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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 terms peppered with promises of paradise or threats of hellfire¹ – ‘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 shar‘i*).³ Conventional wisdom underlying Islamic

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).

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-manfa'a*) and prevent harm (*daf' 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 ninth 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 goodness without revelation and to create norms to guide human actions. Between the tenth and twelfth 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 nineteenth-century reform movement that *maṣlaḥa* came truly to the fore as a means of modernizing

⁴ In this study, I focus on *maṣlaḥa* as normative framework for Islamic moral reasoning to determine if it ought to be understood as deontological or consequentialist approach to morality. In this sense, the contribution that this paper makes is different from mainstream literature on *maṣlaḥa* as a source of Islamic law or an overarching objective for Islamic lawmaking. Felicitas Opwis provides a useful account of the meaning, scope, and development of *maṣlaḥa*. Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law* (Brill, 2010). In a more recent study, Felicitas builds on her previous work that mainly focused on pre modern jurists. In her new work, Felicitas traces new developments in modern jurisprudence on *maṣlaḥa*. She particularly focuses on growing calls by modern scholars such as Ibn ʿAshūr and Yūsuf al-Qaradāwī to transform *maṣlaḥa* into a mechanism that justifies modern constitutional values such as justice, equality, freedom and human rights. Felicitas Opwis, 'New Trends in Islamic Legal Theory: Maqāṣid al-Sharīʿa as a New Source of Law?' (2017) *Die Welt des Islams International Journal for the Study of Modern Islam*, Volume 57: Issue 1, 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) 280-281.

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 consequential or a deontological approach to moral reasoning?

The purpose of the present article is twofold. On the one hand, it considers whether claims of consequential/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

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. A large body of literature on moral pluralism follows John Rawls's exclusion of metaphysical justifications for moral positions.⁸ Rawls theorized that it is possible to reach an overlapping consensus on shared commitments on social good and stable society among comprehensive doctrines that share social existence in liberal polities. Citizens of the liberal

⁶ Think of similar questions in biomedical ethics, if we accept an overarching consequentialist 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.

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 a useful survey of the literature opposed to the use of religious reasons in the public sphere, see Robert Audi, *Religious Commitment and Secular Reason* (CUP 2000) 169.

polity could find that elements of their vision on the social good overlap with other doctrines and ultimately converge on a focal conception of justice.⁹

However, Rawls introduces his public reason proviso that imposes procedural constraints limiting participation in the 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 cannot be included when seeking an overlapping consensus. This explains the focus of this article on the ethical rather than the metaphysical foundations of Islamic moral doctrine. 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. The right action is not exclusively justified in terms of its metaphysical or divine origins but rather in terms of rational normative content. For instance, a Muslim would justify a moral position against physician-assisted suicide, not by claiming that God forbids it. Therefore it is not acceptable. Instead, a Muslim citizen will be appealing to reasons accessible to non-religious citizens such as deontological reasoning suggesting that each life has an intrinsic moral value that imposes categorical duty against 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 input in non-metaphysical terms. In a debate on

⁹ John Rawls, *Political Liberalism* (n 7), pxlii.

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').

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 normative 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 Part II, with a critical evaluation of the nature and scope of the consequential 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 consequential/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. Parts 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 worldview, 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. Part 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, Part 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 COMPARATIVE NORMATIVE 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 ‘Mu‘tazila 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 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 nineteenth and twentieth 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 consequentialist /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 necessarily lie in creating the greatest good for the greatest number. As I show below, early Ash‘arite theologians and leading jurists of Islamic legal theory such as al-Ghazālī (d.1111) and al-Juwaynī (d.1085) proposed a form

¹¹ George Hourani, ‘Two Theories of Value in Medieval Islam’ (1960) 50 *Muslim World* 269, 273. According to Hourani, the Mu‘tazila 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 Mu‘tazilites’ theory. According to Fakhry, Mu‘tazilites 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.

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 ‘Abduh and Rashīd Riḍā* (University of California Press 1966) 114, 121 (arguing that utility is an inherent feature of ‘Abduh’s and Riḍā’s models of moral reasoning); Wael B Hallaq, *An Introduction to Islamic Law* (CUP 2009) 116; Wael B Hallaq, *A History of Islamic Law and Legal Theories* (CUP 1997) 42, 224.

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, the right as enjoined by revelation takes precedence. In this sense, they understood Islamic moral reasoning as deontological frame of ethics. The ethical choice from an Islamic perspective is that which complies with revelatory norms. Moral agents are not required to maximize what they believe to be good consequences. We will see how this deontic vision of morality is reflected in al-Ghazālī categorical prohibition against killing the innocent or torturing others even if performing these acts would maximize the 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 methods of normative analysis? Further, there are several variants of utilitarianism depending 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 affirmation 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 perceived through their sensations. A hedonist theory of some sort is often associated with classical utilitarians such as Jeremy

Bentham, John Stuart Mill, and Henry 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 consequential/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

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).

