
43   al-Ghazālī (n 40) 494.
44   ibid 481–82.
45   cf Koujah (n 17) 136–37.
46   al-Ghazālī (n 40) 489.

rightness and wrongness of an act or an omission depends on complying with norms that categorically forbid the intentional commission of evils acts such as killing the innocent passenger or torturing the prisoner to obtain information.[48]

Finally, to correctly interpret Al-Ghazālī's captives scenario, it is necessary to take account of a condition that was central to using scriptural ethical values to address textually unqualified ethical questions—namely, scope: the novel situation must concern a universal value (*maṣlaha kullyia*) that benefits the entire community and not just parts of it. Al-Ghazālī spoke of saving not the majority but the entire Muslim community from destruction. For al-Ghazālī', *maṣlaha kuliyya* was an absolute, not a relative condition: it was a question of securing the existence of the entire society, not merely the greatest number of its members. This is a view shared by Anver Emon, who considered that *maṣlaha* must protect 'a universal value for all of society'. This means that 'what is stake is more than just a utilitarian principle of maximizing happiness'. *Maṣlaha*-based reasoning pursues interests related to society as a whole, not just the greatest number of its members.[49] For al-Ghazālī, competing ethical values are inherently duty-based: on the one hand, we have a duty to preserve the existence of society, but also to preserve innocent human lives on the other. The right thing to do in this case is determined not by taking a consequentialist approach that seeks to maximize the good, but by resolving a conflict of priorities between two competing duties. In taking this line, al-Ghazālī remains within the parameters of deontological normativity.[50]

To correctly interpret Al-Ghazālī's captives scenario, it is necessary to take account of a condition that was central to using scriptural ethical values to address textually unqualified ethical questions—namely, scope: the novel situation must concern a universal value (*maṣlaha kullyia*) that benefits the entire community and not just parts of it. Al-Ghazālī spoke of saving not the majority but the entire Muslim community from destruction. For al-Ghazālī', *maṣlaha kuliyya* was an absolute, not a relative condition: it was a question of securing the existence of the entire society, not merely the greatest number of its members. Overall, it seems that al-Ghazālī's approach is closer to deontological than to utilitarian ethics.[51]

(ii) The Rational Input of Al-Rāzī and ʿAbd al-Salām

The contributions of Fakhr al-Dīn al-Rāzī (d.1210) and al-ʿIzz b. ʿAbd al-Salām (d.1261) were more progressive compared to those of al-Juwaynī and al-Ghazālī. Both incorporated rational elements, but al-Rāzī's was of particular interest. While placing himself in the tradition of Ashʿarite theology, he proposed an apparently intuitionist account of Islamic moral knowledge, which, as I will show, has a close affinity to standard consequentialism and utilitarianism, insofar as he seems to suggest that what is good precedes what is right and rightful action consists in maximizing good and reducing evil.

47   ibid 490.
48   Anver M Emon, *Islamic Natural Law Theories* (Oxford University Press 2010) 143.
49   Anver M Emon, 'Natural Law and Natural Rights in Islamic Law' (2005) 20 Journal of Law and Religion 351, 374.
50   Emon (n 48) 143.
51   cf Koujah (n 17) 136.

Al-Rāzī's contribution to Islamic legal theory displays greater complexity than that of his predecessors, including al-Juwaynī and al-Ghazālī. He was criticized by some jurists, notably Ibn Qayyim al-Jawziyya (d.1351), for his conflicting views on extrapolating *(ʿilla)* from revelatory norms.[52] Ahmad al-Raysuni suggests that a close reading of al-Rāzī's work reveals a dual account of the origin of value—one in which the proposition that revelatory norms are amenable to rational explanation by the human intellect is both upheld and rejected. The reason for this is that al-Rāzī entertained differing views on *taʿlil* (rationalization) in his theological works and in his works on legal theory.[53]

In al-Rāzī's central work on legal theory, *al-Maḥṣūl fī ʿilm uṣūl al-fiqh*, two visions of the source and content of ethical value are put forward. The first reflects his Ashʿarite conviction that revelation, transmitted through textual commands and prohibitions, is the sole source of our moral knowledge on *ḥasan* (good) and *qabīḥ* (evil).[54] He closely follows al-Juwaynī in defining goodness as the purpose of revelation *(maqṣūd al-sharʿ)* and adheres to al-Ghazālī's explanation of *maqṣūd al-sharʿ* as the promotion of religion, life, lineage, intellect, and wealth. He even reproduces some of the practical examples given by al-Ghazālī in *al-Mustaṣfá*.[55]

Yet, in an unusual leap for an Ashʿarite legal theorist, he proposes a rational account for the content and scope of ethical value, arguing that revelatory norms were justified through *ratio*. He defines *ratio* as that which is agreeable to human nature *(munāsiba)*, which he interprets as meaning that the moral agent will acquire some benefit *(manfaʿa)* and be spared harm *(mafsada)*. Al-Rāzī then resorts to a hedonic calculation by defining *manfaʿa* as pleasure *(ladhdah)* and *mafsada* as pain *(alam)*, for which no further explanation is needed as they can both be perceived by the human senses.[56] According to Ayman Shihadeh, who studied al-Rāzī's ethics both within and outside legal theory, al-Rāzī 'maintains that the notions of "good" and "bad" are rational'. For al-Rāzī, benefit and harm 'are ultimately defined in terms of the primal sensations of pleasure and pain that the agent experiences, or expects to experience'.[57]

This view contrasts sharply with that of al-Juwaynī and al-Ghazālī, for whom the good was made known through revelation, not sensory perception of it. Al-Rāzī seems to be suggesting that the two are not incompatible, although why al-Rāzī assumes that pain and pleasure can serve as a measure of value in Islamic moral reasoning remains unclear. After all, it is at odds with the Ashʿarite line he adhered to. While references to pain and pleasure may be understandable on the part of a Muʿtazilite like ʿAbd al-Jabbār, who believed in the intellect's power to determine value, the same cannot be said of an Ashʿarite like al-Rāzī. It is likely that al-Rāzī's views on the content of ethical value in Islamic legal theory were influenced by

52 Ibn Qayyim al-Jawziyya, *Iʿlām Al-Muwaqiʿin ʿan Rabbi al-ʿĀlamīn* (Ṭāha ʿAbd al-Raʾūf Saʿd ed, Dār al-Jīl 1973) vol 2, 75.

