

In our current area of concern, that is, the sphere of Islamic Law and its rulings, it should be recalled that in order for our understanding of the Law and its purposes to advance, we must proceed with the full certainty and confidence that this Law, to borrow the words of Ibn al-Qayyim, “is nothing but justice, nothing but mercy, nothing but benefit, nothing but wisdom...”<sup>137</sup> And as al-Qurṭubī – a fellow countryman of Ibn Ḥazm’s – puts it, “Among the discerning, there is no one who would dispute the fact that the intent behind the Laws revealed through the prophets is to preserve human interests, both worldly and otherworldly, material and spiritual.”<sup>138</sup>

We are thus called upon to inquire into the material and spiritual benefits and purposes which underlie the rulings of Islamic Law, since in this way we will be enabled to understand them, apply them, and be guided aright in situations which receive no explicit mention in the Qur’an or the Sunnah. Distinguished scholar Ibn Ashur states,

In sum, we are certain that all the rulings of Islamic Law entail objectives, that is, wise purposes, interests and benefits. Consequently, our scholars are duty bound to acquaint themselves with the Law’s logical bases and purposes, both those which are readily perceived and those which are hidden from view.<sup>139</sup>

And just as it is impossible for someone who lacks faith in the laws of the universe, their regularity, stability, perfection and precision to progress in any of the material sciences, neither is it possible for one who lacks faith in the all-encompassing wisdom of the divinely revealed legislation, its orderly laws and its sound principles, to achieve any progress in the sciences of Islamic Law.

## [ II ]

### Sources of Benefit and Harm

If the discussion of *ta’lil* is a discussion of the foundation of the objectives of Islamic Law, then the discussion of sources of benefit

and harm is a discussion of the heart of these objectives. For as we have seen, these objectives may be summed up in the phrase, “achieving benefit and preventing harm;” hence, the critical importance of the theme we are about to consider. In what follows I shall attempt to highlight and clarify al-Shāṭibī’s most important views on the sources of benefit and harm, comparing them with other relevant perspectives and completing them as seems appropriate.

### The Concepts of Benefit and Harm

A premise which admits of neither doubt nor disagreement is that the terms ‘benefit’ and ‘harm,’ when employed by Muslim scholars in this all-encompassing and unconditional manner, include benefit and harm in both this world and the next. As we have quoted al-Shāṭibī as saying earlier, “[divinely revealed] Laws have all been established to preserve human beings’ interests both in this life and the life to come,”<sup>140</sup> a statement the truth of which is so self-evident that it calls for neither proof nor clarification. Equally self-evident is the affirmation that ‘benefit’ as it relates to the life to come is whatever brings God’s favor and blessing or increases the degree to which they are experienced, while ‘harm’ as it relates to the life to come is whatever brings God’s disfavor and chastisement or increases the degree to which they are experienced. Or, more properly speaking, we might say that ‘benefit’ as it relates to the life to come is God’s favor and blessing, while ‘harm’ as it relates to the life to come is God’s disfavor and chastisement. This being the case, those things which bring either God’s favor and blessing or His disfavor and chastisement are only referred to as sources of benefit or harm to the extent that one may apply to means the ruling which applies in actuality to the ends to which they lead, or to the extent that one may apply to causes the ruling which applies in actuality to their effects.

It is important that we bear in mind these self-evident truths as we examine the definitions which *uṣūl* scholars have offered of ‘benefit’ (*maṣlaḥah*)<sup>141</sup> and ‘harm’ (*mafsadah*). According to one scholar, for example, “‘interest’ may be defined as the achievement of benefit or the prevention of harm,”<sup>142</sup> while according to another, “benefit is

equivalent to pleasure or whatever leads to it, while harm is equivalent to pain or whatever leads to it.”<sup>143</sup> In other words, “Interest, or benefit, means nothing other than pleasure or that which serves as a means thereto, while harm means nothing but pain or whatever serves as a means thereto.”<sup>144</sup> However, we should not lose sight of the fact that definitions such as these are inclusive of both physical and non-physical types of pleasure and pain. It is with this in mind that Ibn ‘Abd al-Salām refines his definition, saying, “There are four types of interest or benefit, namely: pleasure and its causes, and happiness and its causes. Similarly, there are four types of harm, namely: pain and its causes, and sorrow or distress and its causes. Moreover, these are divided into worldly and otherworldly...”<sup>145</sup> Thus, in the realm of benefits, Ibn ‘Abd al-Salām draws a distinction between pleasure and happiness, and in the realm of harm, between pain, and sorrow or mental distress; in so doing, he draws attention to the fact that there are types of benefit and harm which are non-material in nature. Moreover, such non-material forms of benefit and harm are, without a doubt, included in the aforementioned definitions.

In his definition of worldly interests, al-Shāṭibī also draws attention to the non-material aspect of benefit and harm, saying, “What I mean by interests is whatever supports human life and well-being and ensures that people obtain whatever they need in the physical and non-physical dimensions, thereby enabling them to experience blessing on all levels.”<sup>146</sup>

Based on the foregoing definitions, then, the concept of benefit and harm as employed by Muslim scholars includes: (1) other-worldly benefits, their causes and the means by which they are attained, (2) other-worldly types of harm, their causes and the means by which they are attained, (3) earthly benefits, their causes and the means by which they are attained, and (4) earthly types of harm, their causes and the means by which they are attained. The essence of benefit, then, is pleasure and enjoyment, be it physical, emotional, mental or spiritual, while the essence of harm is pain or suffering, be it physical, emotional, mental or spiritual. Hence speaking of human beings’ interests in terms of pleasure and enjoyment in no wise means that they are limited to the satisfaction of lusts and bodily instincts;

rather, they include pleasures, sources of enjoyment, and benefits with numerous facets and dimensions; the same thing, moreover, may be said of harm.

In order to avoid any confusion in relation to the concept of 'interest,' al-Shāṭibī makes it clear that true interests are those which serve not to destroy life, but to support and nurture it, and which contribute to the attainment of blessedness in the life to come. He writes,

Whatever benefit is achieved and whatever harm is avoided are considered only on the basis of whether and how this earthly life prepares the way for the life to come; they are not considered on the basis of whether they help to satisfy the desire to achieve one's own interests and to avoid harm as these terms are ordinarily understood. For the Law has come in order to deliver human beings from [the tyranny of] their selfish desires and whims in order that they might become servants of God alone. And if this is true, then it is a truth which cannot be reconciled with the premise that Islamic Law was established in harmony with selfish ambitions and the pursuit of immediate gratification however one chooses. As our Lord has declared, "But if the truth were in accord with their own likes and dislikes, the heavens and the earth would surely have fallen into ruin, and all that lives in them [would long ago have perished]!" (Qur'an, 23:71) Hence, the Law takes into consideration that which is of greater significance, namely, the achievement of people's best interest – the pillar of both our material and spiritual existence – not what people happen to like or dislike.<sup>147</sup>

For this reason the Law has set limits and restrictions on the attainment and enjoyment of various types of benefits since, given human beings' impetuosity and shortsightedness, they may be concerned to achieve a certain benefit which is associated with various sorts of harm, or which will cause them to forfeit other benefits which are of greater importance than the benefit they seek. By the same token, they may seek to avoid some immediate type of harm, as a result of which they expose themselves to some other harm which is even greater. Or, in seeking immediate relief, they may bring prolonged suffering upon themselves or others. "Many a moment's

pleasure has given rise to untold grief and calamitous affliction.”<sup>148</sup>

This brings us to the matter of the overlap which often occurs between benefit and harm. A given action may be a source of benefit in one respect and a source of harm in another; it may bring short-term benefit, but ultimate harm, or vice-versa; similarly, it may bring benefit to one person, but harm to another. As it was said of old, “One man’s meat is another man’s poison.” What this means is that there is no such thing as ‘pure benefit’ or ‘pure harm.’ “This being the case, sources of earthly benefit and harm are to be assessed on the basis of which of the two elements is predominant: If the predominant effect [of a given thing, action, etc.] is beneficial, it is classified as a benefit as this term is customarily understood, whereas if its predominant effect is harmful, it is classified as a source of harm as this term is generally employed.”<sup>149</sup>

The overlap between benefit and harm was discussed by a number of al-Shāṭibī’s predecessors. Al-Qarāfī, for example, states,

...An inductive reading of Islamic Law leads one necessarily to conclude that there is no benefit which does not entail some degree of harm, however slight it may be in the long run, nor is there any type of harm which does not entail some degree of benefit, however slight it may be in the long term. As God Almighty states concerning intoxicants and games of chance, “Say: ‘In both there is great evil as well as some benefit for man; but the evil which they cause is greater than the benefit which they bring.’” (Qur’an, 2:219).<sup>150</sup>

Before al-Qarāfī, his shaykh Ibn ‘Abd al-Salām declared, “A pure benefit is a difficult thing to find.”<sup>151</sup> However, al-Shāṭibī’s treatment of the topic is distinguished by its objectives-based precision. Specifically, he states that when the Lawgiver enjoins a benefit which entails some degree of harm, it is not this harm which He intends, and when He prohibits some type of harm which entails a degree of benefit, it is not this benefit which is the object or intent of the prohibition:

If, judged by commonly accepted standards, it is a beneficial influence

which prevails by comparison with a harmful influence, then it is this benefit which is taken into consideration by the Law, and it is for the sake of its attainment that human beings are urged or commanded to engage in a certain action. If, by virtue of their thus acting, some harm or hardship results, it is not this harm or hardship which the Law intends by permitting or commanding this action. Conversely, if, judged by commonly accepted standards, it is a harmful influence which prevails by comparison with a beneficial influence, it is this harm which is taken into consideration by the Law, and it is for the sake of eliminating it that the Law prohibits the action concerned. And if, by virtue of a prohibited action, some benefit or enjoyment results, it is not in order to prevent this enjoyment or benefit that the act has been prohibited. What follows from all of this, then, is that the benefits which are taken into consideration by the Law are 'pure' and untainted by any sort of harm.<sup>152</sup>

Given the fact that in life's daily reality, there is this degree of overlap, intermingling and conflict between sources of benefit and harm, there needs to be a Law to which people submit and under whose authority they place themselves. This is the supreme, or 'universal' interest, since it is from this that all benefits arise and by which they are guaranteed. This truth is embodied in Islamic Law, because

the rulings of the Law encompass a universal interest, as well as a particular interest peculiar to each specific case. The particular interest is indicated by each piece of evidence as it relates to this or that case or circumstance; as for the universal interest, it is for every human being to be answerable to some specific precept of the Law in all of his movements, words and beliefs. Otherwise, he remains like a dumb beast left to roam at will until he is reined in by the Law.<sup>153</sup>

Another self-evident truth related to the concept of interest is that Islamic Law calls for the preservation of interests of all kinds and on all levels. As we have seen on more than one occasion, it calls for the preservation of what are termed 'essential' interests and their com-

plements, 'exigencies' and their complements, as well as the 'embellishments' no matter how insignificant they may appear to be. What this means is that Islamic Law neglects nothing, great or small, in the realm of benefit and harm. Moreover, anything which is not included in its specific texts has been included in its general ones.

