

A CLASSICAL PARADIGM OF SOCIAL HARMONY IN ASIA THE CASE OF 'URF (LOCAL CULTURE) IN ISLAMIC LEGAL PHILOSOPHY

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ABSTRACT

Social harmony endows the society with peace and tolerance. For this reason it is very important especially in our world today with global influences and speedy movement of people with different cultures. This paper is an attempt first to elucidate the concept of “social harmony”, and then try to see how this was achieved in Asian communities with an example chosen from the Islamic legal doctrine based on the concept of ‘urf. I would like to translate this concept as “local culture”. I would like to argue that because Islamic legal philosophy developed a concept of local culture as a source for legal pronouncements beyond the primary sources of Islamic legal doctrine, it was able to preserve local cultures through establishing a social harmony. The concept of local culture provides a legal and conceptual background for social harmony both culturally and philosophically. It is through such a background that Islamic legal philosophy was able to develop a paradigm of social harmony for all Muslim communities which may be a new model in the glocal world of ours today.

Keywords: Social harmony, local culture, ‘urf, Islamic Law, conflict resolution

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The phenomenon of globalization brings more clearly not only cultures face to face today but also introduces environments in which people of diverse cultures are also forced to live as one society. In the past this kind of social coexistence also took place through conquests. But the past encounter of diverse cultures met with a certain kind of “social harmony” perhaps because of the historical circumstances and the slow pace of life at that time. The global phenomenon today introduces a very fast pace of life through its rapid ways of encounter and means of mass communications and transportation. Therefore, it does not give sufficient time to digest other cultures in order to integrate different cultures into a way of social harmony which endows the society with peace and tolerance. For this reason the understanding of social harmony has become very crucial in this global age with horrendous global influences and rapid movement of people across different cultures. This paper is an attempt first to elucidate the concept of “social harmony”, and then try to see how this was achieved in Asian communities with an example chosen from the Islamic legal doctrine based on the concept of *'urf*. In this regard I shall try to argue that because Islamic legal philosophy developed a concept of *'urf* to refer to local cultures as a source for legal pronouncements beyond the primary sources of Islamic legal doctrine, it was able to preserve local cultures through establishing a social harmony.

If we start our analysis of the concept of social harmony by first evaluating what we mean by “harmony” then we may be able to elucidate this concept more effectively. Harmony, as intended to be used in this context, literally means “fitting together of parts agreeably so as to form a consistent whole”. In this sense it refers to “coming into agreement in relation”; as such it expresses consonance, balance and suitability. Therefore, in the idea of harmony there is ultimately the sense of some kind of “unity” among the parts that make up the whole. The problem here is that although “harmony” reflects the idea of unity we would like to argue that this unity in a society is not possible as it may be possible in other instances of harmony, such as musical harmony; or the harmony among the parts of a jigsaw puzzle. This is because a society is made up of many different kinds of individuals and groups that may act under the influence of their bodily instincts such as greed, lust, resentment, anger, conflict and maltreatment. On the other hand, there will be individuals and groups acting out of such good dispositions as self sacrifice, goodwill, kindness, benevolence and compassion. How can harmony in society be achieved under such contradictory human dispositions? The problem will be more complicated when we consider the infinite range of dispositions proportionately distributed in between these opposite extremes.

One should not forget that contradictions and conflicts which exist in a society are in no way restricted to human dispositions. For, there are many cultural difference let alone contradictory and conflicting ways of living and customs, traditions and beliefs practiced by different groups of people. We thus cannot but raise the question: Considering this wide range of conflicting and opposing human dispositions, cultures, customs, ways of life and traditions, is it at all possible to achieve social harmony, if by harmony we understand its literal meaning as given above; namely, harmony in the sense of “fitting together of parts agreeably so as to form a consistent whole”? In that case, if we still strive for this ideal then we have to achieve even within ourselves to somehow unite the contradictory elements. Social harmony thus begins at the level of “self-harmony”. This compels us to define social harmony in a different way from the literal meaning of “harmony”.

