

Lecture 5: Islamic Legal Approach to Ethics/Morality

1. Understand the ethical nature and functions of Islamic law and Maqasid al-Shari'ah & al-Qawa'id al-Fiqhiyyah (Legal maxims).
2. Identify the connection of the Shari'ah and Islamic law with ethics/morals
3. Explore ethical priorities according to the Maqasid.

Secular law: The relationship between law and morality is not entirely reciprocal. What is moral is not necessarily legal and vice versa. Many practices have been inscribed in the law, that are clearly immoral (e.g., homosexuality, same sex marriage, mercy killing, abortion, usury). Islamic law: Law should reflection of the Islamic morals (Law should not violate morality) Law and Morality be a § Both law and ethics in Islam deal with obligations, human character, and righteous actions. § Sharia consists of law and morality. § Morality provides provide the reasons for the laws governing human life. § Morality is broader than law. What is moral in not necessarily enforced through law. § In morality: wrong motives/intentions may amount to a moral wrong while good one are in themselves good values. § Law and ethics compliment each other. § Law (legal code of do and don't) is concerned with acts rather than attitudes. Rulings of Fiqh Wajib (Compulso ry) Sunnah (Recoman ded) Mubah (Permissib le) Makruh (Undesirab le) Haram (Prohibite d) MAQASID AL-SHARI'AH § Maqasid al-shari'ah means the objectives of Islamic law. § Shari'ah is a set of norms, values and laws that make up the Islamic way for life. § Shari'ah is all about justice, mercy, wisdom, and good, and public welfare. § Maqasid al-shariah (objectives of Islamic law) is to protect and promote public interest (maslahah) through preservation/promoting the following five fundamentals: religion, life, reason (intellect), human progeny/honor, and wealth. Ibn al-Qayyim, a great Muslim scholar says: " Any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Shari'ah, even if it is claimed to be so according to some interpretations." CATEGORIES OF OBJECTIVES OF SYARI'AH The Essentials (Daruriyyat) THE ESSENTIAL RIGHTS matters on which the religion and worldly affairs of the people depend upon, their neglect will lead to the total disruption and disorder and it could lead to evil ending. The Complementary These 5 primary objectives of Shari'ah (Hajjiyyat) The Embellishments (Tahsihiyyat Our Main Concern are known as Daruriyyat (essentials/fundamentals): Ethics requires their protection and their promotion. They go in the following order: ● Religion has precedence over life ● Life has precedence over intellect ● intellect has precedence over Human Progeny ● Human Progeny has precedence over wealth

1-PROTECTION OF Al-Din (Religion) § Al-din is the most important value to be protected. § Protection of al-din at personal level is achieved through the observance of 'Ibadah, such as performing prayers, fasting, paying Zakah and performing Hajj. Examples: Salat: "...And establish regular prayer; for prayer restrains from indecency and evil" (29: 45) Fasting: "...Fasting was made compulsory for you, as it was made compulsory for those who preceded you, so that you may become righteous." (2: 183) Zakat: "...Take alms of their wealth, so that it may purify and sanctify them. (9: 103) Hajj: "...whoever determines the performance of the pilgrimage therein, no lewdness nor abuse conversation on the there shall be nor angry pilgrimage(2: 197).

2-PROTECTION OF LIFE ● Protecting of life is obligatory to each and every individual and societies. ● In the capital punishment for murder, even though one's life is lost because of the crime, it leads to saving many more lives as the punishment will deter others from committing such heinous crime. Examples?

4-PROTECTION OF INTELLECT ('AQL) §

‘Aqlisadivinegiftandisajustificationfortaklif. § Man needs intellect for the l’mar (holistic development) wellbeing of his own self, community and humanity. § Islam encourages ijthad, freedom of expression, and allows for toleration of views. § Protection of the intellect from all that might harm its ability to function (e.g., consumption of liquor/ any similar substance that disturb the function of brain). Examples?