53 Al-Raysuni (n 5) 223.

54 Muhammad Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl fī ʿilm uṣūl al-fiqh* (Dār al-Kutub al-ʿIlmiyya 1988) vol 1, 108, 123.

55 ibid vol 5, 160–62.

56 ibid 158.

57 Ayman Shihadeh, *The Teleological Ethics of Fakhr al-Dīn al-Rāzī* (Brill 2006) 58.

ancient Greek notions of the hedonic nature of value.[58] Although he does not refer to such influence in *al-Maḥṣūl*, his work on philosophical theology, entitled *Eastern Studies in Metaphysics and Physics*, includes several pages on the meta-ethical significance of pain and pleasure. Significantly, al-Rāzī refers to Aristotle's *Nicomachean Ethics* to consolidate some of his claims about the role of pain and pleasure as factors motivating human actions.[59] The first section of the tenth book of the *Nicomachean Ethics* explains to ethicists the importance of understanding the roles of pain and pleasure in creating value for humankind.[60]

The consequentialist/utilitarian dimension of al-Rāzī's approach finds additional support in his normative analysis. After explaining that ethical value depends on a pain/pleasure calculus, he suggests that a consequential assessment of human conduct will be necessary to decide on the right course of action in a given situation.[61] If an action causes more good than evil, then it becomes mandatory, and if the opposite is true, then it must be forsaken. Thus, at a meta-ethical level, pain and pleasure are used as criteria for determining value, and at a normative level, the right moral choice will be one that maximizes good (pleasure) and minimizes evil (pain). The influence of al-Rāzī's opinions on the content of ethical value can be seen in the work of jurists such as al-ʿIzz, ʿAbd al-Salām, and ʿAdud al-Dīn al-ʿaiyyji (d.1355), who likewise relied on notions of pain and pleasure to determine what constitutes an intrinsically good state of affairs, and on consequential calculations to bring it to fruition.[62]

Al-ʿIzz in particular deserves special attention, for two reasons: his book *al-Qawāʿid al-kubrā* was devoted to explaining ethical value in terms of good and evil; and it was he who first emphasized the need to consider different levels of good and evil and articulate different degrees of moral judgements – an action becomes obligatory, permissible, neutral, prohibited, or reprehensible depending on the level of goodness or evilness it implies. Departing from the classic Ashʿarite doctrine on the scriptural origin of ethical value as presented in the work of his predecessors, particularly al-Ghazālī, al-ʿIzz claims that human reason is capable of determining the content of worldly interests independently of revelation. According to al-ʿIzz, humans are naturally disposed to distinguish between good and evil, as reflected in their instinctive acknowledgement of the sanctity of human life, property, and honour.[63]

58 The Greek influence on al-Rāzī's work is very evident not only in his use of Greek philosophical notions of value but also in his writing style. Haywood observes that al-Rāzī 'was a master of subtle argument, based on Greek philosophy and logic, and full of syllogisms. This was one of his main weapons in dialectics.' John A Haywood, 'Faḵẖr al-Dīn al-Rāzī's Contribution to Ideas of Ultimate Reality and Meaning' (1979) 2 Ultimate Reality and Meaning 264, 266.

59 Faḵẖr al-Dīn al-Rāzī, *al-Mabāhith al-mashriqiyya fī ʿilm al-ilāhiyyāt wa-al-tabiʿyyāt* (Markaz taḥqiqā Kampiyutiri-ʿUlumi Islāmi, n.d.) vol 1, 388–97.

60 Aristotle, *Nicomachean Ethics* (WD Ross tr, Focus 2002).

61 cf Shihadeh (n 57) 2. According to Shihadeh, al-Rāzī 'adopts a thoroughly consequentialist ethics of action' (ibid 66). Although Shishadeh does not discuss al-Rāzī's approach to maximizing the good in terms of providing motivation for moral action, he clearly shows that, for al-Rāzī, consequential calculations of good and bad justify moral judgements. As far as moral obligations are concerned, 'judging acts to be obligatory, recommended (*mandūb*), prohibited, or reprehensible (*makrūh*) [rests] purely on the basis of their consequences' (ibid 72).

62 Shalabi (n 28) 279.

63 ʿIzz al-Dīn ʿAbd al-ʿAzīz b. ʿAbd Al-Salām, *al-Qawāʿid al-kubrā* (or *Qawāʿid al-aḥkām fī iṣlāḥ al-anām*) (Dār ibn Hazm 2000) 9.

Although al-ʿIzz declares that good manifests in pleasure and happiness, and evil in pain and sadness,[64] he does not have a hedonic conception of pain and pleasure, as was the case with al-Rāzī and his reference to the human senses. Rather, al-ʿIzz adopts a position more akin to ideal-utilitarianism by arguing that physical pleasure is not the primary measure of value; our perception of value should instead aim at higher virtues, an example of which is the pursuit of knowledge.[65]

Al-ʿIzz also points out that ethical value is not a black-and-white concept; moral reasoning typically involves *degrees* of goodness and evilness, as pure good and pure evil are rare. This relativity coloured his understanding of the normative implications of ethical value. Like al-Rāzī, he held that moral choices depend on a consequential weighing of good and evil (with a view to maximizing good and minimizing evil).[66] He differed from al-Rāzī, however, by adding that those choices also depend on the intensity of the good and the evil.[67] Moral judgements cannot be reduced to binary do or don't choices. At one extreme, pure good will impose obligatory action, while at the other extreme pure evil will necessitate outright prohibition. Between the two, however varying expectations of good and evil will lead to varying degrees of permissibility. According to al-ʿIzz, reference should be made to the classical divisions of moral judgement in Islamic legal theory (*taqsimāt al- ḥukm al-sharʿi*) when drawing normative implications from ethical value.[68]

