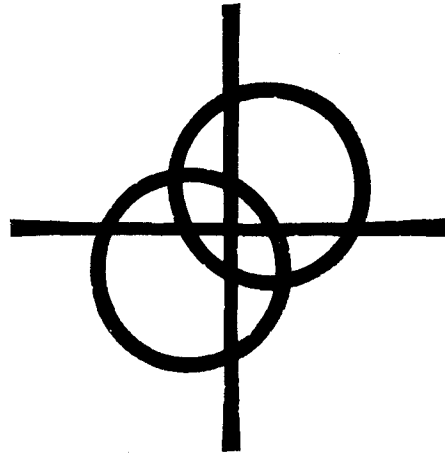


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A QUARTERLY OF COMPARATIVE PHILOSOPHY

Special Issue: Seventh East-West Philosophers' Conference

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UNDERSTANDING JUSTICE IN AN ISLAMIC
CONTEXT: SOME POINTS OF CONTRAST
WITH WESTERN THEORIES

A. Smirnov

One present-day Arab, who is a practicing lawyer and who devotes much of his time and attention to theoretical research, gives the following definition of justice (*'adāla*):

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Moscow

Political justice is the right (*ḥaqq*) of an individual to participate in political power and rule. Social justice is the right (*ḥaqq*) to have equal opportunity, to avoid exploitation, to receive a true evaluation of one's labor, and to satisfy the natural and social needs of each individual in harmony (*fī al-i'tidāl*) without injury to the rights, public affairs, or common values of others. Judicial (*qaḍā'iyya*) justice is the right (*ḥaqq*) of an individual to have a clear idea of the rules and laws that regulate his relations with other individuals and with society, as well as his right to equality with his opponent under these rules and laws. These are the ideas of justice elaborated by modern civilization and nurtured by the new human spirit.¹

The author does not hesitate to recognize the idea of justice as a *natural* concept common to all human beings, to which modern-day civilization (also presumably *general* to all humans by its nature) gives its final perspicuity and exactness. Further on, he finds no difficulty in defining this concept that is common to all humanity:

The natural foundation for the idea of justice is provided by the coherence and consonance (*tawāfuq*) that marks all the Universe, arranges the parts of our body and makes everything agree with itself.² Everything in the world, whether at a cosmic or at a nuclear level, matches all the rest in a most amazing way. . . . This coherence implies that anything that deviates from the rule (*qā'ida*) should be rejected, anything that infringes the law should be repudiated, for any digression from the law is abnormal. As for justice (*'adāla*), it means that anything that steps aside from the rule must be brought back to its initial [state] (*'aṣl*), everything that violates the law should be straightened out (*yuqawwam*), until it stands right (*yastaqīm*), and what deviates from coherence must be ordered back to coherence.³

The present essay is an attempt to find out whether this statement (in its commonality quite representative) is dependent on a set of concepts that underlies the notion of justice⁴ in traditional (or, we might better say, classical) Islamic thinking. To what extent can the most (as it would appear) ordinary apprehension of the fundamentals that are presumably "common to all humanity" be free from cognitive procedures elaborated by this or that tradition?

We shall start with the understanding, or rather the intuition, of truth and the true and space and time in their relation to the "temporal and

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spatial" (i.e., "things"), and proceed to discuss the law and the lawful. After that we shall talk about uniformity, generality, and noncontradictory character as conditions with which the law is supposed to comply, in order to test the validity of these assumptions in a case being deliberated. Finally, we shall consider the concept of rights and obligations. All this is intended to lead us to our aim: we are going to see how the assemblage of *'adāla* meanings is arranged through these fundamental concepts. Needless to say, the limited space here makes it possible to give only a rough sketch, far from any detailed elaboration of the problems outlined.

1. Philosophy appears to be a pursuit of truth even more than a pursuit of wisdom. However, philosophy is not alone to declare its love for truth. It is no exaggeration to say that the assertion of truth is also at the core of the "Islamic sciences," going back to the well-known Qur'anic verse "Truth stands out clear from Error" (2:256). The deep Qur'anic intuition of the "clarity of truth" penetrates Islamic culture. It is rather significant that the verse just cited illustrates the noncompulsory character of Islam ("Let there be no compulsion in religion"—2:256); the clarity of truth is supposed to be quite sufficient for reasonable people who are seeking the right way.