What I have just stated may appear to be problematic when viewed in relation to the division of interests into the three categories of 'recognized interests' (*maṣāliḥ mu'tabarāh*), 'nullified interests' (*maṣāliḥ mulghāh*), and 'unrestricted interests' (*maṣāliḥ mursalah*). Based on this division, universally recognized among *uṣūl* scholars, the Law only undertakes to preserve the first type of interests, that is, 'recognized interests,' whereas it is silent on the third type ('unrestricted interests'), and has abrogated the second type ('nullified interests'). If this is taken to be true, then Islamic Law preserves only one type of interest and either abrogates or neglects all others!

Now, the fact of the matter is that the interests which the Law has abrogated, that is, the 'nullified interests' based on the aforementioned division, are, more properly speaking, interests which have been relegated to a place of lower priority due to the fact that they come in conflict with interests which are considered to be of greater importance or urgency. Hence, the preservation of that which is viewed as of most importance is given priority over the preservation of other interests if it is difficult or impossible to preserve them both simultaneously. However, this involves no abrogation or nullification of the interest per se. The clearest example of this phenomenon may be seen in the verse quoted above on the matter of intoxicants and games of chance. The verse states clearly that intoxicants and games of chance involve both harm and benefit; however, the harmful aspects of these things are numerous, in addition to which they affect society as a whole, whereas the benefits which they offer are few and affect only certain individuals. Consequently, the Lawgiver has chosen to disregard the few benefits which might be enjoyed as a result of intoxicants and games of chance and chosen instead to preserve the public interest and ward off the harm which they cause by prohibiting them. Even so, the benefits which have been negated in this case have not been negated unconditionally or absolutely. For

if we assume that the benefits offered by intoxicants and games of chance are things such as financial profit, the pleasurable feeling of being 'high' by drinking, or of winning at the gambling table, such benefits are not negated entirely by the Law, which has permitted innumerable means by which such pleasures can be experienced; however, such permissible means are not associated with sources of harm which are equal to or greater than the benefits they offer, nor do they cause one to miss out on some interest which, by comparison, is of greater importance.

Hence, the 'nullification' of certain interests is, in point of fact, none other than the preservation of human beings' true interest. This truth may be seen in all 'nullified interests,' which have only been nullified in specific cases whereas they are recognized and preserved in innumerable other cases. What this means is that the preservation of human interest – whatever the interest happens to be – is always the fundamental principle. As for nullification, it will only apply in limited cases and in respect to particular individuals. Moreover, such nullification entails the preservation of other aspects of these individuals' interests and the interests of others as well. At the same time, it must be remembered that interests which have been nullified in such situations have not be forfeited entirely or unconditionally; rather, there are numerous legitimate avenues by means of which they may be realized. Al-Qāḍī Abū Bakr ibn al-ʿArabī states in this connection,

When the Creator, Glory be to Him, in His peerless wisdom, created for us all that is on earth as He has told us He did, He apportioned things in such a way that there were things which He would allow unconditionally, others which He would allow in some situations but not in others, and still other things which He would allow in one respect but not in another. However, if there is anything on Earth which is never allowed in any respect or under any circumstances, I have yet to encounter it.<sup>154</sup>

As for what are termed 'unrestricted interests,' or 'public welfare,' they are, similarly, not interests which have been neglected or about

which the Lawgiver has nothing to say. In other words, they are not 'unrestricted' in the absolute sense; rather, they are 'unrestricted' only in the sense that there is no specific, explicit mention of them in the texts of Islamic Law. However, insofar as they are, in fact, interests, and even more importantly, insofar as they belong to the category of that which is good and beneficial, it could well be said that there is no such thing as an 'unrestricted interest' at all. After all, what interest could remain 'unrestricted' given God Almighty's command, "and do good, so that you might attain to a happy state!" (Qur'an, 22:77) or His declaration that "Behold, God enjoins justice, and the doing of good" (16:90)? Indeed, God makes clear that He sent His Messenger to people in order to "enjoin upon them the doing of what is right and forbid them the doing of what is wrong" (7:157), He spurs the believers on to do "righteous deeds,"<sup>155</sup> and He commands them to cooperate in doing what is good, saying, "help one another in furthering virtue and God-consciousness" (5:2).

People are commanded, in these and other passages of the Qur'an, to do good, act justly, be kind to others and commit themselves to a life of righteousness; not only this, but they are commanded to help one another in furthering all such virtues. On this their ultimate spiritual well-being depends, and there will be no true well-being for them, whether in this life or the life to come, by any other path:

Consider the flight of time! Verily, man is bound to lose himself unless he be of those who attain to faith, and do good works, and enjoin upon one another the keeping to truth, and enjoin upon one another patience in adversity. (Qur'an, 103:1-3)

Worthy of reflection in this connection is the hadith which Imam Muslim narrates on the authority of Majāshī' ibn Mas'ūd al-Sulamī, who said, "I came to the Prophet with the intention of pledging myself to emigrate [to Madinah], but he said to me, 'Those who were meant to emigrate have already done so; as for you, pledge yourself to Islam, jihad, and the doing of good.'" In fact, any one of the passages quoted here would be sufficient by itself to show that there is no true interest or benefit which is not required of us and included

within the sphere of Islamic Law and its concern.

In addition, there is unanimous agreement among Muslim scholars – regardless of their varied specialties and schools of thought and the various ages in which they have lived – that Islamic Law calls for the preservation of the ‘essentials,’ ‘exigencies’ and ‘embellishments,’ and that the interests whose preservation is the most vital are: religion, human life, the faculty of reason, progeny and material wealth. Similarly, there is a consensus that “whatever contributes to the preservation of these five essentials is a benefit, and everything which causes them to be forfeited is a source of harm, while its prevention is a benefit.”<sup>156</sup>

Is it possible, then, to imagine an interest which falls outside the scope of service to these essentials on the three levels mentioned here? I, for one, find it impossible to conceive of. Imam al-Ghazālī declares, “Properly speaking, unrestricted reasoning (*al-istidlāl al-mursal*)\* in connection with the Law is so inconceivable that we can speak of it in terms of neither negation nor affirmation...”<sup>157</sup>

It follows, then, that all interests are ‘recognized interests,’ and that there is no such thing as an interest which is either ‘unrestricted’ or ‘nullified’ in the absolute sense.

### Identifying Interests Through Human Reason

The question of whether interests may be identified through human reason is, more or less, the equivalent of what has been known in the realms of scholastic theology and the fundamentals of jurisprudence as the question of *al-tahṣīn wa al-taqbīḥ*, that is, whether it is possible through human reason to determine whether a given act is good and praiseworthy, or evil and blameworthy, or whether this can only be determined based on explicit declarations of the Law. The reason I say that it is ‘more or less’ equivalent to this age-old question is that, firstly, I do not wish to review the debates which have raged over this question and, secondly, I do not wish to enter the labyrinths of what is known as scholastic theology. Rather, I want to treat the subject only to the degree necessary. I have chosen to raise this issue in light of its importance for and influence on the question of how

interests can be identified, and because al-Shāṭibī himself was not completely free of its negative impact, by which I mean specifically his having been influenced by the Ash‘arite perspective on this question. And in fact, this Ash‘arite perspective is still extant, if not dominant, to this very day.

In the course of discussing the theme of *al-tahsīn wa al-taqbīh*, it will be possible for us to observe some manifestations of al-Shāṭibī’s Ash‘arite leanings in this area, as well as the features of the Ash‘arite perspective on *al-tahsīn wa al-taqbīh*.

Al-Shāṭibī states directly that his view is based on what has been established in scholastic theology – by which he also means Ash‘arite scholastic theology. In the tenth premise, he affirms – as would any Muslim – that “if textual and rational evidence are in mutual agreement concerning legal questions, the textual evidence must be given priority over the rational such that reason is given only the degree of latitude which the textual evidence allows.”<sup>158</sup> He then proceeds to offer evidence in support of this statement. He affirms, for example, “that according to the findings of scholastic theologians and scholars of *uṣūl al-fiqh*, reason does not judge things to be either good or bad.”<sup>159</sup> In other words, it is not able, nor does it have the right, to judge things and actions as being good or evil, that is, to be sources of either benefit or harm.

