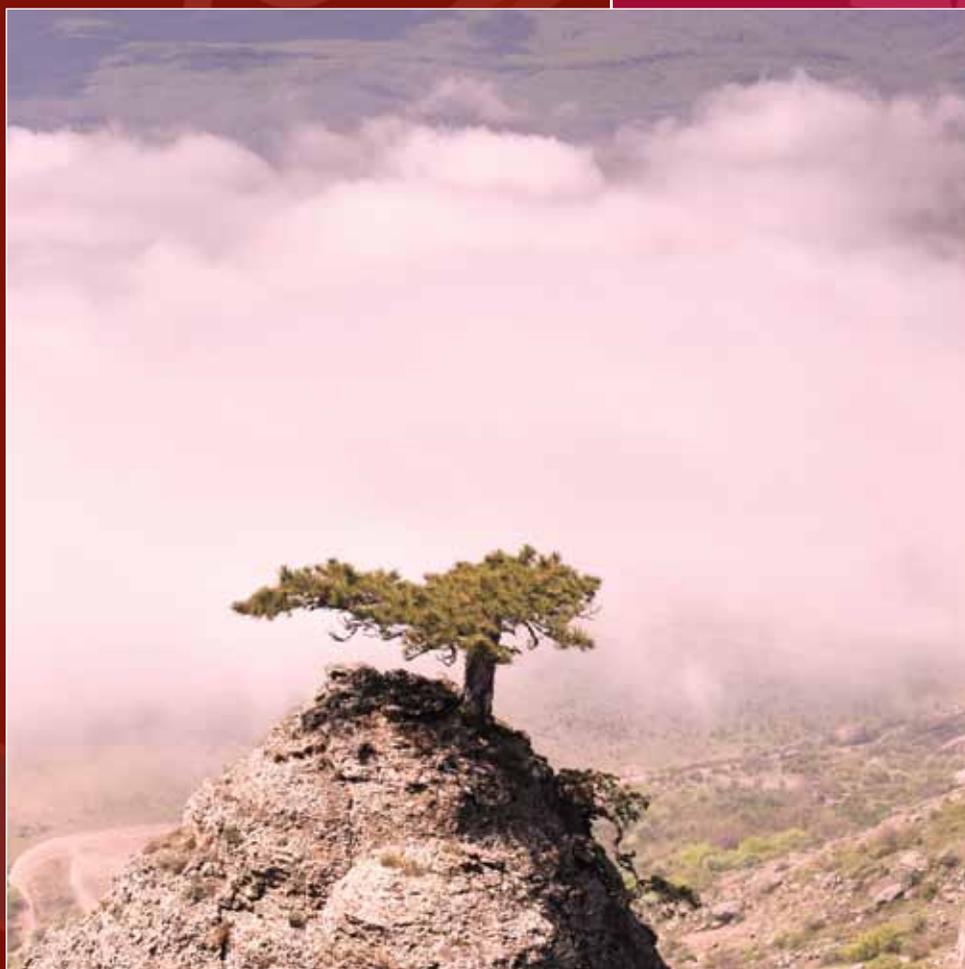


# ISLAMIC DISCOURSE

## BETWEEN THE CONCLUSIVE AND THE VARIABLE

SHAYKH ABDULLAH BIN BAYYAH

Tabah Papers Series  
Number 3



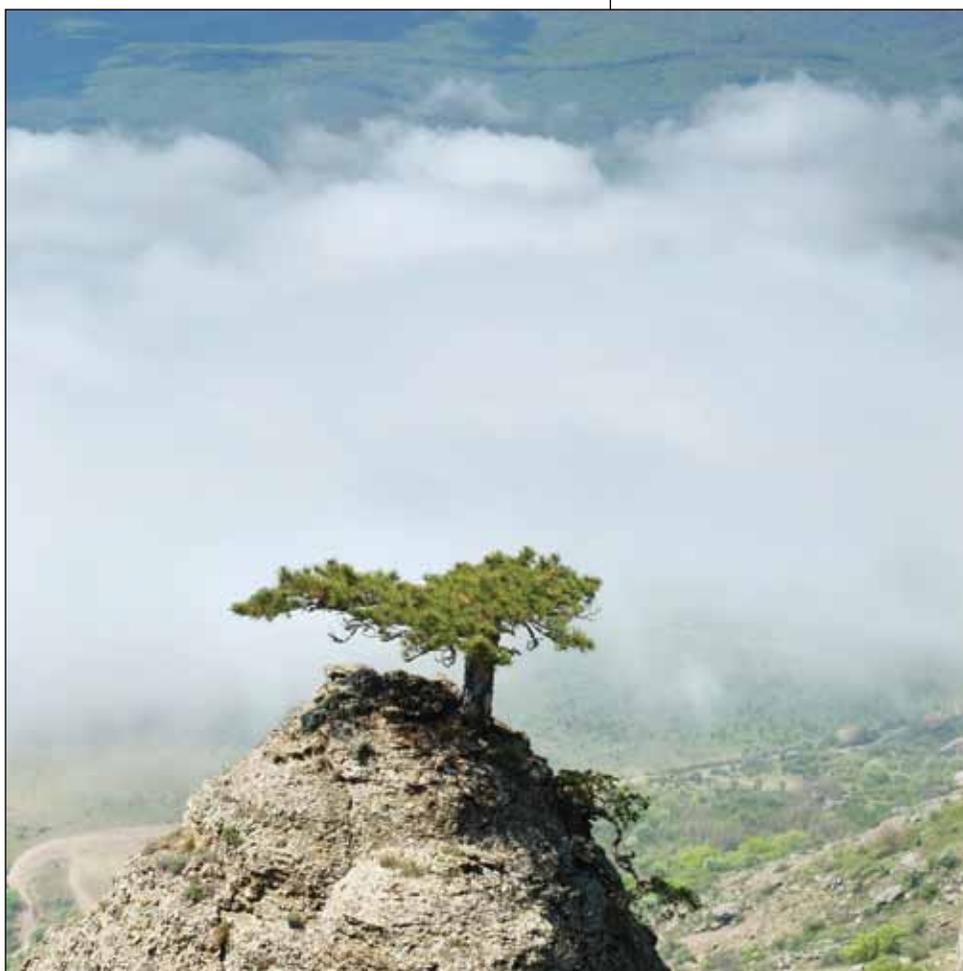


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Islamic Discourse: Between the Conclusive and the Variable

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## Director's Introduction

Perhaps the most looming challenge before Islam today is to be understood. Misrepresentation on the part of international media punditry does contribute much to this dilemma, as well as a general myopia within the consciousness of Western publics regarding their own "others"; a category within which Islam, more often than not, features as the primary candidate. We would be remiss however, if we did not acknowledge the shortcomings of contemporary Muslim discourse to achieve the target of clarity. Clarity is the all too important defining factor of the contextual corridor between sender and receiver. It is the ever-elusive component of the encoding and transmission process of communications.

Four considerations illustrate the gravity of this problem. First, systemic misunderstanding of Islam challenges the very well-being of Muslim populations worldwide. Muslims easily become vulnerable to official and unofficial backlash and their religious affiliation nearly becomes an indictment in itself. Second, it impedes Muslims' potential to contribute valuably to the common good of the greater global community in which they participate. Suspicion is an inhibitor where there is a pressing need instead, for enablers. Third, Muslims believe that it is the human right of every person to experience the message and meaning of Islam. The ability of every person to make his or her own informed decision about Islam is at the essence of securing freedom of conscience. Fourth, it is this very disconnect between peoples and cultures that continues to exasperate the atmosphere of volatility that surrounds them.

In the Quran we find the verse, "*and We have not sent a messenger except with the tongue (lisān) of his people*". The tongue of a people is not just the formal patterns of their language but the meanings conveyed by that language. Language is the vessel of meaning; however the conveyance of meaning calls for much more than the surface aptitudes required to pass a TOEFL examination.

Two concepts intimately related to *lisan* (tongue), ostensibly used here for “language”, are *nuṭq* (speech) and *bayān* (expression). To engage in *bayān* is to give expression to internalized meaning. It is defined in the discipline of *uṣūl al-fiqh* (Islamic legal theory) as the movement of a thing from a space of obscurity into a space of clarity.

The word *nuṭq* (speech) comes from the same trilateral root from which we derive the word *manṭiq*, or “logic”. This common source for both implies a symbiotic relationship between language and sound intellection. A discourse that is in tune with the “tongue” of a people must be conversant with their modes of intellection. It must be recognizable to its audience; and it can only do this by being conscious of the *unspoken* assumptions that operate in their minds and inform their worldview.

The preceding considerations can be summed up in two operating principles for effective discourse, *relevance* and *accessibility*. Relevance implies both value and significance. For a discourse to be significant it must be at once meaningful and exceptional. The importance of its content must stand out from the monotonous buzz of the herd. It cannot forfeit its integrity by replacing substance with the shallowness and distraction of cheap market “spin”.

To have value is to contribute to a tangibly felt need in the lived reality of people; or to provide enrichment or augmentation to an already existent value. The first is to establish quality, the second is to quantifiably increase original or native quality. The lie of modernity and its handmaiden, progress, is to tack a notion of valuation onto naked quantity alone, proliferating at hyper-speeds in a void that has now become our post-modern condition.

Accessibility means that a discourse is comprehensible to its audience. How often have we found that speech serves only to satiate a need within the speaker

himself and that resonates only amongst his choir? It remains a closed and circular conversation. Accessibility means that the way in which the discourse adds value to the particular situation of its audience be immediately recognizable.

The target of clarity in discourse inevitably warrants subscription to the principle of transparency. The language used to promote or advocate doctrinally held positions should lucidly reveal the moral clarity that underpins them. According to senior authorities like al-'Izz Ibn 'Abd al-Salām, the rationale at the heart of sacred law is the securing of *good* and the prevention of harm. How this is achieved as a morally reasoned *good* in the lives of every person should serve to bolster the confidence required to embrace the principle of transparency. The chronic hedging that tends to plague much of current messaging doesn't hold up under the lens of globalization and transnational multiculturalism. For the exchange of meaning between sender and receiver to be a successful enterprise, its structure must stand on a foundation of trust. The message must engender confidence in the integrity of its own source.

The challenge of competing to reach hearts and minds with powerful and ubiquitous international media machinery is daunting in the least. However, the onus of responsibility lies squarely on the shoulders of the Muslim community to fulfill their end of the communications equation. In addition to the above outlined principles, Muslims must calibrate their discourse to be in alignment with their own organic roots. These roots are eternal moral universals and spiritual aims and purposes that resonate across the continuum of time and space. They are the arbiters of authenticity and they imbue identity with life and vibrancy. These root principles and authentic meanings alone are the source of *significance*; everything else is just an adjective.

In the monograph that follows, the eminent jurist and thinker, Shaykh Abdullah Bin Bayyah outlines the components of a sound and effective Islamic

discourse, one that delivers on its purpose and fulfills its aims. He begins by enumerating the timeless constants that ground the discourse in doctrinal authenticity.

Upon this is built the methodological system of theological and juristic reasoning, which provides a latitude for development, creativity, and semantic possibility, while securing continuity. This enables the discourse to embrace and engage with its contemporary moment.

The author goes on to treat the qualities that must accompany a sound and grounded, yet engaged discourse, of tolerance, reconciliation, and facilitation. These are necessary components if the message is going to bring health and healing to contemporary hearts and minds.

In his treatment of what might be considered an *uṣūl* of the Islamic discourse, Shaykh Bin Bayyah proceeds to demonstrate the essential factors and ready latitude inherently built into the system that deliver on the “relevancy” and “accessibility” required as the Muslim community continues to traverse new and evolving expanses of time and place.

Tabah Research is honored to offer this contribution to the effort to bring *sense* to the perplexing nature of our times, and *understanding* to the diverse membership of the global community, as well as *enrichment* to all those who are interested in the world of ideas and inspired by the possibility of their application.

*Jihad Hashim Brown*

Director of Research

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## About the Author

Shaykh Abdullah bin al-Shaykh al-Mahfudh bin Bayyah (born 1362AH/1935CE) is currently one of the highest ranking scholars of traditional Islam. Born in Mauritania, Shaykh Abdullah was, in his youth, appointed to study legal judgments in Tunis. On returning to Mauritania he became Minister of Education and later Minister of Justice, holding several other important positions under different administrations, and eventually serving as Vice-President of the first president of Mauritania. He has also been the Vice-President of the International Union for Muslim Scholars. Shaykh Bin Bayyah is presently involved in The Islamic Fiqh Council, a Saudi-based Institute, he teaches at King Abdul Aziz University in Saudi Arabia, and he is the founder and president of the Global Center for Renewal and Guidance. His publications include: *Intellectual Opinions, A Dialogue on Human Rights in Islam, Security Discourse in Islam, Terrorism: Diagnosis and Solutions, Amālī al-Dalālāt (Uṣūl al-fiqh), Financial Transactions, and The Craft of Fatawa and Fiqh of Minorities*. In 2009 Shaykh Bin Bayyah was ranked amongst the 50 most influential Muslims worldwide.