The truth is *clear*, *settled*, and *definitely convincing*. It is this property of the Qur'anic intuition of truth that requires our attention: the truth, though of supreme (divine) origin, is not at all unearthly. The truth stands here, facing us; it is *presented* to us. The truth in its completeness⁵ is submitted to us as clarity-for-us.⁶ "Clarity" (*mubīn*) is one of the attributes of truth that is frequently cited in the Qur'an.

We discover that the truth is not something that is pure, separate from all that is passing, trifling, and subject to change. The truth, established and secured by its certainty, makes no distinction between "momentary" and "eternal." The truth is valid not because it has ascended above the nonlasting; the truth is valid because it stands firmly *established*⁷ amid the flow of things nonlasting. Of course, this is so not because the truth holds onto that which is momentary, and not because it does not search for the eternal; the fact is that even the momentary may turn out to be everlasting. The truth can be found as much in the heavens (*al-Haqq* is one of the Divine names) as on the earth.

2. To say that the truth is clear does not mean at all that there is no problem in acquiring it. The reality is the opposite: perhaps it is exactly this intuition of clarity that produces paradoxical situations, and classical Islamic thought gives plenty of examples of the surprise that has been caused by it, and attempts to solve this problem. The paradox is caused by the fact that the *clear* truth is far from being always *manifest*.

Probably for the first time,⁸ the discrepancy between being *clear* and being *manifest* is declared through a variety of understandings of the

Truth per se (as Divine speech, through the verses of the Qur'an). But a discussion of the problem of how clarity becomes manifest can be traced back to the Qur'anic text itself: it is immanent in the way the Truth is announced. The clear and established truth arrives from "the Hidden." The Hidden, whence the clarity of truth has reached us, is *al-ghayb*, where there is "no presence."⁹ The clarity of truth is made manifest to us from where we are not and where we cannot reach. Even the well-developed mystical teachings of Islam do not intrude upon the secret of "the Hidden" (*al-ghayb*).

The truth that is clear and present but not manifest should be *made manifest*. The truth that is present but not manifest is "the inner" (*al-bāṭin*) truth. The procedure whereby it is made manifest (*izhār*) is, generally speaking, an epistemological procedure in the widest sense, to be found in a wide variety of disciplines. Making the inner truth manifest, while having no doubt that it is presented to us, is characteristic of the cognitive process. But what is the cognized? It is that which is made manifest when manifested initially and immediately. It is also made manifest when a perception of its manifested character is achieved by us through special effort and with the help of special procedures. In any case, the true is that which stands, obviously manifest, before our eyes.

3. The intuition of truth as established and clear gives rise to a family of notions and concepts. It produces an understanding of the coming into existence of things and of our grasping this coming-into-existence, in which these two aspects are merged and their distinctions nearly obliterated. Attesting this are *al-ḥaqq* derivatives, that is, concepts connected with cognizing or establishing the truth.¹⁰

Taḥaqqqa (a verb that may be translated as "to be true" or "to become true") is a word that means something like "to gain true existence" or "to gain true knowledge." The *true* thing and the *actually* existent thing will both be expressed as *shay' muḥaqqaq*, "the thing that reached its validity." "Cognizing the validity of a thing," *taḥqīq al-shay'*, out of context can be understood as well to mean "giving true existence to a thing."

The "truth" (*al-ḥaqq*) is the "true," and it is the "true thing" as such. Thus the truth does not declare definitely its ontological status. The truth means "what really is," and the truth means the "validity of our knowledge of what really is." The epistemological and ontological are closely linked in this concept of truth.

4. The approach to truth discussed here agrees well with the atomic theory of time developed in classical Islamic thought. Elaborated by the first representatives of theoretical reflection, the Mutakallimūn, it was somewhat dimmed in *falsafa* and Isma'īli teachings, only to flourish later in Sūfī thought. This theory maintains that individual (*indivisible* is the more exact meaning of the term) temporal moments (*zamān fard*, *waqt*

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far), deprived of duration, can be specified in the flow of time (*zamān* or *waqt*). The moment of a thing's coming into existence is merged with its destruction in an atom of time. Thus the existence of a thing turns out to be a series of atomic states of coming and going.