The basis for this denial is that in the Ash‘arite view, things and actions are neither good nor evil in and of themselves. Hence, they ask, how could the mind perceive that which is ‘nonexistent,’ that is, the goodness or badness of things, or their usefulness or harmfulness? According to the Ash‘arites, nothing may be said to be either good or evil unless the Law declares it to be so. Without the Law’s declaration of something to be good or evil, there is no such thing as ‘goodness’ or ‘evil;’ moreover, this applies to everything without exception. Al-Shāṭibī reiterates this same view, saying:

The fact that a benefit is a benefit or that a source of harm is a source of harm is determined based on the ruling of the Law. Given the negation of *al-tahsīn wa al-taqbīh*, this is a matter which concerns the Lawgiver alone, and human reason has no role to play in it. If the Lawgiver has

issued a ruling concerning a given benefit, it is He who has established it as a benefit; otherwise, it would be possible, logically speaking, for the same entity not to be a benefit. For all things are, in essence, equal, and it would be impossible for reason to declare some good and others bad. Consequently, the fact that a benefit is a benefit is determined by the Lawgiver alone; this is a reality to which human reason gives assent and which the human soul accepts in tranquillity.<sup>160</sup>

Al-Shāṭibī affirms this message in another context as well, and with even greater clarity, saying, “On the level of mere logic, actions and omissions, in so far as they are actions and omissions, are all identical with respect to what is intended by them, since human reason is incapable of declaring things to be either good or bad.”<sup>161</sup> Unlike *uṣūl* scholars and Ash‘arite theologians who discuss the question of *al-taḥṣīn wa al-taqbīḥ* at length and refute the Mu‘tazilites’ views in detail, al-Shāṭibī touches on the matter only briefly. Yet despite this fact, Ash‘arite influence is evident in what he writes, since he denies the view that actions can be spoken of as good or bad in themselves, that is, the view that actions are, in and of themselves, sources of either benefit or harm. Rather, he affirms that with respect to human reason, actions and omissions are equal and identical. He thus holds that human reason is incapable of declaring actions to be either good or bad, which is the essence of Ash‘arite theory. Imam al-Juwaynī, a leading Ash‘arite thinker, states,

‘Goodness’ is not an attribute which inheres in things or actions and which is perceived by means of the Law. Rather, ‘goodness’ is, itself, the Law’s commendation of the person who engages in the act concerned; and the same applies to ‘badness.’ Hence, when we describe an action as being either obligatory or prohibited, we do not mean by this that the obligatory act in question possesses some attribute by means of which it is distinguished from that which is not obligatory. Rather, what is meant by ‘obligatory’ is simply an act which the Law has declared to be required, while what is meant by ‘prohibited’ is simply an act which the Law has declared to be forbidden.<sup>162</sup>

In opposition to the Ash'arite view there are two other theories, namely, those of the Mu'tazilites and the Maturidites. According to the Mu'tazilites, goodness and evil are rationally discernible properties; that is to say, things, actions and omissions may rightly be described as beneficial or harmful before a legal ruling declares them to be so. Hence, the mind is capable of perceiving and affirming these properties. However, the Mu'tazilites go further than this to claim that in the absence of a legal ruling, sensible, rational human beings are held accountable (to God) by virtue of reason alone. What this means is that just as legal rulings may be confirmed by divine revelation, so also may they be confirmed by human reason.

As for the Maturidites and other fair-minded people willing to investigate matters with care, they agree with the Mu'tazilites that goodness and evil are rationally discernible properties. However, this premise does not lead them to the same conclusion as that of the Mu'tazilites. Hence, they do not hold that legal rulings and obligations may be confirmed by means of human reason alone; rather, they hold that this confirmation requires hearing/divine revelation as well.

The Mu'tazilite point of view passed out of existence along with its proponents, and is only mentioned now by way of refutation and criticism. The Ash'arite theory, however, has survived and spread; in fact, there are still writers who adopt it lock, stock and barrel despite the fact that the circumstances which gave rise to it ceased to exist centuries ago. Muhammad Said al-Buti, for example, states,

Benefit and harm as spoken of in relation to actions are no more than an effect and result of the Lawgiver's rulings on things such that some are prohibited, others are allowed, others are commanded, and so forth. Otherwise, as we have stated, it would be invalid to speak of interests as a branch of the religion.<sup>163</sup>

What this means is that the benefit or harm which we attribute to things and actions is nothing but a fruit of the revelation of divine Laws, and that before these revelations and their associated rulings were received, there was no such thing as either benefit or harm!

Moreover, according to al-Buti, a failure to affirm this view necessitates the invalidity of the claim that interests or benefits are a branch of the (Islamic) religion.

Al-Buti then continues, saying, "As for the claim that God's judgments follow upon interests and benefits, this is false, and is denied by the majority of Muslims,<sup>164</sup> since it contradicts the established view that there is no such thing as 'goodness' and 'badness' as rationally discernible properties of actions."<sup>165</sup> In so saying, al-Buti is making a claim of the utmost seriousness which flies in the face of the most self-evident truths. Nevertheless, the only evidence which he adduces in its support is "the established view" that 'goodness' and 'badness' as rationally discernible properties do not exist! It remains to ask, then: Who has established this view? How was it established? And what validity can it claim? However, it is not advisable to raise such questions, since this might disprove what he himself has established!

As for the fact that the view which al-Buti has established – and which he has adduced as evidence for further conclusions – flies in the face of self-evident truths, this was sensed by those who first advocated it. Al-Juwaynī, for example, states,

We do not deny that people's reason requires them to avoid perils and to seek out whatever benefits are possible for them, the details thereof varying from one situation to another. A refusal to recognize this would be senseless, for this is human beings' right. Rather, what we are speaking of has to do with what is judged to be good or bad in the judgment of God Almighty.<sup>166</sup>

In the statement just quoted, al-Juwaynī appears to have loosened himself from the grip of the Ash'arite theory and joined ranks, or nearly so with the Maturidites, since he has acknowledged that, with or without the Lawgiver's rulings, there are sources of harm and benefit which people recognize and among which they distinguish by virtue of logic and common sense, a process which leads them necessarily to avoid the former and seek out the latter. And herein lies the meaning of the statement that 'goodness' and 'badness' are

rationality discernible properties.

Al-Juwaynī had no choice but to extend this degree of recognition to the human ability to recognize good and bad, a number of Shafi‘ites – who were also Ash‘arites, of course – have been known for their frank disagreement with the Ash‘arite theory; such thinkers have defended the affirmation of goodness and evil as rationally discernible properties and the human ability to recognize them by means of the faculty of reason. Ibn al-Qayyim states,

The Shafi‘ite imams who have taken this position include the great fiqh scholar, Imam Abū Bakr Muḥammad ibn ‘Alī ibn Ismā‘īl, who went to great lengths to affirm it. Indeed, he employs it as the basis for his book, *Maḥāsīn al-Sharī‘ah* in which he expounds it with mastery. Imam Sa‘īd ibn ‘Alī al-Zanjānī was vehement in his criticism of Abū al-Ḥasan al-Ash‘arī for his denial of *al-taḥsīn wa al-taqbīḥ* and for taking this position when no one before him had done so. Others who were critical of the Ash‘arite theory include Abū al-Qāsim al-Rāghib, Abū ‘Abd Allāh al-Ḥalīmī, and countless others.<sup>167</sup>

Among the Shafi‘ite scholars who are not mentioned by Ibn al-Qayyim – nor by Ibn al-Subkī in the passage to be quoted from him below – is ‘Izz al-Dīn ibn ‘Abd al-Salām, who exerted great efforts to counter the Ash‘arite perspective. He writes:

Most sources of earthly benefit and harm are discernible through human reason. Hence, there is no sensible person – even before the revelation of the divine Law – who would fail to realize that the attainment of pure benefit and the prevention of pure harm, whether for one’s own sake or for someone else’s, is a praiseworthy, desirable thing. There is universal agreement among the wise and prudent, as well as among the various divinely revealed Laws, on the sacredness of human life, chastity, material wealth and honor... and wherever disagreement has occurred, this has most often been due to differences of priority and degree.<sup>168</sup>

However, denial that benefit and harm, or righteousness and cor-

ruption, are attributable to actions or that these can be discerned to a significant degree through human reason alone, is not only unreasonable, but an expression of disregard for the explicit message of untold numbers of texts from Islamic Law itself. The Qur'an has commanded us to do good and to conduct ourselves in righteousness and kindness while forbidding us to engage in evil, corruption or what would be counter to reason; it has commanded us to act with justice and charity while forbidding shameful conduct and envy. Not only this, but it informs us that it has declared lawful that which is good and wholesome while declaring unlawful that which is baneful and injurious. If these commands and prohibitions had not conveyed meanings which would be recognized by those to whom they were addressed, there would have been no use in issuing them. Who would deny that at the time when people were addressed with these precepts, they were fully capable of comprehending their import and significance? And who would deny that they were addressed with these words on the assumption that this understanding would be present? Indeed, they fully appreciated what they were hearing, and as a consequence, they realized that anyone who would command goodness and righteousness and prohibit evil and corruption without violating any of his own precepts could not possibly be a deceiver. And it was on this basis that a number of the most upstanding Arabs took the initiative to embrace Islam simply because they so fully appreciated the truth and righteousness which it called for, as well as the error and corruption which it prohibited.

