Forgiveness in Islamic Ethics and Jurisprudence

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INTRODUCTION

This paper will explore the role of forgiveness within Islamic ethics and jurisprudence. Although I reject the characterization of the relationship between Christianity and Islam as a clash of cultures, I recognize a profound need for processes that move beyond theological disagreement to authentic solidarity. Deep seated senses of harm, whether arising from the Crusades or 9/11, make this process particularly challenging. However, it is my thesis that models for forgiveness can be found in both traditions. This paper will explore a number of potential starting points for understanding forgiveness within Islamic tradition. Islamic thought contains deep commitments to forgiveness in its textual traditions (the Qur'an and Sunnah), in medieval ethics, in traditional jurisprudence (particularly in criminal law), and in contemporary ethics. Section I will analyze the role of forgiveness in key portions of the Qur'an and Sunnah. Section II will consider the tradition of ethics in medieval Islamic ethics, particularly in *adab* literature. Section III will reflect on the understanding of forgiveness in classical Islamic jurisprudence as it addressed crimes against persons and the relationships between the Islamic community and other communities. Finally, Section IV will consider the value of forgiveness in contemporary Islamic ethical thought, particularly in the writings of Khaled Abou El Fadl, Abdullahi Ahmed An-Na'im, and Fethullah Gülen, as a form of contemporary *akhlaq* literature.

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I. FORGIVENESS IN KEY ISLAMIC TEXTS

Hermeneutics determine the content of law and social teaching within scriptural religious traditions.[1] Within Islam, some writers[2] have called for a new interpretive technique (*ijtihad*) that is more consistent with broad Qur'anic principles (e.g., an-Na'im),[3] but it remains to be seen whether Muslim communities will ultimately embrace these new hermeneutics. Some thinkers, like Gülen, advocate an approach to text that does not explicitly require a break with traditional jurisprudence.

All schools of Islamic jurisprudence rely primarily on the text of the Qur'an and the Sunnah.[4] The Qur'an and Sunnah, as sources of Islamic jurisprudence (*usul al-fiqh*), address the theological and legal roles of forgiveness in a variety of ways. The Sunnah (or traditions of the Prophet as recorded in *hadith*[5]) provides context for interpreting the Qur'an and supplies a large number of legal standards. By the eleventh century CE, Muslim jurists had developed an extensive corpus of legal treatises which analogized from the text of the Qur'an and *hadith*.[6] Their use of *ijtihad* sometimes allowed for significant judicial discretion, though the formal interpretive role of Sunni jurists declined after this period.[7]

A. Forgiveness in the Qur'an

Variations of the Arabic word *ghafara* (forgive, along with the related terms forgiving and forgiveness) appears approximately 128

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1. Hermeneutics is a "method or principle of interpretation." *Hermeneutics Definition*, Merriam-Webster, http://www.merriam-webster.com/dictionary/hermeneutics (last visited Sept. 18, 2011).

2. *See, e.g.*, ABDULLAHI AHMED AN-NAIM, TOWARD AN ISLAMIC REFORMATION (1996).

3. *See* FAZLUR RAHMAN, ISLAM AND MODERNITY: TRANSFORMATION OF AN INTELLECTUAL TRADITION (1982) (describing his "double movement" theory of Qur'anic exegesis).

4. *See* CLARK B. LOMBARDI, STATE LAW AS ISLAMIC LAW IN MODERN EGYPT 22-26 (2006).

5. *Id.* at 23. "[E]ach hadith report was supposedly an eyewitness account of the words or deeds of the Prophet or his companions—an account which had been reported by the witness to a listener who then passed on the report to another listener who in turn passed it on down through the generations until it was written down." *Id.*

6. RAHMAN, *supra* note 3.

7. *See* WAEL B. HALLAQ, A HISTORY OF ISLAMIC LEGAL THEORIES 107–111, 130–132 (1997) (discussing *istihsan*).

times in standard English translations of the Qur'an.[8] Most of these references can be broken into two categories. The first includes references to the character of Allah as forgiving. The second broad category includes exhortations for human beings to forgive, whether for the sake of righteousness or for the sake of reward.[9] Although there is no legal requirement to forgive in the Qur'an, there may be a moral imperative to forgive as an imitation of Allah's mercy and justice.

Unlike the unilateral command to forgive in the Christian Gospels,[10] the Qur'anic command is rooted in a vision of justice that requires reciprocity.[11] However, in imitation of the Prophet, believers should forgive those who have not asked for forgiveness — even enemies. The Qur'an describes believers as "those who avoid major sins and acts of indecencies and when they are angry they forgive."[12] The same Surah later states, "The reward of the evil is the evil thereof, but whosoever forgives and makes amends, his reward is upon Allah."[13] Similarly, another Surah asserts, "If you punish, then punish with the like of that wherewith you were afflicted. But if you endure patiently, indeed it is better for the patient. Endure you patiently. Your patience is not except through the help of Allah."[14]

B. Forgiveness in the Sunnah

Most references to forgiveness in the standard *hadith* collections refer to the same basic categories as those found in the Qur'an. However, there are a number of notable exceptions from the Sunnah that provide

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8. *See, e.g.*, THE QUR'AN 2:175, 4:106, 4:110, 39:5, 39:53 (describing Allah as forgiving or as the great forgiver).