As long as each moment of time is unique, a "snapshot of existence," nothing can be said to remain "constant in time" or uniform in the current of time. Each moment of time brings something new. Thus the truth is true not because it does not depend on time or remains unconnected with time, but because it preserves its identity in any of the possible temporal transformations. To be true does not mean to be unassociated with time; to be true means to stay one and the same in the flow of time. The truth is everlasting not because it imparts eternity, but because it is unchangeably established here and forever.

5. One of the consequences of this way of understanding the truth in its relation to time is the fact that "more correct" is apprehended as "more fixed," *'athbat* (cf. "more exact" of the Western intuition of truth as accuracy of conformity with the ideal archetype). In this case the true is applicable to any temporal moment not because it eternally envelops it in itself and presumably comprises it as an abstract moment. When the true is eternal by virtue of this *enveloping* ability, it keeps its hold on any temporal moment (and, accordingly, on any particular case) exactly because it is *not* present in that moment as such, because this particularity is dissolved in its generality.

But when the true is true not because it envelops time (and the temporal) but because it *precedes*, by virtue of being already established, any given moment of time (and any given temporal thing), then it is not the general character that gives the true its power and authority at any temporal moment and in any temporal thing. When true in this way, the truth by no means has to be a general case for all the particulars that would fall under it and thus presuppose its authority: such a truth imposes its power on any other given thing by right of its preceding fixity. Thus a specific understanding of the generality/particularity relationship is added to the aspect of time/eternity already discussed.

6. Apart from everything else, what is true-and-established in this way is exemplified by the Prophet: "You have indeed in the Apostle of God a beautiful pattern [of conduct]," the Qur'an says (33:21), addressing all Muslims. The Messenger's conduct is an established pattern that finds its validity in this secured fixity. The truth fixed forever becomes law. The Qur'an calls the Prophet's example *'uswa*, while tradition prefers to designate it *sunna*. The *sunna* is an "example law"; the two meanings here are inseparable.

The divine order, eternal and unchangeable, revealed in the Qur'an and manifested in the Prophet's words and deeds, will last unchanged forever, and in this sense it is *necessary* (*wājib*). To break away from this

quality of being established means to violate the validity of truth and law. In a case being deliberated, to be an exemplar (a unique specimen) is *never* a contradiction to the quality of being valid and true.

Therefore the law is not an abstract order (of things or ideas) that claims the validity of truth and has a general character (no matter whether an intuitionistic or a Platonic understanding of generality is implied). The law is a line drawn and fixed, a set of exact requirements, an exemplar. Such is the law as presented by the *shari'a* and the *sunna*—a line of behavior, an everlasting established specimen. Here our foremost concern is with the notion of legal laws, but this holds for natural laws as well. The main feature of these laws, as formulated by medieval thinkers, appears to be their nonabstract character: the infinity of the particular is *not* enveloped by these laws in the completeness of finite, concise unity.

7. In the final analysis, the law establishes the true (i.e., the due and proper); what is "true" is "lawful." But it is not the *contents* of the true and lawful that interest us here, but rather their *character*. The true, when manifested as complete clarity and fixity, establishes the lawful (legal) as an entity equally complete and full of vitality. In order to know what is due, we do not have to look for the eternal ideal form (formula) that envelops all the temporal particulars. To find out what is due (when it has not previously been established for us), we have to understand how to arrive at the new as a derivative of the already established truth. Since everything that might or should have place has already been fixed by the true Law, the "new" does not in fact add to it anything really novel; the "new" is just the modified "old." To determine the appropriate procedural method for this kind of modification, as well as to find out its allowed limits, is what appears to be the focus of intellectual activity in a case being deliberated.

8. The 'aṣl-far' pair serves to describe the link between the secured truth and the newly-coming-to-exist. These two terms, I believe, are best translated as "basis" (or "basic thing") and "branch." The 'aṣl permits its branch, the far', to be. This permission may take the form of generating the far', as well as just giving place to it, when the 'aṣl concedes to make room for the far' by stepping aside.

What allows the other to be wields authority over it by virtue of its priority. The "branch" that comes into existence after the "basis," and owing to it (although not necessarily *from* it), cannot deny it. What comes after has no power over what has already come. Thus the fundamental relation between the "basis" and the "branch" is determined: the far' cannot contradict the 'aṣl. Yet this statement says nothing about the conditions for the multiplicity case: it does not define relations inside the group of "basic things" (*uṣūl*), as well as relations between multiple "branches" (*furū*).