The word “social” in the concept of “social harmony” obviously refers to the society. In my previous papers presented at ICAPA I tried to elaborate this concept based on human nature. Considering the problem of social harmony outlined above we have again put stress on human nature by proclaiming that social harmony begins at the level of “self-harmony”. To be in harmony with oneself means to be in tune with one’s conflicting dispositions that may ensue from any part of human nature. If we follow this line of argument we may already reach a preliminary understanding of social harmony as “being in tune with others in any group or society”. When we apply this understanding to Asian communities we may assert that it is possible to trace the footprints of both self-harmony and social harmony at the level of cultural co-existence among the past Asian communities. The only problem remaining here is that the social harmony is not based on self-harmony; namely it did not follow upon individual realization of harmony; and that is why even in the past there were cultural clashes between communities. Of course today because of nationalistic feeling and the high dose of dispositions with respect to self interestedness cultural conflicts are widened. That is why Islam offers a different approach here in a unique science which is called *fiqh* (more properly *al-fiqh*). This science does not exist in any other civilization, which makes it difficult to translate in any other world languages. Because of this, all Muslims of various ethnic backgrounds simply emulated this concept into their languages in its original usage. In English, however, it is translated as “law” which does not transfer all the meaning embedded in this concept. If we were to translate all its connotations into English then we would have to pay attention all the topics discussed in this science, such as human nature, spirituality, society, order and divine will in organizing such phenomena manifested in all these spheres of life. In that case

fiqh means an all-embracing science that combines human phenomena as different branches under its gamut, namely the entire range of humanities and social sciences, including law. In order to understand correctly, therefore, the exact status of social harmony in Islam and the solutions offered by it in order to achieve this good social state we need to examine first the nature of this science in its historical process as it emerged in Islamic civilization.¹

In order to trace the history and origins of a science in Islam depends upon reviewing in a sense Islamic history from its very beginning. If we take the Meccan period in the first century of Islam, namely the seventh century of C.E. as a whole as the beginning of Islamic history, it is possible to demonstrate that with the advent of the Medinan period the foundation of many disciplines had already been established. For, more than half of the Qur'an was revealed and the foundational Islamic worldview had already been founded in Mecca. This worldview is what we call "fundamental metaphysics" of Islamic conception of reality as a whole. In other words, the fundamental metaphysics of the Islamic worldview had already been constructed by the Qur'an while the Prophet Muhammad (a.s.w.) was in Mecca. Therefore, most of the terminology of the subsequent philosophical developments was contained in the Meccan *suras* (chapters), for these terms are mostly contained within the fundamental metaphysics of Islam. But most of the terminology in the fields of law and political philosophy was developed within the Medinan period. This is because Islamic worldview is based on the idea of God, resurrection, prophethood and man's moral response to that scheme, which is, as its fundamental metaphysics, "revealed theology". Therefore, as legal, political and social institutions came to be established in Medina, the foundations for such disciplines investigating these spheres of life had been firmly and in connection with actual life established. It is this process of development that we shall endeavor to trace in order to see how *fiqh* came to emerge as an umbrella science covering humanities and social sciences. In this regard, in order to see how a body of knowledge comes to be established as a science, we shall first exhibit from the history of sciences the process that is involved in this phenomenon.

We must first of all realize that sciences are not discovered; they are established by us. Therefore, they are not like, the law of gravity, for example, or the fact that the earth revolves around the sun. For, these may be called scientific truths that are discovered by the scientists. But sciences are established by the scientists. However, in establishing a science usually there involves many scientists who first establish a [scientific] tradition by laying down certain

principles which acquire a general acceptance by the subsequent followers. This way the scattered and discrete studies begin to acquire a unity. The body of collected knowledge thus acquires the status of a discipline. Then, in this process, a scientist or the community of scientists active in those learning activities gives a name to that discipline, either according to its subject matter, or its method. A discipline is, therefore, a study with a certain method, but not necessarily a well-defined and clear-cut subject matter, although the purpose of the study does assign it a general subject matter. But a science is a discipline with a well-defined subject matter, method, theories and an accumulated knowledge.

It is thus clear that there are primarily four stages in the process of a body of knowledge to be established as a science:

1. **The Stage of Worldview**, which represents the process in the initial period when a worldview suitable for cultivating learning activities emerge in the minds of the individuals in that society;
2. **The Stage of Problems**, where scattered and discrete studies of various problems are carried out for a period of time;
3. **The Disciplinary Stage**, which is the period when a tradition arises as a result of conventional consensus among the scholars; general subject matter and method are determined on the basis of classification of the accumulated knowledge;
4. **The Stage of Naming** which represents the period when scholars become conscious of each class of knowledge constituting a subject of study representing a science; in this manner the name used for the classification becomes the name of the science.

It is possible to defend an epistemological position on behalf of this process in the coming into existence of sciences; a position which claims that these four stages in the establishment of sciences are not only the logically, but also naturally successive stages. But the way they take place in each civilization may vary. For example, the emergence of physics in Greece may be the same as the emergence of kalam, for instance, in the Islamic civilization. But in one of them study of nature emerged as a science, in the other study of religion. It is possible that physics would never have emerged as a science in Islam; and instead a branch of kalam may have developed and emerged on independent science to replace the Greek physics. In fact, considering, the atomic theory of kalam together with other earlier cosmological theories, if there had not been the Greek influences, that might have been the case.