9. *See, e.g.*, THE QUR'AN 2:109, 42:37, 43:40.

10. *See, e.g., Matthew* 19:21-35.

11. Aaron Tyler, *Tolerance as a Source of Peace: Gülen and the Islamic Conceptualization of Tolerance*, http://gulenconference.net/files/Georgetown/2008_AaronTyler.pdf (2008) at 743. ("While reciprocity is the *modus operandi* for tolerance, Muslims are exhorted to overlook the transgressions of others, and be willing to speak and implement 'love and affection for humankind'... Rather than being reactive, waiting to receive tolerance, [Allah's] viceregents are called to be proactive and eager to demonstrate forbearance and goodwill to the Other as an ambassador of [Allah] and representatives of a magnanimous Islam. Mercy, kindness, and forgiveness are countenanced whenever possible.") (citation omitted).

12. THE QUR'AN 42:37.

13. THE QUR'AN 42:40.

14. THE QUR'AN 16:126–27.

more substantive context for understanding forgiveness in Islam. These exceptions include the Charter of Medina, the Farewell Sermon of the Prophet, intercession for the people of Ta'if, forgiveness for Muhammad's opponents in Mecca, and Abu Bakr's forgiveness of Mistah.

The Charter of Medina, which Muhammad authored shortly after the *Hijra* (the Prophet's Migration to Yathrib in 622 CE), was a formal agreement between the Muslim community and the non-Muslim families of Yathrib.[15] The Charter's characterization of the Ummah, which traditionally referred only to the Muslim community, interestingly included the Jewish communities associated with Yathrib. As such, the Charter established an important precedent of tolerance within the community. It also ensured security for all parties, provided for principles such as legal equality, communal autonomy, and religious freedom,[16] and established an ideal of friendly relations between the Muslim community and non-Muslim communities.

The classical *hadith* collections also recount the Farewell Sermon, which reinforced the value of peaceful coexistence expressed in the Charter of Medina. Muhammad gave the Farewell Sermon just before his death, at the end of his pilgrimage to Mount Arafat[17] and after the Muslim community had engaged in active warfare. It supported the principles of fundamental dignity and equality, and implied a role for forgiveness in restoring right relationships.[18]

Although both the Charter of Medina and the Farewell Sermon create a theoretical framework for interreligious tolerance and voluntary

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15. *See* Ibn Ishaq, *Sirah Rasul Allah* (Alfred Guillaume trans., Oxford 1997).

16. *See* BARAKAT AHMAD, MUHAMMAD AND THE JEWS: A RE-EXAMINATION 46–47 (1979).

17. *See, e.g.,*Narrated by Imam Ahmed ibn Hanbal, Hadith no. 19774.

18. *See The Farewell Sermon of Prophet Muhammad* (Hakan Yesilova ed., Tughra, 2004).

> All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor has a non-Arab any superiority over an Arab; also a white has no superiority over a black nor a black any superiority over white except by piety and good action. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood. Nothing shall be legitimate to a Muslim which belongs to a fellow Muslim unless it was given freely and willingly. Do not, therefore, do injustice to yourselves. Remember, one day you will appear before Allah (The Creator) and you will answer for your deeds. So beware, do not stray from the path of righteousness after I am gone.

forgiveness, there are three other *hadith* accounts that elevate forgiveness to the level of a moral duty for believers. First, in the account of Muhammad's call to punish those who abused him in Ta'if, the Prophet forgave those who persecuted him without their request or contrition, and asked Allah to spare the city. Second, in his triumphant return to Mecca, Muhammad forgave his enemies.[19] Both these examples of forgiveness calmed political tensions and stimulated large-scale conversions to Islam. The final example is Allah's command to Abu Bakr to forgive Mistah for the slander of Aisha, even though Mistah might have deserved punishment in a strict application of justice.[20] This story clearly demonstrates the moral superiority of forgiveness.

II. FORGIVENESS IN MEDIEVAL ISLAMIC ETHICS

Falsafa (Islamic philosophy) arose in the Abbasid Caliphate at the same time Muslim scholars in the so-called *Bayt al-Hikma* (House of Wisdom) translated major works of classical Greek philosophy into Arabic.[21] Consequently, *adab* literature (Arabic literature) and *akhlaq* (Islamic ethical discourse) took on a decidedly Aristotelian character. However, contrary to the Greek works, *adab* literature and *akhlaq* integrated principles of forgiveness from the Qur'an and Sunnah. Muslim scholars imported the Islamic virtue of forgiveness into an Aristotelian