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

Before moving to explain the nature of moral reasoning in Islamic jurisprudence and legal theory, one might ask: why mainstream jurists and theorists of Islamic studies normally focus on explaining Islamic normative ethics in terms of deontological and consequentialist moral positions and exclude virtue ethics despite the latter being much older.²¹ Virtue ethics is not

¹⁷ Rami Koujah, 'Maṣlaḥa as a Normative Claim of Islamic Jurisprudence: The Legal Philosophy of al-'Izz b. 'Abd al-Salām' in Sohaira Siddiqui, *Locating the Shari'a: 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.

²¹ The roots of virtue ethics are normally traced back to Greek philosophy. In particular, to Aristotle's *Nicomachean Ethics*. Virtue ethics' importance as normative theory diminished since philosophers of Enlightenment introduced consequentialism and deontology as the main normative sources for morality. In 1958, Anscombe took the lead in drawing attention to virtue ethics as a rival framework to deontology and utilitarianism. G.E.M Anscombe, 1958, "Modern Moral Philosophy", *Philosophy*, 33: 1–19. Philippa Foot, in 1978, defended the central importance of virtue ethics and claimed that it is more rational and coherent in comparison to consequentialism and deontology. Philippa Foot, *Virtues and Vices*, (Oxford: Blackwell 1978). However, MacIntyre introduced the most influential work that sought to restore virtue ethics to contemporary ethical theory. MacIntyre argues that Enlightenment philosophical project embodied in deontological and consequentialist approaches to morality failed to provide any coherent rational framework for ethics. Instead, it reduced ethical inquiry into subjective moral positions without the possibility to test their relative merits. MacIntyre advocates the adoption of the Aristotelian version of virtue ethics in order to "restore intelligibility and rationality to our moral and social attitudes and commitments". MacIntyre argues that the content of virtue must be derived from practices and traditions within communities. Again, MacIntyre's vision of virtue ethics

susceptible to a simple definition but it generally refers to normative framework encompassing a collection of ethical notions that seek to lead moral agents to achieve human flourishing (*eudaimonia*). The normative frame of reference for morality does not lie in actions that maximize good consequences or actions that confirm with a presupposed categorical imperative. Virtue ethicists locate morality in the character, identity, motivational and dispositional qualities of agents. In this sense, virtue ethics is an agent *agent-centered* vision of morality compared to consequentialism and deontology, which both are *act-centered*.²² In stark contrast to the underlying conceptual structure of virtue ethics, Islamic forms of moral reasoning addressed in this paper hold that morality stems from complying with existing norms to do the right thing or maximizing intrinsically good consequences. As I show below, jurists I cite in this paper do not seem to be concerned with the foundational question of virtue ethics, that is, *What sort of person should I be?*” but more with act centered 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

does not fit with Islamic approaches discussed in this paper since the locus classicus of these approaches discusses morality in terms of performing duties and promoting good consequences or combination of both. Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd edition (University of Notre Dame Press, 2007), 54 – 69, 222- 259.

²² Michael Slote, *Morals from Motives* (Oxford: 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 as a prominent normative vision in mainstream Islamic jurisprudence, particularly the contributions of jurists cited in this paper. However, scattered elements of virtue ethics can be found in the teachings of some Muslim jurists such as Ya’qūb ibn Miskawayh (d. 1030 CE) who sought to integrate the Aristotelian doctrine of virtue ethics in Islamic sources of moral obligation. Elizabeth M Bucar, *Islamic Virtue Ethics*, in Nancy E Snow, *The Oxford Handbook of Virtue* (Oxford University Press, 2018)

theology and jurisprudence contain conflicting views on the source of value and what constitutes an intrinsically good state of affairs. And 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 Ash‘arites 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 consequential 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 Ash‘arites’ 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 Mu‘tazilites, unlike the Ash‘arites, proposed a rational account of the content of ethical value that closely resembled a crude form of consequential/utilitarian normativity.²⁵ In his manual *al-uṣūl al-khamsa*, the prominent Mu‘tazilite theologian and jurist al-Qāḍī ‘Abd al-Jabbār (d.1025) argued that humankind was created to live in an ideal state of affairs (*ni‘ma*), which he described as some form of good (*manfa‘a*). He suggested that *manfa‘a* lay in pleasure and happiness (*ladhdha* and *surrur*), and he appealed to human senses to explain *ladhdha*,

²⁴ ‘Abd al-Malik b. ‘Abdallāh al-Juwaynī, *al-Burhān fī usūl al-fiqh*, (Salah b. Muhammad ‘Awida ed, Dār al-Kutub al-‘Ilmiyya 1997) vol 2, 1–10.