In a hadith related by Ibn Mājah on the authority of 'Alī we read that, "God commanded His Prophet to present His message to the Arab tribes. Hence, he went and stood before the elders' council of Shaybān ibn Tha'labah during the [pilgrimage] season, calling upon them to embrace Islam and to lend him their support. One of the elders by the name of Mafrūq ibn 'Amrū asked him, 'To what exactly are you calling us, O brother of Quraysh?' In response, the Prophet recited to him the words, 'Behold, God enjoins justice, and the doing of good, and generosity towards [one's] fellow-men; and He forbids all that is shameful and all that runs counter to reason, as well as envy; [and] He exhorts you [repeatedly] so that you might bear [all

this] in mind' (Qur'an, 16:90). The elder replied, saying, 'If so, then you are most certainly calling us to the most noble of morals and the most virtuous of deeds, and those who have disbelieved and opposed you are deceivers'."169 It was with this same appreciation for Islam's call to truth and justice that al-Ṭufayl ibn 'Amrū al-Dawsī, leader of the Daws tribe, embraced Islam. He relates the story of his conversion, saying, "...The Messenger of God presented Islam to me and recited the Qur'an in my hearing. And I tell you truly, never in my life had I heard words more excellent, nor precepts more just. Hence, I surrendered to God in Islam and uttered the testimony of truth..."170

The Qur'an addressed its hearers with truth and commanded them to act justly, rebuking them for practices which were contrary to reason and condemning the falsehood in which they were living. And for their part, they hastened to embrace the goodness which they had heard and whose beauty and munificence they could sense. As for those who dragged their feet, hesitated or shunned the message altogether, it was because defensiveness and pride had kept them in bondage to their wrongdoing, while their egos and personal inclinations held sway over their better judgment. Qatādah, the second-generation Qur'anic commentator, has been quoted as saying,

There is no virtue which was practiced and approved in the pre-Islamic era but that God commands it in this verse.<sup>171</sup> Nor is there a vice for which they were accustomed to reviling each other but that He prohibits and condemns it. For God forbids all immoral .<sup>172</sup>

When the Messenger of God received pledges of allegiance from a group of women after the conquest of Makkah, he did so based on the following conditions as stipulated by God Almighty:

O Prophet! Whenever believing women come unto thee to pledge their allegiance to thee, [pledging] that [henceforth] they would not ascribe divinity in any way to aught but God, and would not steal, and would not commit adultery, and would not kill their children, and would not indulge in slander, falsely devising it out of nothingness, and would not

disobey thee in anything [that thou declarest to be] right – then accept their pledge of allegiance and pray to God to forgive them their [past] sins: for, behold, God is Much-Forgiving, a Dispenser of Grace. (Qur'an, 60:12)

In this context, Hind bint 'Utbah (Abū Sufyān's wife) came and pledged her allegiance to the Prophet based on these conditions, one after another. And when he declared to her the condition that she must "not indulge in slander, falsely devising it out of nothingness," she said, "Indeed, slander is a reprehensible thing, and what you enjoin upon us is nothing but right guidance and the noblest of morals."<sup>173</sup>

Let us also recall and reflect on the memorable stance taken by that great woman, Mother of the Believers Khadījah bint Khuwaylid about which we read in the account of how the revelation first came to the Prophet. The Messenger of God came home to her one day in a state of terrible fright over the revelation he had just received, relating to her what had happened to him with the words, "I fear for myself!" to which Khadījah replied, "Fear not for yourself! Rather, be of good cheer. For truly, God will never put you to shame. And truly, you are destined to reunite kith and kin, speak words of truth, bear the burdens of all, come to the aid of the needy, receive guests with hospitality, and assist [others in enduring] misfortune."<sup>174</sup>

Reflection on this situation and these words has led me to three observations, all of which bear witness to the reality of 'goodness' and 'badness' as rationally discernable properties: (1) The Prophet had been graced with these moral virtues prior to receiving divine revelation or being sent out as a prophet. Moreover, he himself had judged these qualities to be desirable by virtue of his sound mind and his uncorrupted nature. (2) Khadījah likewise judged these qualities and actions to be good and desirable and was pleased with these aspects of her husband's character and conduct, viewing them as examples of his noble morals and virtues. Moreover, she did not rely in this assessment on any sort of legal ruling. (3) Khadījah was certain that such conduct could only be met with divine love and approval, and that the person who had conducted himself in such a

manner was bound to receive sustenance, honor and the finest reward from God Almighty.

I wonder what response would be offered by those who deny ‘goodness’ and ‘badness’ as rationally discernible properties to the way in which God Almighty describes a number of specific things and actions, as, for example, His description of intoxicants, games of chance, idolatrous practices and the divining of the future as “a loathsome evil” (Qur’an, 5:90), His description of adultery as “an abomination and an evil way” (17:32), or His description of women’s menses as “a vulnerable condition” (2:222). The question here is: Did the aforementioned entities and actions meet these same descriptions before the revelation of the text of the Qur’an and from the time they came into being? Or did they only take on these qualities after the text caused them to do so? God Almighty does not tell us that intoxicants and games of chance have become “a loathsome evil,” that adultery has become “an abomination and an evil way,” or that women’s menses have become “a vulnerable condition.” Rather, He informs us of what they already are, on the basis of which He cautions us against them and prohibits them.

Hence, the corruption caused by intoxicants and games of chance, the abominable nature of adultery, and the vulnerability of a woman experiencing menstrual flow are all realities which existed before the Law was revealed, and which have continued to exist since then. It is not, as Ibn Ḥazm has claimed – and in which claim he is in full agreement with the Ash‘arites despite his vehement opposition to them – that “prior to the Qur’anic prohibition of them, games of chance were not known to cause enmity among people or to have caused anyone to lose his senses. On the contrary, they were known to be fully consonant with people’s natures and needs!” Similarly in the case of intoxicants, Ibn Ḥazm holds that prior to being prohibited by Islamic Law, they were not a cause of corrupt morals for those who imbibed in them. “On the contrary, we find that many people weep when they are drunk, constantly remembering the afterlife and death, fearing Hell, glorifying God Almighty and praying to Him for the ability to repent and receive forgiveness. We find that such people, when intoxicated, become noble-minded and magnanimous,

while a great deal of their foolishness departs from them and they cease to pose any danger to others!"<sup>175</sup>

In days of old, polytheists justified the abominable practices in which they engaged by stating that they had been adhered to by their forebears, and that God had commanded them to do so as well. In response, God rebukes them, saying, "Say, 'Never does God enjoin deeds of abomination. Would you attribute unto God something of which you have no knowledge?' Say, 'My Sustainer has [but] enjoined the doing of what is right...'" (Qur'an, 7:28-29). Commenting on this passage, Imam Ibn Taymiyah states,

In the context of rebuking them, God declares concerning Himself that He does not enjoin acts of abomination. On this basis we know that it would not be possible for Him to enjoin such acts; moreover, this impossibility could not attain unless such acts were, in and of themselves, evil. This is the declaration of someone who affirms that the properties of 'goodness' and 'badness' inhere in the acts themselves. Moreover, this same affirmation would be made by the majority of scholars.<sup>176</sup>

Ibn Ashur states,

God's declaration, "Say, 'Never does God enjoin deeds of abomination,'" is a refutation of their allegation that God has commanded them to engage in such acts, that is, in acts of abomination. It is a response to them, an instruction for them, and a means of rousing them out of their self-deception, for God is characterized by perfection; hence, He would not command that which is an imperfection and which would thus never be approved or accepted by people of discernment and wisdom. An act's being an abomination is sufficient to demonstrate that God would not enjoin it, since God is the Possessor of supreme perfection.<sup>177</sup>

He also states, "Such acts were thus characterized as being abominations before the Law was revealed."<sup>178</sup>

Ibn Qayyim al-Jawziyyah has written eloquently on this topic in

his book, *Miftāḥ Dār al-Sa‘ādah wa Manshūr Walāyat al-‘Ilm wa al-Irādah*. In addition to numerous other pieces of textual evidence which he both cites and explicates, Ibn al-Qayyim quotes the words of God Almighty in which He describes the Prophet as one who will “make lawful to them the good things of life and forbid them the bad things” (Qur’an, 7:157). Commenting on this passage, he states,

This is an explicit declaration that those things permitted [by the Prophet] were among ‘the good things of life’ before he expressly permitted them, and that those things forbidden were among ‘the bad things’ before he forbade them. The ‘goodness’ of the former and the ‘badness’ of the latter are not derived from the fact of the former’s being permitted and the latter’s being forbidden, and concerning this two observations are in order. The first aspect has to do with the fact that this [i.e., the Prophet’s making lawful the good things of life and forbidding the bad things] is one of the signs of prophethood on the basis of which God is urging the People of the Book to acknowledge and follow him. He speaks of “those who shall follow the Apostle, the unlettered Prophet whom they shall find described in the Torah that is with them, and [later on] in the Gospel: [the Prophet] who will enjoin upon them the doing of what is right and forbid them the doing of what is wrong, and make lawful to them the good things of life and forbid them the bad things, and lift from them their burdens and the shackles that were upon them [aforetime]” (Qur’an, 7:157). Now, if the ‘goodness’ and ‘badness’ of these things were based solely upon his having permitted or forbidden them, this would not serve as any sort of proof of his prophethood. Rather, it would be like saying, “He makes lawful to them that which is lawful, and he forbids them that which is forbidden!” This, of course, would be invalid [as evidence in favor of his special status], since it would prove nothing. As for the second aspect: We have seen that he made lawful that which was already good in and of itself; by thus declaring it lawful, he vested in it still another level of goodness, thereby causing it to be good in both respects.<sup>179</sup>

If you think carefully on this, it will reveal to you the secrets of the Law and enable you to perceive its beauties and perfection, its brilliance and

grandeur. It will thus become clear to you that, in the wisdom of the Wisest of those who judge, it would have been impossible for the Law to take any form but the one which it has taken. Indeed, God is far above all that does not befit His Glory and perfection. "Say, 'Verily, my Sustainer has forbidden only shameful deeds, be they open or secret, and [every kind of] sinning, and unjustified envy, and the ascribing of divinity to aught beside Him – since He has never bestowed any warrant therefor from on high – and the attributing unto God of aught of which you have no knowledge.'" (Qur'an, 7:33) This is further evidence that such deeds are shameful in and of themselves and would thus not be approved by any reasonable person. Hence, they have been forbidden due to their shamefulness.<sup>180</sup>

If the truth be told, the Ash'arites who have denied 'goodness' and 'badness' as rationally discernible properties which inhere in things and actions have been carried along by the force of the longstanding, contentious debate between them and their Mu'tazilite opponents. Abū al-Ḥasan al-Ash'arī, who was the first person to declare this perspective, had once been a member of Mu'tazilite circles, after which he had broken with them. Consequently, it may be said that the Ash'arite theory first emerged out of struggle and thrived by virtue of this same struggle. As the days, years and, indeed centuries passed, this struggle only grew fiercer and more intractable, while 'reaction' against the Mu'tazilites was such a dominant feature of Ash'arite thought that opposition to the Mu'tazilites became a kind of 'personal obligation' for every Ash'arite thinker!