19. AL-TABARI, THE HISTORY OF AL-TABARI, VOL. VIII: THE VICTORY OF ISLAM 162 (1997).

20. Tafsir Ibn Kathir, on Sura 24 Al-Nur ayah 22 (Ṣafī al-Raḥmān Mubārakfūri, trans., Riyadh: Darussalam, 2003).

21. Muslim scholars translated a significant corpus of Greek philosophy into Arabic in Baghdad during the Ninth and Tenth Centuries CE, and Muslims became familiar with Plato primarily through summaries of Greek philosophical works. Translated versions of many of Aristotle's works were available, but later Neo-Platonic interpretations influenced their understanding. Plotinus was known through Porphyry's version of the Enneads. Porphyry's most significant work was his *Introduction to the Categories*, which integrated Aristotle's logic into Neo-Platonism. Important to the development of ethics, Proclus's commentary on Aristotle's *Nicomachean Ethics* became a template for Islamic virtue ethics. *See generally* MAJID FAKHRY, A HISTORY OF ISLAMIC PHILOSOPHY (2d ed. 1983).

virtue ethics[22] framework, and made forgiveness an explicit virtue in *adab* literature and *akhlaq*.

A. Islamic Incorporation of Aristotelian Virtue Ethics

Virtue generally is the mean between extremes in a particular type of behavior. Although some early Islamic ethical works rooted themselves almost entirely in sacred texts and Arab cultural tradition,[23] later works explicitly incorporated a form of Aristotelian virtue ethics. This sort of approach is teleological in that it looks toward an ultimate good, which in the case of the individual is happiness and in the case of a legal system is justice.[24] Individuals can imitate virtues[25] and virtues are ultimately reflected within the community.[26] Just individuals contribute to the creation of a just society. While emulable virtues in Islamic ethics came from a variety of sources (Aristotle, the Qur'an, the Sunnah, Arab tradition, etc.), medieval thinkers relied heavily on Aristotle's *Nicomachean Ethics*.[27]

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22. Virtue ethics concerns "the virtues themselves, motives and moral character, moral education, moral wisdom or discernment, friendship and family relationships, a deep concept of happiness, the role of the emotions in our moral life and the fundamentally important questions of what sort of person I should be and how we should live." Rosalind Hursthouse, *Virtue Ethics*, *in* STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2003) [hereinafter *Virtue Ethics*], http://plato.stanford.edu/archives/fall2003/entries/ethics-virtue/#1.

23. *See* Ibn Abi Dunya, The Noble Deeds of Character (Terry DeYoung trans., 2010) (on file with author).

24. ALASDAIR MACINTYRE, AFTER VIRTUE 244–55 (2d ed. 1984) (discussing how virtues seek to define an "ultimate good," although asserting that individualism can create competing views).

25. *Virtue Ethics*, *supra* note 22.

> A virtue such as honesty or generosity is not just a tendency to do what is honest or generous, nor is it to be helpfully specified as a 'desirable' or 'morally valuable' character trait. It is, indeed a character trait—that is, a disposition which is well entrenched in its possessor, something that, as we say 'goes all the way down', unlike a habit such as being a tea-drinker—but the disposition in question, far from being a single track disposition to do honest actions, or even honest actions for certain reasons, is multi-track. It is concerned with many other actions as well, with emotions and emotional reactions, choices, values, desires, perceptions, attitudes, interests, expectations and sensibilities. To possess a virtue is to be a certain sort of person with a certain complex mindset. *Id.*

26. MACINTYRE, *supra* note 24, at 191–93.

27. *Virtue Ethics*, *supra* note 22 (stating "[A]lmost any modern version [of virtue ethics] still shows that its roots are in ancient Greek philosophy.").

The Aristotelian framework for virtues built upon Plato's description of the four cardinal virtues—courage, temperance, wisdom, and justice—in *The Republic*.[28] As a treatise (rather than a dialogue), Aristotle's *Nicomachean Ethics* presented a clearer and more extensive framework for the nature and cultivation of virtue than did Plato's work.[29] In Aristotle's view, the first three virtues (courage, temperance and wisdom) relate to the three parts of the soul. Courage is the virtue of the irascible soul, and is the ability to confront things such as fear, pain, risk, or intimidation. The virtue of courage is the mean between a dearth of courage (cowardice) and its excess (recklessness). The virtue of temperance requires the restraining of impulses (whether sexual, physical, or emotional) and relates to the appetitive soul. Again, it is the mean between insufficient and excessive restraint. Wisdom is the virtue of the rational soul and entails making optimal use of knowledge. Plato described the fourth and most complicated of the cardinal virtues, justice, as the balance between the first three virtues.[30] For Aristotle, however, justice had two forms: general and particular. General justice is universal and only exists in a perfect society, and particular justice refers to reciprocity for acts of injustice and is characterized by fairness.

Although many Islamic thinkers, and even al-Ghazali,[31] used classical Greek thought broadly, there was significant debate over the role and reliability of human reason. Rationalists, such as the Mu'tazili,[32] observed that Allah vertically communicates truth to creation, and argued believers could discern truth via reasoning and by observing the horizontal relationships between creatures.[33] Thus, some scholars argued that Greek philosophy served as a reliable source to be imitated in

28. *See* PLATO, *The Republic*, *in* PLATO COMPLETE WORKS (John M. Cooper ed., 1997).