Each of the "basic things" is established in itself, and is true by virtue

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of this. To affirm and justify its validity, it has no need at all to prove its conformity with any principle.¹¹ If we have a number of such "basic things," they need not demonstrate any coherence, compatibility, or noncontradiction among themselves. In other words, a group of *'uṣūl* need not be a *system*; at any rate, the concept of *'aṣl* does not presuppose it. Yet one thing at least is a priori impossible, namely for two alternative (mutually excluding) "basic things" to be in the same group: the thing cannot be established if its denial is established as well. One of the most sophisticated branches of *fiqh*, the theory of "the abating" (*nāsikh*) and "the abated" (*mansūkh*), elaborates such problems, defining the mutually excluding norms of Law, deciding which of them should be recognized as established and which are to be abolished, and treating the difficult question of the reason for such strange cases of incompatibility to be present in the Revelation. It is quite characteristic that the two noncompatible norms are regarded here as absolute alternatives, so that they cannot be made to conform by finding some *general* norm under which these two would fall as particulars (I am alluding to what was nearly a routine procedure of eliminating contradictions in the corpus of laws in the medieval West).

As for the *furū'*, their alternative (mutually excluding) character is not taken into consideration *as long as they are regarded as furū'*. Logically the "branch" concept does not imply noncontradiction with other "branches." Only when the "branches" become (or are considered) "basic things" is their status transformed and a noncontradiction rule is enforced. Consequently, some set of norms may be regarded as a *uniform* group of *furū'* obtained through one and the same group of *'uṣūl*, although this unity might well be lost as soon as we consider the same set of norms as the *'uṣūl*: in that case they may get divided into subgroups not containing mutually excluding norms. Thus, all the "branches" form an integral whole as "branches," although some of them could appear incompatible when regarded as "basic things." This paradigm neither demands nor implies that the "contradictions" between subgroups of the *furū'* be reconciled (no contradictions are in fact noticed in this case), and such an inconsistency is no obstacle to qualifying all of them as being in unity.

We may notice that the noncontradiction rule follows from the intuition of *preceding fixity*, and not from the intuition of *unity of the general* (which would have turned out to be the *ideal* unity). Within the framework of the concepts of truth and law that are being discussed, we find it absolutely natural and logically valid, for example, that the judge is allowed to choose the most "suitable" norm for the given case from a number of contradictory norms of one *madhhab* or between different *madhhabs*. Islamic thought grows diverse and contradictory "branches" simultaneously from the same "root," and their incompatibility does not

interfere with the overall unity and is not regarded as a drawback or as something abnormal.

Standing in clear contrast to this is the history of law in the West. In the writings of Aristotle, in the activity of the medieval jurists (the necessary conformity of the law to the abstract notion of *aequitas*: an ideal concept stands as a supreme authority in defining that which is legal), at the University of Bologna (the laborious effort to eliminate contradictions in the corpus of laws), and in modern times, we notice one and the same imperative of *noncontradiction* and *derivation from one integral principle*—the two conditions interconnected and logically presupposed by the Platonic intuition of truth as something abstract and general. When we see Raymond Lully insisting on reducing the natural law to a syllogism (*reducere jus naturale ad syllogismum*) and putting the positive law in accord with natural law by reducing it to the latter (*ius positivum ad jus naturale reductor et cum ipso concordet*), we can only be reminded of this imperative. The history of Western thought knows almost no exception to this rule. And when a thinker like Thomas Aquinas admits that laws *may* normally contradict each other, we find that, first of all, these are contradictions between different “levels” of laws; second, they are the result of our fundamental ignorance of *the only right* divine law; and finally, the inconsistency of laws implies the invalidity of (the possibility of not being able to implement) the inferior ones.

These distinctions imply, by their very nature, that jurists adopt different methods to elaborate what they call “law,” and approach differently the question of what is “lawful.” It is not unusual for the Western orientalist, as well as jurists engaged in comparative studies, to mention the “total absence” of developed theory in *fiqh*.¹² This statement overlooks the fact that this theory, as it was developed by Western law, simply could not exist in *fiqh*. What so often appears to the Western mind as an involvement in concrete and minor details was only a painstaking elaboration of quite another type of legal theory.