Hence, when some Ash'arites fell short of fulfilling this obligation, they were criticized and spoken of as not having a strong foothold in scholastic theology. An example of such a departure from the norm is some Ash'arites' agreement with the Mu'tazilites' statement that "gratitude to the Bestower of Blessings is a duty which is discernible through human reason." Ibn al-Subkī states,

This position has likewise been taken by some of our companions, including al-Ṣayrafī, Abū al-'Abbās, Ibn Surayj, al-Qaffāl al-Kabīr, Ibn Abī Hurayrah, al-Qāḍī Abū Ḥāmid, and others. Al-Qāḍī in his *al-*

*Taqrib*, Abū Ishāq in his *Uṣūl*, and Abū Muḥammad al-Juwaynī in his *Sharḥ al-Risālah* make apologies for those of our companions who have expressed agreement with the Muʿtazilites by stating that they do not have a solid foothold in scholastic theology. Perhaps they read some of the Muʿtazilites' books and approved of the statement that "gratitude to the Bestower of Blessings is a duty which is discernible through human reason," then proceeded to adopt it, unaware of the fact that it arises from the principles of determinism.<sup>181</sup>

Still another example of the peculiar effects to which contentions and struggles can lead is that we find even Imam al-Ghazālī – the giant of Islamic thought – expressing fear and caution lest the Muʿtazilite influence attributed to those mentioned above be attributed to him as well. For just at the point where he is about to state expressly that human reason is able to discern that which is beneficial, he reverts to cautious phrasing. In connection with the necessity of preserving human life, he writes, "Even if divinely inspired laws had not been revealed, human reason would sense this necessity and rule in its favor. Moreover, this principle is one which – according to those who affirm the human mind's ability to recognize things as good or bad – no law can disregard."<sup>182</sup> And even if we say that God, Glorious and Exalted is He, is free to do as He wishes with His servants and that He is not obliged to guard righteousness (*ṣalāḥ*) by providing the conditions conducive to obedience to His commands, neither do we deny that human reason inclines toward the notion of benefit and harm..." He then continues – and here we reach the main point – saying, "We have pointed this out lest we be associated with the Muʿtazilites' belief. Those who seek right guidance will not be offended at what I am saying for fear of being besmirched by an abandoned doctrine, condemnation for which is instilled in the hearts and minds of all those who adhere to orthodox Muslim belief. Hence, let it be believed – based on this interpretation<sup>183</sup> – that human reason leads to forcible prevention of murder through *al-qīṣās*, or the law of retribution."<sup>184</sup> That is to say, human reason approves of the law of retribution as a means of preserving human life and as a way of forcibly preventing attacks upon it, even

if there is no law which prescribes such a punishment.

In the above quotation by Ibn al-Subkī, he mentions the names of some Ash'arites who agreed with the Mu'tazilites in respect to certain aspects of the question under discussion, noting that later Ash'arites felt the need to apologize on their behalf; in other words, they sought to make excuses for them. Now, however, we need to apologize on behalf of those who denied self-evident truths and defended illusions and fantasies simply in order to vex and contradict the Mu'tazilites. One excuse with which one might defend them is that most Ash'arite writings limit the dispute over this question to the exchanges which took place between the Ash'arites on one hand, and on the other, Mu'tazilites who held particular views, as a result of which the student (reading such texts) would be alienated from the Mu'tazilites in view of their (apparent) excesses and bad reputation and find himself with no choice but to adopt and defend the Ash'arites' views. This difficulty is pointed out also by Muhammad Bakhit al-Muti'i, then-Mufti of Egypt and a Ḥanafite, who writes,

Indeed, most Shafi'ite books dealing with the fundamentals of jurisprudence lack any detail relating to Ḥanafite teaching. Instead, they simply attribute the claim that goodness and evil may be discerned through human reason to the Mu'tazilites despite the fact that many of the Shafi'ites who have passed on Ḥanafite teachings have chosen the 'middle' position held by most Ḥanafites, since it is attested to by the Qur'an and the Sunnah.<sup>185</sup>

Perhaps their most cogent excuse, or argument, is that affirming the ability of human reason to discern good and evil, that is, its ability to recognize sources of benefit and harm, opens the door for atheists and those who deny prophethood to claim that there is no need for either the sending of messengers or the Law, since human reason renders them superfluous. There have, in fact, been those who make this claim, such as the Brahmans, certain philosophers, and others. Among them are those who claim that there is no need for a Law or a Lawgiver other than human reason, while others hold that such things are needed by simple, common folk but not by the

intellectual elite.<sup>186</sup> According to this view, acknowledgment of human reason's ability to recognize good and evil opens the door either to unending dissent and temptation, or to dissent and temptation which 'end' with a repudiation of the religion and its Law.

Now, although this concern is realistic to a certain extent, it should not lead us to disregard the facts. For falsehood cannot be refuted by means of falsehood, just as the truth cannot be defended through denial of the truth. Such an approach, on the contrary, merely leads to the weakening of the truth and the strengthening of falsehood. The claim that affirmation of human reason's ability to discern good and evil leads to the conclusion that one can do without the religion and its Law is disproved by the following three points:

1. It is reason itself which leads to belief in the prophets and the message they have brought as the undeniable truth. This is the firm foundation for the necessity of following the prophets and their Law, that is, inward conviction and certainty concerning the prophets' veracity and their having been sent by the Lord of the Worlds. Hence, a reasonable person has no real choice but to recognize and submit to the indisputable evidence and proofs of the Apostle's veracity.
2. Reason itself leads to the conviction that the content of Islamic Law preserves human interests in the most perfect manner. Even if it does not perceive this in detail, it nevertheless perceives it in an overall sense. Moreover, it may be observed in the cases of those who study the Law that the more profound and thorough their understanding of it becomes, the more fully they appreciate its beauties and the consummate manner in which it preserves human interests, from the most general to the most specific.
3. The affirmation that sources of benefit and harm can be discerned by human reason does not mean that human reason's perception of things is perfect or complete. On the contrary, human reason is capable of realizing some things and not realizing others; some

of its perceptions are accurate, while others are mistaken. This point is expounded by Ibn al-Qayyim, who writes,

The most that human reason can do is to perceive in general terms the goodness or evil of those things which are detailed by the Law. Hence, human reason perceives such things in general, while the Law clarifies them in detail. The mind is able, for example, to perceive the goodness of justice; however, it may not be capable of discerning whether such-and-such an act is just or unjust in each and every situation. Similarly, it is incapable of discerning the goodness or evil of each and every action. Divinely revealed laws come to detail and clarify such matters, and in the case of those things which the mind perceives distinctly, the Law comes to confirm them. If there are actions which are good at one time but evil at another and if the mind is unable to distinguish between the times when they are good and the times when they are evil, the Law clarifies the matter by enjoining them at the times when they are good and prohibiting them at the times when they are evil. Similarly, a given act may involve both benefit and harm, yet human reason may not know whether the benefit entailed by the action is greater than the harm, or vice-versa. In such a situation, the mind hesitates; hence, the Law brings clarity by enjoining that which brings greater benefit than harm and forbidding that which brings greater harm than benefit. Similarly, a given action may bring benefit to one person, but harm to another without the mind's realizing to which person it is beneficial and to which person it is harmful. In such a situation, the Law eliminates the confusion by enjoining the action for those to whom it is beneficial and by forbidding it to those for whom it would be harmful. Or, this or that action might appear to be harmful, yet in reality, bring great benefit which the mind can only perceive with the aid of the Law; examples of this type of action include engaging in jihad and bloodshed for God's sake. Some other action, by contrast, might appear to be beneficial yet, in reality, bring great harm which the mind cannot perceive; hence, the Law makes clear the benefit and/or harm brought by this or that action.

At the same time, what reason fails to perceive by way of the goodness

or evil of specific actions is no less than what it is capable of perceiving. Hence, there is a clear need for messengers sent by God; indeed, there is nothing which the world needs more than God's messengers, may blessings be upon them all.<sup>187</sup>

Al-Shāṭibī deals repeatedly with the inadequacy of the mind's ability to discern sources of benefit and harm, and in support of this point he frequently cites the example of the peoples to whom no prophet had been sent, and who fell into confusion, miscalculation and misguided conduct. Al-Shāṭibī notes that "with their minds they perceived things which were in agreement [with the Law] and which the Law both confirmed and corrected...However, by comparison with the things they failed to perceive correctly, these were quite few. Consequently, they were both excused [for their errors] and warned, and God sent the prophets."<sup>188</sup>

The inadequacy of human reason is attested to by the fact that any one of us might, at a given time, believe that he or she has fully investigated a certain matter, or that he or she has acquired exhaustive experience and understanding of it, only to find after some time has passed that he or she is discovering or coming to understand aspects of this same reality which he or she had not been aware of before.<sup>189</sup> In addition, there are things our estimation of which is influenced by our personal inclinations, instincts and desires in such a way that we are unable to see them as they really are or the final effects to which they will lead: "How many pleasures are viewed by human beings as benefits, whereas they are deemed the very opposite by the rulings of the Law? Such is the case with adultery, partaking of intoxicants, and all [other] forms of immoral conduct which relate to the fulfillment of some immediate objective."<sup>190</sup> Hence, "the interests upon which human well-being rests are known fully to none but their Creator and Establisher; as for human beings, they know only some aspects thereof."<sup>191</sup>

At this point al-Shāṭibī makes reference to 'Izz al-Dīn ibn 'Abd al-Salām,<sup>192</sup> who states unconditionally that sources of earthly benefit and harm are recognized on the basis of human necessities, experiences, customs, beliefs, and sound, commonly acknowledged suppo-

sitions, and that whoever wishes to recognize the occasions for benefit and harm and to identify those which are more or less probable must consult his own reason if no mention of them is made in the Law, then base his rulings on this. Hardly will one find a legal judgment which departs from this rule with the exception of those having to do with forms of worship which have no rationally discernible basis and which are, therefore, to be adhered to in unquestioning submission.