29. *See* ARISTOTLE, NICOMACHEAN ETHICS (Roger Crisp ed., Cambridge Univ. Press 2000). The four cardinal virtues contain a host of subsidiary virtues in both Aristotle's works and in *adab* literature that incorporated his view (Aristotle, for example, added a detailed treatment of friendship as a virtue). Though subsidiary, they can take on particular importance in *falsafa* because of its attempt to reconcile Aristotle with the Qur'an and Sunnah. The particular lists of virtues vary somewhat, but forgiveness is typically included.

30. PLATO, *supra* note 28.

31. Al-Ghazali generally opposed rationalism that was not grounded in revelation.

32. A. EZZATI, ISLAM AND NATURAL LAW 61 (ICAS Press 2002).

33. *Id.* at 125.

Islamic *falsafa* (an application of *taqlid*).[34] The Mu'tazili, however, were opposed by the Ash'ari[35] and the Hanbali schools of jurisprudence,[36] which acknowledged truth only in revelation. The Ash'arites maintained that truth must come directly from Allah, although the Mu'tazili and the Ash'ari both acknowledged that truth is ultimately rooted in Allah and that human beings ought to use reason to understand and obey Allah.[37] Nevertheless, the Ash'arites did not find truth claims founded on human reason to be sufficiently reliable.[38]

B. The Virtue of Forgiveness in Islamic Ethics

From the Ninth to Twelfth centuries CE, major works of *adab* literature treated forgiveness as a virtue. There is some variety in placing forgiveness within an Aristotelian or similar framework, but the default classification is within the ambit of the virtue of temperance. Although forgiveness might have corresponded with the notion of friendship, forgiveness (without contrition and reparations) within Aristotelian ethics is an Islamic innovation that runs counter to the Hellenistic view of reciprocity.

Misakawayh's *The Noble Deeds of Character* (*Tadhib al-Akhlaq*), perhaps the foremost work of *adab* literature, does little to elaborate the context for forgiveness, but it does list it as a subsidiary virtue of temperance.[39] Specifically, *Tadhib al-Akhlaq* described forgiveness as the restraint of anger or offense, even when justified as a strict matter of fairness or reciprocity. Imam Al-Isfahani's *al-Dhariah* developed a similar structure for including forgiveness within temperance,[40] and Al-Ghazali, who scholars believe admired *al-Dhariah*,[41] included forgiveness as a subdivision of the virtue of temperance.[42]

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34. *See* GEORGE F. HOURANI, REASON AND TRADITION IN ISLAMIC ETHICS 67-97 (1985) (describing the origin of Mu'tazili thought).

35. *Id.* at 75-76.

36. *Id.* at 125.

37. *Id.* at 122-23.

38. *Id.* Even so, the ethical discourse of the Ash'arites conformed to the Aristotelian framework adopted by *falsafa* generally.

39. *See* Miskawayh, *The Refinement of Character* (Qusṭanṭīn Zurayq trans., Great Books of the Islamic World 2002).

40. *See* al-Raghib al-Isfahani, *al-Dhariah ila Makarim al-Shariah* (Cairo 1299).

41. *See* MAJID FAKHRY, ETHICAL THEORIES IN ISLAM 200 (1997).

42. *See* al-Ghazali, *Ihya' 'Ulum al-Din* (Fazul ul-Karim trans., Lahore 1978).

Ibn Hazm's principal work in ethics, *In Pursuit of Virtue* (*al-Akhlaq wa'l-Siyar*), considers elements of forgiveness the height of virtue.

> Do not deliver your enemy to an oppressor, and do not oppress him yourself. Treat him as you would treat your friend, except for trusting him . . . The greatest of good deeds is to refrain from punishing your enemy and from handing him over to an oppressor . . . Magnanimity consists not of mingling with our enemies but of showing mercy to them while still not trusting them.[43]

Here, the split with Aristotelian notions of justice is clear. Enemies are due the same mercy as friends, though they do not deserve to be trusted. So, in the same way that a friend deserves forgiveness, even in an Aristotelian sense, enemies deserve it within Islamic ethics.

Al-Mawardi took a slightly different approach by introducing nobility (*muru'ah*) as an independent virtue within Islamic ethics. Instead of a fixed hierarchical taxonomy, he presumed an interaction between the elements of nobility.[44] Forgiveness is part of discretion or latitude in relating to others. Bounty is a component of nobility parallel to latitude and has two aspects, spontaneous (which applies to friends) and preemptive (which applies to those who are not friends). As a network of virtue, rather than a strict hierarchy, valuing preemptive bounty helps to explain the contours of forgiveness in that those who are virtuous grant it to root out "animosity, envy and strife," even to those who are undeserving.[45]

In Islamic ethics, the obligation to forgive is not understood in the same context as it is in Christian ethics. However, both traditions understand the ethical obligation to forgive those who are undeserving (including enemies, those who have not apologized or asked for forgiveness, and those who have not made amends) in a similar way. In fact, because Islamic thought transmitted Aristotelian ethics to European scholars such as Thomas Aquinas, Christian ethical thought likely owes some debt to Muslim philosophers for their work in integrating monotheistic scriptural religious traditions with classical ethics.