3-PROTECTION OF HONOR/DIGNITY (AL-’IRD) § Protecting the honor/dignity preserves dignity respect and fairness. § Islam encourages its followers to enter into marriage contract and prohibits relations outside of it. § Islam prohibits accusation of others with mischief or slandering them (accusing them of committing moral vices). (Those who slander chaste women, indiscreet but believing, are cursed in this life and in the Hereafter, for them is severe chastisement). (Al-Nur, 24:23) 5-PROTECTION OF

WEALTH (AL-MAL) ● Acquiring property is human necessity. ● Islam commands that none should acquire the property of others without legitimate reasons and without proper contract. ● God set laws to regulate commerce and transactions to ensure fair dealing, economic justice and to prevent oppression and dispute. ● Islam disallows haram ways of acquiring property (taking riba’, cheating in transaction, breaking the trust, stealing property of others. The Qur’an emphasizes this point when it say : “and eat up not one another’s property unjustly, nor give bribery to the rulers that you may knowingly eat up a part of the property of others sinfully.” (Al- Baqarah: 188) (AL-HAJIYYAT) THE COMPLEMENTARY or

HUMAN NEEDS ("Need, whether of a public or private nature, is treated as necessity" ● Interests/benefits whose neglect leads to hardship of the individual or the community, although they does not cause total disruption of normal life. Examples of al-hajiyat include concessions (rukhas) the Shari’ah granted in regards to ‘Ibadah for travelers/sick people. Travelers are allowed to combine and shorten their prayers and break fast in Ramadan. A sick person is allowed to pray in sitting or sleeping position and break his fast in Ramadan. (AL-TAHSINIYYAT) EMBELLISHMENTS ● Interests whose

realization leads to improvement and the attainment of that which is desirable. Lost of al-tahsiniyyat may not interrupt the normal life, but might lead to lack of comfort & beauty in life.. ● Example: Observance of cleanliness in personal appearance and in ‘Ibadah, avoiding extravagance and measures that are designed to prevent proliferation of false claims in the courts. ● These affect positively the customs and (القواعد الفقهية) life-style of others based upon universal moral values inherent in all religions and humans

المشقة تجلب Islamic Legal Maxims “What is certain cannot be removed by doubt” لا يزول بالشك “Hardship Begets Facility” لا ضرر ولا ضرار “Harm shall not be inflicted nor reciprocated” العادة محكمة “Matters are determined by intention” الأمور بمقاصدها “Custom is the basis of judgment” الأمور بمقاصدها

Matters are determined by intention In the event of difference between implicit and explicit “intention, judgement based on intention to the extent that it may be established Example: A gives money to B, depending on their intention, such an act will have varying legal descriptions. This conduct can be an act of charity, like gift, a loan, entrustment, discharge of liability, and each has its own specific legal status. If something has not been established with certainty, it will remain so until proven otherwise. Example: – “Innocent until proven guilty – Medical opinion that a patient is brain dead is not conclusive legal proof for the Sharīah obligations regarding a person’s death to be executed because the norm is that he is still alive until certainty of his death is proven. – man is lost believed to be dead (battle field, drowning or ship wreck) such a man is presumed to be alive until confirmation of the certainty of his

death. Islamic Law is built upon achieving ease and not upon imposing hardship. Whenever difficulties present themselves, the law makes provisions to facilitate matters. The condition for such measure to be taken is that the difficulties are real and not imagined. Example: If someone is traveling and lacks water, then he makes tayammum. the custom of the believers is the basis for judgement in the sacred law. Custom is continuously applied in fiqh. Approved Custom (al-‘urf al-sahih) “One which is observed by the people at large without there being any indication in the Shari’ah that it contravenes any of its principles.” Disapproved Custom (al-‘urf al-fasid) – “Also practiced by the people but there is evidence Do not Inflict Harm nor reciprocate“ لا ضرر ولا ضرار”.to show that it is against the principles of Shari’ah harm” One is to be held legally accountable for her actions when she causes harm to herself or to others. One is not permitted to transgress against others or against himself. Description When removing harm or damage, it must not invoke another type of harm either in the same degree of harm or worse. If harm or damage is unavoidable, one has is to choose the lighter damage between those two. الضرر يزال. Anything which may cause harm must be abolished regardless of whether it is old or new Harm is put to an end” Example? If there is a conflict between harm and benefit, it is obligatory“ to lift the harm first even if by so doing it will remove the benefits because harm can easily spread and cause severe damage. Example: If a company is found disposing its harmful waste (toxic) in a residential area, such an act must be stopped. If the public suffers health problems as a result of such .an act, the firm must take the responsibility and pay compensation accordingly