²⁵ Hourani (n 9) 273.

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 Mu‘tazilites 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. ‘Abd al-Jabbār provided no justification for drawing from his understanding of value as *ni‘ma* and *manfa‘a* 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 Ashi‘rites have long accused Mu‘tazilites of grafting notions of value taken from Greek philosophy onto the Islamic worldview.²⁸ It is quite likely, therefore, that Mu‘tazilite scholars, including ‘Abd al-Jabbār, were here subject to Greek influences.

When it comes to creating ethical norms, there are conflicting views among Mu‘tazilites 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 Ash‘arites 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 Mu‘tazilite position advanced by ‘Abd 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

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

²⁷Quinton (n 13) 11.

²⁸Muhammad Muṣṭafa Shalabi, *T’alil al-Ahkām* (Matba‘at al-Azhar 1947) 98. In his discussion of the historical rivalry between Mu‘tazilites and Ash‘arites, Shalabi notes that the Mu‘tazilites’ 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-Ma‘mūn.

²⁹Badr al-Dīn al-Zarkashī, *al-Baḥr al-muḥīṭ fī uṣūl al-fiqh*, 6 vols (‘Abd al-Qādir ‘Abd Allāh al-‘Ānī ed, Dār al-Ṣafwa li’l-Ṭibā‘a wa’l-Nashr wa’l-Tawzī‘ 1992) 1134–35.

bringing about good and preventing harm.³⁰ In this respect, ‘Abd 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 figure of Islamic legal theory. In doing so, I do not aim to reproduce their arguments on the sources of Islamic moral obligation as is normally the case in previous studies. My purpose here is specific to generating conceptual insights into their normative methodologies. I aim to determine 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 Mu‘tazilite thesis by arguing that reason is capable of determining good and evil independently of revelation, the dominant position, as defended by the Ash‘arites from the Abbasid period (750 to 1258), 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

³⁰ ‘Abd al-Jabbār (n 23) 564–65.

³¹ Opwis (n 4) 32.

³² Hourani (n 9) 269.

of the Mu‘tazilites, appealing instead to the Ash‘arites’ views on the scriptural origins of ethical value and rejecting the idea that human reason could determine good and evil.³³

Ash‘arite 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), *‘illa* (ratio of scriptural stipulations) and *munāsaba* (suitability of scriptural instruction to human nature). It is assumed that revelatory commands, instructions, and narratives are linked to underlying design principles and normative signals, the purpose of which is to promote human flourishing. Generally, Ash‘arite 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 (*mu‘āmalāt* and *‘ādāt*).³⁴

(1) *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-shar‘*).³⁵ Taking a purely Ash‘arite 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-shar‘*. Thus, once ethical value has been determined from

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

³⁴ Al-Raysuni (n 5) 21–23.

³⁵ *ibid* 48.

³⁶ Al-Juwaynī, *al-Burhān fī usūl al-fiqh* (‘Abd al-‘Azīz al-Dīb ed, Dār al-Ansār 1980) 91.

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 Qur'ān 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 criticised 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-shar'*. However, his understanding of scriptural ethical value and its normative force was marked by significant developments. Distancing himself from the Mu'tazilite thesis and aligning with the traditional Ash'arite 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

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

³⁷ *ibid* 743–44.

³⁸ *ibid*.

³⁹ Abū Hamid al-Ghazālī, *Shifā' al-ghalīl* (Ḥamd 'Ubayd al-Kubaysī ed, Maṭḥ a'at al-Irshād 1971) 221.

⁴⁰ Abū Hamid al-Ghazālī, *al-Mustaṣfā* (Ḥamza b. Zuhayr Ḥāfiẓ ed, Sharikat al-Madīna al-Munawwara lil-Ṭibā'a, n.d.) vol 2, 481–82.

no moral position could be derived directly from scripture (*al-masāliḥ 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 consequential 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 Ijtihādī*). 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 consequential analysis of moral choices.⁴³ This understanding

⁴¹ *ibid* 488.

⁴² For an example of such claims, see Nusseibeh (n 10) 89.

⁴³ Al-Ghazālī (n 37) 494.

of Al-Ghazālī's doctrine finds additional support in his overarching perception of *maṣlaḥa* as a duty-creating norm. He states that *maṣlaḥa* exclusively means “the preservation of the objectives of the law” (*al-muḥāfaẓa ‘alā maqṣūd al-shar‘*)⁴⁴. What brings about *maṣlaḥa* is not that which leads to teleological assessment of harm and benefits, but which complies with the divine intentions as expressed/ implied in 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 rightness and wrongness of an act/ omission depends on complying with norms that categorically forbids intending 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 (*maṣlaḥa kullīya*) 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, *maṣlaḥa kullīya* was an absolute, not a relative condition: it was a question of securing the existence of

⁴⁴ Abū Hamid al-Ghazālī, *al-Mustasfā* (Ḥamza b. Zuhayr Ḥāfiẓ ed, Sharikat al-Madīna al-Munawwara lil-Ṭibā‘a, n.d.) vol 2, 481–82

⁴⁵ Compare cf Koujah (n 15) 136 -137

⁴⁶ *ibid* 489.