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43. *See* IBN HAZM AL-ANDALUSI, IN PURSUIT OF VIRTUE 188 (Muhammad Abu Laylah trans., 1990).

44. *See* Ali ibn Muhammad Mawardi, *Adab al-dunyā wa-al-dīn* (Arabic) (Egypt: Muṣṭafá al-Bābī al-Ḥalabī, 1973).

45. *See* FAKHRY, *supra* note 41, at 166.

III. FORGIVENESS IN ISLAMIC JURISPRUDENCE

Although forgiveness is morally praiseworthy in Islamic jurisprudence, it is not a legal requirement.[46] However, three areas of Islamic law indicate an underlying preference for forgiveness. The first is found in the structure of Sunni *fiqh* itself and establishes toleration for theological disagreement. The second is found in the criminal law and relates to forgiveness by individuals. The third is found in international law and relates to groups.

A. Forgiveness in the Structure of Sunni Fiqh

With the emergence of four Sunni schools of jurisprudence in the late Abbasid period, the Muslim community embraced a form of pluralism that allowed for differences in hermeneutics as well as legal rules. In an absolute sense, *Shari'a* is the ideal law of Allah; however, human reason cannot know the fullness of the *Shari'a* with certainty. So, when the four schools of Sunni jurisprudence disagree about a particular legal rule, one of them, at most, actually reflects the fullness of the ideal *Shari'a* rule. However, when a Muslim follows the established rule of a school of jurisprudence, the Muslim community credits the act as righteous even if the particular school is in error.[47] It is a double blessing when the rule obeyed is the correct rule.

Within Islam, the ability to embrace differences and admit possible error reflects a deep sense of humility and tolerance that is embedded within the structure of theological and legal scholarship. This tolerance and peaceful coexistence creates a model for intracommunal relations that communities could apply to intercommunal relations. Although it does not actually reach the idea of forgiveness, it creates a very helpful starting place.

B. Forgiveness in Criminal Law

Islamic jurisprudence typically organizes crimes into three categories. The first category of crimes, *hadd*, constitutes offenses

46. That is, neither the Qur'an nor a reliable *hadith* clearly commands forgiveness. Nor is forgiveness considered a legally derived legal duty in *fiqh* literature.

47. *See* Sahih al-Bukhari 7352 ("If a judge gives a verdict according to the best of his knowledge and his verdict is correct, he will receive a double reward, and if he gives a verdict according to the best of his knowledge and his verdict is wrong, even then he will get a reward.").

against Allah that have textually required punishments that the state is obliged to enforce. Enduring the prescribed punishment restores the criminal to a right relationship with Allah and the community. The second category of crimes, *ta'zir*, does not have required punishments according to the Qur'an and Sunnah. The *ta'zir* crimes may have developed in Islamic jurisprudence itself, so there is more historical and regional variance in the description and punishment of these crimes.

The third category, *qisas* crimes, constitutes crimes against persons that require reciprocity, as in the Biblical standard of an eye for an eye.[48] In one sense, they require punishment proportionate to the crime. The clearest example of *qisas* is the crime of murder, where a victim's family may demand the death of the killer. However, the Qur'an actually encourages families to forgive the offender and demand ransom or blood money (*diyya*) as an alternative to retribution. If the victim demands *diyya*, the judge treats the offense as a tort (similar to wrongful death claims in the common law).[49] Thus, the victim of a *qisas* crime has the power to require the criminal punishment (which would be capital punishment for murder) or to transform the offense into a tort by the exercise of forgiveness.[50] This shifts an important element of legal adjudication from the judge to the victim, a move that is the subject of much common law legal scholarship today.

For example, in 1999, eighteen-year-old Morteza Amini Moqaddam killed a twenty-two-year-old named Haddi Mohebbi.[51] An Iranian court found Moqaddam guilty of murder and sentenced him to death by hanging. Immediately before Moqaddam's execution, however, the

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48. *See* THE QUR'AN 5:45.

> And We prescribed to them in it that life is for life, and eye for eye, and nose for nose, and ear for ear, and tooth for tooth, and (that there is) reprisal in wounds; but he who foregoes it, it shall be an expiation for him; and whoever did not judge by what Allah revealed, those are they that are the unjust. *Id.*

49. *Diyya* is required in the case of accidental killings.

50. This shifts an important element of legal adjudication from the judge to the victim, a move that is the subject of much common law legal scholarship today.

51. *Killer reprieved on scaffold*, BBC, Jan. 2, 2009, *available at* http://news.bbc.co.uk/2/hi/middle_east/587988.stm (last visited Oct. 8, 2012).

victim's father proclaimed forgiveness, and the sentence was avoided.[52] Importantly, as a matter of traditional Islamic jurisprudence and its codification in Iranian law, the victim's choice to forgive—even at the last moment—trumped a valid judicial sentence. The father's decision prompted significant public discourse within a number of Muslim communities regarding the superiority of forgiveness over retribution.[53]

From this brief analysis, it seems that at least in the context of criminal law, forgiveness is laudable as an imitation of the character of Allah. It is to be preferred over retribution, but one must freely choose it. Thus, as a moral principle, one ought to forgive, and this principle could become a powerful basis for moving from tolerance to forgiveness in intercommunal relations.

