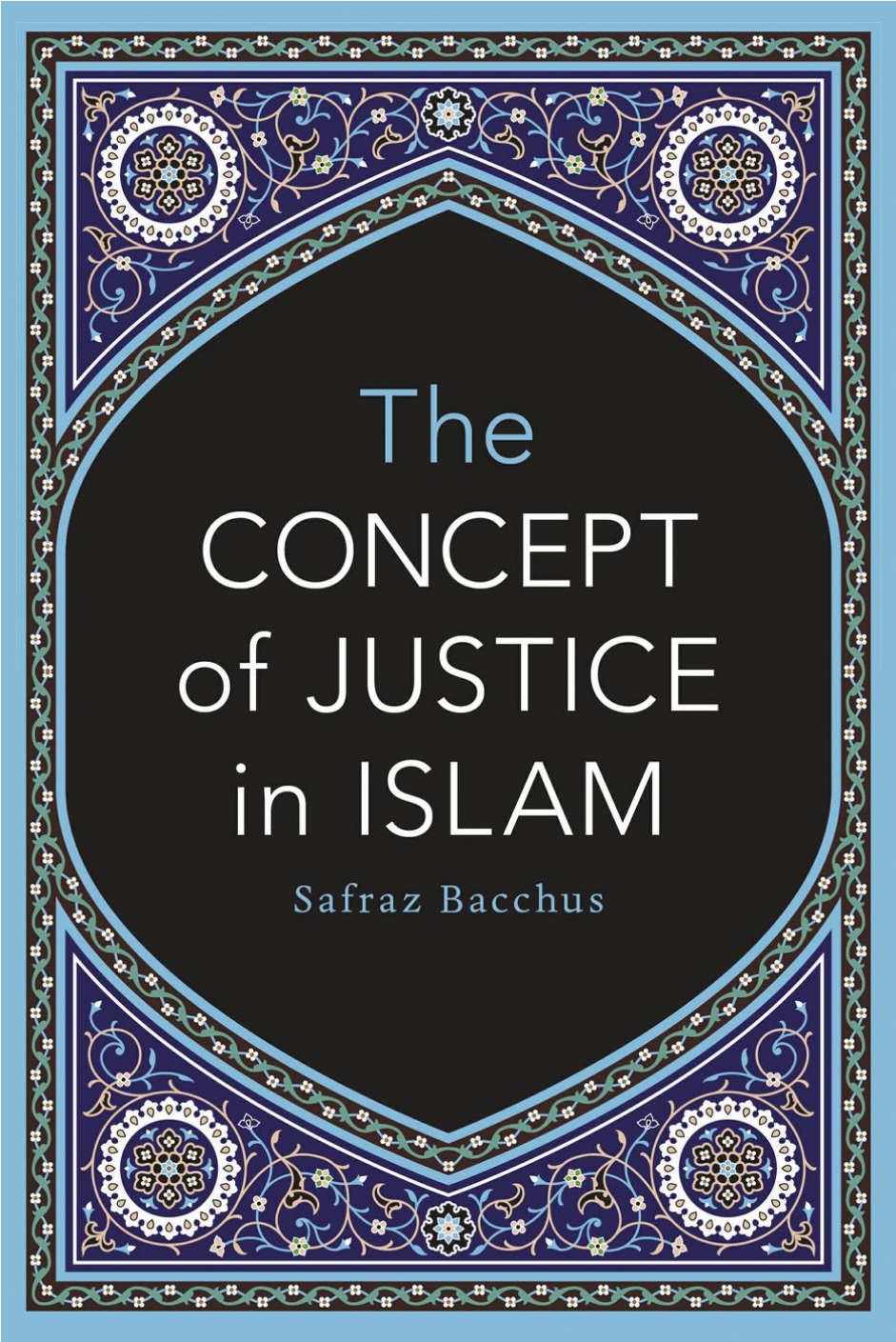


The book cover features a complex, multi-layered decorative border. The outermost border is a light blue band with a repeating geometric pattern. Inside this is a wider, darker blue band containing intricate floral and geometric motifs in gold, white, and light blue. The central area of the cover is a large, dark blue field with a subtle, lighter blue geometric pattern. The title is centered within this field.

The CONCEPT of JUSTICE in ISLAM

Safraz Bacchus

The Concept of Justice in Islam

Safraz Bacchus



Table of Contents

[Acknowledgment](#)

[Dedication](#)

[Introduction](#)

[A Western Liberal Perspective](#)

[Justice in the Islamic Tradition](#)

[Dimensions of Justice](#)

[Illustrious Examples from Islamic History](#)

[Judicial Ethics in the Islamic Legal Tradition](#)

[Ethical Principle](#)

[Justice and Ethics](#)

[Ethics and Procedural Justice](#)

[Ethical Rules for the \(judge\) Qadi](#)

[Ethics and Substantive Justice](#)

[The Ethical Principle of Proportionality](#)

[Conclusion](#)

[Bibliography](#)

[About the Author](#)

[Copyright](#)

Acknowledgment

I will like to express my profound gratitude to all those who have assisted me during the process of writing my first book. There were those who believed in me and was very encouraging especially the late Eric Khan (1945-2014) who's advices and way of life has shaped the lives of many.

While your demise has brought tears in the eyes of many ,we find comfort by our strong sense of hope that Allah (SWT) will admit you in His gardens of bliss.

Dedication

In the name of Allah (SWT) most Gracious most Merciful.

This work is dedicated to my loving mom and dad Mr & Mrs Yusuf Bacchus who taught me to trust in Allah (SWT) and believe in hard work and that so much can be done with little. To my loving wife Nazeela Bacchus who has stood beside me during the duration of my studies and research and lastly to my Good friends and brothers Sidi Nazim Baksh & Faisal Baksh of Canada who have been an inspiration in my life. May Allah (SWT) bless them all.

Ameen

Introduction

The pursuit of justice has occupied the minds of western and eastern philosophers from Aristotle down to our times. What is justice? How can it be achieved? Who is a just person? These are some of the questions that have been debated in every age including our own.

Justice is a dominant theme in the Qur'an and the Prophetic tradition. It is not only mentioned explicitly in many verses, it is implicit as well in the subtext to the narratives, for example, relating to Prophets and communities before the Qur'an was revealed to Prophet Muhammad (sas).

Justice is so central to the Qur'anic worldview that it is impossible for anyone to overlook it. It is glaringly evident in the life of Prophet Muhammad (sas) and his administration of the city of Madinah 1,400 years ago. Not surprisingly, justice has also been a dominant theme in Muslim societies, from the years of the Khulafa Al Rashidun, and beyond. From the administration of the state down to the regulation of weights and measures in the market place, justice has always been the desired objective of Muslim societies, even as it has been elusive.

In this book I will attempt to outline the Islamic view of justice. I will begin with a brief overview of the concept of justice as it is conceived among western philosophers. This will be followed by examining the concept of justice through the lens of Muslim philosophers. Turning to the Qur'an and Ahadith, I will examine three important and interrelated dimensions of justice. The final part of the book will cite examples from the Prophetic and post-Prophetic traditions to demonstrate how Muslim have interpreted the teachings of the Qur'an and the Sunnah in order to bring about what we today might describe as "a just society".

A Western Liberal Perspective

The word “justice” means two things to most people in liberal western societies: conformity to the law (*jus* in Latin) and equality or proportionality among citizens. In other words, justice according to the ancient Greek philosophers such as Plato and Aristotle, and down through the ages to contemporary western philosophers, hinges on two dimensions: respect for the law (legality) and equality among individuals.

There are several recurring problems and evident limitations with this definition. The most common problem often occurs when the law itself is deemed to be unjust. Is it justice to obey an unjust law? During the Wall Street protests in North America many people were protesting what they saw as an unjust system. It turned out that the system they were protesting was legal. Many of them felt the law should be disobeyed because it was unfair and wondered why a person was being punished for flaunting unjust laws? Opinions differ on the question. Some philosophers argue that just or unjust, “Laws are made by the greatest number, not the most just nor the most intelligent,”¹ and they should be obeyed.

According to the English philosopher Thomas Hobbes: “The law as fact (legality) is more important than law as value (legitimacy).” What he means is that the former (legality) serves in place of the latter (legitimacy). In other words, if it is legal and established it is therefore legitimate. Hobbes held the view that without legality, there can be no state, no legal system or no rule of law: “Authority, not truth, makes the law,” wrote Hobbes in his *Leviathan*.² This argument becomes the *raison d’être* of politics and what makes it necessary in the eyes of western liberals. But it also raises a huge moral problem in where elected officials can enact laws that disenfranchises large segments of the population who are then left without any legal recourse.

Another significant limitation in the western conception of justice occurs when standards of equality are at odds with legality. The symbol of equity (from the Latin *aequus*, equal) is reflected in the symbol of the scale with its two balanced trays. According to Aristotle, the principle of justice is equality (in rights). But when rights, enshrined in law, clashes with the demands for equality, then where is justice? How can equality be achieved among people who don’t have the same abilities nor bear the same responsibilities, nor have the same needs or merits? The Greeks debated this question and it remains unresolved among western philosophers today.