Commenting on this view al-Shāṭibī states,

It is not as he says in every respect. Rather, it is accurate in some respects, but not in others. For if things were as he describes them without exception, there would be no need for the Law to promote anything but the interests which pertain to the life to come. However, this is not the case, since the Law has come to establish human affairs in both this life and the next. In this connection, it has promoted untold numbers of [beneficial] behaviors and eliminated forms of corruption which were prevalent at that time. Common experience precludes the possibility that human reason could perceive in detail that which is of earthly benefit or harm, unless what this person means to say is that knowledge of these things is acquired through experience and the like after the Law has established their principles, since of this there can be no doubt.<sup>193</sup>

4. Lastly, no matter how capable people may be of perceiving and assessing what is beneficial and harmful for them – and we have just seen how limited this capability is – they remain in need of powerful religious motivations which will reinforce their commitment on the practical level to preserving their interests and avoiding that which is harmful. After all, religion, given the Source from which it springs, provides a certainty and confidence in the process of discerning good and evil which would rarely be afforded by reason alone. Moreover, by adding a sense of reverence and submission to God to the process of achieving benefit and preventing harm, religion imparts an air of sacredness and seriousness to life which nothing else could. By virtue of its otherworldly dimension as embodied in its teachings concerning reward and

punishment and its divinely inspired ‘carrot-and-stick’ approach, religion provides additional incentives for people to engage in righteous, constructive action and to avoid corruption and harm; this, too, is something which only religion can provide, through both its doctrine and its law.

It is for these reasons that the preservation of religion is the interest given highest priority in Islamic Law, since it is, after all, the fountainhead of all benefits both in this world and the next. At this point someone might ask: If the ability to distinguish between good and evil by means of human reason is faulty and inadequate to this extent, and if the Law’s judgment is the truth “which no falsehood can approach from before or behind it,” then of what use to us is the rational discernment of good and evil, benefit and harm? And what need do we have for this long defense of it? It is to this question that we now turn.

### **The Areas in which Reason May Be Used to Assess Interests**

Before mentioning what these areas are, it should be pointed out that what I mean when I speak of ‘reason’ is the sum total of perceptive powers possessed by human beings – sometimes referred to as innate intuition, experience, or thought – along with the knowledge which these powers make possible in any given realm of experience. In what follows I will discuss the most prominent areas in which reason may be employed in the discernment and assessment of sources of benefit and harm:

#### *1. Interest-Based Textual Interpretation*

Some people may be wary of the phrase, “interest-based textual interpretation.” Realizing this to be the case, let me begin by saying that in using this phrase, I am simply recognizing a practice which is well established among virtually all scholars of Islamic jurisprudence with the exception of the Zahirites. What I mean by this is that

jurisprudents' interpretations of Islamic texts and the inferences which they draw from them rest upon a derivation of the meanings, wise purposes and interests which the Law seeks to achieve and guard. This process is bound to have an effect on the manner in which a given text is understood, how it is used, and the conclusions which are derived from it; a text might be interpreted in such a way that it yields a meaning which differs from its apparent sense, its meaning might be narrowed or restricted, or it might be understood in a generalized sense despite the fact that, taken at face value, it applies only to a particular individual, group, or set of circumstances.

The role of reason here is embodied in attempts to identify the interest which the text is intended to achieve – if it is not stated explicitly, of course – and to interpret the text in a manner which is consistent with the achievement of this interest. In the course of such efforts, due attention must be given to the various sources of benefit and harm which have some bearing on the theme of the text in question. One approach to this process of *ta'lil*, as we have noted earlier, is what is known as “the appropriateness method.” A fundamentally rational approach, this method serves as the foundation for untold numbers of independent rulings, analogies, and inferences, each of which is a type of interest-based interpretation of the text in question. In his book, *Naẓariyat al-Maṣlaḥah fī al-Fiqh al-Islāmī*, Husayn Hamid Hassan explains this method, saying,

The Lawgiver may issue a ruling on a given situation or action without the text's making explicit mention of the interest which it was intended to achieve. However, the jurist will find that in order to understand the text and clarify its content and sphere of application, he must identify this interest. Hence, he engages in independent reasoning in order to acquaint himself with this interest (or wise purpose, basis, or suitable cause). In this process, he is guided by what he knows of the general nature of the Law and its rulings, the spirit of the Law and its explicitly stated bases, as well as its principles or the interests deduced therefrom. Then, once he has identified this wise purpose or interest, he interprets the text and specifies its sphere of application in light thereof.<sup>194</sup>

This approach derives its legitimacy from the unanimously agreed upon recognition that Islamic Law was established in order to preserve human interests, and that the established method of dealing with its rulings is, as we have mentioned, that of interest-based interpretation.

Examples of this practice are innumerable, and wherever one turns in books on Islamic jurisprudence one finds interest-based interpretations and interest-based uses of texts from both the Qur'an and the Sunnah. One such example relates to the prophetic hadith passed down on the authority of Anas on the subject of pricing. Anas states, "During the days of the Prophet, prices began to rise exorbitantly. Hence, some people came and said, 'O Messenger of God, set the prices for us.' In response he said, 'God is the One who takes away and who gives abundantly, the Provider, the Price-setter. My hope is that when I meet God, no one will demand recompense for any injustice I have committed against him with regard to either blood or money.'"<sup>195</sup>

What one concludes from this hadith is that pricing is an injustice, and that as a consequence, no ruler has the right to set prices for his subjects; rather, the matter of prices is in God's hands and no human being has the right to interfere in it. One might also conclude from this hadith that no distinction is to be made between one instance of pricing and another. Nevertheless, a number of jurists – particularly among the Malikites and the Hanbalites – have ruled that there are cases in which pricing is permissible, or even obligatory! This is none other than an interest-based interpretation of the hadith based on rational inquiry. The scholars who have dealt with this hadith are of the view that it considers price-setting to be an injustice; however, they then identify cases in which it is precisely the failure to set prices which is an injustice, while the setting of prices is, on the contrary, an act of justice which serves the public interest. Hence, the hadith has been understood to apply only to specific cases of price-setting, and not to situations in which price-setting would be appropriate. As for situations of the latter type, they are addressed by other texts which forbid injustice and the arbitrary disposal of others' rights while enjoining fairness and the proper balance among

people's various interests.

Abū Bakr ibn al-<sup>ᶜ</sup>Arabī states, "The proper practice is that of setting prices and regulating affairs in accordance with a Law which involves injustice against no one. What the Prophet said is truth, and what he did was the judgment [of a wise leader]. However, this judgment applied to a people who were proven and steadfast and who had surrendered themselves to their Lord. However, in the case of those who aspire to oppress others and consume what is theirs, God's rule is farther reaching and His judgment more austere."<sup>196</sup>

Ibn al-Qayyim comments on this matter, saying,

As for price-setting, there are situations in which it is unjust and prohibited, and others in which it is just and permissible. If it wrongs people and forces them without good cause to sell at a price which they do not approve, or if it deprives them of that which God has declared permissible to them, it is to be prohibited. If, on the other hand, price-setting promotes fairness among people by, for example, obliging them to pay the amount which they owe in accordance with a commutative contract and preventing them from taking more than what they have a right to in accordance with the same, it is permissible, nay, a necessity. [Price-setting is likewise necessary in situations in which] commodity owners only agree to sell their goods – despite people's need for them – for a price which is higher than their known value, and in which it is their duty to sell the goods for prices that reflect their actual value. In cases such as these, price-setting is a means of obliging people to conduct themselves with the fairness that God requires of them.<sup>197</sup>

In the same vein we have several authentic hadiths which contain a prohibition of *bay<sup>ᶜ</sup> al-gharar*,\* that is, sales which involve some degree of uncertainty or risk. In one such hadith we read that, "The Messenger of God forbade *bay<sup>ᶜ</sup> al-gharar*, as well as *bay<sup>ᶜ</sup> al-ḥaṣāh*."<sup>198</sup>

Al-Shātibī states,

The Prophet prohibited *bay<sup>ᶜ</sup> al-gharar*, of which he made mention of particular examples such as the sale of fruits before they are ripe, the sale of *ḥabl al-ḥabalāh* (that is, the unborn offspring of a fetus now

present in the womb of a pregnant animal), *bay' al-ḥaṣāh*, etc. If we interpret these prohibitions in a narrow sense, it will be impossible for us to sell many things which it is acceptable to buy and sell, such as walnuts, almonds and chestnuts in their shells, wood and things which are still underground, as well as all varieties of *maqāthī*.<sup>199</sup> It would not be correct to say that it is forbidden to buy and sell such things, since the type of *gharar* which is prohibited includes only those goods in relation to which reasonable people would have difficulty knowing with certainty whether they are sound or flawed. For its application is determined not by the words' literal meaning, but by human interests.<sup>200</sup>

Among the texts which most call for interest-based interpretation are those of a general, unqualified nature such as the command to act with justice and kindness and assist one's near of kin, and the prohibition against envy and the harming of others. For although there are texts which detail such commands and prohibitions, they nevertheless apply to so many situations that they could not possibly all be enumerated, nor could the cases explicitly mentioned in certain texts be inclusive of all situations to which they apply. Consequently, there is ample room for independent reasoning and investigation when it comes to applying these general texts. On this point al-Shāṭibī states,