¹ The next discussion is based on my book *Islamic Scientific Tradition in History* to be published by IKIM, Kuala Lumpur, Chapter IV.

In is within such an epistemological background that *fiqh* as a comprehensive science emerged in Islamic civilization. At the earlier stages of Islam the term *fiqh* is used literally to mean 'understanding', for example, *la yafqahu wa la yanqah* (neither understands, nor comprehends). This usage is maintained in both the Qur'an and the *hadith* namely usages of the Prophet, as we may see in the following cases:

An intellectual (*faqih*) is more vehement to the Satan than one thousand devout persons (*abid*). (Ibn Majah, "Muqaddimah", 222)

If God wants to do good to a person, He makes him an intellectual (*faqih*) in religion. (Al-Bukhari, "Kitab al-'Ilm", chapter 14)

It seems that in this connection, two terms go together in early Islam: *'ilm* which simply means "knowledge" and *fiqh* which literally means "understanding". However, in knowledge activities of early Islam both terms refer to knowledge, although the former expresses exact, precise and definite knowledge, while the latter signifies *scientific*, and hence knowledge of the rational kind. That is why *'ilm* is used by both the Qur'an and *hadith* to refer to revealed knowledge which is definite and absolute.² The Prophet's prayer for Ibn 'Abbas uses both terms in exactly the same signification indicated respectively here: "O God, give him the rational understanding of religion, i.e. *fiqh*; and make him proficient in knowledge (*'ilm*)".³ *'Ilm*, in this respect, is used to refer to knowledge which is either revealed or related to that which is revealed. But *'ilm* also has its literal connotation in both the Qur'an and certain *ahadith* (sayings of the Prophet) referring to knowledge in general:

We have given them a book (i. e., Revelation) and explained it with a knowledge as a guidance and mercy for people who believe. (7/al-A'raf, 52; also see 4/al-Nisa', 157; 6/al-An'am, 119; 27/al-Naml, 15-6; 31/Luqman, 20)

If anyone acquires knowledge of things by which God's own pleasure is sought, yet acquires it only to get some worldly advantage, he will not reach the smell of Paradise. (Abu Dawud, *Sunan*, "Bab al-'Ilm", 3656)

When *'ilm* is revealed it is absolute and thus is identical with the Revelation; but when it is attained by man, it cannot be identical with Revelation. Therefore, the general usage of *'ilm* by both the Qur'an and *hadith* refers to the knowledge attained by man.⁴ This general meaning of *'ilm* is intimately linked in the knowledge-structure of the Islamic worldview with its usage in the sense of Revelation.⁵ The Qur'an is developing a moral dimension here as the knowledge-structure of the Islamic worldview. However, if this moral dimension is divested of knowledge, it may lead to disastrous results, as indicated in the following verses:

Those who have stupidly killed their own children *without having any knowledge* and forbidden something God has provided them with, have lost out through inventing things about God; they have gone astray and not been guided...Who can be more harmful than the one who invents a lie about God to mislead people *without having any knowledge*. (6/al-An'am, 140, 144)

Therefore, the Qur'anic approach qualifies knowledge with a moral dimension which is provided again by the revelation; the attitude of indifference is thereby excluded from the Islamic worldview and its knowledge-structure. This aspect of knowledge can be observed in the verse stating that "they learn what is harmful and not useful to them." (2/al-Baqarah, 102). The knowledge that is useful is understood as either Revelation itself, as we have seen in the verses mentioned or quoted, or as knowledge derived directly from Revelation, or as knowledge in the general sense, namely as acquired by man, but which can be reconciled with Revelation and thus be based upon it. Therefore, the Qur'an definitely wishes to qualify knowledge; in fact, its aim is to guide knowledge in general; that is why revelational knowledge is collated with it at this point. Knowledge in general is no longer left aloof, but it is suggested to be invested with revelational values. Once general knowledge is thus invested, it becomes *illuminated knowledge*, which is no longer knowledge that is harmful. There is no doubt that all these values are delicately infused into the knowledge-conception of the Islamic worldview

4 See, for example, the usage *bi ghayri 'ilm* (without having any knowledge) 6/al-An'am, 119; 31/Luqman, 20, and so on.

5 See, for instance, this verse: "The ones who do wrong follow their own whims *without having any knowledge*. Who will guide someone whom God has let go astray? They will have no supporters. So keep your face set straight to the true religion, God's natural handiwork along which He has patterned mankind. There is no way to alter God's creation. That is the correct religion, though most men do not *know*." (30/al-Rum, 29-30).