9. Justice is often defined as “giving what is due.” Although this is no doubt a well-turned formula, it appears too far-reaching, however, since it would embrace religious maxims as well as the theories of Aristotle, Marx, or John Rawls, depending on how we would like to treat “that which is due.” We have no difficulty discovering the intention behind “giving what is due” in classical Islamic thought as well. Expressions like *i’tā’u-hu ḥaqqa-hu* or *istifā’ al-ḥuqūq* are used in reference to rehabilitation and reinstatement, the restoration of someone’s suppressed rights, evaluating somebody by the use of true measure, and so forth. Justice, consequently, might be defined as “establishing the right (*ḥaqq*) in its [due] place.”¹³

In the family of concepts that surrounds the notion of *rights-and-* A. Smirnov

obligations in classical Islamic thought, we discover *al-ḥaqq* to be an absolutely dominant notion expressing the unity of the concepts of *truth*, *right*, and *obligation*. This dominance is fed by the roots of this notion in fundamental concepts: as we have already mentioned, *taḥqīq* and *taḥaqquq*, the two *al-ḥaqq* derivatives, mean both the reality of a thing's existence and the validity of its cognition. The true, the due, the really existent,¹⁴ and the really cognized serve as the foundation for each other and are mutually transformable: each presupposes the rest and brings with itself a part of the sense of others. When we happen to mention *i'tā'u-hu ḥaqqa-hu* or *istifā' al-ḥuqūq*, we talk about establishing the necessary completeness of what is possessed by right and what is really and truly present in a thing and known to us as such. The *al-ḥaqq* notion unites *rights* and *obligations* so that they come together and imply each other through ontological and epistemological transitions and transformations.

"The obligatory" is "the truth" and "the due possession." This is why a "right" is apprehended as something *real*. "To ensure the right" may mean—and we often actually find this meaning in medieval texts—to *give [back]* the really necessary to the one to whom it should belong, having *taken it [away]* from the usurper; what is meant is not securing the liberty of the subject of rights, but ensuring something real for the person. Through this procedure, the *inṣāf* justice may be defined as "taking the right (*ḥaqq*) away from the oppressor (*ẓālim*) and returning it to the oppressed (*mazlūm*),"¹⁵ which by no means is supposed to "deprive" the oppressor of any abstract right to something. Thus understood, a right is a sort of substance that has constant volume, of which some parts may happen to be not where they belong, not in the due place; and justice means the necessity of returning them to where they should be. It is not at all by chance that the definition of justice already cited mentions "establishing the right (*ḥaqq*) in its [due] place": each of the rights due has its own "place" (*makān*). By the overall "correct" distribution of such "places" and the allocation of the "rights" in their due "places," "harmony" (*i'tidāl*) is achieved.

"The obligatory" is "the truth" and "the due possession." All that *is* may be apprehended through these concepts. *Al-ḥaqq* is "the obligatory right," "the right needed in order to exist." Generally speaking, any given thing possesses "the right," that is, the set of characteristics necessary for its existence. From that point of view, all entities may be treated in similar terms. From our present perspective, each entity is, first and foremost, power in its entirety. The integrity of "the rule" (*siyāsa*),¹⁶ the latter being true by the very virtue of this integrity, appears to be one of the fundamental intuitions in Islamic law. Any person appointed to perform certain functions or certain tasks possesses the requisite power and authority inasmuch as he *substitutes* (*yastānīb*) for the central

ruling person. The self-sufficiency of this substituting person is validated only inasmuch as it is grounded, fixed, and established in the central ruling person.¹⁷

The system of holding power and exercising rule is realized as a network of linkages that are formed by this kind of substitution or transfer of authority. For each of these linkages we may easily discover the necessary set of *ḥuqūq*—rights and obligations that inevitably result from this kind of linkage depending on its *position* in the general structure (i.e., the way in which this linkage is formed through tying the element in question to the central “pivot” of the system or to other elements).

Thus we find each such link to be the coupling of two “elements” for example, an “ordinary person” and the *wazīr*, an ordinary person and the *imām*,¹⁸ the *wazīr* and the *imām*, and so forth. What appears important is the fact that the set of *ḥuqūq* (rights and obligations) within the system of power and rule¹⁹ (in classical Islamic thought, what was called *ṣulta* and *siyāsa*) is formed exactly through this coupling link and makes sense only within its limits. *Al-ḥaqq* is not the “right” of a single person, group, community, or ruling person regarded separately; *al-ḥaqq* is (both) the right and the obligation, which makes sense (that is, apprehended as true) only within the *unity* of the two “elements” of the power-and-rule system.