C. Forgiveness in International Law

Classical Islamic international law, as developed by jurists like Shaybani and others, divided the world into two parts: (1) the part of the world where Islamic rule is the dominant political force (the *dar al-Islam*) and (2) the part of the world not subject to Islamic rule (the *dar al-harb*).[54] The diversity within Muslim cultures and the duality of the standard make any legal regime rooted in a strict distinction between *dar al-Islam* and *dar al-harb* problematic. However, even within that type of structure, there are bases for forgiveness that transcend tolerance.

The distinction between insiders and outsiders implies some sort of ongoing struggle. This was true during the early years of expansion through the Abbasid period, as the Islamic community moved into regions previously controlled by the Byzantine and Sassanian Empires (among others). However, as Muslim and non-Muslim states reached equilibrium and acknowledged formal borders, Muslim rulers would

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52. Amnesty Int'l, *Iran: Further Information Death Penalty/Flogging*, AI Index: MDE 13/01/00, *available at* http://www.amnesty.org/fr/library/asset/MDE13/001/2000/fr/fc5c6d36-dfd0-11dd-8e17-69926d493233/mde130012000en.html (last visited Oct. 8, 2012) (noting an Associated Press report that quoted the father of the victim: "When I saw his hands cuffed behind him and the noose around his neck and everyone was waiting for my order, I thought . . . if this boy is dead, it will not bring back my son.").

53. *See generally* Arzoo Osanloo, *The Measure of Mercy: Islamic Justice, Sovereign Power, and Human Rights in Iran*, 21 CULTURAL ANTHROPOLOGY 570 (Nov. 2006). Note some critics have suggested Iranian authorities may have exerted pressure on the victim's father to encourage the exercise of *diyya*.

54. *See* MAJID KHADDURI, THE ISLAMIC LAW OF NATIONS: SHAYBANI'S SIYAR (1966).

avoid continuing aggression into *dar al-harb* lands by entering into peace agreements. Moreover, even when these agreements had limited durations, rulers often renewed them after a symbolic show of strength at the border.[55]

Similarly, as Muslim states began to exercise power over populations of non-Muslims, who were not people of the Book (*ahl al-Kitab*), they faced the obligation to expand the *dar al-Islam*. Although *the ahl al-Kitab* had a right to formal legal tolerance, according to some interpretations of the classical international law, other groups (such as Hindus) did not have this right. Even so, Muslim rulers in South and Southeast Asia (especially the Moghuls) tolerated the large Hindu and Buddhist populations under their rule and did not generally view continued expansion as a legal obligation.

In both of these examples, the formal standard could be quite harsh, but jurists advising Muslim rulers gave legitimacy to broad tolerance of religious expression and peaceful coexistence with non-Muslim communities. Although rational self-interest may explain selective enforcement of problematic norms, sustaining peaceful relations between Muslim and non-Muslim states almost certainly required a degree of forgiveness.

IV. CONTEMPORARY APPROACHES TO FORGIVENESS IN ISLAMIC THOUGHT

A number of influential Muslim scholars have considered the role of forgiveness in the broader context of facilitating peaceful coexistence between Muslims and non-Muslims. After the attacks on the World Trade Center in 2001, many Muslim leaders publicly condemned terrorism as un-Islamic and emphasized their religion's focus on tolerance and compassion.[56] These leaders' responses divide roughly into two approaches to jurisprudence. The first group takes a modernist

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55. *See id.* at 58–59 for an example of this accommodation:

> [T]he early Hanafi jurists seem to have stressed that tolerance should be shown unbelievers, especially scriptuaries [*ahl al-Kitab*], and advised the Imam to prosecute war only when the inhabitants of the *dar al-harb* came into conflict with Islam. . .Ibn Taymiyya [the 14th century Hanbali jurist], with all his fidelity to classical thought, understood the futility of waging a permanent war against disbelief at a time when foreign enemies were menacing at the gates of Islam.

56. *See, e.g.,* Charles Kurzman, *Islamic Statements Against Terrorism* (Oct. 27, 2011), http://kurzman.unc.edu/islamic-statements-against-terrorism.

approach, breaking with all or portions of the traditional jurisprudence due to changed circumstances. The second group takes a traditional approach, rooting arguments of interpretation in the *fiqh* tradition. This approach does not replicate political or social liberalism and conservatism. Instead, it describes a particular orientation towards thirteen hundred years of jurisprudence.

Section A below describes helpful insights that the modernists (the first group) have contributed, although it remains unclear whether their approach to the classical texts has legitimacy with large segments of Muslim communities. Although there are a number of traditional scholars challenging violence and advocating forgiveness, Section B below focuses on Fethullah Gülen because of his influence within Muslim communities and his ability to constructively engage non-Muslim religious leaders.