(iii) Al-Shāṭibī's Theory of Revelatory Consequentialism

Writing about a century after al-ʿIzz, al-Shāṭibī refused to admit that reason could establish value independently of revelation. Following the classic Ashʿarite position, he insisted that knowledge of good and evil must be based directly on textual moral judgements and their attendant *ratio*, and that once ethical value has been ascertained in this way, the morally correct course to take is to maximize that value[69]

al-Shāṭibī acknowledged the influence of *kalām* in the formulation of views on good and evil in Islamic legal theory. He adhered to the classical *kalām* belief that the ethical and normative purpose of revelation is to promote good and avert evil.[70] Although he believed that human agency had no role to play in establishing ethical value, he argued that revelation nonetheless promotes human objectives (*maqāṣid al-mukallaf*) that are life-enhancing, satisfy intellectual needs and generally lead to human flourishing (*ḥatā yakūnu munaʿaman*).[71] In contrast to al-ʿIzz, who believed that such worldly interests could be defined by human reason, al-Shāṭibī insisted that their existence is not linked to human perceptions of good and evil. In al-Shāṭibī's view, human intuition can lead only to 'whimsical' judgements (*hawā*) and cannot

---

64   ibid 15.
65   ibid 16, 513.
66   ibid 12.
67   ibid 15.
68   ibid 12, 267 et seq.
69   Al-Raysuni (n 5) 169.
70   Ibrāhīm b. Mūsa al-Shāṭibī, *al-Muwāfaqāt fī uṣu l al-Sharīʿa* (ʿAbdallāh Darāz ed, Dār al-Fikr al-ʿArabī, n. d.), vol 2, 9–12.
71   ibid 44.

form the basis of Islamic norms. Accordingly, value must be sought in revelatory norms.[72] Here, al-Shāṭibī, aligned himself with al-Ghazālī by presenting scriptural ethical value as a taxonomy of five basic social goods: the promotion of religion, life, lineage, intellect, and wealth.[73] al-Shāṭibī diverges from al-Ghazālī, on the other hand, when it comes to the normative part of his reasoning. Here, he takes a similar position to al-Rāzī and al-ʿIzz in asserting that expectations of good and harm must be taken into account when making moral choices:[74]

> That human beings should assess the consequences of their actions (*maʾālāt al-ʿafʿal*) is an intended objective of revelation. A jurist (*mujtahid*) will not reach a moral judgement on acts and omissions without giving due consideration to the expected *consequences* of those acts and omissions.[75]

al-Shāṭibī provides several examples of consequentialist reasoning in his book *al-Muwāfaqāt*.[76] For instance, in a situation where it is necessary to choose between an action that promotes the good of the majority and one that promotes the good of a minority, we should opt for the former. Accordingly, it is right to sacrifice one human life if this enables many to be saved.[77] This is a clear endorsement of the standard utilitarian position expounded in the trolley dilemma.

IV. MORAL REASONING IN MODERN ISLAMIC LEGAL THEORY

The Muslim-majority societies of the nineteenth and twentieth centuries witnessed profound changes that took Islamic ethical discourse in a new direction. Under the influence of Western modernity, notions of secular state institutions and lawmaking entered the religious environment of Muslim societies. Non-denominational education as practised in the West spread across various parts of the Islamic world, from Istanbul to Tunis, posing a challenge to the traditional religious education dominant in those regions.[78] In a related development, the public sphere in the Islamic world began to be penetrated by intellectual trends that associated the positive aspects of Western modernity with secular Western philosophy opposed to public policy grounded in religion. The spread of secular modes of reasoning led to the emergence of an Islamic reform movement, in which religious scholars sought practical justifications for the numerous political, social, and economic developments resulting from Western influence.[79] In contrast to classical Islamic legal theorists, who were more concerned with personal morality than with state authority, reform scholars engaged in a process of public justification for formal constitutional and legal reform in the

---

72 ibid vol 77.

73 ibid vol 32.

74 cf Al-Raysuni (n 5) 259.

75 Al-Shāṭibī (n 70) vol 5, 177.

76 ibid vol 2, 27.

77 ibid vol 2, 64.

78 Rotraud Wielandt, 'Main Trends of Islamic Theological Thought from the Late Nineteenth Century to Present Times' in Sabine Schmidtke, *The Oxford Handbook of Islamic Theology* (Oxford University Press 2016) 711.

79 cf ibid 711.

belief that the Islamic worldview was capable of accommodating Western modernism.

There are two aspects of moral reasoning in the modern reform era that deserve particular attention. First, modernists criticized the persistent imitation of the legacy of classic Islamic legal theory and sought to address the challenges and needs of Muslim societies in the modern era. They saw no sound reason to accept the continuing authority of classic jurisprudence in setting the normative agenda for modern reform. They urged instead that greater authority be given to rational analysis in maximizing good and minimizing evil. Kerr and Hallaq argued that this amounted to reducing Islamic moral reasoning to a crude form of utilitarian rationality.[80] However, while it is true that moral reasoning took a utilitarian turn in the reformist discourse, it was a pragmatic response to the pressure of modernism, not a position argued as an alternative to deontological explanation of moral obligation in Islamic legal theory. In other words, reformers seem to passively appeal to consequentialist moral reasoning rather than contemplating the existence of an alternative deontological explanation for moral reasoning in Islamic legal theory.