In a case being deliberated, the link, described according to the concept of *ḥuqūq*, is not an “in-dividual element,” and the *ḥuqūq* are not the “rights” and “obligations” that serve to connect autonomous elements of the structure. The starting point for cognitive procedure here is different. The rights and obligations are not there until the *two* are linked. These two do not *face* (or should we say *oppose*) each other as the “possessor of right” and the “obliged”; these two form the fundamental integrity that alone allows the apprehending procedure to start (no need to say that the *two* might be two ordinary persons as well as any two agents of power and rule, including God Himself as the primary “basis” for any system of power that establishes all of its subsequent links). Out of this integrity, the subject discussed (structures of power) will hardly make any sense. As an example of this understanding of the *ḥuqūq* concept, notions like *ḥuqūq al-ʿadamiyyīn* and *ḥuqūq Allāh* can be mentioned.

10. The rights-obligations set (*ḥuqūq*) is at the same time an ontologically necessary assemblage of traits that characterize the given existing thing, the given link of the power-and-rule structure. “Giving what is due” in order to “guarantee” (*istifāʿ*) this *ḥuqūq* set is not only and not just an act of moral righteousness; it is first and foremost done to secure the ontological *stability* of the thing in question, that is to say, its being truly established in the flow of changes.

Thus justice, or “giving what is due” and “establishing the true” A. Smirnov

(*ḥaqq*), turns out to be the “preservation” and “maintenance” of this needed-in-order-to-exist assemblage of *ḥuqūq*. It means nondeviation from that which is necessary for existence, the *optimum*. The reverse of such an understanding is that it is the normal and regular character that is perceived in the “just.” The just arrangement and setup of things is merely a consequence, or even a synonym, of the correct (*ṣaḥīḥ*) ontological state of the power-and-rule structure.²⁰ When this correct state is violated, the thing in question becomes abnormally “ill.” This “illness” is to be overcome and eliminated so that the health of the thing is restored. Violation of justice results from a defective formation of some link in the power-and-rule structure.²¹ This defect brings injury to the initially correct-and-healthy, and it may (and should) be corrected.

From this point of view, justice is restored and brought back, not brought forward. To bring justice back means to restore the healthy condition of the *ḥuqūq* assemblage. Returning to the normal is changing the anomalous illness to sound health. Justice is not to be reached as an *ideal* outcome of specific and exceptional efforts. Justice is a function of the ontological organization of the thing: the *correct* and normal structure of power and rule is already just.

11. The desired correctness that guarantees justice is reached through such a linkage of the two sides, when neither intrudes on the other and each gives his partner the best chance to display his self in such a linkage. (This is why the best link is the link rightly formed: it permits the diverse “forces” of the two sides to be manifested in the best way.) Consequently, justice is deviated from when the exactness of “preserving the middle” is lost, through a twist this way or that. The link is askew; we find one side suppressed by the other. This suppression/subjection (*ghulba/ taghallub*) results in inequity. One of the two sides in this skewed link is dimmed and darkened by the other: injustice is *ẓulm* (literally, “darkness”). Also, the darkness of injustice beclouds the clarity of truth: we speak of *ẓulm* when *ḥaqq* is overshadowed.

The two terms *ghulba* and *ẓulm*, which were commonly used to express the notion of injustice,²² bring the sense of the concept of the *middle* to light. *Khayr al-umūr awṣaṭu-hā*—this maxim, usually attributed to Muḥammad, was a commonplace among medieval intellectuals: “the middle of things is the best.” It is the middle in which the *two*, separated from each other and opposed (*muqābala*) to each other, merge and come to harmony, producing a unity that makes genuine sense.

Alluding to the archetype of the scales, one may say that Western thinking is concerned with the pans of the scales and their contents, while for classical Islamic thought the stress lies on the central balancing pivot. It is making one equal to the other (equality between two necessarily *separate* entities) that is important in the first case, and theoretical

discussion tries to determine the accuracy of this equalizing and to find the *only* true (always the *one*) decision. In the second case it is the fact of balancing the opposites that is important, this balance being reached by means of the centering and mediating pivot; the theoretical task is to find out how the two might be linked to form a balanced unity and what the conditions are for such a linkage.