⁴⁷ *ibid* 490.

⁴⁸ Anver M Emon, *Islamic Natural Law Theories*, (Oxford University Press), 143

the entire society, not merely the greatest number of its members. Anver Emon shares this observation on al-Ghazālī's approach. According to Emon, *maṣlaḥa* 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". *Maṣlaḥa*-based reasoning seeks collective societal interests related to society at large not just the greatest number of it.⁴⁹ For al-Ghazālī, the competing ethical values are inherently duty-based. On the one hand, we have a duty to preserve the existence of society. On the other hand, there is a duty to preserve innocent human lives. The right thing to do in this case does not depend on consequentialist approach to maximize the good as evaluators see fit but resolving a priority dispute between two competing duties. Overall, al-Ghazālī is still within the parameters of deontological normativity.⁵⁰

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(2) *The Rational Input of Al-Rāzī and 'Abd al-Salām*

The contributions of Fakhr al-Dīn al-Rāzī (d.1210) and al-'Izz b. 'Abd al-Salām (d.1261) were more progressive compared to those of al-Juwaynī and al-Ghazālī. Both incorporated

⁴⁹ Anver M Emon, 'Natural Law and Natural Rights in Islamic Law' (2005) *Journal of Law and Religion* 20, 374.

⁵⁰ Anver M Emon, *Islamic Natural Law Theories*, (Oxford University Press), 143

⁵¹ cf Koujah (n 15) 136.

rational elements, but Al-Rāzī's was of particular interest. While placing himself in the tradition of Ash'arite 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.

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 (*'illa*) 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 *ta'īl* (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 'ilm uṣūl al-fiqh*, two visions of the source and content of ethical value are put forward. The first reflects his Ash'arite 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-shar'*) and adheres to al-Ghazālī's explanation of *maqṣūd al-shar'* 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

⁵² Ibn Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn 'an Rabbi al-'Ālamīn* (Ṭāha 'Abd al-Ra'ūf Sa'd ed, Dār al-Jīl 1973) vol 2, 75.

⁵³ Al-Raysuni (n 5) 223.

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

⁵⁵ *ibid* vol 5, 160–62.

Yet, in an unusual leap for an Ash‘arite 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 (*manfa‘a*) and “be spared harm (*mafsada*). Al-Rāzī then resorts to a hedonic calculation by defining *manfa‘a* 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 Ayman Shihadeh’s study of al-Rāzī’s ethics, both within and outside legal theory, shows that the latter “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 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 Ash‘arite line he adhered to. While references to pain and pleasure may be understandable on the part of a Mu‘tazilite like ‘Abd al-Jabbār, who believed in the intellect’s power to determine value, the same cannot be said of an Ash‘arite like al-Rāzī. It is likely that al-Rāzī’s views on the content of ethical value in Islamic legal theory were influenced by 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

⁵⁶ *ibid* 158.

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

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, ‘Fakhr al-Dīn al-Rāzī’s Contribution to Ideas of Ultimate Reality and Meaning’ (1979) 2 *Ultimate Reality and Meaning* 264, 266.

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-‘Izz, ‘Abd al-Salām, and ‘Adud al-Dīn al-‘aiyyji (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-‘Izz in particular deserves special attention, for two reasons: his book *al-Qawā‘id 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,

⁵⁹ Fakhr al-Dīn al-Rāzī, *al-Mabāhith al-mashriqiyya fī ‘ilm al-ilāhiyyāt wa-al-tabī‘iyyāt* (Markaz taḥqīqā Kampiyutiri-‘Ulumi Islāmi, n.d.) vol 1, 388–97.

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

⁶¹ Compare Ayman Shihadeh, *The Teleological Ethics of Fakhr al-Dīn al-Rāzī*. 2 According to Shihadeh, al-Rāzī “adopts a thoroughly consequentialist ethics of action”. (At 66). Although Shihadeh does not refer to al-Rāzī’s approach to maximizing the good as 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.”⁷²

⁶² Shalabi (n 25) 279.

or reprehensible depending on the level of goodness or evilness it implies. Departing from the classic Ash‘arite doctrine on the scriptural origin of ethical value as presented in the work of his predecessors, particularly al-Ghazālī, al-‘Izz claims that human reason is capable of determining the content of worldly interests independently of revelation. According to al-‘Izz, 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

Although al-‘Izz 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-‘Izz 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-‘Izz 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

⁶³ ‘Izz al-Dīn ‘Abd al-‘Azīz b. ‘Abd Al-Salām, *al-Qawā‘id al-kubrā* (or *Qawā‘id al-aḥkām fī iṣlāḥ al-anām*) (Dār ibn Hazm 2000) 9.