# ISLAMIC DISCOURSE

Between the Conclusive and the Variable

SHAYKH ABDULLAH BIN BAYYAH

The word *khiṭāb* or “discourse” follows the Arabic morphological pattern *fi‘l* and is the verbal noun for the verb *khaṭaba*, which has as its verbal noun the words *khiṭāb* and *mukhāṭabah*. It means speech directed to another party.<sup>1</sup> This meaning is illustrated in the following Qur’anic verses, *When the ignorant engage them in discourse [khāṭabahum], they say “Peace!”*<sup>2</sup>; *Do not engage Me in discourse [lā tukhāṭibnī] concerning those who have acted wrongfully*<sup>3</sup>; and *And We granted him wisdom and the making of distinctions in discourse [faṣl al-khiṭāb]*.<sup>4</sup>

Turning now to the technical terminology of the scholars of jurisprudence, *khiṭāb*—in the words of al-Zarkashī in *al-Baḥr al-Muḥīṭ*—is defined by the early scholars as speech aimed at imparting understanding to someone who is prepared for understanding. Some scholars define it as speech aimed at imparting understanding to someone irrespective of whether or not he or she is prepared for understanding.<sup>5</sup>

In the technical usage of the West, it means a verbal exposition concerning a specific subject, directed to the public. It is tantamount to a complex of verbal and written features representing an ideology.

Discourse can be divided into many categories or levels. According to Foucault,<sup>6</sup> for example, there is discourse that is changing and that which is stable. The first type of discourse is the daily habitual discourse of people, which terminates and comes to an end with the ending of its time of utterance. The second is discourse that reverberates in the lives of people and does not come to an end, like the discourse documented in sacred texts.

In like fashion, they articulated the levels of discourse with reference to its subject matter, sources, import and content. Accordingly, there is religious dis-

1. Muḥammad bin Makram Ibn Manzūr, *Lisān al-‘Arab*, 4th ed., 9 vols. (Beirut: Dār Ṣādir, 2005), 5:98.

2. Q25:63.

3. Q11:37.

4. Q38:20.

5. Muḥammad al-Zarkashī, *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, ed. ‘Abd al-Qādir ‘Abd Allāh al-‘Ānī, ‘Abd al-Sattār Abū Ghuddah, and ‘Umar Sulaymān al-Ashqar, 2 ed., 6 vols. (Kuweit: Wizārah al-Awqāf wa al-Shu‘ūn al-Islāmiyyah, 1992), 1:126.

6. Michel Foucault, *l’Ordre du discours*, translated by Muḥammad Sabīlah (Lebanon: Dār al-Tanwīr, 2007).

course, philosophical discourse, ethical discourse, legal and historical discourse and socio-political discourse, in addition to various other types of discourse.

Islamic discourse in its comprehensive sense encompasses all these aspects. The broad scope of the concept of religion and its universality that penetrates all aspects of life is not meant in the narrow ecclesiastical sense of religion juxtaposed to reason, but rather in the broad encompassing sense that regards as part of religion all human activity. This activity may be emotional, rational or behavioral, in its diverse fruitful expressions judged on the scale of values and human interest.

Since this paper deals with Islamic discourse—its essence, its absolutes and matters of *ijtihād*, its constants<sup>7</sup> and variables—it should be emphasized that Islamic discourse is constructed, in essence, on the discourse of Allah Most High directed to His servants; it is a presentation of the content of divine discourse directed to humanity, whether in regard to universals or particulars, form or foundation, means or objectives. It is here that its constants and variables lie. It is known that discourse directed to humanity by Allah Most High is of two types:

- discourse that is informative [*ikhbārī*] in nature, which requires belief in accordance with its contents [such as the divine discourse disclosing His essence and attributes; the universe, whether heavens, earth, angels or *jinn*; the Hereafter and that which is associated with it, whether Paradise, fire, judgment, the Scales, reward or retribution]; and,
- discourse that relates to the acts of accountable agents insofar as they are held accountable for them. This is known as *ḥukm* [or legal ruling] and is categorized into (a) discourse establishing accountability for deeds and (b) discourse establishing relationships between things, for discourse [in the form of legal rulings] can be either a prescription, a granting of choice, or asserting a relationship, according to the well known exposition of the scholars of jurisprudence.<sup>8</sup>

It thus may be said that the constants in divine discourse, whether they are informative or in the form of legal rulings, are constituted by that which is supported by certain evidence [*qaṭʿī*]. Whereas non-constants in divine discourse are constituted by that which is supported by *ijtihād* and evidence that is of a presumptive nature [*zanī*].

Al-Zarkashī says:

In *Sharḥ al-Maḥsūl*, al-Iṣfahānī states: “Of the legal rulings, there are those established by way of proofs that generate certain knowledge concerning their subject matter. This occurs in legal rulings established by way of texts supported by secondary evidences that dispel all possible conflicting interpretations and, in so doing, limit the import of the text to a single meaning. And among the legal rulings, there are those that are established by way of narrations transmitted by

7. The usage of this term (*thawābit*) in Islamic writings carries with it the meaning of verified or established matters.

8. al-Zarkashī, *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, 1:127.

a limited number of narrators in each generation of its chain of narration, or by way of texts that are not supported by that which dispels all variant interpretations—these legal rulings are presumptive and not known with certainty.”

He states further: “This is an unassailable truth. It arises from division of the methods of adducing evidence into those that are clear proofs and those that are merely of an indicative nature.”<sup>9</sup>

Ibn Daqīq al-‘Īd is of the view that legal rulings are divided into those that are mass-transmitted [*mutawātir*], which are of decisive quality, and those that are not [transmitted] as such and, therefore, are presumptive.<sup>10</sup>

The truth of the matter is that legal rulings are divided into those that are certain and those that are presumptive. The early scholars who expressed this view include Shaykh Abu Ishāq al-Shirāzī in *Kitāb al-Hudūd* and Ibn al-Sam‘ānī in *al-Qawāṭi’*.<sup>11</sup>

In order to clarify the view of al-Iṣfahānī that absolute certainties arise from proofs that yield absolute certainty, it is imperative to consider briefly the nature of proofs that are absolutely certain and [proofs] that, if a discourse or legal ruling is established thereby, render that discourse or legal ruling absolutely certain. Proofs that are absolutely certain—insofar as their meaning is concerned—are those texts of the Lawgiver, whether from the Book<sup>12</sup> or from the *sunnah*, that do not admit of any variant interpretation. Proofs that are absolutely certain—insofar as their authenticity is concerned—are those that are transmitted in a manner that is absolutely certain, either because they are to be found in the Noble Qur’an between its two covers, or in hadith texts that are mass-transmitted [*mutawātir*] [subject to the well known differences concerning its definition], or in express consensus [*ijmā‘ ṣarīh*] based on evidence. A condition stipulated for all of the above is the absence of any strong opposing evidence of an authoritative nature.

Yet there are proofs that come close to being absolutely certain, such as a well-circulated [*mustafīd*] hadith, narrated by four or more narrators in each generation of its chain, or that has otherwise become well-known. And, in the view of some scholars, [we may include] a solitary [*āḥād*] hadith that is free of any hidden defects and is found in the *Ṣaḥīḥayn*.<sup>13</sup> It is noted that Imām al-Ḥaramayn criticized in his book *al-Burhān* those who held the above mentioned view concerning solitary hadiths, on the basis that error is manifestly possible even for a narrator who is trustworthy.<sup>14</sup>

Other such proofs include: general terms that are repeated [according to al-Shāṭibī]; universal propositions derived from the rational import of texts and are attested to by diverse proofs and a variety of textual and contextual indicators; tacit consensus unopposed by any conflicting evidence, subject to certain differences of opinion in this regard; juristic analogy where the ratio legis manifests itself more

9. Ibid., 1:124.

10. Ibid.

11. Maṣūf bin Muḥammad al-Sam‘ānī, *Qawāṭi’ al-Adillah fī Uṣūl al-Fiqh*, ed. ‘Alī bin ‘Abbās al-Ḥakamī and ‘Abdullāh bin Ḥāfiẓ al-Ḥakamī, 1st ed., 5 vols. (Riyadh: Maktabah al-Tawbah, 1998), 3:3.

12. sc. the Qur’an.

13. “The two rigorously authenticated ones”, meaning the hadith collections by Bukhārī and Muslim.

14. ‘Abd al-Malik bin ‘Abd Allāh al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh*, ed. ‘Abd al-‘Azīm Maḥmūd al-Dīb, 4th ed., 2 vols. (Egypt: Dār al-Wafā’, 1997), 1:204.

strongly than in the source ruling itself or where the ratio legis manifests itself equally strong as in the source ruling, provided that the evidence for the source ruling is itself absolutely certain. The presence of a ratio legis is a condition [for juristic analogy to occur], and the analogy is certain if its support is certain.<sup>15</sup>

The objective of the foregoing introduction is to establish the existence of two types of discourse, but not in reference to the customary division of discourse into that which establishes accountability for deeds and that which establishes legal relations between things; rather [discourse categorized] according to the grade and value of evidence in terms of strength and weakness, clarity and ambiguity, multiplicity or singularity of its chains of transmission, or being widespread or rare.

Accordingly, evidence that is strong, mass-transmitted [*mutawattir*], and clear, confers on its import strength, comprehensiveness, and acceptability. It raises it from the level of merely requiring action in accordance with its dictates to a level where conviction of its content becomes decidedly conclusive. This level is known as “that which is necessarily known of religion.”

These, then, are the certainties that form the foundation of this religion’s edifice, its focal points and supporting structure. The foundation is faith, those matters that are treated on the same basis as faith, and those matters that relate to the requirements of faith. The supporting structure consists of the pillars that elevate the canopy of the edifice—they are the proofs of faith.

After the foundation and the supporting structure, the contents of the building are of differing levels and are represented by diverse rulings of the noble Shari’ah, forming a complete and well-organized structure, apprehending all aspects of life, addressing all exigencies, directed to various goals and objectives, consistent in all its variations, and coherent in the diversity of its objectives.

The certainties of the Islamic discourse are none other than a constant reminder of the definitive fundamentals of Islam as regards belief, conduct, and social interaction.

There is likely no need to mention in this regard the proofs from the Book, the sunnah, and the statements of leading scholars—all of which are well known and in circulation in various references. The objective here is merely to provide a reminder of the principal issues concerning this religion based on affirmation of divine unity and its requisites, prophethood and its imperatives, human dignity and accountability, and preservation of the fundamental necessities [*darūrāt*], so as to establish balance between this world and the Hereafter, and between the spirit and the body.

Faith in the realm of the unseen does not negate the realm of the perceptible, which actually stands as proof and evidence of the realm of the unseen and is indicative thereof: *Indeed, I declare an oath by that which you see and that which*

15. Sayyidī ‘Abd Allāh bin Ibrāhīm al-‘Alawī al-Shanqīṭī, *Nashr al-Bunūd alā Marāqī al-Su‘ūd*, 2 vols. (UAE: Ṭab’ah bi ishrāf al-Lajnah al-Mushtarikah li Nashr al-Turāth al-Islāmī Bayn al-Mamlakah al-Maghribiyyah wa Ḥukūmah Dawlah al-Imārāt al-‘Arabiyyah al-Mutaḥidah, n.d.), verse 654.

*you do not see.*<sup>16</sup> *Indeed, in the creation of the Heavens and the Earth and the alternation of night and day there are signs for those of intellect.*<sup>17</sup>

## The Fundamental Certainties

Most of the certainties or absolutes are to be found in the part of the Qur'an revealed in Mecca in connection with principles of belief. Al-Shāṭibī states:

The majority of the Meccan verses of the Qur'an seek to establish three themes, all of which may be reduced to a single theme: invitation to worship Allah Most High.

The first of these three themes is affirmation of the attribute of unity to Allah, the One, the Ultimate Truth. This unfolds in diverse manners. On the one hand, there is the unqualified negation of any associate to Allah, and, on the other, there is its specific negation of the claims of disbelievers in differing contexts. These include their claim that the associates bring one closer to Allah or that an associate is a son of Allah, along with other various kinds of corrupt claims.