12. Discussing the concept of justice as elaborated by classical Islamic thought, we have found it to combine, or even bring together to the point of merger, the notions of truth (as the quality of being established and fixed), mediation as a method of assuring this truth, and, as an ontological *optimum*, rights and obligations as a fixed assemblage of constituents of the power-and-rule linkage structure (as well as of any existing thing).²³ This kind of justice is not a method of equalizing²⁴ the chances of each separate atom of society that strives to reach its *maximum* benefit (and inevitably finds itself in contradiction with all the others, on whose account it can only benefit); justice of this type is a mode of existence that is concordant and harmonious by the fact that it *is*. The *'adāla* justice, in many of its aspects, is reduced to the maintenance of harmony (*i'tidāl*). This kind of justice persists as long as we do not violate it through incorrect deeds.

Justice in its Western understanding may be characterized as receiving an equipollent recompense. This or that theory of justice and the just society is worked out according to how equality is defined and how and what is recompensed. Compensation turns out to be a procedure based on calculation. Of foremost importance in this context appears to be the fact that this kind of justice is to be seen only as an ideal: it is rarely, if at all, understood as reality. This is implied by the very essence of the Western view of justice: the "utmost" and the "ultimate" for which the human being should strive, no matter whether he or she sees it as actually reachable. This idea is only strengthened by the fact that this ideal may be rationally calculated (whether according to the Aristotelian definition of justice as a mathematical proportion of exchange, or in any kind of social Utopia). The just society in the final analysis turns out to be no place; it is the progression toward it that constitutes the core of society.

13. No matter how close the two understandings of justice may appear to be, they reveal irreducible differences the roots of which may be traced to the deepest conceptual levels. If this research brings any benefit at all, it will be a clearer picture of how and on what scale traditional procedures that "make sense" exert their influence on the present-day discussion concerning "human values." An attempt to find something in these values that is common to different cultures is no doubt praiseworthy; however, any discussion of how successful such an attempt might be must be preceded by inquiring into whether it is in fact possible.

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NOTES

- 1 – Muḥammad Sa'īd al-'Ashmāwī, *Rūḥ al-'adāla*, 3d ed. (Beirut: Dār iqrā', 1984), pp. 15–16.
- 2 – The consonance seen in both macrocosm and microcosm provides sufficient grounds for universal statement.
- 3 – Muḥammad Sa'īd al-'Ashmāwī, *Rūḥ al-'adāla*, pp. 16–17.
- 4 – In this study I shall confine myself to the corresponding notions of 'adāla and 'adl. As for *inṣāf* and *iqṣāṭ*, these concepts, in spite of their affinity with 'adāla, sometimes have specific meanings and special usages.
- 5 – I allude to the idea of the completeness, perfection, and finality of Revelation and Law as one of the most basic, essential, and penetrating intuitions of Islamic culture.
- 6 – Of course, both the Qur'an and *ḥadīth* contain quite a number of sayings that are dark and obscure (sometimes even linguistically), concerning which the tradition prohibited any attempt at clarification. However, even this persistent prohibition speaks for itself: it is based on the presumption that all that human reason is capable of realizing and achieving had already *been presented* to the human being, and there remained nothing that could be within human power to achieve and at the same time be *outside* the present horizon.
- 7 – "To be established" (*thubūt*) and "the established" (*thābit*) are well-known terms in Islamic theoretical thought. They are often used when speaking about truth and validity.
- 8 – I do not intend to say that this is "for the first time" in the history of Arab culture on the whole. Yet for the period that we are concerned with here, this can really be regarded as the first occurrence.
- 9 – *Ghayb* ("absence", "being absent"), understood as a state (or even as a process), is opposed to *ḥuḍūr* ("presence", "being present") both in ordinary speech and as a technical term.
- 10 – Let us note that the language we are speaking forces us here to use two terms to denote clearly which of the two sides of truth-establishing procedure is meant, epistemological or ontological. Also, the ontological meaning of "establishing the truth" is hardly understood in our speech without special notice, this expression being in fact synonymous with "cognizing the truth." The "truth" here tends to sound epistemological rather than ontological.