Second, reformers seemed to restrict the full moral authority of revelation to acts of worship (*ibādāt*), including metaphysical beliefs, prayers, and fasting. They considered that ethical issues beyond the realm of worship (*muʿāmalāt*) should always be addressed through rational analysis aimed at achieving material welfare for individuals. This proposition conflates two distinct aspects of moral reasoning. The first involves ethical questions for which there is no revelatory source determining the right course of action to take. Reformers suggested that moral authority to address such questions might have been delegated to flexible rational analysis for the purpose of achieving general welfare. Here, as I explain below, moral evaluation is unmistakeably utilitarian: reformers seek to promote choices that maximize the greatest good for the greatest number. The second concerns the adaptation of existing interpretations of the Qurʾān and the *ḥadīth* to meet human needs and interests. Believing that modernity calls for a progressive attitude to deriving moral knowledge from revelation, reformists such as ʿAbduh and Riḍā made extensive use of the classic doctrine of necessity (*ḍarūra*) as a device to override traditional interpretations of Islamic scriptures. The doctrine allows the application of textual norms to be suspended if this will alleviate actual or perceived hardship. Reformers argued that modern Muslim societies were faced with political, economic, cultural, and social challenges not necessarily of their making or choosing. Revelatory norms dated from 7th-century Arabia, so there was a pressing need to rethink their application in what were very different circumstances. The doctrine ended up being used to permit acts that were known to be prohibited under classic Islamic legal theory but were now considered justified on utilitarian grounds, as they increased the welfare of the majority of

---

80 Kerr (n 14) 1; Hallaq, *An Introduction to Islamic Law* (n 14) 116. Kerr and Hallaq focused on the way modernists used the concepts of utility, public interest, and necessity, arguing that these notions have transformed ethical enquiry into utilitarian reasoning as used to rethink the foundational ethical claims of classic legal theory. According to Hallaq, significant elements of the reform discourse have made Islamic modes of reasoning 'nominally Islamic and dominantly utilitarian'. Hallaq defended similar views in in earlier publications. See for instance, Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh* (Cambridge University Press 1997) 224.

Muslims. As we shall see, Riḍā used this argument in a number of his opinions, going even as far as allowing Muslims to fight in non-Muslim armies despite the fact that this flew in the face of classic Islamic legal theory.

To explain the nature of moral reasoning in the reform era, I will refer to the contributions of ʿAbduh and Riḍā, arguably two of the most influential figures in modern Islamic legal theory, although it should be said that other jurists made interesting contributions to ethical discourse, too. One such figure was Jamāl al-Dīn al-Qāsimī (1866–1914), reputed above all for the first known commentary on Najm al-Dīn al-Ṭūfī's work, which he apparently endorsed wholeheartedly.[81] Al-Ṭūfī (d.1316) is known for his influence on the modern reform movement, although he adds very little to our core understanding of ethical value. While boldly asserting that once jurists have determined what is good (*maṣlaḥa*), this should take precedence over all other sources of moral obligation, including revelation, he did little to explain the scope and implementation of his conception of *maṣlaḥa*.[82]

Al-Ṭūfī's views on moral reasoning based on *maṣlaḥa* were expounded in his interpretation of the *ḥadīth* 'lā ḍarar wa-lā ḍirār' (no harm shall be inflicted or reciprocated): if the main objective of revelation is the prevention of harm, then the Lawmaker's central objective must be to bring about an ideal state of affairs (*maṣlaḥa*) for humankind. Good, al-Ṭūfī argues in a cursory discussion of the content of ethical value, is what procures happiness and joy (*faraḥ wa saʿādah*) in compliance with revelation.[83] The right thing to do is what achieves that value even if it runs counter to a given revelatory norm. To justify his position, al-Ṭūfī claimed that moral reasoning inspired by the pursuit of good and avoidance of evil was the strongest foundation for moral judgement in the Islamic worldview, prevailing over all other sources of moral obligations, including scripture.[84] ʿAbduh and Riḍā, as I show below, closely follow al-Ṭūfī's vision *maṣlaḥa*-based moral reasoning.

Although there is only a limited record of *fatwas* by al-Qāsimī, it is clear that he advocated for legal reform to promote choices that would maximize benefits and minimize harm. This can be seen in his opinion on constitutional reform. Defying scholars who declared that modern constitutions were not compatible with Islamic traditions, he suggested that any new system of rules should be judged by a consequentialist yardstick: constitutions should be considered compatible with Islamic norms if they helped to ensure public welfare by maximizing good and minimizing harm.[85]

81 Al-Qāsimī's comments on al-Ṭūfī's views on *maṣlaḥa* were reproduced by Riḍā in *al-Manār*. Muhammad Rashīd Riḍā (ed), *al-Manar*, 35 vols (Maʿatal-Manar 1898–1935) vol 9, 745–46.

82 Najm al-Dīn al-Ṭūfī, *Kitāb al-Taʿyyin fī Sharḥ al-ʿrbaʿin* (Ahmed Ḥaj ʿUthmān ed, Muʾassasat al-Raiyyān 1998) 239.

83 Al-Ṭūfī (n 81) 240.

84 Muṣṭafa Zayd, *al-Maṣlaḥa fī l-tashrīʿ al-islāmī* (research thesis [1954], Muḥammad Yusri ed, Dār al-Yussr, n.d.) 74 et seq.

85 David Dean Commins, *Islamic Reform: Politics and Social Change in Late Ottoman Syria* (Oxford University Press 1990) 126.

A. Muḥammad ʿAbduh's Rational and Anthropocentric Approach to Moral Reasoning

The key feature of ʿAbduh's contribution to the debate on moral reasoning is his strong insistence on the capacity of the human intellect to determine good and evil. He reasoned that if revelation recognizes the intellect's ability to discover the divine scheme and assume responsibility for human actions in this world and the hereafter, then the intellect must be in complete harmony with revelation.[86] With this argument, ʿAbduh limited the influence of the traditional Ashiʿrite doctrine in the reformist discourse. Although he did not explicitly associate himself with Muʿtazilite theology, he is commonly regarded as a neo-Muʿtazilite.[87] He was extremely critical of literalists' modes of reasoning and their slavish adherence to pre-modern jurisprudence. Instead, he defended a rational approach to ethical value and normative positions, believing that it would equip Islam with the much-needed flexibility to respond to the challenges of the nineteenth and twentieth centuries.[88]

ʿAbduh had a pragmatic and empirical understanding of moral knowledge. He believed that the right thing to do was determined by rationally weighing moral choices with a view to maximizing good.[89] For him, the ultimate goal of moral reasoning should be the satisfaction of human needs and the promotion of human flourishing. His vision of the nature and scope of ethical value was clearly anthropocentric. To support his proposition that human life takes precedence over religion, he referred to several Qurʾānic verses attesting to the superiority of the physical needs of individuals over acts of devotion, including prayers and fasting.[90] ʿAbduh thus sought to demonstrate that revelation itself acknowledged the intrinsic value of human well-being and the importance of human needs, which justified their having a central role in moral reasoning.