⁶⁴ *ibid* 15.

⁶⁵ *ibid* 16, 513.

⁶⁶ *ibid* 12.

⁶⁷ *ibid* 15.

of permissibility. According to al-‘Izz, reference should be made to the classical divisions of moral judgement in Islamic legal theory (*taqsimāt al- ḥukm al-shar‘i*) when drawing normative implications from ethical value.⁶⁸

(3) *Al-Shāṭibī’s Theory of Revelatory Consequentialism*

Writing about a century after al-‘Izz, al-Shāṭibī refused to admit that reason could establish value independently of revelation. Following the classic Ash‘arite 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 value⁶⁹

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 muna‘aman*).⁷¹ In contrast to al-‘Izz, 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 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

⁶⁸ *ibid* 12, 267 et seq.

⁶⁹ Al-Raysuni (n 5) 169.

⁷⁰ Ibrāhīm b. Mūsa al-Shāṭibī, *al-Muwāfaqāt fī usūl al-Sharī‘a* (‘ Abdallāh Darāz ed, Dār al-Fikr al-‘Arabī, n.d.), vol 2, 9–12.

⁷¹ *ibid* vol 2, 44.

⁷² *ibid* vol 77.

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-‘Izz 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 (*ma’ālāt al-‘aḥ’al*) 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 consequential 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.

(4) *Al-Ṭūfī’s Conceptual Shift in Moral Reasoning*

Although Najm al-Dīn al-Ṭūfī (d.1316) had an impact on the modern reform movement, as we will see below, his controversial contribution to moral reasoning in pre-modern Islamic legal theory added little to the core understanding of ethical value. He boldly asserted that once jurists had determined what is good (*maṣlaḥa*), this should take precedence over all other sources of moral obligation, including revelation, but he did little to explain the scope and implementation of his conception of *maṣlaḥa*

⁷³ ibid vol 32.

⁷⁴ cf Al-Raysuni (n 5) 259.

⁷⁵ Al-Shāṭibī (n 60) vol 5, 177.

⁷⁶ ibid vol 2, 27.

⁷⁷ ibid vol 2, 64.

For Al-Ṭūfī, the essence of moral reasoning in the Islamic worldview lies in the pursuit of good and the avoidance of evil. Like al-Juwaynī and al-Ghazālī, he defined good and evil with reference to intentions exposed through revelation (*maqṣūd al-Sharʿ*).⁷⁸ Taking an unmistakably Ashiʿrite line, he rules out any role for human reason or intuition in creating moral knowledge on good and evil. Also, he consistently rejects the Muʿtazilite views on the rational source of ethical value.⁷⁹ In *al-ʿIshārat al-Ilāhiyya*, for example, he maintains that revelation (i.e. the Qurʾān) is the sole source of knowledge on good and evil.⁸⁰

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 (*farah wa saʿādah*) in compliance with revelation.⁸¹

Al-Ṭūfī's standpoint was marked, in particular, by a conceptual shift away from the prevailing understanding of the relationship between revelation and norm creation. The predominant position in Islamic legal theory was that when making moral choices revelation should be the first point of reference, overriding jurists' own perceptions of good and evil. Al-Ṭūfī, however, inverted this stance by arguing that jurists could rely on revelation to inform their own understanding of ethical value. In other words, 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

⁷⁸ Najm al-Dīn al-Ṭūfī, *Kitāb al-Taʿīyin fī Sharḥ al-ʿrbaʿīn* (Ahmed Ḥaj ʿUthmān ed, Muʿassasat al-Raiyyān 1998) 239.

⁷⁹ *ibid* 242.

⁸⁰ Muṣṭafa Zayd, *al-Maṣlaḥa fī l-tashrīʿ al-islāmī* (research thesis [1954], Muḥammad Yusri ed, Dār al-Yussr, n.d.), 101.