Despite these problematic issues, justice in western philosophy shares some commonalities with justice as it is conceived in the Islamic tradition. Justice, for example, is an absolute good, the greatest of all virtues — the complete and comprehensive virtue that contains and presupposes all others.³

There could be no happiness without justice, and without it, all virtues would become worthless values. It is a well-known fact that justice does not make people just, but it is just people that make justice. These ideals were reflected in the writings of Aristotle and Plato and they resonated with Muslim thinkers who did not see anything in them that contradicted the teachings of the Qur'an or the Prophetic traditions.

¹ Andre Comte — Sponville, *A small treatise on the great virtue: The uses of Philosophy in everyday life*. New York, Henry Holt and company. 1996. pg. 63

² Ibid. pg. 63

³ Ibid, pg. 85

Justice in the Islamic Tradition

The Qur'an uses the term 'adl (from the root 'ayn-dal-lam) to denote justice. The term 'adl is used as the technical term for justice in the moral (ethical) and legal aspects of the Islamic tradition. It is mentioned fourteen times in Qur'an. To someone who is unfamiliar with the deep semantic range of the Arabic of the Qur'an, this might seem to be a relatively small number of references for an important concept. However, references to justice increases substantially when one considers the many synonyms that are used for 'adl. The most common is qist (equity). Qist or equality has many synonyms such as birr (righteousness) Sidq (truthfulness), ihsaan (excellence or goodness), haqq (truth) and mizaan (balance).⁴

In his *Ethico Religious Concepts in the Qur'an*, Toshihiko Izutsu defines qist as a “forensic term for justice in the Qur'an”. And because qist has to do with impartiality in dealing with others, Izutsu observes that it “is most often applied to the verdict in a trial”.⁵ In other words, what you give is most likely what you will get in return.

Believers are constantly reminded to be just in their daily affairs. Before concluding the Friday congregational sermon, the katib will recite the following verse from the Qur'an:

*God commands justice ('adl), doing good (ihsan), and generosity towards relatives and He forbids what is shameful (fahsha), blameworthy (munkar) and oppressive (baghy). He teaches you, so that you may take heed.*⁶

The Prophet's companion, Ibn Mas'ud, described this verse as “the most comprehensive verse in the Qur'an in terms of what is good and what is evil”.⁷

In linguistic theory a concept may be defined by clarifying its opposite. In the Qur'anic worldview the opposite of qist is Zulm or oppression. In the above verse (16:90), God commands justice ('adl) while forbidding al-fahsha' (lewdness), al-munkar (disobedience), and al-baghy (insolence). In other words, the opposite of 'adl and qist is (zulm) which manifests itself as wickedness, disobedience and a contempt of God's laws.

In the Qur'an and the Prophetic tradition, justice is regarded as a supreme virtue. This is reflected in the writings of great Muslim philosophers. In Imam Abu Haamid Al-Ghazali's (1058--1111) magnum opus “Al-Ihya Uloom-ud-Din,” justice ('adl) is defined “as the putting of all things in their rightful place.”. By contrast, “injustice (zulm) represents a displacement, or disarray, of things, the violation of an order determined not by reason, but by divine command.”.⁸

According to Imam Al-Ghazali, the highest manifestation of justice is the straightening (ta'dil) of the heart, which is achieved when the body follows the just rule (Qanun al-'adl), i.e. the sacred Law revealed in the Book of God — the Glorious Qur'an.⁹

Imam Ahmad ibn Muhammad Ibn Miskawayh (c. 940—1030) regarded justice as one of the “Ummahat al-fada'il”. In his “Tahdhib Al-Akhlaq” he listed “wisdom” (hikmah), “courage” (shuja'ah), temperance ('iffa) and “justice” ('adl) as the four cardinal virtues in Islam from which all virtues emanate.

Borrowing heavily from Greek philosophers, but working well within the established boundaries of the Islamic philosophical tradition, Miskawayh argues that justice, unlike wisdom, courage and temperance, has no ‘mean’ between two extremes.¹⁰ In other words, it is an absolute value. Wisdom or prudence, on the other hand, is the mean between stupidity and arrogance, while courage is the mean between cowardice and bravado, and temperance being the mean between sloth and gluttony.

Anything that is not justice is injustice (Zulm) whether it happens to be an excess or a deficiency. Furthermore, justice, Miskawayh posited, can only be achieved when the virtues of wisdom, courage and temperance are dominant traits among the majority of people.¹¹

It is evident from the writings of Muslim philosophers during the classical period of Islamic thought that when justice is seen to be achieved, both at the individual and the collective level, true happiness is said to be experienced in this life.

⁴ Jane Dammen Mc Auliffe, *Encyclopedia of the Quran*. Brill Publishers.2001.vol.3 pg.70

⁵ Toshihiko Izzutu, *Ethico Religious Concepts in the Quran*. Mcville Univ.Press, Montreal, Canada. pg. 209

⁶ “The Quran.” English Trans. By M.A.S. Abdel Haleem. Ch.16.V.90

⁷ Feraz Hamza (tras.) “Tafir al-Jalalayne.”. Royal Aal al Bayt Institute for Islamic Thought, Amman, Jordon. Pg. 286.

⁸ Eric L. Ormsby, “ Theodicy in Islamic thoughts: The dispute Over Al-Gazali’s “Best of all Possible World.”. Princeton Univ. Press. New Jersey, U.S.A. 1984.pg. 228— 229

⁹ Oliver Leaman, ed. “ The Quran: An Encyclopedia.”. Routledge, 2006. Pg. 14.

¹⁰ Wisdom is the means between ignorance and arrogance. Courage is the means between cowardice and bravado. Temperance is the means between sloth and lustfulness.

¹¹ Constantine K. Zurayk (trans.) *Miskawayh: The Refinement of Character* (Tahdhib al-akhlaq). American University of Beirut, 2002. Great Books of the Islamic World Series. Editor, Seyyed Hossein Nasr. pg. 111

Dimensions of Justice

The Qur’anic approach to justice, I believe, seeks to resolve the fundamental contradictions inherent in the western discourse of justice. The verses of the Qur’an pertaining to justice and equity illuminates three important and related principles of justice.

First Principle: ‘Aqidah (Theological)

The first principle pertains to the nature of Divine actions. Two of the 99 Most Beautiful Names of God in the Islamic tradition are: Al-‘Adl (The Just) and Al-Muqsit (The Equitable) from qist. While nowhere in the Qur’an does Allah (SWT) refer to Himself as Al-‘Adl, to the early generation of theologians, the fact that God is Al-‘Adl means that Zulm (injustice) is impossibility for Him.

The fact that Allah (SWT) is “The Just” and all His actions are Just, He therefore admonishes human beings to act with justice when dealing with each other. Imam An-Nawawi’s collection of 40 Hadith contains the following hadith Qudsi:

Oh my servant, I have forbidden oppression on myself and have made it forbidden amongst you, so do not oppress one another.^{[12](#)}

In chapter 82, verses 6–7, God remind believers of His generosity and His justice.

Oh mankind, what has lured you away from your generous Lord? Who created you, shaped you and proportioned you (‘adalaka) and in 6:73:

It is He who created the heavens and the earth with proportionality (bi-haqq).

In his commentary on the Names of Allah (SWT), Imam Al-Ghazali offers the following commentary in the section on divine attribute of Al-‘Adl:

He created the categories of existing things, the physical and the spiritual, the perfect and imperfect among them; and He gave to each thing its created existence, in which He is generous, and also ordered them in a placement suitable to them, in which He is just. He positioned the earth as the lowest and He set the water above it, and the air above the water, and the heavens above the air. Were this arrangement to be reversed order would be impaired.^{[13](#)}

The Qur’an reveals that not only did God create the heavens and the earth, but He assembled the souls of all of His creation and asked: “Am I not your Lord?” (7:172). Mankind answered in unison

with the affirmative. It is an answer that echoes in the souls of every human being, according to Imam Al-Ghazali. With this verse God demonstrates His Justice by establishing that mankind acknowledged that their creator is Allah (SWT).

Recognizing that human beings have a penchant to forget the answer they gave in the primordial realm, God says He sent them Prophets and Messengers to remind and warn them. And if they persist, the Qur'an reveals, they will have "wronged themselves". If God were to destroy them for their transgression, He would never have done so unjustly. (6:131. 11:117). The Qur'an reveals that God's scales are just and He will not deny anyone their rightful due even if the weight of an ant (4:40).

For example, in 7:8 God reveals: *The weighing on that day is just.*

Most of the great Qur'an exegeses such as Imams Al-Baydawi and Al- Qurtubi, interpret the word haqq as a metaphor for 'adl. In the Tafsir al-Jalalayn, al- waznu is described as the weighing of our deeds (written on scrolls) in The Scales. The verse affirms that on the Day of Judgment the weighing will be al-haqq, i.e. just, fair, honest, and equitable.¹⁴ This divine promise is reinforced in the following verse:

*We will set up scales of justice (mawazin-al-Qist) of the Day of Resurrection so that no one can be wronged in the least, and if there should be even the weight of a mustard seed, We shall bring it out: We take excellent account.*¹⁵

Imam Abu Hanifa states in his *Al-Fiqh al-Akbar*:

*Allah (SWT) Most High is kind and just to His Servants: He may give many times more reward than he is entitled to out of his kindness, He may punish for a sin out of His justice, and He may forgive out of His generosity.*¹⁶

This important statement of Sunni theological ('Aqidah) orthodoxy was a subject of much dispute among Muslim theologians beginning in the early decades following Prophet Muhammad's death. The dispute arose around the issue of the unity of God's action; meaning that both "good and evil are from Allah (SWT)".