2 For this usage, see the following verses: 2/al-Baqarah, 120; 3/Âli 'Imran, 61; 6/al-An'am, 119, 140, 143; 11/Hud, 14, 49; 13/al-Ra'd, 37, 43; 19/Maryam, 43.

3 Isma'il ibn Muhammad al-'Ajlunî. *Kashf al-Khafa' wa Muzil al-Ilbas* (Beyrut: Mu'assasat al-Risalah, 1985), 1: 220-1. The exact Arabic statement is: *Allahumma faqqihhu fi al-din wa 'allimhu al-ta'wil*.

by the Qur'an.⁶ It is through this approach that the Qur'an utilizes human nature in order to achieve self-harmony based on knowledge not on ignorance.

In this way a morality of knowledge is also developed as a part of the knowledge-structure of the Islamic worldview. Knowledge unqualified is considered as though it is not knowledge at all; hence, the phrase "without having any knowledge" which simply means "ignorance". For when the Qur'an accuses those people with this allegation, it cannot obviously mean that those people had no knowledge at all; in fact, "they knew only the external look of the worldly life very well, but they were totally unaware of the life to come (*al-âkhirah*)" (30/*al-Rum*, 7). That is why their knowledge is as if *non-existent*. Therefore, *unilluminated* knowledge is superficial in itself and as such it can be equated with *ignorance*.

As all these conceptions concerning *'ilm*, *fiqh* and other knowledge-related terms were developed, a doctrinal understanding gradually began to emerge within the Islamic worldview; it is this comprehensive doctrinal understanding that we call the 'knowledge-structure' of the Islamic worldview. This conception emphasizes knowledge with an utmost care, without even leaving it with a mere emphasis, for it also states that "seeking knowledge is an obligation for every Muslim".⁷ Moreover, besides this emphasis, a framework is also given together with the doctrinal understanding of knowledge. Considering also the Qur'anic encouragement to examine and understand the universe and the nature of certain related problems, it becomes inevitable that as a result of all these comprehensive knowledge-seeking activities, a network of concepts emerges; it is this network which we have called the *scientific conceptual scheme*. Since this scheme emerged as a result of and within the Islamic worldview, we identify it as the *Islamic scientific conceptual scheme*. As we have shown, if such a scheme emerges within a given society or civilization, it is called 'scientific tradition'.

There is a twin term of *fiqh* derived from the earlier usages of the Prophet, *ra'y* and *ijtihad*. These terms bring the early *fiqh* into its conception as a comprehensive human science. Two cite only a few usages we may mention al-Zuhri's (d. 846) usage of the term *ra'y*, who maintains that a sound theory (*al-ra'y al-Hasan*) is a good piece of knowledge.⁸ Ibn 'Abbas (d. 688) reports from the Prophet that he said: "As though I see the women of Banu Fahr circumambulating

around the Khazraj (tribe) while shaking their buttocks; they are the polytheists. This is the first polytheism of this community. By God, their wrong theory (*su' ra'yihim*) shall eventually lead them to exclude God from predetermining good, just as they had already excluded Him from predetermining evil".⁹ It may not always be possible to find an equivalent translation of a scientific term of a scientific conceptual scheme, coined for a specific meaning within a certain worldview in another scientific conceptual scheme. This is the case with the concept of *ra'y*, which does not have an exact corresponding term in the Western scientific vocabulary; except that the term 'theory' is used very much in a meaning close to the term *ra'y*.¹⁰ This means that *'ilm* is understood as a definite piece of knowledge which is either directly taken from a revealed source, or derived from it on the basis of a precedent practice of the Prophet. But *ra'y* cannot be *'ilm* in this sense because it is the view of an individual on a certain problem. Hence, *ra'y* actually means 'theory' in the Western scientific terminology. Not only does a theory, i. e., *ra'y*, mean 'provisional opinion', it also expresses a rational argumentation because a scientific theory is based on reasoning.¹¹ Moreover, since reason is not authoritative in the absolute transcendent realm, the Prophet says that "if one interprets the Qur'an on the basis of his theory (*ra'y*), he has committed an error even if he is correct in his interpretation"¹², since no knowledge can be based on theory. It is also reported that "sometimes Ibn 'Abbas held a theory which later he abandoned."¹³

The knowledge based on a rational argumentation is reached as a result of *ra'y*, and such scientific knowledge was actually defined as *fiqh* in the early scientific terminology. Since such a knowledge is in fact *science per se*, in certain early usages it was used exactly in the same manner, such as the title of a book written by al-Tha'alibi (d. 1038), *Fiqhu'l-Lughah*, i.e., the science of lexicography. Later developments, however, diverted this usage, and perhaps as an influence of the Greek scientific tradition this usage was dropped and thus replaced by the term *'ilm*. Moreover, according to Abu Hanifah (d. 767), *fiqh* meant "speculative thinking".¹⁴ Al-Dhahabi (d. 1348) says of 'Abdullah ibn al-Mubarak (d. 797) that he "recorded knowledge,