When it comes to drawing normative moral conclusions, ʿAbduh argued for the empowerment of rational thinking. As human reason and revelation are in harmony with each other, the use of reason to realize ethical value becomes a divine objective.[91] Accordingly, norms created through rational analysis may rely on the metaphysical divine system of reward and punishment:

> The human intellect has long acknowledged the existence of consequences. It divided them into harmful and useful. It called the former evil actions and the latter good actions. On the basis of that division, we differentiate between

---

86   Muḥammad ʿAbduh, *al-Amāl al-kāmila li-l-imām Muḥammad Abduh* (Muḥammad ʿAmāra ed, al-Muʾassasa al-ʿarabiyya li al-dirāsāt wa al-nashr 1972) vol 3, 257–350.

87   Richard C Martin and Mark Woodward, with Dwi S Atmaja, *Defenders of Reason in Islam: Muʿtazilism from Medieval School to Modern Symbol* (Oneworld 1997) 129–35; D Khalid, 'Some Aspects of Neo-Muʿtazilism' (1969) 8 Islamic Studies 320–21.

88   ʿAbduh (n 86) 359–63.

89   Kerr (n 14) 111.

90   Muḥammad ʿAbduh, *al-Islām wa-l-naṣrāniyya maʿa l-ʿilm wa-l-madaniyya* (Dār al-Ḥadātha 1988) 74–76.

91   In expounding ʿAbduh's views on this particular point, Kerr states that 'normatively, the starting point for him is man's ability to distinguish for himself between good and evil – to determine the norm of right behavior – through rational calculation of utility. The obligatory character of the norm is then supplied by religious input, which informs him that it is God's will that the norm be adhered to on pain of punishment in the afterlife'. Kerr (n 14) 121.

virtue and vice. Human thought ... has made the happiness or misery of a man in this life dependent on them.[92]

B. Riḍā's Utilitarian Applied Ethics

Rashīd Riḍā's views on moral evaluation followed the theoretical models of ʿAbduh and al-Qāsimī. He endorsed al-Qāsimī's commentary on al-Ṭūfī's conception of *maṣlaha*, arguing that the prime objective of moral obligation should be to achieve good and prevent evil.[93] Like ʿAbduh, he defended an anthropocentric approach to moral reasoning and called for greater normative authority to be assigned to reason.

Riḍā's vision of moral reasoning was influenced by growing calls to adopt Western practices for legal norms and institutional structures in Muslim-majority countries[94] and by a belief that the normative structure of classic Islamic legal theory was ill-equipped to respond to the unique challenges posed by modern Western culture. His position was that Islamic legal theory should as far as possible be relied upon to justify norms that promote the utilitarian interests of Muslim societies. Riḍā took up the reformers' claim that revelation was intended to be limited to acts of worship. As for moral choices concerning worldly matters and human needs, Muslims had to recognize that the human intellect was endowed with an independent capacity to create norms that prevent harm and promote welfare. Riḍā's vision of reform relies on two doctrines of classic Islamic legal theory: *maṣlaha* and the doctrine of necessity (*ḍarūra*).

Riḍā called for extensive use of *maṣlaha* when making moral choices addressing ethical questions for which there are no specific revelatory norms. He drew particularly on the discourse of scholars who recognized *maṣlaha* as an independent frame of reference for normative positions. Like them, he considered the welfare and happiness of Muslims to be the ultimate goal of moral reasoning: the right choice in a given situation is one that maximizes welfare and happiness. However, Riḍā went further by proposing to rethink existing interpretations and applications of textual sources in order to construct a welfarist vision built around the contemporary human needs of Muslims.[95]

Riḍā stood out from other reformers for his bold and unprecedented use of the traditional doctrine of necessity, which enabled him to advocate normative positions different to those derived from textual sources whenever warranted by an actual or perceived human need. Generally, the necessity doctrine is used as a means of exemption, allowing Muslims to set aside textual instructions to avoid hardship. For instance, it allows them to utter words of disbelief, drink wine, or eat prohibited food if doing so is the only way to avoid life-threatening dangers. Riḍā, however, used it as a general benchmark for the creation of norms. It would appear that he considered Western influence on politics and society in Muslim-majority countries to have

---

92 Muḥammad ʿAbduh, *Risālat al-tawḥīd* (Muḥammad ʿAmāra ed, Dār al-shurūq 1994) 70–71.
93 Riḍā (n 81) 745–46.
94 Kerr (n 14) 188.
95 Muḥammad Rashīd Riḍā, 'Adilat al-Sharʿwa taqdīm al-maṣlaha ʿala al-naṣṣ, Bāb Uṣū l al-fiqh' in Riḍā (n 81) vol 9, 746–70.

created a generalized state of necessity, requiring new norms specific to this new normative environment. He believed that Muslims should be free to make choices that promote their material interests, and he saw no good normative reason—other than in relation to acts of worship—to prioritize textual sources if they led to an undermining of human needs. Riḍā's application of the doctrine of necessity follows al-Ṭūfī's model of normative analyses: moral reasoning should aim to promote a good state of affairs regardless of textual stipulations.[96]