The group that first raised objection to this doctrinal formulation were known as the Mu'tazila (Mu'tazilites), also known as Ahl-al-Tawhid Wal-'Adl. The group that responded to them most effectively became known as the Ash'aris (Ash'arites).

If God is Just and His actions are necessarily good, the Mu'tazilites argued, then it is impossible for God to will an evil or an injustice into existence. Human beings who flaunt the laws of God are solely responsible for the evil and injustices, which befall them.

The Mu'tazilite position raised several serious theological problems. If God didn't will an act that human beings deemed to be evil, how did it come into existence? Could something come into

existence without God's will? If God willed it, did he know His servants would perceive it as an evil? In his famous treatise on 'Aqidah, Imam At-Tahawi stipulates: "Nothing will be except what He wills." That's because Irada (Will) is an essential attribute of God in orthodox Sunni theology.^{[17](#)}

In the creed of Imam At-Tahawi we read:

He commanded them (his servants) to obey Him and proscribed them from disobeying Him. All things are in accordance with His determination and will, and His will is fulfilled. His servants are without volition except what He wills for them will be, and what he does not will for them will not be. He guides, protects and preserves whomever He wills by grace. And he misguides, forsakes, and afflicts whomever He will by justice. All of them vacillate in His providence between His grace and His justice.^{[18](#)}

So how does Zulm (Oppression) come into existence? The Mu'tazilites say that if you believe God wills an injustice or an evil into existence then you are saying that God is "unjust" (Zalim), which means he has placed a thing in other than its proper place. But "this leads to an obvious absurdity since God, and only He, not human reason, determines what place is proper for a thing",^{[19](#)} according to Imam Al-Ghazali.

Injustice, according to the Ash'aris such as Imam Al-Ghazali, "represents a displacement, or disarray of things, the violation of an order determined not by reason (Mu'tazilites), but by divine command".^{[20](#)} In response to the Mu'tazilites, Imam Al-Ghazali asked: "Who would command God? Justice is not some value which God observes and respects; rather, it is He who creates justice."^{[21](#)}

Second Principle: Usul-al-Din (Jurisprudential)

Justice is inscribed on the relationship between Allah (SWT) and His Creation. God's commands and His prohibitions have been revealed and explained by the Prophet (sas) so that mankind would respect God's boundaries (hududullah) in all of their affairs. The one who transgresses the boundaries of sacred law "has wronged himself" (zalama nafsahu) and will be punished unless he seeks repentance and is forgiven.

God revealed in the Qur'an (57:25):

We sent Our Messengers with clear signs, the Scripture and the Balance, so that people could uphold justice (bil-qist).^{[22](#)}

And in chapter 42 verse 15, Allah (SWT) commands the Prophet(sas) to call people to follow the straight path and to avoid doing what they desire, instead they should say:

I believe in whatever scripture God has sent down. I am commanded to bring justice between you.

The development of the science of Usul-al-din is an attempt to reflect the principles inherent in the revelation of God and the Sunnah of His Messenger(sas) and to prevent mankind from falling into a state of incivility and oppression (Zulm).

To this extend, there are five foundational priorities of the Shari‘ah. They are permanent and unchangeable and when applied, could lead people to enjoy the fruits of the Shari‘ah. These foundational priorities are: din (religion), nafs (life), ‘aql (intellect), nasl (progeny) and maal (wealth).

These principles of Shari‘ah are derived from the Qur’an and the Sunnah, and are meant to help believers navigate between what actions are necessary, complimentary or luxuries. According to Muslim scholars, acting in conformity to the revelation of God and the Sunnah of His Messenger saves mankind from harm in this life and in the Hereafter. In other words, by acting in obedience to the Shari‘ah, believers can achieve a state of ‘adl or they can migrate from the realm of Zulm where things are in disarray, to the domain of ‘adl, where things are in their rightful places.

Third Principle: (Ethical)

Justice mediates human-to-human relationships by insisting on the principle of equality (qist) of all in sacred law. This area of sacred law is known as ‘mu‘amalat’ and covers both private and public affairs such as fair measures in the market, honest testimony, judicious recording of debts, striving for impartial judgments and even treating co-wives equally.

The following verse, referred to as Ayat al-Umara, addresses the political or authoritative dimension of justice:

God commands you to return things entrusted to you to their rightful owners, and, if you judge between people, to do so with justice: God’s instructions to you are excellent, for He hears and sees everything. You who believe, obey God and the Messenger, and those in authority among you. If you are in dispute over any matter, refer it to God and the Messenger, if you truly believe in God and the Last Day: that is better and fairer in the end.^{[23](#)}

The Hanbalite theologian, Ibn Taymiyyah (1263–1328), cited this verse as the basis for his Siyasa Shar‘iyya. He pointed out that:

In the first part of the verse the rulers are referred to, and their duty is to act justly and to enforce justice among their subjects. In the second part of the verse, the ruled (subjects) are mentioned since their duty is to obey the rulers until such time as they turn aside from the way of God; obedience is not a duty to evil rulers.^{[24](#)}

In the following verse of the Qur’an, God issues a command for believers to be just when bearing witness, God reveals:

Oh You who believe, be steadfast in your devotion to God and bear witness impartially: do not let hatred of others lead you away from justice. Adhere to justice, for that is closer to awareness of God. Be mindful of God: God is well aware of all that you do.^{[25](#)}

The verse clearly states that being just outwardly is a reflection of one's inner state of God-consciousness (Taqwa). Furthermore, in relation to bearing witness, God reveals:

You who believe, uphold justice and bear witness to God, even if it is against yourselves, your parents, or your close relatives. Whether the person is rich or poor, God can best take care of both. Refrain from following your own desire, so that you can act justly—if you distort or neglect justice, God is fully aware of what you do. (4:135)

Even when giving or receiving credit, believers are commanded to write down the contract with 'adl (2:282). Muslims are exhorted by God to:

Give full measure and full weight in justice (bil-qist)...do not withhold from people things that are rightly theirs, and do not spread corruption in the land. (82:85)

The above verse warns believers about withholding things from people that are rightfully theirs, i.e. giving short measure is considered to be fraud in Islamic law. The Qur'an reveals:

Woe unto the defrauders (mu-taffifin) who when they measure against others, take full measure, but, when they measure or weight for others, give short measure.^{[26](#)}

Even in their personal conduct with their co-wives behind closed doors, the Qur'an warns believers to act justly:

But if you fear you cannot act equitably (ta'dilu) [towards multiple wives], then marry only one, or what your right hand possess.^{[27](#)}

In settling disputes between two groups of people the Qur'an commands those in authority to *return things entrusted to you to their rightful owners, and when you judge between people judge between men with 'adl*^{[28](#)} *and make peace between them with 'adl and act equitably (aqsitu), verily, God loves those who act equitably (muqsitin).*^{[29](#)}

Even when dealing with the wealth of orphans the Qur'an admonishes believers:

To steer well away from the property of orphans until they come of age; give full measure and weight, according to justice (bil-qist) and when you speak, be just even the matter concerns a relative; Keep any promises you make in God's name.^{[30](#)}

Finally, to avoid dispute and injustices pertaining to apportioning one's wealth after death, the Qur'an

calls on believers to write down their wills:

*You who believe, when death approaches any of you, let two just men from among you act as witnesses to the making of a bequest, or two men from another people if you are journeying in the land when death approaches...*³¹

Out of these commands come volumes of rules and regulations that govern every aspect of human affairs, all aimed at ensuring that fairness and equity is achieved and maintained.

¹² E. Ibrahim and D. Johnson-Davies, (trans.) *An-Nawawi's Forty Hadith*. The Holy Koran Publishing House. 1977. Hadith No. # 24

¹³ David B. Burrell and Nazih Daher (trans.) *Al-Ghazali: The Ninety-Nine Beautiful Names of God*. Al Maqlad al-asnaa fi sharh asmaa Allah (SWT) al-husnaa. pg. 93

¹⁴ Feras Hamza (Trans), *Tafsir al-Jalalayn by Jalal al-Din al-Mahalli and Jaal al-Din al-Suyuti*. Royal Institute of Aal al-Bayt Institute of Islamic Thought, Amman, Jordan. 2007.