9 Ahmad ibn Hanbal, op. cit., 1 (21): 330.

10 This is attested also in the report of Ibn Sa'd who states that when 'Ata' ibn Abi Rabah was asked concerning his judgment whether it was *'ilm* or *ra'y*, he replied that it was *'ilm*, if his judgment is derived from a precedent, i.e., *athar*; otherwise, it was implied that the judgment in question was grounded upon *ra'y*. see *Kitab Tabaqat al-Kubra*, ed. by Ihsan 'Abbas (Beirut: Dar Sadir, 1968), 5: 469.

11 This understanding of *ra'y* is also clear from the following usage; "*ni'ma wazir al-'ilm al-ra'y al-hasan*" (what a good minister of knowledge is the correct theory). See Al-Darimi, *Sunan*, "Muqaddimah", 30.

12 *Sunan Abu Dawud*, op. cit., 1036.

13 Al-Darimi, op. cit., "Muqaddimah", 52.

14 L. Gardet, "Ilm al-Kalam", *EI*².

6 See, for instance, "the true knowledge is with God alone" (46/*al-Ahkaf*, 23); "above all those who possess knowledge is an All-knowing" (12/*Yusuf*, 76); "God knows you do not know" (2/*al-Baqarah*, 216; see also 3/*Ali 'Imran*, 65-6).

7 *Ibn Majah*, "Muqaddimah", 17, 224.

8 See Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1986), 8.

i.e., *hadīth*, in chapters and concerning *fiqh*” (*dawwana'l-‘ilm fi'l-abwab wa'l-fiqh*).¹⁵ Of course this usage of the term has a basis in the Qur'an (e.g., 9/al-Tawbah, 122; *li yatafaqqahu fi al-dīn*), as well as in the *hadīth* (see the *hadīth* quoted above in relation to the Prophet's prayer for Ibn 'Abbas). That is why 'ilm was taken by the Traditionists to mean *hadīth*.

Ijtihad, on the other hand, means the *effort to search for knowledge through ra'y*. Hence, *ijtihad* is also a scientific effort which is theoretical. For this reason it is not a definite knowledge, but it must, of course, be based on revealed knowledge. It must be for this reason that the Prophet says: “the scholar who bases himself on true knowledge is a hundred times higher in rank than the theoretical scholar.”¹⁶ In this context a scholar is the one who utilizes *ijtihad*. If we want to show the relation of *ra'y* to *ijtihad*, we can say that *ra'y* is the theory which is produced in an *ijtihad*. This is clear in Mu'adh ibn Jabal's (d. 638) interesting usage of *ijtihad* and *ra'y* together in the famous *hadīth* of *ijtihad*: *ajtahidu ra'yī la alu*; i. e., I shall make my best effort to come up with a theory.¹⁷ But *ijtihad* is necessarily based on the Qur'an and *hadīth*, as understood from this *hadīth* as well.

What about the theoretical knowledge which is primarily derived from discursive thinking? The early Islamic scientific conceptual scheme used the term *kalam* to refer to this kind of knowledge. As such *kalam* meant 'speculative knowledge'. The earliest reference in this regard can be taken from Hasan al-Basri's (d. 728) letter in which he states that “we initiated the speculative study of *qadar*; just as people initiated the denial of it” (*ahdathna al-kalam fihi*).¹⁸ It is also reported that once our Prophet's wife, 'Ā'ishah, heard Hasan al-Basri speaking, and asked: “who is this discoursing with the word of the veracious” (*man hadha alladhī yatakallam bi kalam al-siddiqīn*).¹⁹ In this sense, *kalam* comes very close to the term 'philosophy' as it is used today; i.e., speculative thinking. It is clear why Muslims chose the word 'kalam' for this kind of knowledge, for *kalam* means 'language' or 'speech' but not in the ordinary sense. It rather refers to the kind of human language which is discursive. In this sense, it comes close to the term 'logos' in the Greek scientific conceptual scheme. It may be translated into English as 'discourse', but in the technical sense of today's Western scientific terminology, it means precisely 'philosophy'.

15 *Tadhkirat al-Huffaz* (Hyderabad: The Dairatu'l-Ma'arif-il-Osmania, 1955), 1: 275.