The consequentialist/utilitarian turn of Riḍā's applied ethics is apparent in his many fatwas. From 1903 to 1935, Riḍā published around 1061 fatwas in al-Manār.[97] He gives clear expression to his consequentialist ethical benchmark: when making moral choices in mundane matters, we must begin by weighing the expected outcomes of action and inaction with a view to promoting the well-being of the average Muslim.[98] He thus criticized the long-standing interpretations of textual sources that led to the prohibition of photography and alcoholic substances. Instead, he argued that photography and certain uses of alcohol were permissible under Islamic law on the grounds of the benefits they could be expected to procure. Such would be the case, for example, when photography is used to verify a person's identity or for classroom illustrations,[99] or when alcohol is used not for intoxication but to save human lives in life-threatening conditions.[100]

Perhaps the most obvious example of Riḍā's use of utilitarian rationality is his fatwa permitting Russian Muslims to fight with the Russian army in the Russo-Japanese War. Mainstream Islamic legal theory traditionally rejected any form of submission to non-Muslim political or military authorities.[101] Riḍā rejected this blanket prohibition, choosing instead to analyse the matter in terms of the benefits that might accrue to Muslims if they chose to fight. Far from considering enlisting with the non-Muslim Russian military authority as sin forbidden by Islamic law, he submitted that if Muslims joined the fight to help other Russian Muslims, they might even be rewarded with all the benefits and privileges that other Russian citizens enjoy, whereas failing to do so might expose them to harm and oppression from the Russian political authorities. Interestingly, Riḍā does not engage in any deontic reasoning about the ethicality of war or whether this was a just or unjust war. He confines himself instead to a cost and benefit analysis: it is right to fight with the Russian army because this might result in more benefits for the Muslim community of Russia.[102]

Riḍā's reduction of Islamic moral reasoning to utilitarian rationality concerned with human needs and welfare does not sit comfortably within Islamic legal theory. Classically minded scholars like Muḥammad Saʿīd al-Būti and theoreticians of

---

96   Muḥammad Rashīd Riḍā, *Yusr al-Islām wa-uṣūl al-tashrīʿ*)Maṭbaʿat al-Manār 1928) 75–76.

97   Ṣalāḥ al-Dīn al-Munajjid and Yūsuf al-Khūrī, *Fatwā al-Imām Muḥammad Rashīd Riḍā* (Dār al- Kitāb al-jadīd 1970).

98   ibid, see fatwa 685 (1926) vol 5, 1873 and fatwa 201 (1906) vol 2, 627.

99   ibid vol 4, 1411.

100   ibid vol 4, 1609–34.

101   Aḥmad ibn Yaḥya, al-Wansharīsī (d.1508), *al-Miʿyār al-Muʿrib wa-l-Jāmiʿ al-Mughrib ʿan Fatawa Ahl Ifrīqiyya wa-l-Andalus wa al-Maghrib* (Wizārat al-Awqāf al-Maghribiyya 1981) vol 2, 121–38.

102   Al-Munajjid and al-Khūrī (n 97) vol 2, 565.

modern Islamic studies such as Hallaq have criticized Riḍā for introducing such a radical shift.[103] They maintained that human perceptions of good and what was in the public interest could not override revelatory norms and operate as the guiding principles of Islamic normative and applied ethics. Hallaq eloquently accused Riḍā of failing to provide a convincing account to justify his departure from the established norms of classic Islamic legal theory:

> Riḍā's doctrine amounts to a total negation of traditional legal theory. What is interesting about the way in which he achieves this task is that he draws extensively on a highly limited and minor concept in that theory in order to suppress the rest of it. The concepts of necessity and interest . . . were traditionally of limited use, and only a small minority of theoreticians gave these concepts prominence in their writings. The ideas of this minority, consisting mainly of al-Ṭūfī and Shatibi, became in Riḍā's theory the standing paradigm. Thus, aside from matters of worship and religious ritual, which were to remain within the purview of revelation, Riḍā upheld a legal theory strictly anchored in natural law, where considerations of human need, interest and necessity would reign supreme in elaborating a legal corpus. Any revealed text, however epistemologically evincive it may be, could be set aside if it contravened such considerations . . . Riḍā was preparing the ground for the total dissociation of religion from strictly non-religious, mundane matters. But his was a theory that constituted a radical shift from the religious values of the law, values that the Muslim world found difficult to abandon. It found it difficult because the alternative that Riḍā provided lacked both true religious foundation and a theoretical depth that could successfully compete with, and match, the impressive intellectual achievements of traditional legal theory.[104]

Recent trends in the reformist discourse have continued to view moral evaluation in Islamic legal theory as a largely consequentialist/utilitarian process, as can be seen in the works of Muḥammad Abū Zahra and Yusuf al-Qaraḍāwī. Abū Zahra unequivocally linked moral evaluation in Islamic legal theory to the utilitarian ethics of Mill and Bentham, arguing that *madhab al-manfaʿa* (utilitarianism) compelled lawmaking in contemporary societies to maximize the greatest good for the greatest number. He believed that, by a process of induction, a social system that seeks to achieve as much material and spiritual happiness as possible for the greatest number of people can be considered compatible with Qurʾānic principles.[105] Al-Qaraḍāwī, on the other hand, suggested that Islamic notions of moral reasoning be recast in a new strand of Islamic jurisprudence that he called *fiqh al-muwāzanāt* (literally, jurisprudence of calculations). Al-Qaraḍāwī's *fiqh al-muwāzanāt* largely follows al-ʿIzz's model of moral evaluation. He argued that, as far as worldly matters were concerned, the intellect

---

103 Muḥammad Saʿīd al-Būti, *Ḍawābit al-maṣlaḥa fi al-Sharīʿa al-islāmiyya* (PhD Thesis, Faculty of Sharīʿa al-Azhar University, 1965) 23–60.