The second is affirmation of the prophethood of the Prophet Muhammad and that he is the messenger of Allah to all of humanity, that he was truthful in what he conveyed from Allah. Similarly, this unfolds in diverse manners, such as attestation that he is truly a messenger of Allah and negation of the claims of disbelievers that he is a liar, a sorcerer, insane, or that he is instructed by another human being, and other such claims of their disbelief and obstinacy.

The third is affirmation of the resurrection and the Hereafter and that they are true and not subject to doubt, [evinced] by way of clear proofs and the refutation of those who reject them, addressing all avenues open to the disbelievers to justify their rejection, and in so doing, refuting their claims in all respects by way of authoritative evidence, censuring the opponent, and bringing clarity to the matter at hand.

It is these three themes that the passages of the Qur'an revealed in Mecca generally deal with. What appears at first glance to violate this general proposition can ultimately be brought within its framework. This approach can be applied to the verses that encourage compliance and instill fear of transgression, similitudes, stories, recollections of Paradise and hellfire, descriptions of the day of resurrection, and the like.

Al-Shāṭibī proceeds to apply the above to surah *al-Mu'minūn*, saying:

It commences with three concepts.

The first—and this is the most relevant for present purposes—is elucidation of the attributes capable of acquisition by the servant of Allah, which if so

16. Q69:38–9.

17. Q3:190.

acquired, results in the servant being elevated and honored by Allah. This is embodied in the words of Allah: *The believers have indeed succeeded. They are those who are humble in their prayers, who turn away from worthless talk, who guard their private parts—except from their wives and those whom their right hands possess, yet those who covet anything more than that are people who transgress—who honor their trusts and contracts, who are diligent in their prayers. These are the heirs who will inherit Paradise, wherein they shall dwell forever.*

The second is elucidation of the origin of man's creation and his subsequent development, based on contemplation and choice, in a manner that leaves no avenue open to denigrate those who are in this state.

The third is elucidation of the manners in which the human being is provided with external support suitable for his upbringing, considerate treatment, and assistance in maintaining his means of livelihood. This is achieved by subjecting the heavens and the Earth and that which is between them to the human being. This in itself suffices as an honor and distinction.<sup>18</sup>

On the basis of what has preceded, and extrapolating from the words of Allah Most High—*The Most Merciful! He taught the Qur'an. He created the human being*<sup>19</sup>—we now discuss three certainties.

1. The Most Merciful—divinity and unity of the Divine.
2. The Qur'an—the message and prophethood.
3. Humanity—the focus of the divine discourse.

#### THE FIRST CERTAINTY: AFFIRMATION OF THE UNADULTERATED UNITY OF ALLAH MOST HIGH

It includes such related matters as the attributes of Allah with regard to His omnipotence, divine decree, omniscience, mercy, granting of sustenance, creation, beneficence, bringing of adversity, and so forth.

The discourse in this regard plays out on three levels.

**The First Level:** discourse concerning divine unity directed to Muslims, the objective being simply to direct them to adhere strictly to the affirmation of absolute and perfect divine unity, in accordance with the words of Allah Most High: *Say to them, "Indeed, my prayer, my sacrifice, my life, my death, all are for Allah, Lord of the worlds. He has no partner. By that I am commanded, and I am the first of those who submit."*<sup>20</sup> This adherence must be free of any doubt about the cardinal beliefs of Muslims and their intentions.

In the context of this discourse, it is essential to highlight two matters. The first is that the invitation to affirmation of divine unity must be linked to the principle of virtue [*ihsān*], which is the twin of faith [*īmān*]. This means that faith-based

18. Q23:1–11. Ibrāhīm bin Mūsā al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed. Ibrāhīm Ramaḍān, 6th ed., 4 in 2 vols. (Beirut: Dār al-Ma'rifāh, 2004), 3:377–8.

19. Q55:1–3.

20. Q6:162–3.

spiritual training—aiming to purify the soul and to elevate it to the heights of trust in Allah, contentment, worldly indifference, and love—must always be present.

The second matter is action, as faith [*īmān*] is constituted by both utterance and action, both worship and social interaction. This is more proximate to prophetic guidance and more distant from the type of dispute and polemics that is of no utility whatsoever.

**The Second Level:** invitation directed to the adherents of previous divinely revealed faiths. This level constitutes a reminder to them of what is contained in their [divinely revealed] books:

*Say, “O People of the Book, come to a common word between us, namely that we will not worship any but Allah, we will not associate anything with him, and we will not take one another as lords, other than Allah.”*<sup>21</sup>

*The Messiah said, “O Children of Israel, worship Allah, my Lord and your Lord. Indeed, Allah has declared Paradise to be forbidden for those who associate partners with Allah and their final destination is the fire of Hell.”*<sup>22</sup>

*It is not fitting for any human being, after Allah has granted him the Book and wisdom, to say to people, “Worship me besides Allah.”*<sup>23</sup>

This is a perpetual reminder that the message of divine unity is the message of all prophets and that the Prophet, upon him be blessings and peace, is simply the one who brings completion to the chain of prophets and perfection to nobility of character.

It is possible in this regard to seek assistance in the content of their sacred texts, such as the statement of Jesus, upon him be peace, in the Gospel of Mark, “The first of all the commandments is: ‘Hear, O Israel, the Lord our God, the Lord is One. And you shall love the Lord your God with all your heart, with all your soul, with all your mind, and with all your strength.’ This is the first commandment.”<sup>24</sup> There are other passages that occur in the Old and New Testaments with similar import.

**The Third Level:** discourse directed to the rest of humanity and those without faiths, pursuant to the words of Allah: *Say, “O Mankind, I am the messenger of Allah to all of you. It is He to whom belongs all that is in the heavens and Earth. There is no god but He. He gives life and causes death.”*<sup>25</sup> This discourse—and every discourse—must rely on logic, knowledge, universal proofs, and the Qur’anic methodology: *Were they created of nothing, or were they themselves the creators? Or did they create the heavens and the earth?*<sup>26</sup>

Muḥammad ibn Abī Zayd al-Qayrawānī was correct when he said in his book *al-Risālah al-Fiqhiyyah*, “[Allah] alerted man by way of the effects of His handiwork and left him without excuses on the lips of His messengers....”<sup>27</sup>

What he means is that Allah, Most Glorious and High, put in place evidences of His existence and unity, by making evident in the universe the extent of His

21. Q3:64.

22. Q5:72.

23. Q3:79.

24. Mark 12: 29–31.

25. Q7:158.

26. Q52:35–6.

27. Abū Muḥammad ‘Abd Allāh bin Abī Zayd al-Qayrawānī, *al-Risālah al-Fiqhiyyah*, ed. Ḥamū al-Hādī and Muḥammad Abū al-Ajfan, 2nd ed., (Beirut: Dār al-Gharb al-Islāmī, 1997), 77.

wisdom, the intricacy of His handiwork, and the manifestation of His providence. These are evidences that the intellect, with which the human being has been provided, is receptive to, as though they were words expressly uttered and fully illuminating. Man's natural disposition is thereby awakened to longing for the Creator.

Divine providence then intervenes by way of elucidating the revelation articulated on the tongues of His messengers, whom He supports with the most sublime of evidence pointing to their truthfulness. This gives rise to meanings and thoughts—in the minds of the messengers and those who came into contact with them—that compel them to believe in the veracity of the information conveyed by the messengers and the brilliance of the light carried by them. Their speech concerning the unseen is like that of a witness whose truthfulness nobody doubts and who speaks to you about a city you have never seen, yet you believe him because of your prior knowledge and experience concerning the truthfulness of his speech.

Belief in Allah necessitates belief in the major pillars of Islam that have been transmitted with such frequency as to yield certainty, such as prayer, *zakāh*, fasting, and pilgrimage. These are certainties concerning this religion known by way of self-evident knowledge. For every one of the above-mentioned levels, there are appropriate styles and methods of discourse. Moreover, it is a discourse that renders and resolves all equivocalities and ambiguities to that of the definitive. By way of example, Jesus healing the blind and the leper, and his bringing the dead to life are to be rendered subject and referred to the definitive principle of divine unity, which dictates that all of this happens with the power of Allah Most High and with His permission.

In like manner, the special privileges and the supernatural and extraordinary feats granted to the “friends of Allah” are things that exist in reality and are acceptable conceptually to Muslims, but they are rendered subject and reduced to the definitive principle of the Creator's omnipotence, for it is He, Most Glorious, Exalted and High, who brings all of that into being and who destines it: *so that those who are to perish [the disbelievers] might perish after clear evidence, and those who are to live [the believers] might live after clear evidence.*<sup>28</sup>

#### THE SECOND CERTAINTY: PROPHETHOOD AND ITS IMPERATIVES

The second certainty requires belief in the phenomenon of revelation, which is a divine connection and contact with the human being chosen to receive knowledge of a body of truths and to receive a message to be conveyed to humanity, this being the objective of the Creator with respect to creation. This message expounds on certain fundamentals that lie beyond the scope of reason, but that reason does not assign to the realm of the impossible. In so doing, the message introduces

28. Q8:42.

humanity to the Creator, Most Sublime and High, to that which is necessary pertaining to the Creator, Most Sublime is His Power, to His Shari'ah, to the origins of the universe, to the destiny of humanity, to the affairs of the Hereafter, and to the awakening and resurrection. Indeed, scholars of science are privy only to secondary causes, as stated by Claude Bernard, the French physiologist of the nineteenth century.

These then are the fundamental truths that the prophets came with. Islam emphasizes that the messages of the prophets are in their essence a single message: *Verily, We have sent revelation to you [O Muhammad] as We sent revelation to Nūḥ [Noah] and the Prophets after him....*<sup>29</sup>

The messages of the prophets are attested to by their miracles. It is narrated on the authority of Abu Hurayrah, may Allah be pleased with him, that the Prophet, may the blessings and peace of Allah be upon him, said, "Every Prophet was given miracles the like of which people believed in because of their sheer force; but what I have been given is Divine Inspiration that Allah has revealed to me. So I hope that my followers will outnumber the followers of the other Prophets on the Day of Resurrection."<sup>30</sup>

The most important proof of the truthfulness of the Prophet, the seal of prophets, may the blessings and peace of Allah be upon him, is the Veracious Qur'an, which constitutes both the message and the evidence at the same time, both the claim and its proof. It is a challenge to humanity in its form, meaning, and testimony, which, with the passage of time, have only increased in timeliness and veracity. No messenger has ever come with a Qur'an that is recited—*It is nothing but revelation revealed*<sup>31</sup>—protected in the hearts by memorization and in writing. The passage of time has not affected its inviolability. It extracts what is hidden innermost and penetrates to the depths of the soul. In the present age, its scientific miraculousness is evidence that it is from the Knower of the unseen and the manifest.

The Creator, Most Sublime and High, has embedded the evidence of prophethood in the human being itself: *And in your own selves. Do you not then see?*<sup>32</sup> This takes place by way of premonition of events outside of the normal course, resulting in precognition of reality, such as by way of dreams the occurrence of which nobody disputes, presenting events in coded form, which is then clarified by way of the events themselves or is decoded by those with knowledge of the Book. Sometimes the event in question is presented in the precise form in which it will occur. In the authentic hadith narrated by al-Bukhārī and others, the Prophet, may the blessings and peace of Allah be upon him, alerted our attention to dreams: "Indeed, the righteous dream is one of forty-six parts of revelation."<sup>33</sup>

The commentators of this hadith have expressed divergent views concerning the interpretation of this division [of revelation]. Some say that it refers to the

29. Q4:163.

30. Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 2 vols. (Cairo: Jam'iyyah al-Maknaz al-Islāmī, 2000), 1:76.

