ISLAMIC JURISPRUDENCE OF CHRISTIAN-MUSLIM RELATIONS: TOWARD A REINTERPRETATION

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Abstrak

Tulisan in mengkaji fiqih hubungan Islam-Kristen dengan fokus pada masalah penelusuran kemungkinan reinterpretasi ketentuan-ketentuan hukum Islam mengenai masalah ini. Kajian ini bertitik tolak pada suatu tesis bahwa fiqih Islam mengenai hubungan Islam Kristen yang ada terbentuk dalam kondisi-kondisi historis tertentu dan berdasarkan pada beberapa teori hukum Islam yang diterima luas seperti teori nasakh dan teori asbabun-nuzul. Menurut teori nasakh, hukum (Islam) didasarkan pada teks (nas) terakhir, sedangkan hukum yang didasarkan kepada nas terdahulu yang bertentangan dengan nas terakhir dinyatakan dibatalkan. Ini berarti bahwa nas terakhir menggambarkan ketentuan hukum final. Dalam tulisan ini penulis berargumentasi, dengan merujuk kepada teori-teori asy-Syatibi (w, 790/1388), bahwa hukum harus disimpulkan secara induktif-tematis dari keseluruhan teks (nas) yang relevan dan tidak hanya dari nas terakhir, bahkan seperti dinyatakan oleh asy-Syatibi, nas-nas Makkiah merupakan fundamental hukum. menyangkut teori asbabun-nuzul, kita perlu memperluasnya hingga tidak terbatas-pada kasus-kasus dan konteks individual melainkan mencakup kondisi sosial historis masyarakat saat terbentuknya teks secara umum. Kesimpulannya antara lain adalah bahwa teks-teks al-Qur'an dan hadis mengenai hubungan Islam-Kristen lebih menggambarkan sikap sezaman dalam menanggapi respon yang diberikan oleh Ahlul-Kitab terhadap Islam. Oleh karena itu masih terbuka ruang untuk reinterpretasi hukum Islam mengenai hubungan Islam-Kristen se-suai dengan tuntutan perkembangan zaman.

ملخص

تناقش هذه المقالة فقه العلاقات الإسلامية-المسيحية بالتركيز على محاولة اكتشاف إمكانيات إعادة تفسير للأحكام الشرعية المتعلقة بهذه المسألة، وهذه الدراسة تقوم على أساس الفرضية القائلة بأن أحكام الفقه الاسلامى بخصوص العلاقات الإسلامية-المسيحية كانت تنشأ وتتشكل في أوضاع تاريخية معينة وتؤسس على نظريات شرعية تتمتع بالقبول الواسع كنظرية النسخ ونظرية أسباب النزول. فحسب نظرية النسخ لابد أن تستخرج الأحكام من أخر النصوص نزولا أو ورودا، وأما الأحكام المبنية على النصوص المتقدمة تاريخا المخالفة لأحكام النصوص المتأخرة فتبطلها وتنسخها هذه النصوص الأخيرة وهذا يعنى أن النصوص المتأخرة من حيث النزول أو الورود تمثل الأحكام النهائية. يرى الكاتب في هذا البحث، مستندا إلى بعض نظريات قدمها الشاطبي (ت ٧٩٠/١٣٨٨)، أن الأحكام يجب أن تستنبط استقرائيا معنويا من جملة نصوص متصلة بالموضوع لا من نص واحد متأخر على الانفراد. بل ولقد قال الشاطبي أن النصوص المكية هي عبارة عن أصول الشريعة وكلياتها. وفيما يتصل بنظرية أسباب النزول فمن المفروض أن نوسع من مفهومها حتى لا تقتصر على مجرد الحالات أو السياقات الفردية فقط بل تشمل أيضا الأوضاع التاريخية الاجتماعية للمجتمع الذي نشأت وتشكلت فيه هذه النصوص ككل. وخلاصة القول أن النصوص القرآنية و النبوية بشأن العلاقات الإسلامية-المسيحية أكثر ما تصور مواقف من متلقيها لمواجهة ردود فعل وقف بها أهل الكتاب في وجه الإسلام. ومن هنا يرى الكاتب أن الباب ما زال مفتوحا للقيام بإعادة تفسير للشريعة الاسلامية بخصوص العلاقات الإسلامية طبقا لمتطلبات تطور العصر.