104 Hallaq, *A History of Islamic Legal Theories* (n 14) 219–20.

105 Muhammad Abū Zahra, *Tanẓim al-Islām lil-Mujtamaʿ* (Dār al-Fikr al-ʿArabi, n.d.) 54–55.

could independently define ethical value and create moral knowledge about good and evil.[106] He also considered that there were degrees of goodness and evilness: the right thing to do was to weigh the expected consequences of actions/inaction and aim to maximize the highest degree of good and prevent the worst degree of evil.[107] Unlike al-Ghazālī, who claimed that moral choices were justified only if they could ensure general and absolute good for all Muslims, al-Qaraḍāwī was accepting of an average level of goodness for the majority.[108] He pointed to maxims in classic Islamic jurisprudence, according to which a lesser harm may be tolerated to prevent a greater harm; a confined harm may be tolerated to prevent a widespread harm; and the right of the group takes precedence over that of the individual.[109] Al-Qaraḍāwī invited jurists to rely on *fiqh al-muwāzanāt* to address practical ethical questions in relations with non-Muslims, including joining international alliances and contributing to the welfare of non-Muslim societies.[110] One of the most famous examples is his *fatwa* for American Muslim soldiers who were called to participate in US military campaigns. According to classic juristic thinking, the act of fighting Muslims as part of non-Muslim armies was a form of *kufr* (disbelief). Al-Qaraḍāwī, however, conceded that this would not be the case if the refusal to fight would cause harmful consequences for the Muslim soldiers and their communities living in the USA. Accordingly, it was right to participate in the war if participation could be expected to maximize the immediate interests of the majority of American Muslims.[111]

V. THE PLACE OF DEONTOLOGY IN ISLAMIC MORAL REASONING

Not all modern Islamic legal theorists subscribed to a consequentialist/utilitarian view of moral reasoning. Al-Būti, for example, followed the classic Ashiʿrite position rooted in textual deontology. He was careful to dissociate all forms of meta-ethical and normative enquiry in Islamic legal theory from the standard Benthamite thesis of maximizing the greatest good for the greatest number[112] and criticized the reformers' attempts to introduce rationality into determining value and making moral choices.[113] He was particularly concerned that increased rationalism in moral evaluations would lead to 'whimsical' normative positions (*hawā*) divorced from traditional Islamic thinking. He thus insisted that good does not depend on rational calculations of human needs and desires or pain and pleasure. For al-Būti, a secular and material view of ethical value was incompatible with the Islamic worldview, which had to take account of faith (*īmān*) and metaphysical notions that contributed to our understanding of intrinsic good. While al-Būti accepted that God desires the good of humankind, he refused to explain this desire in standard utilitarian terms; the Islamic

---

106 Yūsuf al-Qaraḍāwī, *fiqh al-ʿawlawiyyāt, dirāsah jadida fī dawʾ al-Qurʾān wa al-Sunnah* (Maktabat Wahba 1996) 31.

107 ibid 29, 33.

108 ibid 31.

109 Yūsuf al-Qaraḍāwī, *al-Siyyāsa al-Sharʿiyya* (Maktabat Wahba 2011) 302.

110 ibid 303.

111 Islam Online, 'Ulama's Fatwas on American Muslim Participating in US Military Campaign' (n.d.), <https://archive.islamonline.net/?p=1334> accessed 26 May 2020.

112 Al-Būti (n 103) 26–30.

113 ibid 140.

conception of moral goodness depended on revelatory and metaphysical signals, not on an intuitionist account constructed by the human intellect. In other words, the right precedes the good. Revelation determines the right thing to do, and what revelation determines as right is intrinsically good regardless of human perceptions of pain and pleasure. For instance, a moral agent (*mukallaf*) might be required to endure various forms of pain, including even losing one's own life, in order to advance the cause of religion.[114] The affinity to deontological ethics is unmistakeable.

There is indeed no good reason to exclude deontological normativity from moral reasoning in Islamic legal theory. It is one thing to say that God desires the good of humankind, but quite another to read into this a consequentialist intention to maximize a good state of affairs for the majority. There is clear evidence of an Islamic commitment to a categorical approach to moral conclusions, whereby the right thing to do is not necessarily that which leads to good consequences, but that which conforms to pre-formed *categorical rules* instructing moral agents to perform or abstain from certain actions. Take the Qur̠ānic commitment to the promotion of freedom as a deontological value, for example. Various textual authorities abolished several causes of slavery, including voluntary enslavement, slavery as punishment for committing a crime, and enslavement in payment of a debt.[115] Also, there are numerous places in the Qur̠ān where Muslims are encouraged to emancipate slaves—eg as a method of paying obligatory annual charity (*zakāt*), or as an essential prerequisite for atonement.[116] These normative statements testify to the existence of a categorical normative framework in which slavery was perceived as a morally reprehensible social practice.

This general deontological vision of moral reasoning in Islamic legal theory was endorsed by Muhammad al-Ṭāhir Ibn ʿĀshūr (d.1973). In explaining the objectives of the divine scheme, he argued that underlying all forms of moral evaluation was a guiding principle that required Muslims to abide by a universal commitment to equality. For Ibn ʿĀshūr, the internal logic of revelation envisioned equality as a policy aim as well as a principle underlying all normative positions. The rights that revelation protects are guaranteed to all human beings equally as a matter of natural law (*fiṭrah insāniyya*).[117]

> By their nature, [humans] are equal in their right to live. No differences in colour, anatomy, race, or place can affect that equality. This basic equality is a manifestation of the well-known objectives of the divine scheme regarding 'protection of life' and 'protection of progeny'. [Humans] are also entitled to equal protection of their means of living expressed by the term 'protection of property'.[118]

The influence of deontological normativity in the determination of ethical value and the drawing of moral inferences in Islamic legal theory is undeniable. Even those scholars who are cited to as exponents of a consequentialist/utilitarian approach recognize the presence of moral imperatives in Islamic thinking on ethics. Riḍā, for

---

114   ibid 25.
115   Abū Zahra (n 105) 157.
116   ibid 28.
117   Muhammad al-Ṭāhir ibn ʿĀshūr, *Maqāṣid Al-Sharīʿah al-Islāmiyya* (Dār al-nafāʾis 2001) 329.
118   ibid 330.