⁸¹ Al-Ṭūfī (n 60) 240.

strongest foundation for moral judgement in the Islamic worldview, prevailing over all other sources of moral obligations, including scripture.⁸² However, al-Ṭūfī did not explain how a revelatory norm might be at variance with *maṣlaḥa*. In fact, his argument seems to contradict itself: he posits that revelation is the source of *maṣlaḥa*, but then implies that revelation could lead to harmful outcomes.⁸³ Al-Ṭūfī's claims about the normative supremacy of *maṣlaḥa* remain highly abstract. According to Muṣṭafa Zayd, al-Ṭūfī never constructed an independent theory of *maṣlaḥa* as part of his work on legal theory, but simply advanced a succession of controversial views in his short commentary on the collection of some forty *ḥadīths* by Imām al-Nawawī (d.1277).⁸⁴ Consequently, he failed to provide concrete examples of situations where revelation diverges from a jurist's determination of *maṣlaḥa*. That said, al-Ṭūfī never suggested that his understanding of *maṣlaḥa* was applicable to all areas of moral reasoning; he made it clear that juristic determination of *maṣlaḥa* could not encroach on immutable revelatory norms such as acts of worship (*ʿibādāt*) or civil matters involving numerical values (*muqaddarāt*), such as corporate punishment and inheritance issues.⁸⁵

It should be said that al-Ṭūfī's opinions on the normative priority of *maṣlaḥa* were marginal. The mainstream contributions during the eleventh and fourteenth centuries remained the benchmark in Islamic discourses on ethical value and normative analysis, and there was little development in the concepts and processes of moral reasoning during the period that followed. Theoreticians of Islamic studies have suggested that thereafter a collective move towards intellectual imitation (*taqlīd*) infiltrated Islamic jurisprudence. Many were content to reproduce short versions of existing works (*mukhtaṣarāt*) and construct norms that drew on existing views of how the primary sources (i.e. the Qur'ān and *ḥadīth*) should be correctly

⁸² Zayd (n 70) 74 et seq.

⁸³ For a useful discussion on this particular aspect of al-Ṭūfī's work, see Muḥammad Sa'īd al-Būti, *Dawābit al-maṣlaḥa fī al-Sharī'a al-islāmīyya* (PhD Thesis, Faculty of Sharī'a al-Azhar University, 1965).

⁸⁴ Zayd (n 70) 72.

⁸⁵ Al-Ṭūfī (n 68) 277.

understood, interpreted, and applied.⁸⁶ Consequently, the legacy of pre-modern Islamic legal theory was sustained during subsequent centuries and fed into the ethical and normative imagination of modern reform scholars, who sought to mobilize Islamic legal theory in response to modern ethical questions.

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.⁸⁷ 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.⁸⁸ 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 belief that the Islamic worldview was capable of accommodating Western modernism.

⁸⁶ Mohammad Fadel, 'The Social Logic of Taqlīd and the Rise of the Mukhataṣar' (1996) 3 *Islamic Law and Society* 193. Joseph Schacht remarked that jurists who engaged in *taqlīd* believed that the views of their predecessors were almost perfect and that their successors were less competent to rethink existing explanations and applications of Islamic law. Joseph Schacht, *An Introduction to Islamic Law* (OUP 1964) 70–71.

⁸⁷ 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* (OUP 2016) 711.

⁸⁸ cf *ibid* 711.

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.⁸⁹ 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 consequential 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 (*mu‘āmalāt*) 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

⁸⁹ Kerr (n 13) 1; Hallaq, *An Introduction to Islamic Law* (n 13) 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 earlier publications. See for instance, Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh* (CUP 1997) 224.

evaluation is unmistakably 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 Qur'ān 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 'Abduh 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 seventh-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 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 'Abduh 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.⁹⁰ Al-Ṭūfī (d.1316) is known for his influence on the modern reform movement despite adding very little input to our core understanding of ethical value. Al-Dīn al-Ṭūfī boldly

⁹⁰ 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 (Ma'atal-Manar 1898–1935) vol 9, 745–46.

asserted that once jurists had determined what is good (*maṣlaḥa*), this should take precedence over all other sources of moral obligation, including revelation, but he did little to explain the scope and implementation of his conception of *maṣlaḥa*.⁹¹

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 (*farah wa sa'ādah*) in compliance with revelation.⁹² 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.⁹³ 'Abduh 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 consequential yardstick: constitutions should be considered compatible with Islamic norms if they helped to ensure public welfare by maximizing good and minimizing harm.⁹⁴

⁹¹ Najm al-Dīn al-Ṭūfī, *Kitāb al-Ta'īyyin fī Sharḥ al-'rba'īn* (Ahmed Ḥaj 'Uthmān ed, Mu'assasat al-Raiyyān 1998) 239

⁹² Al-Ṭūfī (n 60) 240.

⁹³ Zayd (n 70) 74 et seq.

⁹⁴ David Dean Commins, *Islamic Reform: Politics and Social Change in Late Ottoman Syria* (OUP 1990) 126.