A. Important Modernist Contributions

Two of the most respected Muslim legal scholars in the United States are Khaled Abou El Fadl and Abdullahi Ahmed An-Na'im. Both were born in predominantly Muslim countries, Kuwait and Sudan, respectively, and both studied within the Muslim world and in the West. Though they argue from different assumptions, each is critical of classical jurisprudence and argues for a reimagining of the tradition by applying new hermeneutics, particularly to the Qur'an. However, although both approaches may provide profound new insights into sacred texts, they may lack legitimacy among believing Muslims to the extent they are not grounded in traditional approaches or institutions.[57]

Abou El Fadl argues for a historically contextualized, sophisticated approach to sacred texts.[58] He seems to assert that *ijtihad* continues in the progressive uncovering of *Shari'a*.

> Shari'ah as conceived by [Allah] is flawless, but as understood by human beings Shari'ah is imperfect and contingent. Jurists ought to continue to explore the ideal of Shari'ah and to expound their imperfect attempts at understanding [Allah's perfection]. As long as the argument constructed is normative it is unfulfilled potential to reach the Divine Will. Significantly, any law applied is necessarily a potential-unrealized. Shari'ah is not simply a collection of *ahkam* (a set of positive rules) but

57. Ironically, some movements (like the Taliban) have similarly rejected tradition and replaced it with a literal understanding of the Qur'an, with little regard for context.

58. *See* KHALED ABOU EL FADL ET AL., THE PLACE OF TOLERANCE IN ISLAM 22–23 (2002).

> also a set of principles, a methodology, and a discoursive process that searches for the divine ideals. As such, Shari'ah is a work in progress that is never complete.[59]

With regard to tolerance, Abou El Fadl proposes a theology rooted in a sophisticated understanding of the Qur'an, Sunnah, *fiqh*, and Islamic history. The core of his argument is that while a traditional approach to questions of equality, religious freedom, and peace may legitimize oppressive methods, it need not be so. In fact, to the extent moral ideals like compassion and forgiveness are central to Islamic faith, they ought to be reflected institutionally, even if this was not always the case historically.[60]

An-Na'im, on the other hand, proposes a reconsideration of supercession (*naskh*) as a guiding principle in Qur'anic exegesis (as suggested by Mahmoud Muhamed Taha).[61] According to An-Na'im, a hermeneutic preferring the Meccan period of general revelation on justice and faith would be superior to the traditional approach, which prefers the later Medinan period of revelations addressing practical problems of governance.[62] He also argues for the legitimacy of secular governance within an Islamic cultural context.[63] The issues that he is most concerned with are human rights and intercommunal relations, particularly the legal treatment of women and non-Muslims. He asserts that his approach would improve the quality of justice within Muslim jurisdictions and facilitate peaceful relations between Muslim and non-Muslim communities, moving toward reconciliation. Although An-Naim makes cogent arguments for his Shari'a project, it is admittedly a break with the medieval *fiqh* tradition.[64]

B. Important Traditionalist Contributions

Gülen writes within the Mevlevi Sufi tradition and Said Nursi's *Risale-i Nur* (Letters of Light) clearly influenced him. Although writing within the mystic tradition may provide somewhat more interpretive

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59. Khaled Abou El Fadl, *Islam and the Challenge of Democracy*, BOS. REV., Apr.–May 2003, *available at* http://bostonreview.net/BR28.2/abou.html.

60. *See* ABOU EL FADL, *supra* note 58, at 13–22.

61. *See* ABDULLAHI AHMED AN-NAIM, TOWARD AN ISLAMIC REFORMATION 34–35, 158–60 (1996).

62. *Id.* at 57–60.

63. *See generally* ABDULLAHI AHMED AN-NAIM, ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A (2008).

64. *Id.*

flexibility, Sufi thought had an influence on the early development of Islamic jurisprudence (particularly within the Hanafi school). So, although some of Gülen's conclusions diverge from conventional understandings, his community understands them to be consistent with the development of traditional jurisprudence.[65] His work, *Key Concepts in the Practice of Sufism*, asserts the legitimacy of the mystical tradition alongside traditional Islamic jurisprudence.[66] Because two of the main commitments of the Gülen movement are education and dialogue, Gülen has written extensively on issues of tolerance, forgiveness, and cooperation.

Fethullah Gülen begins his argument for tolerance with a discussion of the Charter of Medina and the Farewell Sermon.[67] He emphasizes that tolerance is an obligation rather than a virtue. Forgiveness is similarly valued and often relates to tolerance. "We should have such tolerance that we are able to close our eyes to the faults of others, to have respect for different ideas, and to forgive everything that is forgivable."[68]

1. The Role of Love

As with many Sufi traditions, the Mevlevi value love as the primary virtue and, in his own writing, Gülen similarly values love as the core

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65. *See also* Özcan Keleş, *The Gülen Movement and Human Rights Values in the Muslim World*, TODAY'S ZAMAN (Nov. 3, 2007), *available at* http://hizmetmovement.blogspot.com/2011/09/gulen-movement-and-human-rights-values.html (last viewed Oct. 8, 2012) (affirming Gülen's assertion that his approach is consistent with traditional *fiqh* and does not constitute new *ijtihad*, though the author disagrees that this is actually the case).