A. Introduction

What is meant by Islamic jurisprudence of Christian-Muslim relations is a study of those parts of Islamic law pertaining to how Muslims see Christian "others" and develop relations to them based on the Sharī'ah values. This term does not refer to a single and independent branch of Islamic legal studies like the study of personal status law *(fiqh al-ahwāl al-shakhṣiyya),* criminal law *(al-fiqh al-jinā'ī),* constitutional law *(al-fiqh al-dustūrī)* and so forth. Rather it comprises norms and legal rules from various branches of Islamic law which are most closely connected to the relations between Muslims and Christians. It is more like the notion of business law that does not mean a special branch of law, but it describes those parts of the law affecting typical business activities.

This aspect of Islamic jurisprudence has been attracting the attention of the fuqahā' (Muslim jurists) since the classical times. One can find the discussions on this topic overwhelming among the jurists and much more than what the *Mutakallimīn* (Muslim theologians) do in theological work.[1] In the present day the debate about this topic is carried out under a variety of rubrics and has gained its new impetus due to several factors. For example, the rise of political Islam in many parts of the Muslim world and the plea for the application of Islamic law accompanying it has raised the fear among the Christian minority in some predominantly Muslim countries of being relegated to a status as the second class citizens as given to them in the classical *fiqh* rules.[2]

In many cases the Muslim jurists in the past did not treat various aspects of this topic by concentrating them in a single chapter, rather dispersed them throughout legal work. At times they discussed some aspects in the chapter on marriage law while discussing interreligious union, and sometimes in the chapter on law of succession while dealing with inheritance between persons of different religions. They also discussed this matter in a book on governmental, or more appropriately constitutional, law where they talked about constitutional rights of the protected people (*ahl al-dhimma*). But the most common place for this topic is the chapter or book called *Siyar* (the relations to non-Muslims). Many works in this field were produced in the past and the well-known and most ancient one which is extent to the present day is *Kitāb al-Siyar al-Kabīr* by Muhammad Ibn al-Hasan al-Shaybānī (d. 189/804) of the Hanafi school of law.[3] Three centuries later another Hanafi jurist, al-Sarakhsī (d. A.H. 490), produced a

great commentary on this book under the title of *Sharh Kitāb al-Siyar al-Kabīr*.[4] Another important work which can be mentioned in this regard is a work by the Hanbali Ibn Qayyim al-Jawziyya (d. 751/ 1350) entitled *Ahkâm Ahl al-Dhimma* (Laws on the protected peoples).[5]

The main attitude of the classical Muslim jurists to the Christians as can be discerned from the jurisprudence of Muslim-Christian relations they formulated was based on the supersessionist notion of the relations to the others. Even though these jurists were able to acknowledge the very existence of the others coexisting with them and to recognize their rights to a great extent, but in general they looked at those others as inferior and the relations to them were put in the framework of *jihād* except those who accepted to enter under the protection (*al-dhimma*) agreement. Therefore the starting point of their legal reasoning was such an exclusive Qur'ānic verse and hadith without paying much attention to the more inclusive ones. In this connection several questions might come to the fore: Why did the classical *fuqahā* hold tenaciously, and give much emphasis on, those texts of opprobrium? From a modern interest and perspective, how can we contextualize and understand such texts for reinterpreting Islamic jurisprudence of Muslim-Christian relations?

This paper will try to deal with these questions by stressing on general principles, not on the details of the substantive legal rules. But before commencing with them, it is necessary to give a glance at the importance of the Sharī'a for a Muslim and to clarify its very concept and sources.