¹⁵ 5 Qur'an 21:47

¹⁶ Abdur-Rahman ibn Yusuf (trans.) *Imam Abu Hanifa's Al-Fiqh al-Akbar Explained*. White Thread Press, California, U.S.A. 2007. pg. 187

¹⁷ Hamza Yusuf (trans.) *The Creed of Imam Al-Tahawi*. Zaytuna Institute, California, U.S.A. 2007. pg. 50

¹⁸ Ibid.; pg. 52

¹⁹ Ormsby, pg. 227

²⁰ Ormsby, 229

²¹ Ibid.; pg. 229

²² The verse continues: (And We sent down iron. In it is a tremendous power and many uses for mankind, and Allah (SWT) will know who will help Him and His Messengers in the unseen) 57:25. Ibn Taymiyyah said: "The aim of commissioning the Prophets and of revealing the Books, therefore, is to have people administer justice in the cause of Allah (SWT) and in the rights of His creatures...thus he who deviates from the Book shall be corrected by iron (force of arms)." Muhammad S. El-Awa, *On the Political System of the Islamic State*. American Trust Pub. Indiana, U.S.A. 1980. pg. 99

²³ *The Qur'an*. English Trans. by M.A.S. Abdel Haleem. Ch.5 V. 58-59

²⁴ Oliver Leaman, ed. *The Qur'an: An Encyclopedia*. Routledge, 2006. pg. 14

²⁵ *The Qur'an*. English Trans. by M.A.S. Abdel Haleem. Ch. 5 V. 8

²⁶ Qur'an: 83:1-3

²⁷ Qur'an: 4:3

²⁸ Qur'an: 4:58

²⁹ Qur'an: 49:9

³⁰ Qur'an: 6:152

Illustrious Examples from Islamic History

There are several causes of injustices in the world. A lack of knowledge can result in people putting things in their wrong places. The contemporary Malaysian thinker, Syed Naquib Al-Attas writes:

To know how to put what knowledge in which place is wisdom (Hikmah). Otherwise, knowledge without order and seeking it without discipline does lead to confusion and hence to injustice to one's self.^{[32](#)}

This type of injustice can sometimes manifest itself in oppression of minority groups, racism, or class oppression. Lack of knowledge can also result in an irrational fear of things that are strange or unfamiliar. Greed can and does lead to forms of oppression. Self-preservation is also a cause for Zulm and the absence of 'adl in the affairs of this world. We see this type of Zulm most explicitly when we observe the relationship between those in power and authority and their relationship with their subjects. There are many Ahadith of the Prophet (sas) warning leaders to act with justice and equity when it comes to those in their care.

The absence of political and economic justice is one of the main reasons why nations go to war and why civil wars are the norm of our age. The Prophet s is reported to have said:

Whoever mistreats those who are under his supervision will never enter paradise (At-Tirmidhi).

This hadith pertains not only to servants and workers, but also to animals. Abdullah ibn Abbas narrated that the Prophet s said:

He who aids a tyrant or an oppressor in order to deny a person his rights, will be excluded from God's protection and the protection of His Messenger (sas) (At-Tabarani).

The Messenger (sas) of God is also reported to have said:

Whoever is in charge of the affairs of Muslims and appoints a man while knowing that there is a more competent person deserving of the position, has indeed betrayed the trust of Allah (SWT) and His Messenger.

In another hadith, the Messenger (sas) of Allah (SWT) said:

If a ruler who has the authority to rule Muslim subjects and dies deceiving them,

Allah (SWT) will forbid Paradise for him (Bukhari).

In the Sunan of Imam Ahmad Ibn Hanbal, it is narrated that Allah's (SWT) Messenger(sas) said:

Whoever rules over ten people will come in fetters on the Day of Judgment until justice releases him; otherwise, injustice will cause him to perish (Imam Ahmad).

The leadership examples of the "Rightly Guided Caliphs" is filled with examples of just and righteous leadership, a model for believers even for our times. 'Umar ibn al-Khattab is reported to have said concerning the governors of outlying cities and towns: "I didn't hire them as rulers to mistreat you or to take your money.... If any of you faces injustice by any of them, bring it to my attention, and I will give your rights back to you."

Imam Ali ibn Abi Talib is reported to have been criticized for distributing the wealth of the Muslims liberally. To this he replied, "If it had belonged to me even then I would have distributed it equally among the people, but this wealth belongs to Allah (SWT) and is meant for distribution among the people and therefore everybody has an equal right in it."

Imam Al-Mawardi writes in his Al-Ahkam Al-Sultaniyyah:

Of the public matters, (the ruler) must supervise things himself and get first-hand information about the general circumstances in order to improve the situation of Muslims and safeguard the religion. He should not blindly rely on delegating others to do the job while he is preoccupied with worship or vain desires. This is true because a trustworthy person is liable to act treacherously and a sincere counsellor is also liable to cheat.

As for matters that he cannot supervise himself, writes Al-Mawardi, the leader can deputize qualified and competent people, who are both strong and trustworthy to do the job, as Allah (SWT) says:

*Truly the best of person to appoint (hire, or employ) is the one who is strong and trustworthy.*³³ 28:26

The Muslim polity is one that reflects a system of meritocracy where the most competent people rise to the top rather than those who are favoured by the elite or the ruling class. If incompetent people are appointed to positions of authority, injustices will ensue and people's rights will not be fulfilled. It is for this reason that 'Umar ibn al-Khattab once said, "If a governor of mine has wronged someone and I heard of the incident without doing anything about it, I am the one who has wronged him."

Imam Muslim narrated that the Prophet (sas) said:

The best of your rulers are those whom you love and who love you, who invoke Allah's (SWT) blessings upon you and you invoke His blessings upon them. And the worst of your rulers are those whom you hate and who hate you, and whom you curse

and who curse you.

Imam Muslim narrated that the Prophet (sas) once said:

Behold! The dispensers of justice will be seated on the pulpits of light beside Allah (SWT), on the right side of the Merciful, Exalted and Glorious. Either side of the Being is the right side both being equally unmeritorious. (The dispensers of justice are) those who do justice in their rule, in matters relating to their families and over those whom they have authority.

The Prophet (sas) also told his companions that Allah (SWT) will shade seven groups of people on the Day when there will be no shade but His. One of those groups will be the just ruler (Bukhari). He also said:

The dwellers of Paradise are three: One who wields authority and is just, fair, truthful, and has been endowed with power to do good deeds; the person who is merciful and kind-hearted towards his relatives and every pious Muslim; and one who does not stretch his hand in spite of having a large family to support (Muslim).

The Prophet (sas) was the most perfect example of goodness. The Mother of the Believers, Aisha, narrated that on one occasion members of Quraysh became worried about the fate of a woman from the Banu Makhzum tribe who had committed theft. They observed that “no one could intervene with the Messenger (sas) on her behalf except Usama bin Zayd who is the favourite of Allah’s (SWT) Messenger (sas). When Usama spoke to Allah’s (SWT) Messenger about the matter, Allah’s (SWT) Messenger(s) said:

Do you intercede regarding one of the punishments prescribed by Allah (SWT)?” He then stood up and addressed the people saying: oh, people! The nations before you were destroyed because if a noble person committed theft, they would spare him; and if a person of low rank among them committed theft, they would inflict the prescribed punishment upon him. By Allah (SWT), if Fatima, daughter of Muhammad, committed theft, I would have her hand cut off (Bukhari and Muslim).

This incident clearly shows that the justice of Islam transcends kinship and tribal bonds. An-Nu’mān ibn Bashir narrated: “My father gave me a gift but Amrah bint Rawaahah (my mother) told him that she would not agree unless Allah’s (SWT) Messenger (sas) witnessed to it. So my father went to Allah’s (SWT) Messenger (sas) and said: ‘I have given a gift to my son but Amrah bint Rawaahah has ordered me to take you as a witness to it.’ Allah’s (SWT) Messenger (sas) asked him: ‘Have you given (the like of it) to everyone of your sons?’ An-Nu’mān replied in the negative. Allah’s (SWT) Messenger (sas) said: ‘Fear Allah (SWT) and observe equity among your children.’ My father returned home and took back his gift.” (Bukhari)

Conclusion:

Islamic history is replete with shining examples of rulers and judges who administered justice among their people and settled their disputes regardless of their social standing, race and religion. History records the impressive story that earns the respect of the institutions of justice throughout the world even in our times. It is the incident of the Caliph Ali ibn Abi Talib who stood in the court accusing a Jewish resident of Madina of stealing his shield. The judge, Shurayh al-Qadi, did not allow his great respect for the Caliph to prevent him from asking him to produce evidence that the shield in the possession of the Jew belonged to him. When the Caliph could not produce the required evidence, Shurayh ruled in favour of the Jewish man. In profound admiration of Islam's justice, the man announced that he had embraced Islam and returned the shield to Ali, its rightful owner. The Caliph, in generosity, gave the shield as a gift to the man upon hearing the news that he had embraced Islam.

Justice is a difficult virtue to achieve and perhaps it is one of the reasons why it is a virtue that is so hotly debated today among people of faith and those who live under secular laws. As I've outlined in my writing, the Islamic concept of justice offers mankind a way out of the morass of injustices and inequalities. God is Just and He has revealed for mankind sacred laws for them to live so that their lives on earth will reflect the justice of the God Almighty in the heavens.

³² Syed Muhammad Naquib Al-Attas, *Islam: The Concept of Religion and the Foundation of Ethics and Morality*. Dewan Bahasa dan Pustaka, Kuala Lumpur, 1992. pg. 28

³³ Qur'an: 28:26

Judicial Ethics in the Islamic Legal Tradition

We study ethics, Aristotle says, not in order to know what good men are like, but in order to act as good men act. In his introduction to Aristotle's *The Nicomachean Ethics*, Jonathan Barnes writes that ethics "is not telling us how to be morally good men, or even how to be humanly happy: it is telling us how to live successful human lives, how to fulfil ourselves as men."³⁴

Ethics concerns itself first with understanding virtues and then striving to become a person of good character. In the Islamic philosophical tradition, a person who has a virtuous character is said to be a person of adab or Akhlaq, i.e. refined character and excellent manners. The sources of ethics in Islam are the teachings of the Quran and the noble character of the Messenger of Allah (SWT), who drank directly from the wellspring of the Quran. The Quran describes the lofty moral stature of Prophet Muhammad:

*And surely you have the most excellent moral character.*³⁵

Aisha, the wife of Prophet Muhammad testified that his khuluq was based on the teachings of the Quran.