31. Q53:4.

32. Q51:21.

33. Muḥammad bin Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 3 vols. (Cairo: Jam'iyyah al-Maknaz al-Islāmī, 2000), 3:1413; see also Zakarīyā al-Ansārī and Muḥammad bin Ismā'īl al-Bukhārī, *Minḥat al-Bārī bi Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Sulaymān bin Duray' al-Āzimī, 1st ed., 10 vols. (Riyadh: Maktabah al-Rushd Nāshirūn, 2005), 10:100; Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 2:979.

temporary cessation of prophethood prior to the revelation to Muhammad, peace and blessings of Allah be upon him. Others have kept silent on the matter. It is possible, and Allah knows best, to explain it on the basis that the word “part” [in the hadith] points to the fact that prophecy comprises multiple meanings, and that dreams, to the extent that they bring to light and make manifest unseen realities, represent this small part of the manifestation of matters unseen, clarity, and truthfulness that accompanies revelation. It is an instantiation of exposure to knowledge of the unseen and truth, but one that is weak such that it does not rise to the level of clear exposure to knowledge of the unseen that accompanies prophethood. And furthermore, it is not a religious imperative that we believe in the knowledge contained in dreams, as they are open to delusion, error, and obscurity, which are not applicable to the manifestation of truths in the state of prophethood. This does not apply to the dreams of one of the prophets, as these are true, even if in coded form, such as the dream of Abraham, peace be upon him, in which he saw himself slaughtering his son. This was a trial that was to realize itself by means of a grand ram, so that this could become an established practice and means of gaining nearness to Allah Most High, in succeeding generations: *And We ransomed him with a momentous sacrifice and We left this blessing for him among generations in later times.*<sup>34</sup> [Consider] also the dream of Joseph, peace be upon him: “*I saw eleven planets and the sun and the moon. I saw them prostrating to me.*”<sup>35</sup> [Consider] also the dream of Daniel, a messenger of the Children of Israel, the true interpretation of which the exegetes of the People of the Book have not yet been able to perceive.

As for the dreams of our Prophet, blessings and peace be upon him, with which revelation commenced, he did not see a dream-vision, except that it occurred [in the state of wakefulness] like the light of the dawn.

Many dreams of persons other than the prophets have been true and accurate, such as the dream of the king of Egypt mentioned in the Qur’an, which was interpreted by Joseph, blessings and peace be upon him. [The king said]: “*I see seven fat cows being consumed by seven lean cows and seven green ears of grain and others shriveled.*”<sup>36</sup> And such is the dream of Mūbadhān before the calling of the Prophet, blessings and peace be upon him. He saw that fastidious camels leading Arabian horses had crossed the Tigris and had spread in their lands.<sup>37</sup> Consider also the dream of the American president, Abraham Lincoln, who saw his assassination in a dream and documented it, after which it occurred just as he had seen in his dream.

Many people have seen or heard things in their dreams that afterwards came true. Indeed, this is testimony to the nature of prophethood existing in the human being.

A logical implication of prophethood is immunity from error. This negates the occurrence of lies and error in the transmission of the message and necessitates

34. Q37:107–8.

35. Q12:4.

36. Q12:43.

37. Muḥammad bin Aḥmed al-Dhahabī, *Tarīkh al-Islām wa Wafāyāt al-Mashāhīr wa al-‘Ālām*, ed. ‘Umar ‘Abd al-Salām al-Tadmūrī, 1st ed., (Beirut: Dār al-Kitāb al-‘Arabī, 1987), 1:32.

belief in the message and following the dictates thereof: *[The Prophet] does not speak of his own whim. It is but revelation revealed.*<sup>38</sup>

In like vein, another logical implication is that immunity from error is applicable only to prophets. If it were otherwise, there would be sources of revelation other than the prophetic source. This would be inconsistent with the special nature of the prophetic immunity and would result in the proliferation of sources of revelation.

It is a cardinal principle of belief that no person's view is accepted in opposition to the statements of the Prophet, blessings and peace be upon him, that have been verified with certainty and that are of clear and definitive meaning. For this reason, the leading scholars whose views are followed have declared themselves innocent of contradicting that which has been verified as emanating from the Prophet, blessings and peace be upon him, using terms that are powerful and conclusive, such as the statement attributed to Mālik, "Every speech is capable of being accepted and rejected, other than the speech of the owner of this grave."<sup>39</sup>

And such is the statement of al-Shāfi'ī, "If my view conflicts with a hadith, then cast my view against the wall."<sup>40</sup> And likewise is the statement of Abū Ḥanīfah, "If a hadith has been verified, it is my considered view."<sup>41</sup> And the statement of Aḥmad, "Even a weak hadith is preferable to me over the views of men."<sup>42</sup>

Another of the logical implications of prophethood and matters that complement the transmission of the message of revelation is acknowledgement of the status of the Companions of the Prophet, namely those who conveyed his message to succeeding generations and who gave effect to his commands. They are the reliable mirrors that reflect a true image of the noble prophetic message.

Any effort that casts aspersions upon the Companions—the carriers of the revealed message and the trustees of revelation—is ultimately nothing more than an effort to cast aspersions upon the message itself and akin to manufacturing doubt about it. The multitude of texts of the Qur'an and hadith in praise of that small group, both those of a general and specific nature, is the best evidence that exaltation of their position of honor, upholding their sanctity, and guarding their sacred precinct enjoy distinction in this religion.

Let's consider the words the Most High: *Muhammad is the messenger of Allah and those who are with him are strong against unbelievers, compassionate among each other. You see them bowing and prostrating, seeking the grace of Allah and His good pleasure. On their faces are their marks [of piety], being the traces of their prostrations. This is their similitude in the Torah. Their similitude in the Gospel is like a seed that sends forth its blade, then makes it strong. It then becomes thick and stands on its own stem, filling the sowers with wonder and delight. As a result, it fills the disbelievers with rage at them.*<sup>43</sup>

38. Q53:3–4.

39. Muḥammad bin Aḥmed al-Dhahabī, *Siyar 'Alām al-Nubalā'*, ed. Shu'ayb al-Arnā'ūṭ and Ibrāhīm al-Zaybaq, 11th ed., 23 vols. (Beirut: Mu'assasah al-Risālah Nāshirūn, 2001), 10:73.

40. Ibid.

41. Muḥammad Amīn Ibn 'Ābidīn and Muḥammad 'Alā' al-Dīn Afandī, *Ḥāshiyah Radd al-Muḥtār 'alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār*, 3rd ed., 8 vols. (Egypt: Maktabah Muṣṭafā al-Bābī al-Ḥalabī, 1984), 1:72.

42. Muḥammad Adīb Ṣāliḥ, *Lamaḥāt fī Uṣūl al-Ḥadīth*, 5th ed., (Beirut: al-Maktab al-Islāmī, 1988), 197.

43. Q48:29.

And His words, Most High: *You are the best of nations sent forth for the benefit of humanity*,<sup>44</sup> and, *Those who believe in him, honor him and assist him...*,<sup>45</sup> and, *For the poor among the Immigrants who were expelled from their homes and their property, while seeking the grace of Allah and His good pleasure and aiding Allah and His messenger. Such indeed are the sincere ones. And those before them who had homes and had adopted the faith show their affection to those who came to them in refuge and entertain no desire in their hearts for things given to the latter, rather they give them preference over themselves.*<sup>46</sup>

Furthermore, let's consider the words of the Prophet, blessing and peace be upon him, in the authentic narrations. "Do not revile my Companions. Were anyone of you to spend the like of Mount Uḥud in the path of Allah, it would not be equal to a handful spent by one of my Companions, or even half of that."<sup>47</sup>

It is narrated that Abū Burdah reported from his father who said, "We performed the early evening prayer with the Prophet, may the blessings and peace of Allah be upon him. We then said among ourselves, 'Let us remain seated until we have performed the night prayer with him.' So we remained seated. He came out to us and said, 'Are you still here?' We said, 'O Messenger of Allah, we performed the early evening prayer with you and then resolved among ourselves that we should remain seated until we perform the night prayer with you as well.' He said, 'You have done well,' or 'You have acted correctly.'" Abū Burdah continued, "He then raised his head to the sky—and he used to often raise his head to the sky—and said, 'The stars are the keepers of the heaven. When the stars go their way, that which has been threatened will befall the sky. Likewise, I am the keeper of my Companions. When I pass, that which has been threatened will befall my Companions. Likewise, my Companions are the keepers of my community. When my Companions pass, that which has been threatened will befall my community.'<sup>48</sup> The aforementioned hadith was narrated by Muslim.

Let us also consider the following words of the Prophet, blessings and peace be upon him: "A time will come upon humanity when a group of people will go out in battle. It will be said to them, 'Is there among you anyone who saw the Messenger of Allah, may the blessings and peace of Allah be upon him?' They will respond, 'Yes!' and they will be victorious. Subsequently, a latter group of people will go out in battle. It will be said to them, 'Is there among you anyone who saw the Companions of the Messenger of Allah, may the blessings and peace of Allah be upon him?' They will respond, 'Yes!' and they will be victorious. Then, yet a latter group of people will go out in battle. It will be said to them, 'Is there among you anyone who saw the companions of the Companions of the Messenger of Allah, may the blessings and peace of Allah be upon him?' They will respond, 'Yes!' and they will be victorious."<sup>49</sup> The aforementioned hadith was narrated by al-Bukhārī and Muslim.

44. Q3:110.

45. Q7:157.

46. Q59:8.

47. al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:720.; Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 2:1082.

48. *Ibid.*, 2:1078.

49. al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:562.; Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 2:1079.

There are numerous other texts that affirm the testimony [of the Companions' illustrious status].

By reason of the foregoing, our scholars have reached consensus that the Companions enjoy precedence over all others and that the matters [of dispute] that broke out between them must be desisted from, in observation of the sanctity of the Prophet, may the blessing and peace of Allah be upon him, and the sanctity of the message, and in order to distance the Shariah from slander. In addition, historical rumors that divide the community and sow dissension, cursing, and abuse are of no benefit to the community, whether they pertain to religion or matters of this world. Neither Allah, nor His Prophet, is pleased with the state of affairs alluded to above. For this reason, they must be rendered subject to the what is definitive. By application of the same principle, the family of the Prophet, may the blessing and peace of Allah be upon him, enjoy great sanctity and utmost respect, whether they are of the Prophet's sons, daughters, or wives. Allah Most High has indeed removed from them all impurity and has made their love the hallmark of faith and purity of soul. *Indeed, Allah wants but to remove from you all contamination, O Companions of the Prophetic household, and to purify you, a complete purification.*<sup>50</sup>

Al-Taḥāwī spoke well in stating, “Those who speak well of the Companions of the Prophet, may the blessings and peace of Allah be upon him, his wives—women of purity—absolving them of all tarnish, and his venerated descendants exonerating them of every contamination are indeed free of hypocrisy.”<sup>51</sup> Everything that conflicts with the position delineated above falls within the scope of the ambiguous and must be interpreted so as to be consistent with what is definitive.

It is obligatory to educate the community that there is no contradiction or inconsistency between love of the household of the Prophet of Allah, may the blessings and peace of Allah be upon him, and love of his Companions; and that the community of Muhammad is innocent of those who shed the blood of the household of the Prophet of Allah, may the blessings and peace of Allah be upon him, being a small group that carries full liability for the sin that they committed. *They are a community that has passed. They will have the benefit of what they earned and will carry liability for what they incurred. You will not be held accountable for what they did.*<sup>52</sup> In this regard, the discourse is on different levels in accordance with the circumstances and backgrounds of the addressees.

### THE THIRD CERTAINTY: THE HUMAN BEING

The human being is that creation whose description has reduced philosophers to perplexity. He comprises spirit, intellect, and emotion; and he has been honored by knowledge and by subjugating of all creation to him. Perhaps this is what is

50. Q33:33.

51. Ibn Abī al-‘Izz al-Ḥanafī and Abū Ja‘far bin Muḥammad al-Ṭahāwī, *Sharḥ al-‘Aqīdah al-Ṭahāwiyyah*, ed. Aḥmed Muḥammad Shākir, (Riyadh: Wakālah al-Ṭibā‘ah wa al-Tarjamah fī al-Riyāṣah al-‘Āmmah li Idārāt al-Buḥūth al-‘Ilmiyyah wa al-Iftā’ wa al-Da‘wah wa al-Irshād, n.d.), 501.

52. Q2:141.

referred to in the following verses of the Qur'an: *And We have indeed honored the children of Adam. We have carried them on land and sea. We have given them pure things in sustenance and We have favored them abundantly over much of Our creation.*<sup>53</sup> *It is He who created the human being. It is He who taught him eloquence.*<sup>54</sup>

The origins of the human being revert to Adam whom Allah Most High created, and into whom Allah blew of His Spirit. This was the consensus of humanity and the view of all philosophers until the age of Lamarck and Darwin. The distinction between species then became the subject of revision, and research commenced directed at identifying a new origin for the human being among the primates who share with the human being a complete set of teeth, the ability to walk erect on two legs, and greater functionality in the use of their hands. The discovery of fossils and the dictates of imagination became the points of reference for this posited origin, which has not been verified scientifically [in its true sense].

We believe in the divine revelation and we believe that it is the only authority truly qualified to speak about the origins of the human being, as this is one of the many matters that fall outside the scope of rational investigation.