Every legal text which is comprehensive and unqualified and for which no specific rule or criterion has been drawn up must have some rationally discernible, humanly identifiable basis. This type of text most often has to do with matters which are ordinary and straightforward: In the realm of that which is commanded, they deal with things such as justice, kindness, pardon, patient endurance and gratitude, and in the realm of things prohibited, with things such as injustice, that which is shameful and counter to reason, envy, and unfaithfulness to covenants.<sup>201</sup>

When it comes to applying such texts determining what falls under their jurisdiction and what does not, and specifying the numbers and quantities required in relation to commands and the manner in

which they are to be carried out – there is ample room for reliance on reason and consideration for human interests. Commenting on another text, al-Shāṭibī clarifies an aspect of this point, saying,

On the level of verbal content, commands and prohibitions all communicate equally the message that something is required. Hence, the distinction between commands which indicate that an action is obligatory and those which indicate that it is merely recommended, and between prohibitions which indicate that an action is forbidden and those which indicate that it is simply undesirable, will not be found entirely in the texts themselves. Rather, most such distinctions will become clear only with reference to the objectives of the texts concerned and by an examination of relevant human interests and their degree of importance or urgency.<sup>202</sup>

This point might be illustrated with reference to the matter of disseminating knowledge among people. There are large numbers of texts which call for and urge the dissemination of knowledge by way of both encouragement and warning. Taken as a whole, such texts indicate that it is the duty of those who possess knowledge to spread their knowledge and to impart it to those who need it. However, an interest-based perspective indicates that teaching others may be either an individual or a collective obligation; similarly, it may be obligatory in some situations, but only recommended in others depending on the type and importance of the knowledge as well as the situation of the learner and the degree to which he needs the knowledge in question. In fact, the Prophet is reported to have avoided teaching his Companions in excess. We read, for example, in *Ṣaḥīḥ al-Bukhārī* that ‘Abd Allāh ibn Mas‘ūd used to preach a sermon every Thursday. A certain man then said to him, “Abū ‘Abd al-Raḥmān, I wish you would preach to us every day.” ‘Abd Allāh replied, “The reason I don’t is that I do not wish to weary you. I deal with you as we used to be dealt with by the Prophet, who would preach to us only on certain days lest it become burdensome to us.”

In addition, there might be types of knowledge which, for the sake of people’s well-being, should not be disseminated among all under

certain circumstances. A number of the Companions – under instructions from the Prophet – refrained from repeating the teaching they had heard from him to the effect that if anyone dies without having associated any partners with God, God will forbid the Fire to touch him. They withheld this teaching from others for fear that if people heard it, they would give up their striving to do good works; instead, they would speak to people of it only when they were on the verge of death lest the hadith be lost altogether. It is related in *Ṣaḥīḥ Muslim* on the authority of ‘Ubādah ibn al-Ṣāmit, Mu‘adh ibn Jabal and Abū Hurayrah that it was ‘Umar who forbade him (Abū Hurayrah) to inform people of this teaching, and that this prohibition was approved by the Messenger of God. Al-Nawawī states, “This hadith tells us that it is permissible to withhold certain types of knowledge for which there is no need, the purpose for this being either to preserve people’s interests or to prevent harm.”<sup>203</sup> Similarly, it is related of Imam Mālik ibn Anas that he disliked speaking of matters which could not serve as the basis for action; moreover, he attributed this same attitude to other scholars who had gone before him.<sup>204</sup>

Al-Shāṭibī states,

From this it may be concluded that not all true knowledge is meant to be disseminated, even if it has to do with Islamic Law and would serve to increase our understanding of its rulings. Rather, such knowledge may be divided into two categories: (1) that knowledge which is meant to be disseminated, and which includes most knowledge pertaining to Islamic Law, and (2) that which is either not meant to be disseminated at all, or which is not meant to be disseminated in certain circumstances, at a certain time, or among certain people...<sup>205</sup> And in fact, he notes, “Islamic scholars have identified specific questions concerning which no legal decisions may be issued even if they are valid in the sight of Islamic jurisprudence...”<sup>206</sup>

The reason for this being that in view of people’s potential mishandling of such matters, their open discussion could result in harm. In view of such considerations, al-Shāṭibī established a criterion by which scholars may distinguish between those types or aspects of

knowledge which should be disseminated and taught to others, and those which should not be, saying,

First lay the matter of concern before the Law; if it is valid by the Law's standards, consider its long-term consequences for the people of your generation and beyond. If its discussion would not lead to harm, then present it in your mind to human reason; if it finds acceptance, then you may speak of it either among lay people or, if it would not be suitable for the general populace, among the elite. However, if the matter of concern to you does not pass these tests, then it is advisable, for the sake of human interests as viewed from the perspective of both Islamic Law and reason, to remain silent about it.<sup>207</sup>

And thus we see the extent to which a sound understanding of Islamic texts requires the careful, thoughtful use of human reason and insightful, interest-based inquiry.

## *2. Assessment of Changing and Conflicting Interests*

This area, which is an extension of the previous one, includes two points, namely: (1) rational assessment of changing sources of benefit and harm, and (2) rational assessment of conflicting sources of benefit and harm. What is meant by the first point is that, as is well known to all, many interests change with changing times and circumstances; this change, moreover, may have some effect upon the legal rulings which are based on such interests. In dealing with this phenomenon, the interpreter of Islamic Law must be vigilant, insightful, and thorough in his inquiry in order to identify those interests whose conditions have actually changed, and in order to answer the question as to whether this change calls for the review and modification of the relevant legal rulings.

This is undoubtedly a difficult ascent to climb; however, there is no escaping it for scholars who take their task seriously, since otherwise, the objectives of the Law will be lost and, perhaps even its outward forms as well. The failure to confront these dangers and climb this ascent, followed by the closure of this door of *ijtihad*, has

confounded Islamic jurisprudence and impaired its natural progress, rendering it incapable, in many cases, of maintaining its hold on Islamic societies by dealing effectively with the issues and developments of relevance to them, meeting their needs and guarding their interests. As a result, it has contributed – along with other factors, of course – to a process by which many aspects of life, both public and private, have become disconnected from Islamic Law.

It is this which opened the door wide for al-Ṭūfī long ago, and for others in modern times, to make the illusory claim that Islamic texts may be inconsistent with human interests, in which case it is necessary to give human interests priority over the texts concerned on the pretext that the preservation of human interests is the intent and aim of these texts. Indeed, so keen was al-Ṭūfī to give first consideration to human interests that he was blinded (to the truth of the situation), saying,

Texts are disparate and inconsistent; hence, it is they which cause disputes among legal rulings – disputes which are blameworthy in the sight of the Law. As for the guarding of human interests, it is an unchanging reality about which there is no dispute; it is this, then, which brings about the agreement for which the Law calls, and it is this which should be afforded the greatest importance.<sup>208</sup>

Someone who is ignorant of Islamic Law, or who is shallow and hasty in his efforts to acquaint himself with its rulings and the degree of integration and uniformity among them, might be excused if the texts of the Law appear to him to be ‘disparate and inconsistent,’ since this impression reflects the extent of his knowledge and understanding. What further exonerates such an individual is the fact that the texts of the Law are so numerous and varied, dealing with a wide variety of issues and situations and bringing order to a broad multiplicity of themes. They thus require, as we have seen, a great deal of reflection and a sophisticated, interest-based perspective. Otherwise, they will appear to be inconsistent, as will the rulings based on them and their requirements. However, what no sensible person can be excused for is the claim that the guarding of human interests is “an

unchanging reality about which there is no dispute”!

I doubt that al-Ṭūfī ever had a day when his interests did not conflict with those of someone else, or even when his own interests did not conflict among themselves. I doubt that his interests remained, at the end of his life, as they had been in his youth and childhood or, at the very least, that his perspective on these interests remained unchanged. And since such changes and conflicts do occur, how much more would one expect to encounter them on the level of far-flung geographical expanses, succeeding ages, and variable circumstances? I am not denying, of course, that there are some interests which are, indeed, unchanging, or at least, which are characterized by a high degree of stability. It is these interests which make up the cornerstone of human life, such as those represented by rulings pertaining to the Islamic forms of worship, legally prescribed criminal punishments, numerous rulings relating to family life, and others.

Nor, however, can it be denied that there are many sources of benefit and harm which vary with circumstances and life conditions. Their placement on scales of priority change, as does the degree of benefit or harm with which they are associated, all of which calls for renewed inquiry, appropriate assessment and suitable means of undertaking both. All such things, moreover, exercise an influence over legal rulings, an influence which must be investigated and given its proper due. In this way the door is closed to the illusion that Islamic legal texts are inconsistent or incapable of responding to changing human interests.

There are two aspects of life which are in particular need of renewed investigation and assessment. The first of these, which has to do with the preservation of human interests, is that of human transactions based on conventions and habits, while the second, which has to do with the prevention of harm, is the area of discretionary punishments.