The Quran describes the path to goodness in contradistinction to the path of evil. For example, those who obey the commands of God and His Messenger (sas) outwardly are deemed to be morally upright members of society. They are good, motivated by righteousness and engage in "al-amr-bil-ma'ruf" (commanding good) and "al-nahi 'anil-munkar" (forbidding evil).³⁶

People may call them "Muttaqin" or those who possess Taqwa (God consciousness). However, while Taqwa plays a role in ethical conduct, the majority of Muslim scholars say real Taqwa resides in the heart of a person according to the Prophetic hadith³⁷ and can only be known by God, not men. It is also true that a person might perform righteous deeds, command the good and forbid the evil, but yet that person is impolite, lack basic courtesies or is often rude to others, i.e. they lack adab.

³⁴ J.A.K. Thomson, trans. *Aristotle the Nicomachean Ethics*. Penguin Books, 2004. pg. xxxiii

³⁵ Quran. Surah Al-Qalam, Verse 4

³⁶ Toshihiko Izutsu, *Ethico Religious Concepts in the Quran*. Montreal: McGill-Queens University Press. 2002. pg. 203–232

³⁷ Ezzeddin Ibrahim and Denys Johnson-Davies (trans.), *An-Nawawi's Forty Hadith*. The Holy Quran Publishing House, 1976, Hadith # 35

Ethical Principle

In his discourse on the principles of ethics, Ahmad ibn Muhammad Miskawayh's identifies four cardinal virtues (fada'il) in his seminal work titled *Tahdhib al-Akhlaq*. The first is Hikmah (wisdom); the second is 'Iffah (temperance); the third is shaja'ah (courage); and the fourth is 'adl (justice). Following the Greek philosophers, Miskawayh explains that these virtues are only achieved when they reach the mean or balance between two extremes. Courage, for example, is no longer courage when it gets to the point that it becomes bravado or recklessness or when it slips in the opposite direction and becomes cowardice.

More interestingly, for the purpose of this book, is Miskawayh's explanation of the virtue of justice. Miskawayh argues that in order for the virtue of justice to exist, wisdom, temperance and courage must pre-exist. "Justice is not part of virtue, but the whole of virtue; nor is injustice a part of vice, but the whole of vice."³⁸ In his first of six discourses, Miskawayh writes: "Justice is a virtue, which causes one to be fair to oneself and to others, by refraining from giving, of the useful, more to himself and less to others, and, of the harmful, less to himself and more to others. The just man applies equality, which is a proportionate relation between things..."³⁹

³⁸ Constantine K. Zurayk (trans.) "Miskawayh the Refinement of Character (Tahdhib al-akhlaq). Great Books of the Islamic World, American University of Beirut, 2002. pg.104

³⁹ Ibid., pg. 25

Justice and Ethics

Majid Khadduri, author of *The Islamic Conception of Justice*, expounds how the above-mentioned fada'il were applied by Imam Abu Hamid Al-Ghazali, Nasir al-Din Tusi and Miskawayh to the subject of judicial ethics.

1. Wisdom (al-hikmah), the quality of mind by which man makes choices: he distinguishes between good and evil and restrains himself from extreme acts under such pressures as rage and anger, and maintains a balance between foolhardiness and swindling. Such a balance, considered by the Prophet as one of the "goals of believers", is implied in the principle of the "mean" and hailed as the very essence of justice. "Whoever is given wisdom," in the words of the revelation, "has been given much good." (Quran 2:272)
2. Courage (al-shaja'ah), the quality of fury and indignation (al-quwwa al-ghadabiya), which may be described as a form of moral courage, neither rashness and hastiness (tahawwur) nor cowardice (jubn), but a state in the middle of the two. Guided by Law and Reason, courage urges man to conduct himself properly, pursue the right or straightforward path (al-siraat- al- Mutaqiim) and avoid the wrong. It also prompts him to be resolute on some occasions and compassionate on others.
3. Temperance (al-'iffa), the quality of moderation by virtue of which man follows the middle course between two extremes of greed and antipathy, tries to be fair to others and moderate in his way of life. It is, in other words, an expression of "the golden mean".
4. Justice (al-'adl), which is not just one virtue but the "whole of the virtues". It is the perfection of all virtues, consisting of the "state of balance (equilibrium) and of moderation in the conduct of personal and public affairs. Above all, it is an attitude of fairness (Insaf), which urges man to pursue that which might be described as the "path to justice".^{[40](#)}

The "path to justice" according to Imam Al-Ghazali is al-sirat-al-mustaqim, "by virtue of which man attains happiness in this world and in the hereafter".^{[41](#)} By happiness, Imam Al- Ghazali is not referring to wealth but to spiritual contentment, which comes from sacred knowledge that lifts men out of the animal state and allows them to climb the ladder of human perfection in preparation for a life of eternal happiness in Paradise. The opposite to the path of justice is the path of injustice or jawr. "Heaven and Earth," Imam Al- Ghazali said, "are founded on two pillars — order and justice — without which man cannot possibly survive."^{[42](#)}

According to the Nasirean Ethics (akhlaq-Nasiri), a treatise on ethics written by Nasir al-Din Tusi, “The just man is expected to practice justice first with regard to himself and then towards others.”⁴³ Were a judge or any person in authority who issues decrees, to depart from this rule he would end up by practicing tyranny and his actions would result in harm to others or misery, instead of happiness. This understanding led to rich body of literature on ethical justice commonly referred to as *adab al-Qadi*. This genre of literature is made up of guidelines and general rules pertaining to the conduct of a mufti, Qadi, wakil or anyone who works with them such as a scribe or a secretary.

One of the more frequently cited books in this genre was written by Abu al-Hasan Al- Mawardi (d.450/1058), a jurist and Chief Justice (Qadi al-Qudaat) under the Caliph al-Qadir bi-Allah (SWT). The title of his book that is widely quoted is *Kitab al-Ahkam al- Sultaniyyah*⁴⁴ but he has written other books as well on ethics. For example, he wrote a code of ethics for what we today might call the ministers of state and yet another on the ethical rules to be applied generally by the public to make up what Al-Farabi referred to as al-Madina fadila or the Virtuous City, a civil society “whose ideals were fired by Plato’s Republic yet fully encased within a religious imagination”.⁴⁵

According to Mawardi, in order for justice to prevail, there has to be a general adherence to ethical conduct, both by those in authority and by members of the public. If the public is expected to obey a set of ethical and legal norms while those in authority are absolved from it, there would be chaos and it takes more than brute force to repair the scales of justice after its broken.⁴⁶ One sure way to ensure the scales of justice do not collapse is to regulate the institution of justice with rules that prevents corruption from creeping in. Procedural justice, according to Khadduri, is “the external aspect of the Law by virtue of which substantive justice is realized”.⁴⁷

⁴⁰ 7 Majid Khadduri, *The Islamic Conception of Justice*. The John Hopkins University Press, Baltimore.1984. pgs. 120–121 (from the chapter on Ethical Justice)

⁴¹ Ibid. pg.121

⁴² Ibid. pg. 121

⁴³ Ibid. pg. 123. Khadduri is referencing the Nasirean Ethics, pp. 98–99. This is in conformity with what Aristotle said: “The best man is not he who exercises his virtue towards himself but he who exercises it towards another.” (Nichomachean Ethics)

⁴⁴ Asadullah Yate, *al-Ahkam as-Sultaniyyah: The Laws of Islamic Governance*. Abul-Hasan Ali ibn Muhammad ibn Habib al-Basri al-Baghdadi al-Mawardi. Ta-Ha Publishers. Ltd. London. 1996

⁴⁵ Ayn B. Sajoo, *Muslim Ethics: Emerging Vistas*. I.B. Tauris. London. 2009. pg. 62

⁴⁶ Khadduri, pg. 134

⁴⁷ Khadduri, pg. 144

Ethics and Procedural Justice

The first pre-requisite of a Qadi is that he should be a person who fears God, i.e. Taqwa. God reveals in the Quran: *Do not fear them, but fear Me.*^{[48](#)} The judge who fears God is likely to judge justly. The Prophet (sas) is reported to have said:

Judges are of three types: two in Hell and one in the Heaven. There is he who knows what is right and judges accordingly; he is in heaven. The one who provides judgments based on ignorance; his abode is Hell. The one who knows what is right but judges unjustly, his abode is Hell (Sunan Abu Dawud and Ibn Majah).^{[49](#)}

In a refreshing essay contrasting the various modalities of advocacy under Islam and Common Law, Ali Khan writes, “In matters of law, Taqwa furnishes a firm understanding that God is just and supports lawyers of faith who use their intellect and spiritual resources to seek justice.”^{[50](#)}

If Taqwa governs the conscience of a judge, Khan says there needs to be rules to punish errant behaviour. He refers to this as takhsha, a Qur’anic term used to refer to fear of calamitous events or occurrences. For example, takhsha may “prevent a lawyer from embezzling his clients’ funds, fear of sanctions may deter him from unlawful conduct and fear of penalties may prevent ethical violations”.^{[51](#)}

It is clear that Al-Mawardi holds the office of judges to a higher level of religious and moral standards. He wrote that a judge must be “Truthful, trustworthy, sinless, and beyond suspicion of bias in all religious and temporal actions. To these moral qualities, the judge must be: (1) an adult, free, and a male believer; (2) sound in the senses, especially in sight and hearing, though some jurists (Malik in particular) make reservations about sight, as he might be assisted by someone who acts as an aide; (3) sane and sound in all faculties in order to be able to exercise good and discriminating judgment and cope with subtle and complex problems; and (4), in the possession of an adequate knowledge of the Law, both in its fundamental principles and rules as well as an ability to exercise legal reasoning through analogy (qiyas) and make the right and just decisions in accordance with the recognized sources of the Law.”^{[52](#)}

Drawing guidance from the Sunnah of the Prophet (sas), ‘Abdur Rahman Doi offers a list of four tasks that a Muslim judge must adhere to in performing his task.