It is the view of some scholars that the nature of the human being has three aspects:

- The instinctive biological aspect, like that of other animals.
- The social aspect, with the human being as a social being who lives life in a society and is indeed influenced by society.
- The human aspect that aspires to the promotion and the supremacy of the transcendent realms, and is capable of coming to know the Creator and yearns for a world of values and spirituality.

The human being is a composite of body and spirit. This composite represents the diverse faces of nature: the ineluctable radiant spirit and the burdensome matter with its pressing needs.

Because of this complex nature, the human being is capable of overstepping limits: *Indeed, the human being is prone to overstep limits, as he sees himself to be self-sufficient.*<sup>55</sup> He is also prone to act in impulsive haste: *The human being was created of haste.*<sup>56</sup> And likewise, he is prone to weakness: *The human being was created weak.*<sup>57</sup> Exegetes have interpreted this to mean that the human being does not resist his base desires: *Indeed, the human being has been created impatient.*<sup>58</sup>

Revelation places the human being in front of the mirror of reality so that he may see his image without flattery or pride. He is distinctive in his dual, yet harmonious, nature and in his unique psychological composition. He finds himself in a world that suits his nature, his needs, and his development, given his amazing constitution and unique bodily arrangement. How glorious is the Creator!

He is accordingly a distinctive creation to which the universe has been subjected, this being manifested in his appointment as vicegerent: *I am placing*

53. Q17:70.

54. Q55:3-4.

55. Q96:6-7.

56. Q21:37.

57. Q4:28.

58. Q70:19.

*a vicegerent on Earth.*<sup>59</sup> It is also manifested in his settlement of the Earth: *He brought you forth from the Earth and caused you to settle therein.*<sup>60</sup> The Earth has been prepared to attend to various human needs so as to be able to receive this human guest: *He laid out the earth for all living creatures. In it there are fruits and date palms with covered spathes, and grains on leafy stems and fragrant herbs.*<sup>61</sup>

The appointment of the human being as vicegerent embodies both honor and imposition of liability, as determined by the Creator in His wisdom, Most Sublime and High, to enable the human being to take responsibility for his vicegerency on Earth. Will he show gratitude or will he disbelieve? Will he reform or corrupt? The human being is an honored creation, but he is not an absolute master. The French philosopher Lamarck described the human being as God's project on Earth.

As a further manifestation of this honor, out of mercy to the human being and as a source of enjoyment for a time, Allah, Most Glorious and High, encompassed the human being with general legislative propositions that belong to the constants and certainties, in order to preserve his essence and maintain his existence. These general propositions find expression in the preservation of religion, life, intellect, progeny, and material wealth.

Pursuant to the above, scholars have been able to discern a higher objective of the Shari'ah, namely that it is directed towards realization of the interests of the servants of Allah. As articulated by *al-Shāṭibī*: "Every ruling of the Shari'ah embodies a legitimate interest of the servants of Allah, whether in the short term [this life] or in the long term [the next life]. This is predicated on the institution of the Shari'ah in the first place to preserve the interests of the servants of Allah. For this reason, it is said in a hadith, 'The entitlement of the servants of Allah is that if they worship Him without associating any partner with him, He will not punish them.'" <sup>62</sup>

Al-'Izz ibn 'Abd al-Salām notes, "Most of the worldly benefits and harms are known by way of the intellect, and these constitute most of the law."<sup>63</sup>

The many entitlements of human beings, as compared with their obligations, serve their interests in their livelihood and their ultimate destination. Islamic discourse, insofar as this certainty or absolute is concerned, must draw attention to the fundamental issues concerning human beings and their definitive entitlements. It must participate with others in promoting noble human values that contribute to human coexistence, establishment of justice, avoidance of harm, and realization of interests. In so doing, it must always emphasize the origin of values and rights in Islam, being Divine Revelation that affirms the position of the human being as an honored creation. This is the exalted source that honored the human being. It is not the human being who brought rights into existence, nor is the human being an independent source of values. These are important areas that Islamic discourse must attend to.

59. Q2:30.

60. Q11:61.

61. Q55:10–12.

62. al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 3:1318; Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 1:35; and see al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, 2:600.

63. al-'Izz bin 'Abd al-Salām, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, ed. Nazih Kamāl Ḥammād and 'Uthmān bin Jumū'ah Ḍumayriyyah, 1st ed., 2 vols. (Damascus: Dār al-Qalam, 2000), 1:7.

## Matters of *Ijtihād* in Islamic Discourse

We indicated in the introduction that discourse can be divided into that which is certain and into that which is presumptive, based on the analysis of its evidence and the associated textual and contextual indicators. If the evidence is sufficiently strong—to the extent that it generates certain knowledge—it becomes a matter of certainty. If the evidence is weak, the matter descends to the level of presumption and sometimes to the level of speculation and conjecture. In the introduction, we also set out the two categories of proofs that relate to rulings and that facilitate the adoption of this categorization. We will now proceed to define the terms “*ijtihād*” and “the subject matter of *ijtihād*.”

Presumptive evidences incorporate authentic narrations transmitted by an insufficient number of narrators to warrant certainty. Giving effect to these narrations is obligatory, provided there exists no authoritative opposing evidence. In the view of the majority of scholars of jurisprudence, these narrations do not generate certain knowledge, albeit that some of them entertained opposing views in this regard. It is stated: “They do not in any circumstance give rise to certain knowledge according to the majority of the illustrious scholars of jurisprudence.”<sup>64</sup>

The following are also regarded as presumptive evidences: the manifest meanings of texts [*al-zāhir*], divergent meanings [*mafhum al-mukhālafah*], juristic analogies [*al-qiyās*], unrestricted interests [*al-maṣāliḥ al-mursalah*], blocking of the means to harm [*sadd al-dharāiʿ*], tacit consensus [*al-ijmāʿ al-sukūti*], an opinion of a Companion [*qawl al-ṣaḥābi*], and the like.

### DEFINITION AND FORMULATION OF THE TECHNICAL TERM

Scholars have defined *ijtihād* as a suitably qualified person’s exercising his utmost effort in arriving at a degree of presumption or certainty that Allah Most High’s ruling for a matter is such and such.

Al-Rāzī opined:

Linguistically, it is the exertion of one’s utmost effort in a deed, whatever it might be. It may be said, “He exerted his utmost effort in carrying a heavy object,” but not, “He exerted his utmost effort in carrying a date pit.” In the usage of the scholars of Islamic law, *ijtihād* is the exertion of one’s utmost effort in consideration of that which will not bring any censure to the person in question for having exerted such effort in doing so. *Ijtihād* is the tool used to deal with specific matters of law, and for this reason they are called “matters of *ijtihād*.” The person who engages in consideration of such matters is a *mujtahid*. This approach is not applicable to fundamental principles.<sup>65</sup>

64. al-Shanqīṭī, *Nashr al-Bunūd ʿalā Marāqī al-Suʿūd*, verse 543.

65. Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl fī ʿIlm Uṣūl al-Fiqh*, ed. Ṭaha Jābir al-ʿAlwānī, 3 ed., 6 vols. (Beirut: Muʿassasah al-Risālah Nāshirūn, 1997), 6:6.

Al-Zarkashī states:

Linguistically, it follows the morphological pattern “*ifti’āl*” of the verbal noun “*jahd*,” which means hardship and power. This term should consequently be restricted to what involves hardship. By doing so, we exclude self-evident matters which are known from the Shari’ah in an obvious and unmediated fashion. For while there is no doubt that they constitute laws of the Shari’ah, there is no hardship in acquiring this type of knowledge.

In the technical sense, *ijtihad* is the exercise of one’s utmost effort in arriving at the ruling of the Shari’ah with regard to a matter of action, by using various tools of legal interpretation and extrapolation. The expression “the exercise of one’s utmost effort” means that the person must sense in himself an inability to exceed the effort he has exercised, lest he be accused of negligence.<sup>66</sup>

Abu Bakr al-Rāzī noted:

The word “*ijtihad*” is used in the Shari’ah in three senses:

First, juristic analogy. As the ratio legis does not in itself necessitate the legal ruling in question, due to the possibility of the ratio legis existing in the absence of the legal ruling, it does not give rise to certain knowledge concerning the ruling applicable to the matter in question. For this reason, it is considered to be a method of *ijtihad*.

Second, that which generates presumptive knowledge without the existence of a ratio legis, such as *ijtihad* concerning the status of [the purity of] water, times of prayer, the direction for prayer, valuation of destroyed or damaged goods, the penalty for hunting while in *iḥrām*, the dowry of a woman’s peers, divorce maintenance, and so forth.

Third, extrapolation using fundamental principles of jurisprudence.<sup>67</sup>

Given that entering the doors of *ijtihad* is restricted to the *mujtahid*, whether in the absolute sense or the qualified sense, the insightful jurist who is capable of dealing with the proofs of a specific nature in a manner consistent with the higher overarching objectives of the Shari’ah and excels in applying the above mentioned to specific circumstances, is fit to present the Islamic discourse.

As said in *Marāqi al-Su’ūd*:

Exertion by the jurist of utmost effort to generate presumptive knowledge that such-and-such is required, by way of example.<sup>68</sup>

66. al-Zarkashī, *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, 6:197.

67. Ibid., 6:197–8.

68. al-Shanqīṭī, *Nashr al-Bunūd ‘alā Marāqi al-Su’ūd*, 2:315.

Thus exercise of utmost effort and exertion of utmost power by the jurist is accordingly necessary. Those other than the jurist who is a *mujtahid* are regarded as followers, and the exertion of utmost power by a follower does not constitute *ijtihād* in the specialized sense of the word.

The subject matter of *ijtihād* is every ruling of the Shari‘ah, whether relating to actions or reason for which a scholarly conclusion is sought in those circumstances where there exists no evidence generating certain knowledge concerning it. The reference to “ruling of the Shari‘ah” excludes rational matters [*al-‘aqlī*], as there is only one truth in these matters. The qualification of a “given effect” refers to the deeds of the accountable human being, whether by way of acting or refraining from acting.

The reference to “reason” comprises presumptive matters [*al-maznūnāt*] encountered in the discipline of jurisprudence and that form the basis for actions. The qualification “in circumstances where there exists no evidence generating certain knowledge concerning it” excludes those rulings where such evidence is available; once such evidence is obtained, it becomes prohibited to rely on presumptive processes [*al-zān*].<sup>69</sup>

In like vein, the Hanafi scholars have commented, “The area of application in which *ijtihād* is deemed valid is restricted to circumstances in which *ijtihād* does not conflict with any certain text of the Book, a *sunnah* that has become widespread, or scholarly consensus; since if it did conflict with any of the aforementioned in the view of the *mujtahid*, it would not be regarded as the proper area of application of *ijtihād*. If a judge were to issue a contrary judgment on the basis of *ijtihād* in these circumstances, that judgment would not be enforceable.”<sup>70</sup>

As stated in *al-Fatḥ*, “*Ijtihād* is not deemed valid if there is consensus or an unambiguous text that is not in conflict with any other text in the view of the *mujtahid*, notwithstanding the existence of such conflict in reality.”<sup>71</sup>

The conflict referred to in the quotation from the author of *al-Fatḥ* is dealt with by scholars of the Hanafi school on the basis of one of two causes: uncertainty arising in the meaning of the text in question, or uncertainty arising in the transmission of the text.

Matters of *ijtihād* enjoy a correlation at the level of detail with the values of tolerance, justice, consultation, coexistence, communication, unity and diversity in the framework of the constants. This diversity is manifested by the flexibility of Islamic law, its broad scope, the variety of semantic interpretations permitted by the texts, and the broad compass of the general proofs in the context of time. All of this serves to confirm the oft-quoted expression that is certainly true: “The Shari‘ah is valid for all times and places.” This is achieved by bringing *ijtihād* to bear on the ongoing link between time and the Shari‘ah, in respect of its texts, higher objectives, fundamentals, and rules. All this springs forth from two starting

69. al-Zarkashī, *al-Baḥr al-Muḥīṭ fī Uṣūl al-Fiqh*, 6:227.

70. Ibn ‘Abidīn and Afandī, *Ḥāshiyah Radd al-Muḥtār ‘alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār*, 3:467.

71. Muḥammad bin ‘Abd al-Wāḥid Ibn al-Humām, *Sharḥ Fatḥ al-Qadīr li-l-‘Ājiz al-Faqīr*, 9 vols. (Beirut: Dār al-Kutub al-‘Ilmiyyah, n.d.), 4:89.

points [the intellect and human wellbeing], and embodies three levels of higher objectives: essentials, exigencies, and embellishments.