16 Al-Darimī, op. cit., “Muqaddimah”, 32.

17 Ahmad ibn Hanbal, *Musnad*, 5: 230.

18 Julian Obermann, “Political Theology in Early Islam”, *Journal of the American Oriental Society*, 55 (1935), 145; Arabic text, Helmut Ritter, “Studien zur Islamischen Fromigkeit I: Hasan al-Basri”, *Der Islam*, 21 (1933), 68, lines 10-11.

19 Ibn al-Jawzī, *al-Hasan al-Basri*, 8-9; quoted by Muhammad 'Abd al-Rahīm, *Tafsīr al-Hasan al-Basri* (Al-Qahirah: Dar al-Haramayn li't-Tiba'ah, 1992), 1: 21.

It is clear that all these usages determined the scientific vocabulary of the early Muslims. Not only is the meaning of each term clarified, but so is its relation to other terms and the way, viz., method, they ought to be used is also given. For instance, it is possible to think that since *fiqh* is a rational understanding, it may be a kind of knowledge that is to be avoided by Muslims, as indicated in the above *hadīth* that the scholar who bases his himself on true knowledge is a hundred times higher in rank than the theoretical scholar, i. e., the rationalist. But another *hadīth* clarifies that rational understanding may be decisive in certain cases (e.g., *faqīh wahid ashadd 'ala al-shaytan min alf 'abid*).²⁰ Of course, the Islamic worldview also clarifies in which cases which is to be preferred.

To the concept of knowledge in the scientific conceptual scheme of the Islamic science, the term *hikmah* also proved indispensable. Mujahid (d. 721), for example, explains the term *hikmah* in the verse *wa man yu'ta al-hikmah fa qad utiya khayran kathira* (2/al-Baqarah, 269) as comprising three things: 1. al-Qur'an, 2. *al-‘ilm*, 3. *al-fiqh*.²¹ Here 'ilm refers to the knowledge of Islamic tradition and the Sunnah, *fiqh* was held as a rational understanding on the basis of the revealed sources. *Hikmah*, on the other hand, was understood as knowledge derived rationally from a revealed source, as such it is both 'ilm and *fiqh* at once, but different from independent speculation, which can be understood as *kalam*. That is why al-Tabarī reports that *hikmah* was defined by his predecessors as the Qur'an and its (rational) understanding (*al-hikmah hiya al-Qur'an wa'l-fiqh bihi*).²²

When the Muslim community was established in Medina, with the arrival of the Prophet in 622, some kind of a political authority was established and thereby the foundation of an organized judicial system was also erected. The Prophet was the central authority. But some companions of the Prophet were drawing conclusions from the Qur'an and the *sunnah* of the Prophet by independent reasoning. Their conclusions were approved by the other Companions and thereby they became binding on the community. It seems that from the earliest times two characteristics were exhibited in every legal decision to be admitted universally by all Muslims and to acquire the status of law:

1. Independent reasoning based on the Qur'an and the *Sunnah*,
2. Recognition of an authoritative community, in this case of those who have the 'ilm namely knowing the conditions from the time of the Prophet.

20 Al-Tirmidhī, “‘Ilm”, 13; Ibn Majah, “Muqaddimah”.

21 Al-Tabarī, *Jami' al-Bayan fi Tafsīr al-Qur'an* (Beirut: Dar al-Ma'rifah, 1980), 3: 60.

22 Ibid.

The first came to be identified as “*qiyâs*” (analogical reasoning) and the second “*ijma*” (consensus). It is clear, then, that at the time of the Prophet these two terms were not used in the sense that it was used after the science of jurisprudence came into existence. But the term *fiqh* was being used very commonly; indeed its usage was so common that soon after the Prophet’s death it already began to acquire a technical meaning. These and many other such usages, as cited above, show that the word which was later chosen to be the name of legal scientific activities has only Islamic origins. Within this background the legal system in Islam began to enrich itself by using the terminology already developed within the Islamic worldview which was already established in Mecca. Some concepts of this worldview were directly related to the legal understanding such as the last judgment, the concept of *al-wa’d wa’l-wa’id*, the idea of justice, the doctrine of community (*ummah*), the concept of right action, good deeds; *amal* and so on.

On the basis of this, first the law prescribed in the Qur’an was practiced on the authority of the Prophet; the Companions also observed how the Prophet exercised his own opinion in interpreting the legal verses of the Qur’an. In this way most of the legal terminology developed by the Prophet himself either as taken directly from the Qur’an or through the opinion of the Prophet. This can be clearly seen in the hadith collected in al-Shafi’i’s *Risalah*.²³

After the death of the Prophet, the Companions continued his tradition and thus as legal cases increased; proportionate to that legal thought also began to acquire more sophistication. Thus legal problem began to form a body of legal knowledge during the first half of the Islamic century. But about two decades later, i.e. 660’s, we encounter the first specialists in law whose activity can be regarded as putting all these scattered and discrete discussions under one discipline. This means that the legal activity pass into its second stage when a legal disciplinary tradition was established on the basis of *fiqh* as a comprehensive science (700-750). Now the subjects under discussion was broadly recognized, a sufficiently well-formulated method was invented and as a result *fiqh* came to have a more definite meaning; for the scholars specialized in the subject, the body of knowledge included in all legal discussions constituted a discipline, which still mostly included *fatwas* (legal judgments) or independent decisions of the legal scholars. Thus, these scholars came to realize that their subject actually constitutes a discipline.