- A. Equality to all litigants: A Muslim judge must treat all of his litigants equally whether he is a king or his page, a master or his servant, a rich man or a poor man, a relative or a stranger and a friend or a foe. It is reported by Ubadah bin al-Samit (r.a) that the

Messenger of Allah (SWT) said: Let the hudud of Allah (SWT) be applied equally on your relatives and the total strangers. You should not care for the reproachment of any critic whatsoever.” It is reported by Aisha that the Messenger of Allah (SWT) said: “Forgive the shortcomings of highly respected people but certainly do not forgive them in awarding the hadd punishment to them.”

- B. The Defendant and Appellant must appear before the Qadi: Even though one is a highly placed person or a king or an emperor or an administrator of a country, he must not be exempted from appearing before the judge to answer the charges levelled against him. It is reported by Abdullah bin Zubair that the Messenger of Allah (SWT) said: “Both the parties in a dispute must be brought before the judge.”
- C. The Defendant should be given the right to take an oath: Human being, being what he is, will keep on grumbling and blaming others for his own faults or in order to hide his faults and escape punishments. If every one’s claims is taken seriously, there would appear so many claimants of people’s life and property. The remedy is suggested by the Holy Prophet (sas) who is reported by Abdullah bin Abbas who said the Messenger of Allah (SWT) said: “If people were to be judged merely on account of their claims, there would appear claimants of the life and property of everyone (so that there would remain none whose life and property can remain safe). So, the defendant must be given the right to take an oath concerning the charge levelled against him.”
- D. The judge must be careful in awarding Hadd punishment: Hadd punishment is meant to be a deterrent so that people may not become complacent and commit crimes simply because they find punishment to be just nominal. If there is a slight doubt in establishing the crime, he should refrain from awarding Hadd punishment. It is reported by Aisha that the Messenger of Allah (SWT) said: As far as possible, refrain from awarding Hadd punishment to a Muslim. If there is found slight excuse (or doubt) leave him alone because it is better for a judge to err in acquitting the accused than erring in awarding him a punishment.”^{[53](#)}

^{[48](#)} Al-Quran, 2:150

^{[49](#)} Abdur Rahman L. Doi, *Shari’ah: The Islamic Law*. Ta Ha Publishers, London. 1984.

^{[50](#)} Ali Khan, *Advocacy under Islam and Common Law*. Islamic Law and Law of the Muslim World at New York Law School. Research Paper Series 07-04. pg. 25–26. This paper can be downloaded free of charge from Social Science Research Network at: <http://ssrn.com/abstract=1016381>

^{[51](#)} Ibid., pg. 25–26

^{[52](#)} Khadduri., pg. 146

^{[53](#)} Doi., pg. 12–13

Ethical Rules for the (judge) Qadi

Much of the ethical principles that fall under the category of adab comes from Caliph ‘Umar ibn al-Katthab’s letter to Abu Musa al-Ash’ari. The second Caliph ‘Umar, who is known among Muslims for his special sense of justice, wrote in his letter to Abu Musa Al- Ash’ari:

Dispense justice among people, be fair in your attitude towards people as well as in your sitting (before them), so that no elite may become covetous for your unfairness, and no poor may give up hope in your fairness. Avoid anxiety, trouble or grumbling about the plaintiff for when truth is established where it should be, Allah (SWT) will grant a great reward to the one responsible and grant him a good remembrance by it.

In addition to the contents of this letter, the famous treatise of Abu Bakr Ahmad ibn ‘Amr ibn al-Shaybani al-Khassaf (d. 261/874) on Adab al-Qadi provides one of the most comprehensive list of adab al-Qadi.^{[54](#)}

Independence and Impartiality

There are two fundamental principles that top the chart when it comes to the external aspect of the Law — judicial independence and impartiality. Independence is the prevention of undue external influences on the judiciary. A judge cannot expect to be impartial if his Judicial independence is significantly compromised.^{[55](#)} Al-Mawardi stipulated that a judge must not accept a gift from a litigant or non-litigant since he might need the protection of the judge at some point in the future. In some cases the judge is cautioned against engaging in business activities and if it is unavoidable he should keep his identity discreet and use an agent to front his business. If there ever is a person with whom he has or had a business relation stands before his court, he should recuse himself. Most of the classical jurists took for granted that a judge would receive a sufficient salary.

The Qadi is required to treat equally all litigating parties while considering their cases. He should give equal time to each one addressing them and sitting face to face with them. Al-Mawardi, for example, mentions that “when judging between the strong and the weak, the judge should treat both equally”, He shall not meet with anyone of them privately, insinuate to any of them a favourable legal stance, indulge in joking with any of them or frown at one party.

He should not speak to one of them in a language that the other does not understand. While talking or listening to one of them he shall silence the other party and then give him the opportunity to express him or herself. The Prophet (sas) is reported to have said:

One who is appointed as a judge among the Muslim, he shall treat all equitably in terms of sitting, gesturing, looking, and shall not raise his tone upon one of the litigants higher than the his tone with the other litigants.

Likewise, the Prophet's companion 'Abdullah ibn al-Zubayr (d. 73/692) is reported to have said:

The practice of the Prophet with the litigating parties was confirming that the judge shall sit in front of the parties, and should not insinuate anything to one of the parties, nor will he insinuate anything to the witnesses i.e. the judge shall not make any utterance that is likely to inform the witnesses of the fact related to the pending case.

A Jew once lodged a complaint to the Caliph 'Umar against 'Ali ibn Abu Talib. When they both stood before the Caliph 'Umar, he addressed the Jew by his first name and addressed 'Ali by his appellation of Abu al-Hasan (the Father of Hasan) as he was accustomed to addressing him. 'Ali showed signs of displeasure and the Caliph 'Umar asked him if he had resented his adversary being a Jew with whom he had been obliged to stand on equal footing before the Caliph. 'Ali replied that that had not been the cause of his displeasure, the reason being that the Caliph had addressed the Jew by his first name whereas he had addressed him by his appellation of Abu al-Hasan, which is a sign of respect and veneration. 'Ali thus expressed his displeasure that 'Umar had inadvertently treated him with more respect than his adversary. 'Umar, while serving as a Caliph, filed a complaint against another companion of the Prophet, Ubay ibn Ka'b (d. 20/649) to Zaid ibn Thabit (d. 27/656) as a judge. Zaid was influenced by the high status of 'Umar as a Caliph and offered him a back-rest to lean on. 'Umar threw away the back-rest and told Zaid: "This is the harbinger of your unfairness," and then stood up next to his adversary in front of the judge.

Consultation and Seeking Advice

The judge should seek information and consult other knowledgeable scholars about the issue he does not have sufficient knowledge over. This rule is derived from clear textual evidence in the Quran. In Surah Al—'Imran, verse 102, God reveals:

It was mercy from God that you became compassionate towards them. Had you been harsh and mean-hearted, they would have abandoned you. Therefore, you shall pardon them and ask forgiveness for them, and consult them. Once you make a decision, carry out your plan, and trust in God. God loves those who trust in Him.

Abu Hurairah is reported to have said: "After the Prophet I have never seen a person who is more inclined in seeking the advice of his disciples than the Prophet himself."

The famous Maliki jurist, Ibrahim bin Farhun, held that it was essential for a judge to decide cases in the presence and with the consultation of 'Ulama. Imam Hasan al-Basri said that although the Prophet(sas) was not in need of consulting his Companions, Allah (SWT) nevertheless commanded

him to do so in order that his act may become a legally binding precedent.

A Shafi'i jurist, Abu Ishaq Al-Shirazi, regarded the presence of the 'Ulama in the court is a desirable (mustahabb) practice that enables the judge to consult them whenever he needs their help. Ibn Qudamah was of the opinion that these jurist-consults must be from all the Schools of thought. The famous Hanafi jurist, Aladdin Al-Kasani, said that though the presence of 'Ulama in the court is mustahabb, it is not proper for a judge to consult them in the presence of the litigants; if he does so they will accuse him of being ignorant, and so the judge must consult the scholars after adjourning the court.

Peace of Mind and Friendliness

While considering a case, a judge must enjoy a reasonable degree of peace of mind, and should not consider a case while he is disturbed over a matter. The Prophet (sas) is reported to have said: "A judge should not adjudicate between two persons while he is in an angry mood."