Affirmation that there exists a broad and ample scope for *ijtihād* in the Shari‘ah confers upon Islamic discourse three characteristics:

- tolerance
- conciliation
- facilitation and easing of hardship

This can be articulated by reference to three principal issues: tolerance of difference of opinion; conciliation with others and desisting from declaring and labeling others as disbelievers; and facilitation and easing of the affairs of people.

#### THE FIRST CHARACTERISTIC: TOLERANCE OF DIFFERENCE OF OPINION

Difference of opinion is a phenomenon that cannot be avoided, it being one of the manifestations of volition that has been embedded in human nature. Volition, by necessity, leads to the occurrence of difference and divergence in opinion. The luminary scholar Ibn al-Qayyim has noted this as follows: “The occurrence of difference of opinion is inevitable. There is no escape from it due to the disparity and divergence in the aims of human beings, their capacity for understanding, and their powers of perception. But what is reprehensible is when people transgress against others and behave aggressively towards them.”<sup>72</sup>

Ibn ‘Abidin commented on the following statement of the author of *al-Durr al-Mukhtār*, “Difference of opinion belongs to the traces and effects of the mercy of Allah. As difference of opinion increases, mercy becomes more abundant”:

This is a reference to the well-known hadith, “Difference of opinion in my community is a mercy.” Al-Suyūṭī stated in *al-Maqāsid al-Ḥasanah*, “Al-Bayhaqī narrated this hadith with a broken chain of narration on the authority of Ibn ‘Abbās, may Allah Most High be pleased with both of them, with the following words, ‘The messenger of Allah, may the blessings and peace of Allah be upon him, said, “As for what you have been given in the Book of Allah, no one has an excuse in not acting upon it. If there is nothing in the Book of Allah concerning an issue, my sunnah must be followed. If there is nothing in my sunnah, then what my Companions have opined should be followed. My Companions are like the stars in the sky. Whomsoever of them you follow, you will be guided. Difference of opinion among my Companions is a mercy to you.” Ibn al-Ḥājjib quoted this hadith in *al-Mukhtasar* with the words, “Difference of opinion in my community is a mercy.”

Mullā ‘Alī al-Qārī quoted al-Suyūṭī as saying, “It was quoted by Naṣr al-Maqdisī in *al-Ḥujjah* and by al-Bayhaqī in *al-Risālah al-Ash‘ariyyah* without any

72. Muḥammad Ibn Qayyim al-Jawziyyah, *al-Ṣawā‘iq al-Mursalah ‘alā al-Jahamiyyah wa al-Mu‘aṭṭilah*, ed. ‘Alī bin Muḥammad al-Dakhīl Allāh, 3 ed., 4 vols. (Riyadh: Dār al-‘Āshimah, 1998), 2:519.

chain of narration. It was also narrated by al-Ḥulaymī, al-Qāḍī Ḥusayn, Imām al-Ḥaramayn, and others. It is possible that the hadith has been narrated with a full chain of narration in some of the works of the scholars of hadith which have not reached us.”

Al-Suyūṭī has mentioned, “‘Umar ibn ‘Abd al-‘Azīz used to say, ‘It would not have pleased me if the Companions of Muhammad, may the blessings and peace of Allah be upon him, had not differed in opinion. If they had not differed in opinion, there would have been no concession.’” Al-Khāṭib narrated that Hārūn al-Rashīd said to Mālik ibn Anas, “Abū ‘Abd Allāh! Should we not have copies of these books—namely, the books of Mālik—made, and distribute them to the horizons of Islam so that we may oblige people to follow them?” He replied, “Commander of the Faithful! Indeed, difference of opinion among scholars is a mercy from Allah Most High, upon this community. Each one of them follows what he has found to be authentic and each one of them is on a path of guidance. Each one seeks Allah Most High.” The complete discussion of this hadith is to be found in *Kashf al-Khafā’ wa-Muzīl al-Ilbās*.<sup>73</sup>

For this reason, scholars regard knowledge concerning differences of opinion to be essential for the jurist in order to open his heart and expand his horizons.

Qatādah said, “The one who is not knowledgeable about differences of opinion has not had a whiff of Islamic legal reasoning.”

Hishām ibn ‘Ubayd Allāh al-Rāzī said, “One who is not knowledgeable of the differences of opinion among the jurists is not a jurist.”

Likewise, ‘Aṭā’ said, “It is not befitting for anyone to issue verdicts to people unless he is knowledgeable concerning differences of opinion among people.”

Yaḥyā ibn Salām said, “It is not competent for someone who is not knowledgeable of the differences of opinion to issue verdicts, and it is not permissible for someone not knowledgeable of the variant views on a matter to even say, ‘Such and such is preferable to me.’”<sup>74</sup>

For many other quotations of scholars in this regard, one may refer to the *Muwāfaqāt* by al-Shāṭibī. Al-Shāṭibī regarded knowledge concerning differences of opinion to be one of the distinguishing qualities that characterizes the *mujtahid*.

An example of difference of opinion is to be found in the narration concerning the command of the Prophet, blessings and peace be upon him, to offer the late afternoon prayer at the territory of Banū Qurayzah, in the outskirts of Medina. Some Companions offered the prayer while still in the city, whereas others did not offer it until they arrived at Banū Qurayzah, when the time for the night prayer had already entered. The Prophet did not rebuke any of them, as the incident is reported in the *Ṣaḥīḥayn* [the two most authentic hadith collections].<sup>75</sup>

73. Ibn ‘Abidīn and Afandī, *Hāshiyah Radd al-Muḥtār ‘alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār*, 1:70–1.

74. al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 4:524.

75. al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:819.; Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 2:770.

Another example is that while on journeys during the month of Ramadan, some Companions would eat and others would fast. None of them would criticize the other, as reported in authentic hadiths. And consider also the differences concerning recitation as reported in the hadith of Ibn Mas'ūd and the hadith of 'Umar and Ubayy ibn Ka'b.

This is certainly the result of prophetic training on the Companions, which enabled them to conduct their affairs within the ambit of the Shari'ah, yet in accordance with their efforts and subject to their *ijtihad*.

After the Prophet, peace and blessings be upon him, had passed away, difference of opinion continued to arise between the Companions and in many instances these differences ended in consensus, such as their difference concerning the leader of the community after the Prophet, may the blessing and peace of Allah be upon him.

The Companions differed concerning fighting those who refused to pay *zakāh* and the compiling of the Noble Qur'an, as well as 'Umar's adopting 'Alī's view concerning marriage to a woman during her waiting period. 'Umar's view was that the spouses must be separated and subsequent marriage between them is forbidden on a perpetual basis, and her dowry must be paid to her out of the state treasury. As for 'Alī, his view was that subsequent marriage between them is not forbidden in perpetuity. 'Umar subsequently adopted the view of 'Alī.

Sometimes the opposing parties remained committed to their respective positions, yet each kept the greatest respect for the other, as was the case between 'Umar and Rabī'ah ibn 'Ayyāsh concerning the question of which of the two cities, Mecca the Noble or Medina the Radiant, enjoys preference over the other.

There was also a dispute concerning conquered territories: do they become subject to land tax or are they to be distributed among the conquering army?

There was also the discussion between 'Ā'ishah and Ibn 'Abbās about whether the Prophet, blessings and peace be upon him, saw the Creator, Most Sublime and High, and that between 'Ā'ishah and the Companions about whether the dead are capable of hearing.

There was a dispute between 'Umar and Fāṭimah bint Qays concerning residence and maintenance for a woman who has been irrevocably divorced. Fāṭimah bint Qays was of the view that she was entitled to neither residence nor maintenance. 'Umar held a contrary view and commented, "We will not depart from the Book of our Lord and the *sunnah* of our Prophet in favor of the view of this woman, in circumstances in which we do not know whether she accurately remembers the event in question or has forgotten."

Ibn Mas'ūd and Abū Mūsā al-Ash'arī had differing opinions concerning the suckling of an adult. The former regarded it as having no legal effect, whereas the latter regarded it as having legal effect.

Abū Hurayrah and Ibn ‘Abbās differed about performing ablution after having eaten something touched by fire. The former regarded ablution as obligatory, while the latter did not regard it as obligatory.

There was a difference of opinion between ‘Umar and Abū ‘Ubaydah about entering an area affected by infectious disease. ‘Umar was of the view that one should not enter it. Abū ‘Ubaydah’s view was that it is permissible to enter it, until he was informed by ‘Abd al-Raḥmān ibn ‘Awf of the hadith of the Prophet, peace and blessings be upon him, in this regard, whereupon he retracted his view.

We sometimes find the successors to the Companions entering into debate, such as the dispute between Abū Salamah ibn ‘Abd al-Raḥmān ibn ‘Awf and Ibn ‘Abbās concerning the waiting period of the pregnant widow: Does her waiting period extend to the end of the later of the two periods [namely, the period ending with the delivery of the baby and the period ending with the termination of four months and ten days] or only until she delivers?

We find ‘Ā’ishah supporting Ibn ‘Abbās and saying to Abū Salamah, “You are but a little chick who saw the cock crowing, so it crowed,” implying that Abū Salamah had not yet reached the level of *ijtihād*, and the matter was left at that.

The instances of difference of opinion are numerous, but they sometimes end in mutual agreement. It is documented in connection with ‘Umar, may Allah be pleased with him, that he frequently retracted his own views to adopt the views of the Companions, and sometimes acknowledged this in public, saying, “A woman got it right, and a man got it wrong” [the reference being to himself]. Furthermore, he established the golden rule that a judgment issued on the basis of *ijtihād* may not be overturned on the basis of subsequent *ijtihād* that is different. The scholars subsequently adopted this principle and, accordingly, enforced the rulings of judges that contradicted their own personal views and *ijtihād*, in pursuance of the public interest in resolving arguments and settling disputes. This is a type of public interest that has precedence, in terms of prioritization, over the conflicting opinion, even if its holder is convinced that it is correct.

### Views of the scholars concerning difference of opinion

Al-Ḥāfiẓ Ibn Rajab observed:

When difference of opinion among people increased concerning matters of religion and their divisions multiplied, it resulted in mutual dislike [among people] and increase in harsh reproach, each one believing that his hatred of the other is for the sake of Allah. He might in reality be excused in this regard, or he might not be excused, for it could be that he follows his own whims and fancies and

falls short in his search to truly understand and know the reason that he hates the other party. Indeed, much of this hatred arises simply because of disagreement with someone who has a following and who is believed to opine only what is true. This belief is certainly an error. If it means that he proffers truthful opinions with respect to matters in which others disagree, this belief may be in error at times and may be correct. Sometimes the driving force or motive behind the person's inclination to this view is simply personal interest, familiarity or prevailing custom. All of this impairs the professed claim that the hatred is for the sake of Allah. It is incumbent upon each Muslim to advise himself and to take utmost precautions against the aforementioned considerations. And whatever is problematic thereof, he should not let himself get involved therein, out of caution of falling into the unlawful form of hatred that has been forbidden.

There is a subtle point here that must be duly considered. Many a leader of the Faith might sometimes express a view that is less credible than other views. In so doing, he is regarded as a *mujtahid*, who is rewarded for his *ijtihad* and is relieved of the burden of his error. The supporter of his view would not necessarily be in the same position, as he might be supportive of that view only because the person he follows holds that view, and if any other leader of the Faith expressed that view he would not accept it nor support it, nor would he had taken as a friend anyone who agreed with it, or taken as a foe anyone who differed with it. In so doing, he thinks that he is merely acting in support of the truth, like the one he follows. But it is not so; the one he follows merely intended to act in support of the truth, acknowledging the possibility of error in his *ijtihad*.

As for this follower, his support for what he thinks is the truth is contaminated by his desire to exalt the one he follows, and to ensure that his views are preeminent and that no error is ascribed to him. This state of affairs is a concealed machination that degrades his intention to support the truth. This point must be understood well, for it is important and of considerable magnitude. And Allah guides whomsoever He wishes to the straight path.<sup>76</sup>

So ends the quotation from the writings of Ibn Rajab, and it is a quotation of utmost excellence.

Al-Shafi'i said, "Is it not sound that we be brothers, even if we do not agree on a single issue?"<sup>77</sup> He also said, "I have never engaged in a debate with anyone without having said, 'O Allah. Let the truth flow from his heart and his tongue. If the truth is to be found in my view, grant that he follows me, and if the truth is to be found in his view, grant that I follow him.'"<sup>78</sup>

76. Ibn Rajab al-Ḥanbalī and Yaḥyā bin Sharaf al-Nawawī, *Jāmi' al-'Ulūm wa al-Ḥikam fī Sharḥ Khamsīn Ḥadīthan min Jawāmi' al-Kalam*, ed. Shu'ayb al-Arnā'ūṭ and Ibrāhīm Bājis, 10th ed., 2 in 1 vols. (Beirut: Mu'assasah al-Risālah, 2004), 2:267–8.