Prominent thinkers involved the process of legal discussions leading to the existence of

fiqh as a science at the stage of disciplinary tradition are: Abdullah ibn al-Mubarak (of whom al-Dhahabi says “*dawwan al-ilm fil-ahwâl wa’l-fiqh*”²⁴ and “*sannaf al-kutub wa farra’ ‘ala-l-Sunan*.”²⁵ Hisham ibn ‘Urwa’s [d. 712/94] father’s many *fiqh* books were burnt at the battle of Harra and Urwa saw many *fuqaha* (social scientists-lawyers) died in that battle.²⁶ We may also mention Abu Thawr, al-Zuhri and Hasan al-Basri (642 -728), about whom Ibn Qayyim al-Jawziyya says that “his *fatwas* (legal decisions with interpretation) are collected in three books and Hasan al-Basri’s in seven books.”²⁷ Also Ibrahim al-Nakha’i (belonged to the Kufan school), Sa’id ibn al-Musayyab and Mujahid who explains the term *hikmah* (wisdom) in the verse “*waman yu’tal hikmata*” (2/*al-Baqarah*, 269) in his tafsir as comprising three things: 1. al-Qur’an, 2. *al-ilm*, 3. *al-fiqh*.²⁸ Here ‘*ilm*’ refers to the knowledge of Islamic tradition and the *Sunna*, *fiqh* means personal speculation on the basis of this tradition and the Qur’an. Through the efforts of these scholars *fiqh* came to include also philosophy of law (c. 750’s).

In later developments, such scholars as Abu Yusuf (d. 798) and al-Shafi’i (d. 820) perhaps played the role of passing from the previous stage to the stage of the emergence of *fiqh* as a comprehensive science. As the understanding of *fiqh* as a legal discipline gained more ground in Islam, its scope to include ethical issues naturally widened. This is because Islam as a religion includes not only legal principles but as applied structure of principles for guidance in life, it includes moral principles and code of ethics. As a result most philosophical issues in ethics are discussed in it. This development was more in the later centuries but its understanding is grounded within the Islamic worldview, and as such from the earlier times it was still in the domain of *fiqh*.

By the time *fiqh* acquired the status of a comprehensive science including humanities and other social disciplines of the time, there was a parallel sociopolitical development taking place in the Muslim world. Islam as a religion spread among many ethnic groups and societies with different cultural background. As we have seen in the above brief summary of the scientific process of *fiqh* in the earlier periods the main source of this comprehensive science was only the Qur’an and the practice of the early Muslim community based on the Prophetic tradition. But as we have seen, this approach to human and social sciences gradually integrated new methodologies such as using personal opinion as theory, *ra’y*, utilized in the

24 Tadhkirat al-Huffâz, 1: 25.

25 Ibid, 2: 95.

26 Ibn Sa’d, *Tabaqât*, 4: 135.

27 *I’lam*, 1: 26.

28 Tabari, *Tafsir*, 3: 56.

23 We may give following terms as example: ‘*adl*, ‘*afw*, *ahl al-kitab*, *ajal*, *ajir*, *ajr*, ‘*aqd*, ‘*aqil*, ‘*amal*, *aman*, ‘*amd*, ‘*bay*, ‘*hadd*, ‘*haqq*, ‘*halal*, ‘*haram*, ‘*fiqh*, ‘*fida*, ‘*dhimmi*, ‘*istihsan*, ‘*ikhtiyar*, ‘*ijtihad*, ‘*mujtahid*, ‘*ra’y*, ‘*makruh*, ‘*qâdî*, ‘*shibh*, ‘*shâhid*, ‘*shakk* (*shukuk*) written document, ‘*wâjib*, ‘*uqubah*, ‘*wali*, (legal guardian), ‘*zâhir*, ‘*bâtin*, etc.