Abdur-Rahman bin Abu Bakrah narrated that Abu Bakrah once sent a letter to his son who was a judge. He wrote: "Don't decide between two persons when you are angry, because I have heard the Holy Prophet (sas) saying that a judge should never decide when he is in a state of anger." Qadi Shurayh, an eminent judge of the Islamic judicial history, used to exit his court in case of anger or extreme hunger. The famous scholar Ibn Daqiq said in Ahkam Al-Akham: "...deciding a dispute is forbidden only in the state of anger because it causes disturbance of mind, which may result in an improper perusal of the cases, or it may affect the competency of a judge concerning the decision of disputes. The jurists, by way of analogy, have extended this provision to all those factors that may disturb the mind of a judge like hunger and thirst, etc. And perhaps anger is specially mentioned in the traditions because of its severity of effect on the human mind and the difficulty in overcoming it."

According to Imam Shafi'i: "It is reprehensible (makruh) for a judge to give a decision in the state of hunger, tiredness, or mental uneasiness because it changes his mind and heart."

What follows are some additional adab principles that have been mentioned by several authors writing on the subject of adab al-Qadi. In addition to knowing the manners and customs of the people to whom he has been assigned, the Qadi should not:

- Delay issuing a verdict once all the evidences has been heard.
- Prevent a reasonable request for adjournment in order for evidence to be gathered for presentation.
- Prevent either parties from pursuing a path of reconciliation and amicable resolution.
- Be harsh or vulgar in speech.
- Allow barriers or obstacles to his court.

- Discuss the affairs of the litigants when visiting the sick or attending funerals.
- Permit a litigant to enter his home unless both sides to the dispute are present.
- Fear dismissal, nor must he hate his critics.
- Deviate from truth for fear of anyone's anger.
- Walk in the streets alone. This way his dignity will be maintained and he will not be exposed to unwanted influences.

[54](#) *Max Planck Manual on Judicial Ethics in Afghanistan*. Amended 2nd Edition (Dec. 2009). Max Planck Institute for Comparative Public Law and International Law. pg. 111

[55](#) For an excellent contemporary discussion of this subject see *Max Planck Manual on Judicial Ethics in Afghanistan*. Amended 2nd Edition (Dec. 2009). Max Planck Institute for Comparative Public Law and International Law.

Ethics and Substantive Justice

There is a fairly widespread misconception, primarily in the western world, that Islamic Law or Shari'ah is a rigid and harsh set of *dos* and *don'ts* and that a Muslim judge ruthlessly executes a limited set of punishments without giving due consideration to what might be in the best interest of either the public or the rights of individuals. Prof. Hisham M. Ramadan, visiting professor at Michigan State University College of Law and author of *Reconstructing Jury Instructions in Homicide Offenses* writes: "Labelling Islamic law as inhuman and cruel exclusive to proper understanding of the Islamic justice system reflects the common state of ignorance among a large number of commentators."^{[56](#)}

It is true that Islamic law is both stable and consistent, but it is also true that it has a great deal of flexibility. This in-built flexibility allows the ultimate goals and purposes of the Law (maqasid al-Shari'ah), as understood by generations of leading legal experts, to be fulfilled. The ultimate goal is the general good (al-khayr al-'aam). The Shari'ah is literally the path that leads men to what is good and wholesome while avoiding evil and corruption.

Masalih Al-Mursalah — Public Interest

According to Imam Malik and other classical jurists, there are several ethical principles embedded in the Law, which allows the general good to prevail. The first is the concept of maslaha or unrestricted public interests. The term maslaha is defined as legal decisions that results in manfa'ah (benefit), while averting mafsadah (harm).^{[57](#)} In the Maliki School it came to be called Masalih Al-Mursalah and in the Hanafi School, it is istihsan, which legally allowed jurists to depart from the strict adherence to the texts for the public welfare. For example, the Prophetic Tradition stipulates that one should not request permission to enter another's home more than three times in succession. The early interpretation was that if entrance is granted after the third time a person may enter otherwise they should leave. However, Imam Malik went beyond the tradition's apparent meaning and examined its intent. Ibn Wahb related that Imam Malik said:

One should request permission to enter three times, and I prefer that no one go beyond this. However, if one knows that he has not been heard, I see nothing wrong with it, i.e. knocking a fourth or fifth time.^{[58](#)}

Sadd al-Dharaa'i — Deterrent Measures

The second ethical concept embedded in the law is what jurists refer to as Sadd al-Dharaa'i or the principle of adopting pre-emptive polices and deterrent measures. About this Ibn Al-Qayyim states:

...governors, judges, and ombudsmen are forbidden to receive gifts (from those whom they serve in these capacities). This is the root of corruption, a vesting of authority in those who are not worthy thereof. The reason for this is simply that the acceptance of gifts from someone with whom it is not one's custom to exchange gifts may lead the recipient to meet the (gift giver's) need (for the wrong reason). Your love for something can render you blind and deaf; and such love for things may generate a desire to fulfill the request of the person who gave the gift as a way of rewarding him...[59](#)

We will return to this topic in the section below under the heading “Ethics and Procedural Justice”.

Niyyah — Intention

The third ethical principle embedded in the Law is Niyyah based on the Prophetic hadith innamal-‘amalubin-niyyah, “actions are to be judged by intention”. In his al-Muwatta on the subject of the punishment for murder, Imam Malik demonstrates the importance of human intentions. He states:

Concerning a man who apprehends someone in order for another man to beat him, after which the man beaten dies from the beating, we say: If he apprehends the victim with the realization that the third man wants to murder him, then both of them (i.e., the man who apprehends the victim, and the one who killed him) are to be put to death on this account. If, on the other hand, he apprehends the victim on the understanding that the other man does not intend to murder him, but simply wants to give him a disciplinary beating, then the murderer is to be put to death, while the person who did the apprehending is to be given the severest punishment and imprisoned for a year for apprehending the victim, but not receive the penalty for murdering him.[60](#)

In addition to maslaha, Sadd al-Dharaa’i and niyyah, legal scholars add the Freedom, Equality, Brotherhood, Mercy, Moderation, and Proportionality as ethical goals of the Law. In terms of freedom (ibaa’a) people are free to act unless forbidden by the Law. In cases where the Law is indifferent, a believer is free to act as he pleases. The Quran and the example of the Prophet Muhammad (sas) make it evident that brotherhood and equality are the foundation of the community of believers. A test of the equality is recorded in the following hadith: A noble lady committed larceny and the members of her prominent tribe sent a close acquaintance of the Prophet to ask for her exemption from the prescribed punishment. The Prophet refused, maintaining: “The people before you were destroyed because they used to inflict punishment on the poor and forgive the noble. By him in whose hand is my soul! If Fatima, (the daughter of the Prophet) did that (i.e. stole), I would cut off her hand.”[61](#)

Moderation and toleration are not only ethical principles of legal justice, but are rather moral and religious obligations. In Surah Baqarah verse 185 and Surah Hajj verse 178 God reveals that He

desires ease for you, not hardship, and that God has not laid upon you in religion any hardship (haraj).

Mercy and Justice

Both mercy and justice are ethical pillars in the Islamic legal tradition and they are not opposed to each other. In the Quran, God reveals in Surah Hadid verse 25:

We sent Our Messengers with Clear Signs and sent down with them the Book and the Balance (of right and wrong), that men may stand forth for justice; and We sent down Iron, in which is (material for) warfare, as well as many benefits for mankind, that Allah (SWT) may test who it is that will help, unseen, Him and His Messengers, for Allah (SWT) is full of strength, exalted in Might and able to enforce His will.

According to several Quran commentators, Allah (SWT) makes an analogy between justice and iron in an attempt to explain that just as iron is strong, justice needs an iron fist to enforce and protect it. The Quran also reveals that the Messenger of God was not sent but as a mercy to all of mankind.^{[62](#)} The Prophet (sas) is reported to have said in an authentic narration in Bukhari and Muslim: “He who shows no mercy to people, Allah (SWT), the Exalted and Glorious, does not show mercy to him.”^{[63](#)} Mercy is not limited to a particular set of circumstances, but rather it is a universal doctrine to be applied to a wide spectrum of circumstances. This does not mean that a wrongdoer who is found guilty is to be excused particularly if he or she is likely to re-offend. If no one were punished for crimes then criminal would run free and this would result in cruelty to the public.

In Islamic law, extraordinary circumstances may reduce, delay or preclude a punishment say for adultery until the child is delivered and completes the period of nursing if the offender is a woman. This happened in the time of the Prophet (sas) and he ordered a stay of the punishment. The Caliph Umar ibn Al-Khattab excused a slave from the punishment of theft of food when he found out that his master had failed to provide sufficient food to the slave. Caliph Umar had also suspended the punishment for theft in a year of famine.

Forgiveness and Hudud, Qusaas and Ta’zir

Forgiveness is also a virtue in Islam and yet it too is not opposed to the pursuit of the highest of ethical ideals — justice. In Islamic law there are three categories of crimes: Hudud, Qusaas and Ta’zir. It is well established in the Islamic legal tradition that crimes of Hudud and Qusaas are fixed according to the Quran and the Hadith. Forgiveness by a victim is only possible if the crime committed violates the victim’s right and does not impact on others. Because Hudud crimes violate social rights, forgiveness is not possible. In some Hudud crimes such as theft, a victim may not press charges but once he does, the punishment has to be carried out if the perpetrator is found guilty.