77. al-Dhahabī, *Siyar 'Alām al-Nubalā'*, 10:16.

78. al-Sallām, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, 2:275.

### Excusing the differences between scholars

There should be no rebuke in matters of difference of opinion and questions of *ijtihād*. Ibn al-Qayyim said, “If there is no prophetic narration nor consensus regarding a matter and it is a matter where *ijtihād* is palatable, there is no scope for rebuke against any individual who acts in a particular manner in respect thereof, whether as a *mujtahid* or a follower.”<sup>79</sup>

Al-‘Izz ibn ‘Abd al-Salām commented, “Whoever does something the unlawfulness of which is disputed and believes it to be lawful, he should not be rebuked unless the evidential basis of the scholar who regards it to be lawful is weak.”<sup>80</sup>

Imām al-Ḥaramayn observed, “It is not appropriate for a *mujtahid* to object to another *mujtahid* with rebuke and reprimand about a matter in which there is difference of opinion, since every *mujtahid* is correct, in our view, with respect to matters of derived law [i.e. the law as presumptively extrapolated from the primary and secondary evidences of Islam]. As for those who are of the view that only one of *mujtahids* is correct, they maintain further that the one who is correct is indeterminate. Hence, for one of the two *mujtahids* holding opposing views to rebuke and reprimand the other is disallowed on both approaches.”<sup>81</sup>

Mālik, Allah’s mercy be upon him, regarded it an abomination for a *mufti* to say, “This is unlawful [*ḥarām*],” in matters of *ijtihād* that are the subject of difference. The jurist should simply say, “I dislike....”

Ibn Rushd elaborates on this in *al-Bayyān wa al-Taḥṣīl* as follows, “Mālik said, ‘It was not the practice of people when issuing verdicts to say, ‘This is lawful,’ or ‘This is unlawful.’ On the contrary, it was said, ‘I dislike this,’ or ‘I would not have done so.’ People found this [this approach] as sufficient and acceptable. They would sometimes say, ‘We dislike this,’ or ‘This is something that should be guarded against.’ They would not say, ‘This is lawful,’ or ‘This is unlawful.’ He said further, ‘This practice is most admirable and pleasing to me, and it is the established practice of our land.’”<sup>82</sup>

### Causes of difference of opinion

The causes of difference of opinion are to be found, in part, in human temperament and the nature of proofs. As for [human temperament], Ibn al-Qayyim observed, “The occurrence of difference of opinion is inevitable. There is no escape from it due to the disparity and divergence in the aims of human beings, their capacity for understanding, and their powers of perception. But what is reprehensible is when some of them transgress against others and behave aggressively towards them.”<sup>83</sup>

As for the nature of proofs, it can be summarized as four perspectives or angles, which should be viewed as broad headings for the numerous and diverse causes

79. Muḥammad Ibn Qayyim al-Jawziyyah, *I‘lām al-Muwaqqi‘in ‘an Rabb al-‘Ālamīn*, ed. Muḥammad ‘Izz al-Dīn Khaṭṭāb, 1st ed., 4 vols. (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 2001), 3:242.

80. al-Salām, *Qawā‘id al-Aḥkām fī Maṣāliḥ al-Anām*, 1:176.

81. al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh*, 1316.

82. Ibn Rushd al-Qurṭubī, *al-Bayyān wa al-Taḥṣīl wa al-Sharḥ wa al-Tawjīh wa al-Ta‘līl fī Masā‘il al-Mustakhrajah*, ed. Muḥammad Ḥajjī, 2nd ed., 21 vols. (Beirut: Dār al-Gharb al-Islāmī, 1988), 18:339–40.

83. Ibn Qayyim al-Jawziyyah, *al-Sawā‘iq al-Mursalāh ‘alā al-Jahamīyah wa al-Mu‘ṭṭilah*, 2:519.

that give rise to disagreement.

- Disagreement concerning the significations of expressions, their clarity and ambiguity, and regarding them as open for consideration or refutation.
- Disagreement concerning the evidentiary sources pertaining to the rational component of texts, insofar as they relate to the higher objectives of the Shari'ah, in terms of their acceptance or rejection as a juristic source.
- Disagreement concerning the methods for establishing the authenticity of Shari'ah texts and their degrees of authenticity.
- Disagreement concerning the ranking of proofs in the event of conflict, in terms of strength and weakness.

All of the differences of opinion between scholars fall under these four headings. Ibn al-Sayyid elaborated his views on the matter by identifying eight causes of disagreement between scholars.

Al-Ḥāfiẓ Ibn Rajab had the following to say about the causes of scholarly disagreement:

One of the causes is the possibility that the text in question is obscure, having been transmitted by only a few people and not having come to the attention of all bearers of [Shari'ah] knowledge.

Another is the possibility that there are two texts dealing with the issue in question, one indicating permissibility, while the other indicates prohibition. One of the two texts comes to the attention of a certain group of scholars, but not the other. They accordingly adhere to the text of which they have knowledge. Alternatively, both texts might come to their attention, but without any indication of their respective dates, and they thus suspend judgment on the matter due to lack of knowledge as to which of the two texts is the abrogating text.

Yet another relates to issues for which there is no explicit text, and the ruling is extrapolated from the generality of the text, its implications or juristic analogy. The interpretations of the scholars are very diverse in these circumstances.

A further cause arises when there is a command or a prohibition with respect to a given issue. The interpretations of the scholars then differ as to whether the command is to be construed as indicating obligation or recommendation, or as to whether the prohibition indicates that the action in question is forbidden or reprehensible.<sup>84</sup>

When we consider the methodologies of the various schools, we realize immediately that they do not differ about the Book and the *sunnah* being the two primary legislative sources—and this is a cardinal principle of belief for Muslims. Likewise, they regard consensus and juristic analogy as two derivative sources building on

84. al-Ḥanbalī and al-Nawawī, *Jāmi' al-'Ulūm wa al-Ḥikam fī Sharḥ Khamsīn Ḥadīthan min Jawāmi' al-Kalim*, 1:196–7.

the two primary sources. This is the [overriding] position when we consider their methodologies in general terms.

When considering the matter in detail, however, scholarly disagreement manifests itself in the process of *ijtihād* itself when, [for example], a scholar adopts a broad approach to hadith, and in so doing acts upon hadith texts in which the Companion who narrates it is not known [*mursal*]; or hadith texts in which there are significant breaks in the chain of narration [*balāghāt*]; or hadith texts with broken chains of narration [*munqaṭi'*]; or sometimes even weak hadith, giving them precedence over the rational component of textual sources discerned by way of *ijtihād*. On the other hand, other scholars might adopt a more restrictive approach, confining themselves to taking into consideration that which is established as authentic via strict hadith criteria, thus giving wider scope to *ijtihād* in the form of juristic analogy and its like, or the presumption of continuity [*al-istiṣhāb*, the principle that a pre-existing circumstance is deemed to subsist until proven otherwise]. Some of them might even give precedence to the practice of the narrator over acting upon his narration.

Similarly, with respect to scholarly consensus on the level of detail, we find scholarly disagreement manifesting itself when someone adopts an expansive approach to consensus so as to include tacit consensus, consensus of successive generations and times, and the consensus of the people of Medina, while others adopt a more restrictive approach to the concept of consensus, limiting it to express consensus only, and others limit it to consensus of the Companions only.

Likewise, with respect to juristic analogy founded on a ratio legis, most scholars agree that it must be given due consideration. It is with other forms of juristic analogy that scholarly disagreement is widespread, such as juristic analogy founded on resemblance, reverse juristic analogy, and certain methodologies used to determine the ratio legis.

As for the other evidences—such as unrestricted public interest, blocking of the means to harm, juristic preference, views of the Companions, and the laws of previous prophets—the schools differ as to their adoption, but none of them are totally devoid of giving them some form of consideration. The distinction is merely in the degree of distance and separation from the text and adherence and proximity to the text, as indicated by Imām al-Ḥaramayn in his exposition on the approach of al-Shafi'i to unrestricted public interest.

As a general proposition, the leading scholars differ in their employment of the higher objectives of the Shari'ah as a jurisprudential tool. Some of them make expansive use thereof, delving into their depths and being governed by them under all circumstances and in all possible scenarios, while others are attached to the texts, holding fast to their fringes.

All of the schools without exception relied upon *mujtahids* operating freely,

*mujtahids* operating within the parameters of a particular school, followers with independent insight, and followers who acted as bearers and transmitters of the knowledge of their predecessors. Moreover, they afforded those who followed the path of the foregoing a certain amount of latitude and flexibility in religion and the capacity to act prudently and appropriately in their affairs. Similarly, they placed their reliance on the well known and better supported views of the foregoing. However, they also noted the permissibility of acting on views that were not as well supported and views that were not well known, due to necessity or a need that has the status of necessity.

**THE SECOND CHARACTERISTIC: ADOPTING A CONCILIATORY APPROACH TO DISCOURSE AND ABSTENTION FROM IMPUTING TO OTHERS THE CHARGE OF HERETICAL INNOVATION AND DISBELIEF**

To point out the seriousness of imputation of disbelief, it is narrated in a hadith, “Whoever accuses a believer of being a disbeliever, it is as if he killed him!”<sup>85</sup> and, “When a man says to his brother, ‘Disbeliever!’ one of the two returns bearing that description.”<sup>86</sup>

The hadith texts conveying this meaning are numerous; this is because of the serious consequences of disbelief, which include the shedding of blood, loss of the sanctity of wealth, separation of the bonds of marriage, erosion of inheritance, loss of the right to the funeral prayer, impermissibility of burial in graveyards of the Muslim community, and various other afflictions and calamities. We seek refuge from them with Allah Most High.

Scholars have adopted diverse views on the laws concerning imputation of disbelief. Various groups have exchanged accusations of disbelief, whether with due cause or otherwise. However, given the warnings that have been issued in this regard in textual sources, a group of scholars have issued grave warnings against accusations of disbelief, to the extent that Imām al-Subkī said, “For as long as a person believes in the declaration that there is none worthy of worship but Allah and that Muhammad is the messenger of Allah, the blessings and peace of Allah be upon him, attributing disbelief to him is a difficult proposition.”

Al-Ustādh Abū Ishāq al-Isfarāʾīnī stated, “I do not declare anyone to be a disbeliever, other than the one who declares me to be one.”

Imām Abū Ḥāmid al-Ghazālī took the matter to an extreme to the extent that he negated disbelief in respect of all sects, saying, “The affairs of these sects fall within the ambit of *ijtihād*, such that declarations of disbelief must be avoided to the extent that a way to do so is found. Indeed, shedding of blood and loss of sanctity of wealth of those who offer prayer in the direction of the *qiblah* and who expressly affirm divine unity is an error. The error in leaving a thousand disbeliev-

85. al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:1344.

86. Ibid., 3:1245; see also Ibn Ḥajar al-ʿAsqalānī and Muḥammad bin Ismāʿīl al-Bukhārī, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Maʾmūn Khalīl Shīḥā, 1st ed., 8 vols. (Beirut: Dār al-Maʿrifah, 2005), 7:215; Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 1:46.

ers to live freely is lighter than the error in wrongfully shedding the blood of a single Muslim.”

After setting out examples of sects that declare each other to be disbelievers, he said, “The cause of this predicament is ignorance concerning the precise area of application of the concepts of disbelief and belief. This must be understood on the basis that an interpretation of a text of the Shari‘ah in a manner that is reasonable and that does not give rise to any imputation of inadequacy [to that text] must be regarded as a valid act of worship. Rejection of a text is none other than negation of all reasonable interpretations and reducing the text to a state of meaninglessness—this is unadulterated rejection, which is in turn unadulterated disbelief. Accordingly, the heretic who relies on a form of interpretation is not regarded as a disbeliever as long as he adheres to the rules of sound interpretation, since evidence exists, in his view, that the literal meaning of the text in question is not possible.”<sup>87</sup>

Ibn ‘Abidīn said:

In *Jāmi‘ al-Fuṣūliyyīn*, al-Ṭaḥāwī narrated the following on the authority of our companions, “Nothing removes a man from the Faith except disavowal of that which brought him into it in the first place. If there is certainty that apostasy has occurred, judgment must be passed accordingly. But if there is any doubt as to the circumstance in question constituting apostasy, no judgment can be issued in this regard. Acceptance of Islam, once established, does not come to an end on the basis of doubt, albeit that Islam always rises high. When matters of this nature are brought to their attention, scholars should not hasten to declare the people of Islam to be disbelievers, especially if he regards as valid acceptance of Islam by a person forced to do so.”