approach called *ijtihad*. This approach naturally brought with itself human reasoning which is already included in the original meaning of the term *fiqh*. The reasoning that fits into this scheme well is analogical reasoning and that is why in early Islamic human and social sciences demonstration, namely discursive reasoning was not used. This kind of reasoning was left for other sciences, such as physics, mathematics and other similar subjects which are called “sciences of *kawn*” or *kawniyyât* sciences, which can be translated into today’s Western scheme as “natural sciences”. If *fiqh* utilizes the same methodology in its restricted sense the multiplicity of cultures now existing in Islamic civilization may be annihilated. Therefore, *fiqh* needs another source in order to preserve different Muslim cultures. On the other hand, the main source of legal philosophy, the Qur’an, had already enunciated a divine principle:

If God willed He could have made you one single nation but He willed to test you in what He bestowed upon you. Compete with one another in good works because you shall all return ultimately to God. Then, He will inform you of what you have disagreed about. (5/*al-Mâ'idah*, 48)

Mankind was once a single community [but they fell into conflict] and thus God sent His messengers to give them good news and warn them [concerning human pitfalls]; with them He sent down the Sacred Book accompanying the truth that it might judge the dispute among them. (2/*al-Baqarah*, 213; see also 10/*Yûnus*, 19; 11/*Hûd*, 118; 16/*al-Nahl*, 93; 42/*al-Shûrah*, 8; 43/*al-Zukhruf*, 33)

In these verses the Qur’an defends a unity among mankind which appears as if the plurality of cultures is lost. Indeed this is essential for the Qur’anic outlook in order to defend “one God and one humanity”. This idea is set in defense of humanitarianism and to reject racism. Moreover, it also clearly indicates that “God did not make you one nation so that you may compete in goodness” (5/*al-Mâ'idah*, 48). In that case, unity is in good morals and human values; but difference in cultures and ethnicity is essential because all these are set as “divine signs”:

The creation of the heaven and of the earth; and diversity of your languages and colors are God’s signs. Surely in this are signs for those who know. (30/*al-Rûm*, 22; see also 35/*Fâtir*, 28)

In that case it becomes at once an issue for the legal theoreticians to formulate another principle as a source of *fiqh* which will provide a foundation for humanities and all other social sciences in order to preserve different local cultures. This new source came to be identified in Islamic legal philosophy as ‘urf which can be translated as “local culture”. The Qur’anic basis of this principle is the following verse: “Hold forgiveness and enjoin *kindness* (‘urf)” (7/*al-A'râf*, 199). This verse may also be kept in view: “By those sent forth one after another” (77/*al-Mursalât*, 1).

The concept of local culture therefore provides a legal and conceptual background for social harmony both culturally and philosophically. It is through such a background that Islamic legal philosophy was able to develop a paradigm of social harmony for all Muslim communities which may be a new model in the glocal world of ours today. In this sense, Islamic legal theory bases itself on the fundamental metaphysics of Islamic worldview which then provides the necessary psychological and spiritual ground for self-harmony so that the individual tunes himself/herself with his/her own conflicting dispositions. Only then is it possible to establish a healthy social harmony which means, in this sense, peaceful interaction of human dynamics among members of social groups. For, as we have pointed out, social harmony begins at the level of “self-harmony”. In order to realize self-harmony Islam has also introduced the ethics of rights which begins at the level of divine consciousness and then continues from the ethics of the individual based on self-cleansing from the impurity of bodily pleasures such as selfishness, arrogance, greed, self-indulgence, lust, resentment and anger.

In concluding we may say that what we have tried to defend here is not a theory which remained in the pages of history. It was actually practiced by Muslims and for this reason all ethnic groups that accepted Islam even for more than a millennium lived in Islamic civilization without losing their ethnic identity; their language and culture. That is why we have today Arab culture, Turkish culture, Persian culture, Kurdish culture, Malay culture, Chechen culture, etc. But those who are not familiar with *fiqh* as a comprehensive science and who take it simply as Islamic law, think that these Islamic cultures are different understanding of Islam. For this reason instead of calling them as such they identify these various Islamic cultures as “Turkish Islam”, “Arab Islam”, “Indonesian Islam” and so on. This is like observing the differences between architectural designs of mosques in different part of the Muslim world and judging that the prayers performed in these mosques are also different. The architectural design of a mosque is culture but what is performed in it is Islam. This kind of identity in difference and unity in diversity is preserved in Islam through the principle of ‘urf as developed in Islamic

legal philosophy which was the basis of all human and social sciences in Islamic civilization. It is through this principle that social harmony was also maintained.

We need this principle today more than any other time of past history because the global pressure on local cultures will eventually annihilate many local cultures. Feeling this undesirable historical destiny, members of these cultures will feel uneasy and disturbed. In order to preserve their culture they may resort to undesirable solutions including the famous theory of Huntington, the clash of civilizations. I am sure that the other societies can benefit from this principle but we need to adopt it universally. I hope that this study will provide a basis for such a venture.