(1) Muḥammad ‘Abduh’s Rational and Anthropocentric Approach to Moral Reasoning

The key feature of ‘Abduh’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.⁹⁵ With this argument, ‘Abduh limited the influence of the traditional Ashi‘rite doctrine in the reformist discourse. Although he did not explicitly associate himself with Mu‘tazilite theology, he is commonly regarded as a neo-Mu‘tazilite.⁹⁶ 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.⁹⁷

‘Abduh 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.⁹⁸ 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 Qur’ānic verses attesting to the superiority of the physical needs of individuals over acts of devotion, including prayers and fasting.⁹⁹ ‘Abduh thus sought to demonstrate that revelation itself acknowledged the intrinsic value of human

⁹⁵ Muḥammad ‘Abduh, *al-Amāl al-kāmila li-l-imām Muḥammad Abduh* (Muḥammad ‘Amāra ed, al-Mu‘assasa al-‘arabiyya li al-dirāsāt wa al-nashr 1972) vol 3, 257–350.

⁹⁶ Richard C Martin and Mark Woodward, with Dwi S Atmaja, *Defenders of Reason in Islam: Mu‘tazilism from Medieval School to Modern Symbol* (Oneworld 1997) 129–35; D Khalid, ‘Some Aspects of Neo-Mu‘tazilism’ (1969) 8 *Islamic Studies* 320–21.

⁹⁷ ‘Abduh (n 82) vol 3, 359–63.

⁹⁸ Kerr (n 12) 111.

⁹⁹ Muḥammad ‘Abduh, *al-Islām wa-l-naṣrāniyya ma‘a l-‘ilm wa-l-madaniyya* (Dār al-Ḥadātha 1988) 74–76.

well-being and the importance of human needs, which justifieded their having a central role in moral reasoning.

When it comes to drawing normative moral conclusions, ‘Abduh 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.¹⁰⁰ 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 virtue and vice. Human thought ... has made the happiness or misery of a man in this life dependent on them.¹⁰¹

(2) *Riḍā’s Utilitarian Applied Ethics*

Rashīd Riḍā’s views on moral evaluation followed the theoretical models of ‘Abduh and al-Qāsimī. He endorsed al-Qāsimī’s commentary on al-Ṭūfī’s conception of *maṣlaḥa*, arguing that the prime objective of moral obligation should be to achieve good and prevent evil.¹⁰² Like ‘Abduh, 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 countries¹⁰³ and by a belief that the normative structure of classic Islamic legal theory was ill-equipped to respond

¹⁰⁰ In expounding ‘Abduh’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 13) 121.

¹⁰¹ Muḥammad ‘Abduh, *Risālat al-tawḥīd* (Muḥammad ‘Amāra ed, Dār al-shurūq 1994) 70–71.

¹⁰² Riḍā (n 80) vol 9, 745–46.

¹⁰³ Kerr (n 13) 188.

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: *maṣlaḥa* and the doctrine of necessity (*ḍarūra*).

Riḍā called for extensive use of *maṣlaḥa* 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 *maṣlaḥa* 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.¹⁰⁴

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

¹⁰⁴ Muḥammad Rashīd Riḍā, 'Adilat al-Shar' wa taqdlīm al-maṣlaḥa 'ala al-naṣṣ', *Bāb Usūl al-fiqh* in Riḍā (n 80) vol 9, 746–70.

countries to have 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.¹⁰⁵

The consequential/utilitarian turn of Riḍā's applied ethics is apparent in his many fatwas. From 1903 to 1935, Riḍā published around 1,061 fatwas in al-Manār.¹⁰⁶ He gives clear expression to his consequential 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.¹⁰⁷ 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,¹⁰⁸ or when alcohol is used not for intoxication but to save human lives in life-threatening conditions.¹⁰⁹

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

¹⁰⁵ Muḥammad Rashīd Riḍā, *Yusr al-Islām wa-uṣūl al-tashrīʿ* (Maṭbaʿat al-Manār 1928) 75–76.

¹⁰⁶ Ṣalāḥ al-Dīn al-Munajjid and Yūsuf al-Khūrī, *Fatwā al-Imām Muḥammad Rashīd Riḍā* (Dār al-Kitāb al-jadīd 1970).

¹⁰⁷ *ibid*, see fatwa 685 (1926) vol 5, 1873 and fatwa 201 (1906) vol 2, 627.

¹⁰⁸ *ibid* vol 4, 1411.

¹⁰⁹ *ibid* vol. 4, 1609–34.

political or military authorities.¹¹⁰ 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.¹¹¹

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 Sa'īd al-Būti and theoreticians of modern Islamic studies such as Hallaq have criticized Riḍā for introducing such a radical shift.¹¹² 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

¹¹⁰ Aḥmad ibn Yaḥya, al-Wansharīsī (d.1508), *al-Mi'yār al-Mu'rib wa-l-Jāmi' al-Mughrib 'an Fatawa Ahl Ifrīqiyya wa-l-Andalus wa al-Maghrib* (Wizārat al-Awqāf al-Maghribiyya 1981) vol 2, 121–38.

¹¹¹ Al-Munajjid and al-Khūrī (n 93) vol 2, 565.