I have set out the above as an introduction so that it may be a general criterion with regard to the issues I set out in this section. This is important, for in the exposition of some of these issues, it is stated that disbelief occurs, whereas on the basis of the aforementioned introduction, disbelief would not arise. Accordingly, care should be exercised when considering the views conveyed in *Jāmi‘ al-Fuṣūliyyīn*.

In *al-Fatāwā al-Ṣuḡhrā* it is stated, “Disbelief is a serious matter. I do not regard a believer as having fallen into disbelief as long as I am able to find a view opining that he has not fallen into disbelief.”

And in *al-Khulāṣah* and other references, the following is stated, “With regard to a particular issue, if there are approaches requiring a judgment of disbelief and a single contrary approach that avoids that judgment, then the person issuing the verdict must lean towards the approach that avoids judgment of disbelief, on the basis of adopting the best presumption concerning Muslims.” The

87. Muḥammad al-Zarkashī, *al-Manthūr fi al-Qawā‘id*, ed. Taysīr Fā‘iq, ‘Abd al-Sattār Abū Ghud-dah, and Aḥmad Maḥmūd, 3 vols. (Kuwait: Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyyah, 1985), 3:87–8.

following is added in *al-Bazzāziyyah*, “...unless the person in question expressly indicates that he intended a meaning that constitutes disbelief, in which case the possibility of variant interpretation is of no benefit to him.” The following is said in *al-Tatārkhāniyyah*, “Disbelief does not arise when there are variant plausible interpretations. Declaration of disbelief is the ultimate punishment and accordingly necessitates the ultimate transgression. As long as a plausible interpretation can be found, the transgression in question cannot be regarded as ultimate.”

The conclusion that can be drawn is that a verdict of disbelief may not be issued against a Muslim whenever it is possible to interpret his utterances in a plausible manner or when there are differences of opinion in this regard, even if the difference is occasioned by a weak narration. On this basis, most of the views involving declarations of disbelief do not result in a verdict of disbelief being issued. I have taken upon myself not to issue any verdict in any of these matters.

This is the end of the summarized quotation from *al-Baḥr*.<sup>88</sup>

A similar position is set out in *Tanwīr al-Abṣār* and its commentary, *Radd al-Muḥtār*. Ibn ‘Ābidīn commented on the expression, “even if the difference is occasioned by a weak narration,” as follows: “Al-Khayr al-Ramlī said, ‘In my view, even if the narration does not emanate from the followers of our school. This is supported by the requirement that what brings about a verdict of disbelief must be something that is the subject to consensus.’”<sup>89</sup>

Shaykh al-Islām Ibn Taymiyyah said in *al-Fatāwā*:

There is consensus among the Companions of the Prophet and the rest of the leaders of the Muslim community that not everyone who says something incorrect becomes a disbeliever, even if his statement is in violation of the *sunnah*. Declaring every person who makes an error to be a disbeliever is contrary to consensus. However, people have overextended themselves in their discussion of the legal principles concerning imputation of disbelief, and this has been elaborated elsewhere. The objective here is to emphasize that it is not open to any group affiliated to one of the senior scholars, or one of the leading scholars, to declare as disbelievers those who do not belong to them. On the contrary, it is narrated in an authentic hadith that the Prophet, may the blessing and peace of Allah be upon him, said, “When a man says to his brother, ‘Disbeliever!’ one of the two returns bearing that description.”<sup>90</sup>

For these reasons, Islamic discourse does not declare anyone to be disbeliever if he belongs to the community of Muhammad, entering its fold, the fold of unity of Allah and affirmation of the finality of prophethood, unless he commits an

88. Ibn ‘Ābidīn and Afandī, *Ḥāshiyah Radd al-Muḥtār ‘alā al-Durr al-Mukhtār: Sharḥ Tanwīr al-Abṣār*, 4:242–3.

89. *Ibid.*, 4:2429.

90. Taqī al-Dīn Ibn Taymiyyah, *Majmū‘ al-Fatāwā*, ed. Anwar al-Bār and ‘Āmir al-Jazzār, 3rd ed., 35 vols. (Egypt: Dār al-Wafā’, 2005), 7:685.

act of renunciation that has no alternative plausible interpretation and regarding which there exists certain evidence.

This is the position ultimately adopted by the scholars, with which the jurists have contented themselves, and those who plumbed the depths of theology and recorded the views of the followers of heresy and the followers of Islam ultimately returned to this position.

I would like to conclude this section with the words of al-Ḥāfiẓ al-Dhahabī:

I came across some words of al-Ash'arī that fascinated me, and they are reliably attributed to him. Al-Bayhaqī narrated that he heard Abū Ḥāzim al-'Abdawī saying that he heard Zāhir ibn Aḥmad al-Sarkhasī saying, "When death approached Abū al-Ḥasan al-Ash'arī in my house in Baghdad, he called for me and I went to him. He said, 'I testify that I do not declare anyone of the people of the *qiblah* to be a disbeliever, since all of them refer to the same object of worship. All of this discussion is merely of a linguistic nature... I declare—this is my creed.'" And my teacher, Ibn Taymiyyah, opined likewise towards the end of his life when he said, "I do not declare anyone belonging to the Muslim community to be a disbeliever," and he used to say, "The Prophet, may the blessings and peace of Allah be upon him, said, 'None but a believer is diligent as regards the ablution.' Accordingly, whoever regularly performs the prescribed prayers with ablution is a Muslim."<sup>91</sup>

### THE THIRD CHARACTERISTIC: FACILITATION OF THE AFFAIRS OF PEOPLE AND ALLEVIATION OF CONSTRAINTS

Abū Ishāq al-Shāṭibī said,

The sixth inquiry: The Lawgiver does not intend to impose accountability of an excessively burdensome nature, nor to inflict distress in the imposition of accountability. The evidence for this is manifold.

Firstly, the texts evincing this case, such as the words of Allah, *And He alleviates them of their burdens and the fetters placed upon them,*<sup>92</sup> and *Our Lord! Do not place upon us a burden like that placed upon those before us.*<sup>93</sup> As indicated in a hadith, the divine response that followed is, *Allah Most High, said, "I have done so."*<sup>94</sup> And similarly, *Allah places no burden on a person greater than what he can bear,*<sup>95</sup> *Allah intends ease for you and does not intend you hardship;*<sup>96</sup> *He has not placed upon you any cause for distress in matter of religion;*<sup>97</sup> *Allah wishes to lighten your burdens, but the human being has been created weak;*<sup>98</sup> *Allah does not wish to impose upon you any cause of distress. On the contrary, He wishes to cleanse you and to complete his favor upon you, so that you may be grateful.*<sup>99</sup>

91. al-Dhahabī, *Siyar 'Alām al-Nubalā'*, 15:88.

92. Q7:157.

93. Q2:286.

94. Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 1:66.

95. Q2:286.

96. Q2:185.

97. Q22:78.

98. Q4:28.

99. Q5:6.

And in confirmation of this, we find the following hadith texts, “I have been sent with the true religion of forbearance;”<sup>100</sup> and “The Messenger of Allah was never placed in a position to choose between two options, one easier than the other, without him having chosen the easier option, as long as it was not sinful. If it was sinful he would be the most distant of people from that option.”<sup>101</sup> It was said, “as long as it was not sinful,” because refraining from sinful deeds involves no hardship in the sense that it involves only abstention from acting. There are many other texts conveying the same meaning. If Allah had intended hardship, He would not have wished ease, nor lightening of burdens, and instead, He would have intended distress and difficulty, but that is not coherent.

Secondly, reference may be made to the established permissibility of acting on concessions [*al-rukhaṣ*]. This is a matter regarding which there is certainty and is well known about this religion by way of knowledge that one is driven to [and cannot repel]. Examples of this include the concessions relating to shortening of prayers, breaking of the fast, combination of prayers and consuming of forbidden items in circumstances of necessity. This constitutes a pattern pointing in an unqualified sense to the alleviation of causes of distress and hardship. Likewise, the aforementioned position is supported by the prohibitions against excessive absorption in matters, affectation and bringing about circumstances causing a breakdown in consistent activity.

If hardship were the intention of the Lawgiver in imposing accountability, there would be no concessions at all, nor alleviation of burdens.<sup>102</sup>

He expanded on this to great extent, saying, “And there are numerous other specific instances that could be adduced, which in their generality embody an intention to alleviate distress. Accordingly, we conclude, without qualification and on the basis of complete induction, that alleviation of distress applies in all heads of knowledge [of Islam].”<sup>103</sup>

Furthermore, facilitation is one of the principles used to give precedence to one view over another when inconsistencies arise, as mentioned earlier. One of the manifestations of facilitation is dealing with the phenomenon of time.

Facilitation also manifests itself in the analysis of the outcomes of actions and utterances and in consideration of culture and customs.

It is necessary that Islamic discourse encompass all of these principles in order for it to be more successful, original, and effective, as this would be more consistent with facilitation and propagation.

100. Aḥmed Ibn Ḥanbal, *al-Musnad*, ed. Shu‘ayb al-Arnā‘ūṭ et al 2nd ed, 40 vols. (Beirut: Mu‘assasat al-Risālah, 1999), 3:624.

101. Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, 2:999.

102. al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 2:427–8.

103. *Ibid.*, 3:256.

## Summary

Islamic discourse is constructed on various absolutes and constants, which constitute self-evident knowledge concerning this religion. They form the foundation of this religion and its pillars, such as divinity, absolute unity of the Divine, prophethood, messengership, the position of humanity in legislation and the overarching universal principles that guard humanity and direct its existence.

These absolutes and constants must employ all scientific methods for the purposes of elucidation, gathering the Muslim community around them and presenting them to humanity, supported by scientific evidence and rational proofs, in order that Allah may guide whomsoever He wishes from among His servants.

It is our good fortune and that of all humanity that there is nothing about these absolutes and constants that contradicts science or is inconsistent with reason. On the contrary, both science and reason are the best aides in elucidation of the soundness of this religion. Have we then excelled in the presentation of this religion? And have we been effective in developing a sound position and in surmounting challenges?

The new discourse of the age of globalization, the global village, and the transgression of material values devoid of all noble divine and human values is of the material or carnal aspect of the human being, which exists only for itself, drowned in its own pleasures. There is no nobility, honor, altruism, solidarity or consideration of outcomes other than outcomes of profitability, devoid of spirit, and fortune. It is depraved and devoid of self respect, as stated by Fukuyama. It is the *halbājah* as conceived by al-ʿArabī and Khalaf al-Aḥmar.<sup>104</sup>

Islamic discourse enjoys the characteristic of tolerance because it accepts the existence of disagreement and is expansive enough to accommodate diverse points of view and opinions. So there is no basis for rebuke in matters in which there is scope for plausible difference of opinion, as set out above. As for those who are incapable of perceiving the nature of disagreement, they are not adequately qualified to engage in this field in the first place, nor can they be considered frontrunners in matters of importance.

Islamic discourse is conciliatory in nature, as it does not declare as disbelievers those who have entered its outer circle save on the basis of an explicit act of renunciation that is the subject of consensus and regarding which there is certain evidence.

Islamic discourse is a path of ease, as it seeks out the interests of humanity and takes into account their weaknesses. *Allah wishes to lighten your burdens. The human being has been created weak.*<sup>105</sup> Islamic discourse is humanistic in the sense that it elevates the value of humanity. Islamic discourse is firm and solid in its essence, flexible in the manner in which it finds expression.

<sup>104</sup>. *Halbājah*: This term encompasses a multitude of negative characteristics, referring to lazy, indolent and dull persons, see Abū al-Faḍl al-Nisābūrī, *Majmaʿ al-Amthāl*, ed. Muḥammad Muḥyi al-Dīn ʿAbd al-Ḥamīd, (Beirut: Dār al-Maʿrifah, n.d.), 2:52.

<sup>105</sup>. Q4:28.

And above all that, our discourse with its absolutes and constants is firmly established like the deep-seated mountains, and lofty like the towering peaks. Moreover, in the subtlety of its detailed workings, it is flexible in responding to the changing winds of human wellbeing, as flexible as the branches of the *ben* tree in the breeze of dawn on the meadows of the hills.

Allah, Most Glorious and High, is the grantor of guidance. He suffices us and is the best Overseer of all affairs.

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