example, in his book *al-Waḥy al-Muḥamadī*, recognizes that the Qurʾān provides general rules (*qawāʿid ʿāmma*) to guide human action in all worldly matters and that the value of ethical actions comes not from the good consequences they can be expected to produce but from upholding an unconditional duty to protect rights and justice as well as equality in rights.[119] Riḍā suggests that the existence of these categorical duties is an essential feature of revelation:

> If we engage in deduction (*istiqrāʾ*) from revelation (the Qurʾān and Sunnah), we can see that all rules of a civil, political, and military nature are based on a duty to safeguard a number of virtues, including rights, justice, honesty, trustworthiness, commitment . . . and abstaining from vices, including injustice, treachery, lying, deception, cruelty . . . [120]

Clearly, there is some tension between this general commitment to a categorical approach to certain virtues and the consequentialist/utilitarian character of Riḍā's applied ethics. Moreover, some of the examples discussed by scholars in utilitarian terms can also be explained in deontological terms. For instance, both classical and modern scholars agree that one of the main objectives of Islamic ethics is to promote human life. Although, as we have seen above, this is widely understood in a consequentialist manner as meaning that the right thing to do would be to save the maximum number of people in life-threatening situations, it can also be understood in deontological terms as advancing human life, all the more so as there is no solid evidence showing that a consequential explanation is the only one plausible in Islamic ethics. Considering the promotion of human life as an objective of the Islamic social order (or *maṣlaḥa*) does not automatically mean that such *maṣlaḥa* can be attained only through maximization. It can equally be argued that as human life is intrinsically valuable, any act of killing a human is always wrong, regardless of the consequences. A deontological reading such as this finds support in both pre-modern and modern Islamic jurisprudence. Take, for example, the sinking boat scenario of al-Ghazālī, who would refuse to throw one passenger overboard to save the rest,[121] or, more recently, Ibn ʿĀshūr's declaration that euthanasia is morally wrong as human life must be protected regardless of the consequences and cannot be subjected to a cost/benefit or pain/pleasure analysis.[122]

The question is whether the persistence of a deontological moral stance means that consequentialist moral positions must be excluded from Islamic ethical discourse. If one swears by a single orthodoxy, one might be inclined to think that only one theory can explain value, motivation, and human action. But that is not necessarily the right approach, at least not when it comes to the Islamic system of ethics, which is best understood as a hybrid system combining both consequentialist and deontological moral positions. Islamic answers to a particular moral problem will depend on its nature. The deontological dimension of Islamic ethics will provide

---

119   Muhammad Rashīd Riḍā, *al-Waḥy al-Muḥamadī* (Muʾassasat ʿizz al-Dīn lil-Ṭibāʿ wa-l-Nashr 1986) 293.

120   ibid 296.

121   See subSection III.B.(i) above.

122   Ibn ʿĀshūr (n 117) 98. This is the working opinion of the majority of jurists. Major Islamic institutions, including the Islamic Fiqh Council, have declared euthanasia unlawful under Islamic law.

categorical protection for certain basic rights, whereas the consequentialist dimension caters to situations where the right thing to do is to optimize a state of affairs. Even if one disagrees with the general consequentialist moral reasoning of jurists like al-Rāzī and Riḍā, one should at least be able to accept that in some cases it can never be wrong to opt for moral choices that produce an optimal state of affairs. The challenge will be to decide which categories of moral problems call for a deontological approach and which a consequentialist approach.

There are precedents in comparative moral philosophy for combining elements of consequentialism and deontology. Thomas Nagel, for example, accepted that the right moral choice is one that maximizes good, but adds that consideration must at the same time be given to the absolute duty to treat people as equals.[123] In the field of political morality, John Rawls proposed two principles of justice as moral yardsticks for determining the right thing to do. The first, deontological principle is that each person should be indefeasibly and equally entitled to an adequate scheme of basic rights and liberties, which cannot be traded off against other social goods or subjected to consequentialist reasoning. For example, freedom of conscience and speech or the right to vote and hold public office must be categorically protected regardless of the consequences. According to the second principle, moral choices that maximize a good state of affairs are acceptable if they lead to increased benefits for those who are normally disadvantaged in public policy choices. Rawls presents his theory as an alternative to classic utilitarianism. He starts from an overarching deontological position, which is then qualified by consequential considerations when these are necessary to increase overall benefits in the community.[124] By contrast, Amartya Sen, in his hybrid moral theory, starts from a consequential moral position into which he incorporates agent-relative values as fundamental deontological constraints.[125]

VI. CONCLUSION—A HOLISTIC APPROACH TO ISLAMIC MORAL REASONING

The purpose of this article has been to help create a better understanding of the complex meta-ethical and normative components of the Islamic system of ethics. As we have seen, different views have been advanced over the centuries on the content of ethical values and their normative implications, as well as on the relative importance of the notions of rights, duties, and goodness. When defining the nature of the Islamic system of ethics, it is important to avoid generalizations based on a single theoretical model, be it divine command theory, consequentialism, or deontology. The right way forward is rather to think of the system as hybrid, built on deontological principles protecting basic human needs while allowing the use of consequential calculations for moral decisions in certain situations. The task now will be to develop principles showing how the deontological and consequential components can be reconciled.

123 Thomas Nagel, 'The Limits of Objectivity' in *The Tanner Lectures on Human Values* (University of Utah Press 1980) vol 1, 127; Thomas Nagel, *The View from Nowhere* (Oxford University Press 1986) 176.

124 John Rawls, *A Theory of Justice* (rev edn, Harvard University Press 1999) 53.

125 Amartya Sen, 'Evaluator Relativity and Consequential Evaluation' (1983) 12 Philosophy and Public Affairs 113, 120; Amartya Sen, 'Rights and Agency' (1982) 11 Philosophy and Public Affairs 3, 19.