¹¹² Al-Būti (n 73) 23–60.

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.¹¹³

Recent trends in the reformist discourse have continued to view moral evaluation in Islamic legal theory as a largely consequential/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.¹¹⁴ 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

¹¹³ Hallaq, *A History of Islamic Legal Theories* (n 13) 219–20.

¹¹⁴ Muhammad Abū Zahra, *Tanzīm al-Islām lil-Mujtamaʿ* (Dār al-Fikr al-ʿArabi, n.d.) 54–55.

of calculations). Al-Qaraḍāwī's *fiqh al-muwāzanāt* largely follows al-'Izz's model of moral evaluation. He argued that, as far as worldly matters were concerned, the intellect could independently define ethical value and create moral knowledge about good and evil.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷ 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.¹¹⁸ 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.¹¹⁹ 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 United States. 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.¹²⁰

¹¹⁵ Yūsuf al-Qaraḍāwī, *fiqh al-'awlawiyyāt, dirāsah jadida fī daw' al-Qur'ān wa al-Sunnah* (Maktabat Wahba 1996) 31.

¹¹⁶ *ibid* 29, 33.

¹¹⁷ *ibid* 31.

¹¹⁸ Yūsuf al-Qaraḍāwī, *al-Siyyāsa al-Shar'iyya* (Maktabat Wahba 2011) 302.

¹¹⁹ *ibid* 303.

¹²⁰ Islam Online, 'Ulama's Fatwas on American Muslim Participating in US Military Campaign' (n.d.), <https://archive.islamonline.net/?p=1334>.

V. THE PLACE OF DEONTOLOGY IN ISLAMIC MORAL REASONING

Not all modern Islamic legal theorists subscribed to a consequential/utilitarian view of moral reasoning. Al-Būti, for example, followed the classic Ashi‘rite 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 number¹²¹ and criticized the reformers’ attempts to introduce rationality into determining value and making moral choices.¹²² 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 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.¹²³ The affinity to deontological ethics is unmistakable.

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

¹²¹ Al-Būti (n 73) 26–30.

¹²² *ibid* 140.

¹²³ *ibid* 25.

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 preformed *categorical rules* instructing moral agents to perform or abstain from certain actions. Take the Qur'ānic 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.¹²⁴ Also, there are numerous places in the Qur'ān where Muslims are encouraged to emancipate slaves – e.g. as a method of paying obligatory annual charity (*zakāt*), or as an essential prerequisite for atonement.¹²⁵ 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 'Āshūr (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 'Āshūr, 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*).¹²⁶

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

¹²⁴ Abū Zahra (n 101) 157.

¹²⁵ *ibid* 28.

¹²⁶ Muhammad al-Ṭāhir ibn 'Āshūr, *Maqāṣid Al-Sharī'ah al-Islāmiyya* (Dār al-nafā'is 2001) 329.

‘protection of progeny’. [Humans] are also entitled to equal protection of their means of living expressed by the term ‘protection of property’.¹²⁷

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 consequential/utilitarian approach recognize the presence of moral imperatives in Islamic thinking on ethics. Riḍā, for example, in his book *al-Wahy al-Muḥamadī*, recognizes that the Qur’ān provides general rules (*qawā’id ‘āmma*) 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.¹²⁸ Riḍā suggests that the existence of these categorical duties is an essential feature of revelation:

If we engage in deduction (*istiqrā’*) from revelation (the Qur’ān 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 ...¹²⁹

Clearly, there is some tension between this general commitment to a categorical approach to certain virtues and the consequential/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 consequential 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

¹²⁷ *ibid* 330.

¹²⁸ Muhammad Rashīd Riḍā, *al-Wahy al-Muḥamadī* (Mu’assasat ‘izz al-Dīn lil-Ṭibā’ wa-l-Nashr 1986) 293.

¹²⁹ *ibid* 296.

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,¹³⁰ or, more recently, Ibn ‘Āshūr’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.¹³¹

The question is whether the persistence of a deontological moral stance means that consequential 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 consequential and deontological moral positions. Islamic answers to a particular moral problem will depend on its nature. The deontological dimension of Islamic ethics will provide categorical protection for certain basic rights, whereas the consequential dimension caters to situations where the right thing to do is to optimize a state of affairs. Even if one disagrees with the general consequential 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

¹³⁰ See III B (1) above.

¹³¹ Ibn ‘Āshūr (n 113) 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.

an optimal state of affairs. The challenge will be to decide which categories of moral problems call for a deontological approach and which a consequential 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.¹³² 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 consequential 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.¹³³ 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.¹³⁴

¹³² 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* (OUP 1986) 176.

¹³³ John Rawls, *A Theory of Justice* (rev edn, Harvard University Press 1999) 53.

¹³⁴ 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.

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.