66. *See generally* FETHULLAH GÜLEN, KEY CONCEPTS IN THE PRACTICE OF SUFISM (Ali Unal trans., Tughra Books 2009); *see also* Thomas Michel, S.J., *Sufism and Modernity in the Thought of Fethullah Gülen*, 95 THE MUSLIM WORLD 341, 345 (2005), *available at* http://fethullahgulen.org/press-room/islam-in-contemporary-turkey/2127-sufism-and-modernity-in-the-thought-of-fethullah-gulen.html ("For Gülen, *tasawwuf* and *Shari'ah* are two aspects of the same truth or, one could say, two ways of expressing the same truth.").

67. Fethullah Gülen, *An Analysis of the Tolerance Process* (Feb. 26, 2005), http://en.fgulen.com/recent-articles/1942-an-analysis-of-the-tolerance-process.

68. FETHULLAH GÜLEN, THE NECESSITY OF INTERFAITH DIALOGUE: A MUSLIM PERSPECTIVE 33 (Somerset, Light 2004). *See also*, Ahmet Kurucan, *Respect for Religion, Faith and Sanctity*, TODAY'S ZAMAN, Nov. 4, 2006, *available at* http://www.todayszaman.com/tz-web/news-31900-commentaryrespect-for-religion-faith-and-sanctityby-aquaahmet-kurucan.html ("[S]howing respect for religions other than Islam and the sanctities of the adherents of these religions, is a religious duty for us.") (last visited Mar. 1, 2011).

attribute of Allah and as the core orientation of human beings. Altruism and self-sacrifice for the good of others are the hallmarks of love.[69] Love requires treating others as you would want to be treated, which includes a mandate to forgive. The centrality of love and its relationship to interreligious relations is reflected in interview questions posed to Gülen by Nevval Sevindi.

> *In Other words, we need a new human model and reconstruction in the future.*
> Yes. The most important aspect of the new human model is to love the truth, to love science, to love human beings instead of remaining in a one-sided connection, or remaining bound to just one of these.
> *In other words, love is the essence of life. That love is probably Allah's main principle in life. Had Allah not loved, He would not have created the universe.*
> The sprouting of that love is the basis for tolerance. It is hard to expect tolerance from a loveless person.[70]

2. *The Necessity of Forgiveness*

Gülen reinforces the textual position that forgiveness is a virtuous imitation of the character of Allah.[71] Although he does not go so far as to say that Islam requires forgiveness, he does argue that it is the natural result of true faith.[72]

> How can we not forgive when we know that salvation from the fire of suffering in our inner worlds, caused by our own mistakes, is possible only by drinking from the river of forgiveness? And even more so, if we know that the road to being forgiven passes through forgiving.[73]

This moral duty to forgive does not necessarily require contrition on the part of the offender. So long as the offence is "forgivable," forgiveness is appropriate even for enemies who have not offered an apology. Gülen argues that actual intercommunal reconciliation requires forgiveness as a response to sincere repentance. This clear Islamic ethic of forgiveness is helpful, but what would it look like in practice? How

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69. *See* Fethullah Gülen, *Love*, June 14, 2006, http://www.fethullahgulen.org/towards-the-lost-paradise/562-love.html (last visited Oct. 8, 2012).

70. NEVVAL SEVINDI, CONTEMPORARY ISLAMIC CONVERSATIONS 26 (Abdullah T. Antepli trans., Ibrahim M. Abu-Rabi ed. 2008).

71. *See* Fethullah Gülen, *Forgiveness* (Sept. 17, 2001), http://en.fgulen.com/recent-articles/903-forgiveness.html.

72. This discussion bears some resemblance to the discussion of faith and works in the New Testament epistle of James.

73. Gülen, *supra* note 71.

does a community choose to forgive historic offenses like the Crusades? How does a community forgive contemporary offenses like invasion, economic domination, or systematic persecution?

The Gülen movement is a case in point. The movement predicates its dialogue efforts on tolerance and provides opportunities for forgiveness, reconciliation, solidarity, and friendship. Members of the Gülen movement regularly invite non-Muslims to public events and to their homes. The sincerity and hospitality of people who may have ample justification for resentment is striking, and this example of human warmth and charity has caused me to reflect more deeply on my own religious commitments, particularly my need to forgive and be forgiven.

CONCLUSION

Traditional Islamic ethics and jurisprudence value and encourage forgiveness. Contemporary Muslim scholars place an even greater emphasis on it as a necessary precursor to reconciliation and sustainable, peaceful, human relations. Forgiveness is not only a balm for the forgiven, but for the forgiver and the wider community.

> There is a very common, yet very profound, saying: "Errors from the small, forgiveness from the great." How well this is said! Being forgiven means being repaired, returning to an essence, and finding oneself again. Given this, the most pleasing action in the view of the Infinite Mercy is the one—seeking forgiveness—pursued amidst the palpitations of this return and search.[74]

This passage reflects the insight that forgiveness plays a critical role in interrupting cycles of retribution and violence.

74. *Id.*