This is not the place to discuss changes in interests and legal rulings in response to changing times and circumstances. Rather, I simply wish to draw attention to a broad area which stands in need of a rational assessment of what is good and bad through the appraisal of changing sources of benefit and harm and what they require by

way of appropriate legal rulings. As for a detailed treatment of this issue, I will forego such in the present context, contenting myself instead with references to what has been written on this topic by a number of scholars over the years. Older works include: (1) *Al-Iḥkām fī Tamyiz al-Fatāwā min al-Aḥkām wa Taṣarrufāt al-Qāḍī wa al-Imām* by Imam Shihāb al-Dīn al-Qarāfī, (2) books such as *Aḥkām al-Muwaqqiʿīn*, *Al-Ṭuruq al-Ḥukmiyyah* and *Ighāthat al-Lahfān*, by Ibn Qayyim al-Jawziyyah, and (3) *Nashr al-ʿUrf fī anna Baʿd al-Aḥkām Mabnāhā ʿAlā al-ʿUrf* by Muḥammad Amīn ibn ʿĀbidīn. There are, in addition, a number of modern writings which treat aspects of this topic. Foremost among these are studies on the concept of *maṣlaḥah*, that is, ‘interest’ or ‘source of benefit,’ such as *taʿlīl al-Aḥkām* by Muhammad Mustafa Shalabi (Chapter Three in particular), *al-Maṣlaḥah fī al-Tashrīʿ al-Islāmī wa Najm al-Dīn al-Ṭūfī* by Mustafa Zayd, *Ḍawābiṭ al-Maṣlaḥah* by Muhammad Said Ramadan al-Buti, and *Nazariyat al-Maṣlaḥah fī al-Fiqh al-Islāmī* by Husayn Hamid Hassan. Yusuf al-Qaradawi also deals with this theme in a number of his books and articles, particularly *Sharḥ at al-Islām* and *al-Ijtihād fī al-Shariʿah al-Islāmiyyah*. Also included here would be Umar al-Jaydi’s study entitled, “*al-ʿUrf wa al-ʿAmal fī al-Madhhab al-Mālikī*.”

As for the second point mentioned above, namely, rational assessment of conflicting sources of benefit and harm, what is meant by this phrase is the process of determining which source of benefit or harm to give priority over another in the event that they are found to be in conflict, whether in someone’s individual experience, in the work of the mufti or *mujtahid*, or in any other situation of relevance. Most everyone will be aware of the constant overlapping and intermingling that takes place among sources of benefit and harm, a phenomenon which gives rise to unending competition and conflict among them as well. There is no source of benefit or harm but that there will be, alongside it, numerous other sources of benefit and harm which compete and conflict with it. There are many cases, of course, in which the issue is clear and it is an easy matter to determine which of the competing or conflicting sources of benefit or harm should be given priority on the basis of either relevant texts or

rational assessment. Even so, however, the number of cases which are not so clear-cut remains far greater. And what complicates matters still further is the fact that many sources of benefit and harm are relative or, as al-Shāṭibī puts it, 'contingent.' He states,

Most sources of benefit and harm are not intrinsically beneficial or harmful, but only in a contingent sense. What I mean by the term 'contingent' here is that they are beneficial or harmful in some cases but not in others, for some individuals and not for others, and at some times but not at others. For there are many so-called benefits which are actually harmful to people; similarly, they might be harmful at a given time or in a given circumstance but not in another.<sup>209</sup>

The following are a number of rules which scholars have formulated to aid in prioritizing among conflicting sources of benefit and harm:

- Prevention of harm is to be given priority over the achievement of benefit.
- The lesser of two benefits should be forfeited in order to preserve the greater of the two.
- Collective interests are to be given priority over individual interests.
- A greater harm may be eliminated through a lesser one.
- Harm may not be eliminated by means of similar harm.
- Individual harm may be endured for the sake of preventing collective harm.
- Necessities render the prohibited permissible.
- Necessities are to be assessed accurately and given their proper due.

Moreover, as we have noted, al-Shāṭibī formulated a law of great importance for such prioritizing in a number of situations in which different people's interests come into conflict.<sup>210</sup> Imam 'Izz al-Dīn ibn 'Abd al-Salām presents more detailed analyses of various instances of prioritizing among various sources of benefit and harm.

Indeed, this topic is the main theme of his book, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*.

Despite all this and more, the fact remains that on the practical level, such questions of prioritizing among sources of benefit and harm call for careful thought, discernment and accurate appraisals in order to determine which of two sources of benefit or harm should be given greater weight, which of two benefits is more valid and of greater importance, which of two evils is the lesser and which the greater, what involves the achievement of benefit as opposed to what involves the prevention of harm, what is necessary as opposed to what is not, what should be viewed as an earthly benefit as opposed to a benefit of the world to come, etc. Such conflicts and questions of prioritization take countless forms and occur in untold varieties of situations, all of which call for assessment and sound analysis, based on reason and careful investigation.

### 3. *Assessment of Unrestricted Interests*

Earlier in this chapter, we clarified the meaning of the term ‘unrestricted’ as it is employed in the phrase ‘unrestricted interests,’ in the course of which it became apparent that there is no such thing as a truly ‘unrestricted’ interest in the unqualified or absolute sense. Rather, what are termed ‘unrestricted interests’ are, in reality, interests which are recognized by Islamic Law but which are not mentioned by name in any particular legal texts. Instead, the command to preserve them is implied in what is recognized without question to be the Law’s intent, namely, to preserve human interests. It is likewise contained implicitly in general passages which enjoin the doing of good and the commitment to righteousness. And given the clarity of the Law’s intent, this term becomes clear as well.

In our discussion of the two previous areas – namely, interest-based textual interpretation and the assessment of changing and conflicting interests – we saw the extent to which we need to engage in careful examination and rational assessment even when dealing with those sources of benefit and harm which are mentioned explicitly in Islamic legal texts. How much more, then, will such processes be called for in the process of identifying, assessing and prioritizing

among unrestricted interests?

This category of unrestricted interests is neither small nor insignificant. On the contrary, suffice it to note that what is known as "Islamic legal policy" (*al-siyāsah al-sharʿiyyah*) is based primarily upon the preservation of unrestricted interests. This alone makes it clear that the sphere of unrestricted interests expands with every passing day; it expands with the increasing size and growing needs of the Muslim nation, or Ummah, and with the expansion of the state and the growing number of functions which it performs. Thus it is that unrestricted interests have come to impact the very being and destiny of the Muslim nation: influencing its earthly sustenance, its dignity, and whether it suffers decadence and decline, or enjoys prosperity and progress.

Is it reasonable or acceptable, then, for the management of such major interests to remain isolated from the Law's objectives and standards and from those with specialized knowledge thereof? Is it reasonable or acceptable for the scholars of the Law, with their knowledge of its objectives and principles and their educated points of view, to remain isolated from this area of life which is so vital and critical to the Muslim nation and the law which governs it? Is it reasonable or acceptable for them to remain powerless, intimidated or marginalized from the processes by which the Muslim nation's course and destiny are determined – indeed, deprived of the mere opportunity to take part therein?

Such isolation can never be overcome unless scholars of Islamic Law – equipped with their knowledge of the Law and its explicit rulings – demonstrate a high level of awareness and the ability to accurately assess sources of benefit and harm. They must prove themselves able to put each interest in its proper place, guided by the Law itself and its objectives. This is the proper way in which to preserve the interests of the Muslim nation. Ibn ʿAbd al-Salām states,

Whoever investigates the objectives of the Law as embodied in the achievement of benefit and the prevention of harm will arrive at the conviction or recognition that this or that interest must not be neglected and that this or that source of harm must be avoided. For even if

there is no consensus, text or analogy which deals specifically and explicitly with the source of benefit or harm in question, an understanding of the Law itself necessitates this conclusion.<sup>211</sup>

Hence, by means of thorough acquaintance with the rulings and objectives of the Law, awareness of the conditions and requirements of the Muslim nation, careful investigation and rational assessment, it becomes possible to identify unrestricted interests and to arrange them in the proper order of priority. By reflecting on these areas and the need therein to put the mind to work and foment creative thought, it will become clear to us that the divine wisdom requires that human reason and independent thinking be given ample space within which to operate in order to properly function, mature and advance. One of the well-established, overall objectives of Islam is that of enabling human beings to grow in purity. We find, for example, that in no fewer than four passages, the Qur'an explains the sending of the Prophet as having been for this very purpose, saying:

We have sent unto you an apostle from among ourselves to convey unto you Our messages, and to cause you to grow in purity... (2:151)

O our Sustainer! Raise up from the midst of our offspring an apostle from among themselves, who shall convey unto them Thy messages, and impart unto them revelation as well as wisdom, and cause them to grow in purity. (2:129)

Indeed, God bestowed a favor upon the believers when he raised up in their midst an apostle from among themselves, to convey His messages unto them, and to cause them to grow in purity. (3:164)

He it is who has sent unto the unlettered people an apostle from among themselves, to convey unto them His messages, and to cause them to grow in purity. (62:2)

As I see it – and God knows best – growth in purity likewise involves the purification of one's mind by developing it, guiding it

and putting it to use. This is what the Law does when it works to set our minds in motion and release them from their bonds, freeing them from the delusions and superstitions which impede sound thinking. The Law feeds our minds with its values and precepts, then gives them free rein to work and purify themselves. This is an additional aspect of preservation of the faculty of human reason; after all, the Law's preservation of human reason is not limited to outward measures such as prohibiting intoxicants and imposing penalties for partaking of them. How many a person's mind has been lost without his or her ever having touched a drop of liquor? Indeed, people's minds are lost through ignorance, lethargy, idleness and blind imitation.

Consequently, putting the mind to use and giving it a wide berth is not merely an aid toward the assessment and preservation of human interests; rather, it is, itself, one of the most vital human interests, since the mind's proper use ensures its preservation, and its preservation is one of the agreed-upon essentials.

### [ III ]

#### By What Means May The Lawgiver's Objectives/Intents Be Known?

As we have mentioned, al-Shāṭibī makes statements throughout *al-Muwāfaqāt* and *al-I'tiṣām* on the matter of how the objectives of the Law may be ascertained. Moreover, these statements, scattered though they may be, are no less important than what al-Shāṭibī has to say in the Conclusion which he has devoted to this theme. In what follows I shall attempt to gather together and comment on these scattered references so as to synthesize them with the contents of the aforementioned Conclusion.

##### 1. *Understanding Objectives in Light of the Requirements of the Arabic Language*

As was seen earlier, the second category of the Lawgiver's objectives