- 11 – The only thing that the “basis” may comply with is its origin, which provided it with its power of fixity. But when we start talking about this relation, we find ourselves outside the sphere where the “basis” is actually *basis*: in this wider perspective, we already regard the “basis” as a “branch” of some other “basis.”
- 12 – To give an example (by far not the most radical), let us quote well-known orientalist H.A.R. Gibb: “Again, it is characteristic of the practical function and non-speculative origin of Islamic law that the jurists are little interested in general principles. The foundation of the law was the body of concrete obligations declared in the Koran. On this foundation and with the aid of the materials incorporated in the *hadith*, the business of the legist was to draw out the rules of conduct, public and private (as we should say), but exclusively in similar concrete terms” (H.A.R. Gibb, *Studies on the Civilization of Islam* [Boston: Beacon Press, 1962], pp. 198–199).
- 13 – “*Taqrīr al-ḥaqq makāna-hu huwa al-‘adl*,” says the prominent Isma‘īli philosopher Ḥamīd al-Dīn al-Kirmānī (Ḥamīd al-Dīn al-Kirmānī, *Rāḥat al-‘aql*, 2d ed. [Beirut, 1983], p. 456).
- 14 – I.e., existent as “the thing”; *the thing* often serves as the starting point for theoretical reflection in Islamic thought.
- 15 – Ḥamīd al-Dīn al-Kirmānī, *Rāḥat al-‘aql*, p. 456. This quotation was chosen almost by chance; the thesis of “returning the right” (*irjā’ al-ḥaqq*) can be found in the treatises of very different medieval authors, and above all *al-fuqahā’*.
- 16 – Literally, “guidance.” In classical texts this term is often used in a word collocation *siyāsat al-ra‘iyya* (“guidance of the flock”); in modern language it is used to translate the term “policy” (or “politics”).
- 17 – What is meant here is an *intuition* that was expressed in a number of *theoretical* works (first of all, the “*al-Aḥkām al-ṣultāniyya*” of al-Mawārdī, as well as other less-celebrated but nonetheless representative classical texts) and which found its *practical* implementation in the process of building the Islamic “state” (the term is of course problematic with regard to the classical period), if at all only during the very short initial period. Centuries of actual disunity in the Islamic caliphate could not eliminate this feeling of *necessary* unity that finds its support in the absolute center.
- 18 – This most general term, denoting the “first person” of Islamic political and social life, is used here with no special allusion.
- 19 – This is not an insignificant reservation due to the diversity of meanings that *al-ḥaqq* has.

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- 20 – Quite representative in this respect is what Ibn Sīnā says when he argues that “justice (*‘adl*) maintained by Law and established by the Law-giver” is indispensable for sustaining the *life* of the human species (Ibn Sīnā, *al-Namaṭ al-tāsi’ fī maqāmāt al-‘ārifīn*, in Ibn Sīnā, *al-Anmāṭ al-thalātha al-akhīra min al-Ishārāt wa al-tanbihāt. Rasā’il al-shaykh al-ra’is Abī al-Ḥusain ben ‘Abdallāh ben Sīnā fī asrār al-ḥikma al-mashriqiyya. Al-Juz’ al-thānī* [Leiden: E. J. Brill, 1891], p. 12).
- 21 – In this connection, it is interesting to recall the definition of injustice (*jūr*) that Ibn Ḥazm gives in “*Kitāb al-akhlāq wa al-siyar*,” opposing it to justice (*‘adl*): The definition of justice (*‘adl*) is to give what is due (*wājib*) and to take it, and the definition of injustice (*jūr*) is to take it and not to give.” If it is the “*imam*,” the highest person in power, who turns out to be unjust in this sense, his “nongiving of what is due” may have disastrous consequences for the whole structure. The state of injustice from that point of view is, generally speaking, abnormal; it is tolerable only as long as it does not upset the system’s functioning on the whole, but it may (and should) be restored to initial “justice.”
- 22 – They are not the only ones, of course; at least another two terms, *jūr* and *ḥajr*, should be mentioned as among the most frequently used.
- 23 – Limited space makes it impossible to talk about another realm of *‘adāla* meanings, namely understanding *‘adāla* as moral virtue. In this sphere, too, we discover, with almost no exception, the persistent intention of medieval authors to treat justice not as the *maximum* but as an *average goodness*: its common definition consists in not committing the “major sins” and in nonpersistent committing of the “minor sins” (that is, the *standard* abiding by religious morality).
- 24 – This perception of the necessity of equalizing is what Western concepts of justice appear to be based on. We find it in Aristotle’s writings, in the Roman concept of *aequitas*, in medieval appeals to justice, and in modern (at least liberal) theories as well.