In Qusaas crimes such as homicide, the victim has the exclusive right to press charges or insist on the punishment. The victim could also intervene in the judicial process to withdraw the charges or request a stay of punishment if the offender is convicted.

In the event that this happens and the convict is forgiven, it still does not erase the violation, but only circumvents the prescribed punishment. A Qadi would then have authority to prescribe a lesser or discretionary (Ta'zir) punishment. Ta'zir crimes are not defined exclusively in Islamic law, rather they are left to the lawmakers to define what it should be depending on the social conditions that exist in their societies.

Repentance and Punishment

Among the Hanbali and Shafi'i jurists there are some who hold the opinion that if an offender repents after committing certain crimes, he or she could avoid the punishment even after they are convicted of the crime. These jurists cite a number of Qur'anic verses such as Chapter 4 verses 17–18 and Chapter 5 verses 33–34, 39 and Chapter 4 verse 16. The Prophet(s) is reported to have said in an authentic hadith: “Whoever repents after committing sins are as those who have committed no sins.” Imam Malik and Abu Hanifa are of the opinion that repentance does not necessarily preclude the punishment with the exception of armed robbery that is a heinous offense. According to them, the punishment is deterrence and it should be maintained because “opening the door for pardonable repentance after committing the crimes promotes wrongdoing”.⁶⁴

⁵⁶ Ibid, pg. 48

⁵⁷ Ahmad Al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*. The International Institute of Islamic Thought, Washington. 2005. pg. 45

⁵⁸ Ibid., pg. 55–56

⁵⁹ Ibid., pg. 59

⁶⁰ Ibid. pg. 70

⁶¹ Sahih Al-Bukhari, The Book of Hudud, hadith # 11.

⁶² Al-Quran 21:107

⁶³ Sahih Muslim Hadith # 4283

⁶⁴ Hisham M. Ramadan, ed. chapter 2 *On Islamic Punishment* in “Understanding Islamic Law: From Classical to Contemporary.” Altamira Press. New York. 2006. pg. 51

The Ethical Principle of Proportionality

In expounding on the ethical concept of proportionality in light of the Law, Prof. Ramadan points out that the scope of the proportionality doctrine is not restricted only to the harm caused by the offender but it extends to the loss of benefits as well. God reveals in the Quran:

We ordained therein for them: Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal. But if anyone remits retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by what Allah (SWT) hath revealed, they are not better than the wrongdoers.^{[65](#)}

Islamic law did not invent this punishment and Prof. Ramadan points out, rather, they were known to communities before Islam and most of them can be found in the Bible. The difference between the Shari'ah and other legal systems is that the former set a high standard of evidence in cases that could result in the death penalty. In allegations of adultery, a conviction requires the testimony of four credible witnesses, who saw with their naked eyes the actual act of penetration. It's a very high evidentiary threshold to achieve. According to Prof. Ramadan, "Islamic jurisprudence broadens the scope of the harm to include any harm encroaching upon the five protected interests of the Shari'ah, namely life, property, procreation, religion and intellect. In contrast, other legal systems typically utilize a narrow view of the possible harm caused by violating the prohibitory norm. For instance, extra matrimonial sexual intercourse in a non-Islamic legal system is not a crime unless it contains the lack of consent element as in rape or involves the encroachment of the right of another person as in adultery. Islamic law adopts a broader view that considers the socioeconomic impact of extra matrimonial sexual intercourse. Prohibited intercourse risks the welfare of offspring and the innocent partner by increasing their chances of infection by sexually transmitted diseases.

"Furthermore, the socially destructive effect of adultery manifested in destabilizing and destroying the family unit should not be ignored. In these cases, the protected Islamic law objectives of procreation, life and property are undermined greatly."^{[66](#)}

^{[65](#)} Al-Quran 5:45

^{[66](#)} Ramadan, pg. 49

Conclusion

The ethical standards that we've outlined at both the substantive and the procedural platforms of justice, demonstrate that these principles insulate the Law from corruption and distortion. When the Law (Shari'ah) is applied as it was intended, the result is that it benefits the greater good of the majority of people. Adab al-Qadi protects the human institutions that have been assigned as an Amanah (Trust) to ensure that the Law is applied as the Lawgiver intended. If corruption and nepotism is allowed to invade the offices or the personal life of the Qadi, the system begins to unravel from within.

When the institutions of judgeship weaken the Law is applied in a lopsided manner and the ethical safeguards that exists in the substance of the Law cannot be applied. When both trends intersects, the public loses confidence in the judicial system and often times will take the Law into their own hands. Authority breaks down and in some Muslim countries civil wars ensues. This is happening in countries that once had a thriving judiciary. In countries such as Pakistan and Afghanistan, justice is administered by one's ability to pay a bribe to a judge. The rich get away with their crimes and the poor have nothing to lose but to take to the streets in protest and revolt. Ethics have to be inculcated from an early age. Wisdom, courage, temperance, mercy, forgiveness and justice have to be re-introduced into the curriculum of Muslim schools.

Today, we find that judges are being targeted and killed much too frequently in countries like Syria, Iraq, Pakistan, Somalia and Afghanistan. This is what happens when the judiciary has lost its esteem in the eyes of the public.

— God knows best

Bibliography

- Al-Raysuni, Ahmad. Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law. Washington D.C.: The International Institute of Islamic Thought, 2005.
- Az-Zuhaili, Mustafa Wahbah, Kitab: al-Fiqh al-Islami wa Adillatuhu. Beirut: Daar al- Fikr, 2004.
- Doi, Abdur Rahman L. Shari'ah: The Islamic Law. London: Ta Ha Publishers, 1984 Thomson, J.A.K. (translator) Aristotle the Nicomachean Ethics. New York: Penguin Books, 2004.
- Ibrahim, Ezzeddin. Johnson-Davies, Denys. (Translators) An-Nawawi's Forty Hadith. Jeddah: The Holy Quran Publishing House, 1976.
- Izutsu, Toshihiko. Ethico Religious Concepts in the Qur'an. Montreal: McGill-Queen's University Press, 2002.
- Khadduri, Majid. The Islamic Conception of Justice. Baltimore: The John Hopkins University Press, 1984.
- Khan, Ali. Advocacy under Islam and Common Law. New York: New York Law School. Research Paper Series 07-04. Available online at <http://ssrn.com/abstract=1016381>
- Metcalf, Barbara Daly. Moral Conduct and Authority: The Place of Adab in South Asian Islam. Los Angeles: University of California Press, 1984.
- Mughal, Ahmad Munir (translator). Adab Al-Qadi: Islamic Legal and Judicial System by Imam Khassaf. (Ahmad Abu Bakr al-Khassaf, d. 261AH) New Delhi: Adam Publishers, 2010.
- Planck, Max. Manual on Judicial Ethics in Afghanistan. City. Max Planck Institute for Comparative Public Law and International Law, 2009.
- Ramadan, M. Hisham. Understanding Islamic Law: From Classical to Contemporary. New York: Altamira Press, 2006.
- Sajoo, Aryn. Muslim Ethics: Emerging Vistas. London: I.B. Tauris, 2009.
- Yate, Asadullah. (Translator) Al-Ahkam as-Sultaniyyah: The Laws of Islamic Governance (by Abu'l-Hasan 'Ali ibn Muhammad ibn Habib al-Basri al-Baghdadi al-Mawardi). London: Ta-Ha Publishers Ltd., 1996.
- Zurayk, K. Constantine. (Translator) Miskawayh The Refinement of Character (TahdhibAl-Akhlaq).

About the Author



Safraz Bacchus hails from the South American country of Guyana, in 1993, as a result of his outstanding performances he was awarded a full scholarship sponsored by the government of Egypt in collaboration with the government of Guyana to pursue studies in the famous Al-Azhar university.

Shaykh Safraz completed his studies in Islamic Jurisprudence & Arabic Language with training also on Islamic Methodology and Islamic Economics from Al-Azhar University in 2004.

He had the privilege of sitting and studying with famed Scholars such as the Grand Mufti of Egypt Dr Ali Gomah, Shaykh Habeeb Ali Jifri and Dr Omar Hashim, former Chancellor of Al Azhar.

Upon his return to Guyana, Shaykh Safraz spearheaded a surge in Islamic knowledge sharing, training and Dawah and held many roles within the Central Islamic Organization of Guyana (CIOG) including Orphan, Zakaah and Halaal Committees and Director of Education and Dawah.

Safraz also hosted several TV Programs for Islamic Dawah and his work allowed him to travel extensively internationally as well to Kuwait, Saudia Arabia, Bosnia, United States, Jamaica, Chile, Trinidad and Suriname.

Safraz Bacchus migrated to New York in Feb 2013, with his family, to take on the role of Lead Imam of the Central Mosque of New York (Masjid Al Abidin).

Copyright



Suite 300 – 852 Fort Street
Victoria, BC, Canada V8W 1H8
www.friesenpress.com

Copyright © 2014 by Safraz Bacchus
First Edition — 2014

All rights reserved.

No part of this publication may be reproduced in any form, or by any means, electronic or mechanical, including photocopying, recording, or any information browsing, storage, or retrieval system, without permission in writing from the publisher.

ISBN

978-1-4602-5355-7 (Hardcover)
978-1-4602-5356-4 (Paperback)
978-1-4602-5357-1 (eBook)

1. Religion, Biblical Studies, Prophets

Distributed to the trade by The Ingram Book Company