B. The Importance of the Sharī'a (Islamic Law)

Sharī'a is one of the most important aspects of Islam for a Muslim. It is this aspect that most Muslims consider as the main space for the expression of their religious experience. This importance of the Sharī'a in the Muslims' mind can be discerned from the fact that *fatwās* issued by individual scholars and social organizations concentrate much more on legal than any other aspects of Islamic religious expressions.[6] This fact has also been much appreciated and shown by Western and Eastern (Muslim) scholars. According to Frederick M. Denny who observed North American Muslims' theological activities, the Sharī'a, if compared with (Islamic) theology, seems to be the primary focus of attention and the main area of systematic reflection on the Qur'ān and Sunna. There is little

in their activities that would look like theology in the proper sense of the word and even in the classical meaning of *kalām*.[7]

Islamic theology, if by it *kalām* is meant, has never been able to gain as a high position in the Muslims' eyes as the Sharī'a does. It is not surprising that one finds some Muslim jurists are strongly opposed to the Islamic speculative theology (*kalām*). Shāfi'ī (d. 204/820), the the founder of a school of law ascribed to him, is related as saying about the Mu'tazilī Hafs al-Fard, "It is better for him to die and meet God with all sins except associationism (*shirk*) than to meet Him with *kalām*."[8]

Ibn Qudāma (d. 620/1223), another Muslim jurist of the Hanbali school of Islamic law, wrote a special treatise to refute the theology of *kalām* and to warn the sincere faithful of the danger of being involved in such doctrines of *kalām* as were shown by his fellow member of the same school, Ibn 'Aqil (d. 1119 A.D.). In this treatise Ibn Qudāma also quoted a number of jurists who were opposed to kalām, such as Abū Yūsuf (d. 182/789), the Hanafi jurist, who has said, "He who seeks religious knowledge through *kalām* becomes a heretic," and Ibn 'Abd al-Barr (d. 463/1071) of Spain who has said, "Jurisprudents (*ahl al-fiqh*) and traditionists (*ahl al-athār*) of all the big cities are agreed that the adherents of kalām are adherents of heretical innovations and of error ..."[9]

Quoting Anderson, Herbert J. Liebesny describes the Sharī'a as having held a paramount place in the civilization and structure of the Muslim world ... and having enjoyed the prestige which can be regarded as without parallel in history.[10] The reason of this is simple. God, as believed by the Muslims, has not revealed Himself and His nature, rather his words which contain His commands to be observed by human beings as His servants.[11] Thus Joseph Schacht does not exaggerate when he states that the Sharī'a is "the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and the carnal of Islam itself."[12] It is because of this reason, as a Muslim writer from Morocco says, that the Islamic jurisprudence (*al-fiqh*) becomes "the evenest shares" distributed among the Muslims, and one almost can find a book on Islamic law at the house of every committed Muslim from the Atlantic to the Philippines.[13] At the present time, the application of the Sharī'a value and principle in Muslim societies, their public life and the development of their socio-economic and political system forms one of the common objectives of the Islamic revival movement notwithstanding of its heterogeneity in reality.[14]

Therefore, every effort on the part of Muslim leaders to bring the Muslims involved in dialogues with the adherents of other religions, such an effort made in last couple of decades to promote Christian-Muslim relations, should take the Sharī'a into consideration. For the Muslims, the Sharī'a is a religious value system which forms a framework of reference into which they confine their acts and conducts, including the relations to Christians. In modern times with the closer contact between Christians and Muslims, the question as to the Islamic jurisprudence of Christian-Muslim relations has assume importance once again.

Although it is believed by Muslims that the sources and principles of the Sharī'a are divinely ordained and revealed by God, but many points of detail in its legal rules were formulated and developed along the history of Islam in compliance with social demands of various Muslim generations. Even the legal rules of the Qur'ān itself, not to mention those of the Sunna, are not meta-historical in nature. Every legal *verse (āyah al-ḥukm*) has its particular background of revelation (*sabāb al-nuzūl*). The legal verses in the Qur'ān did not come down or were not revealed to Muhammad at once and in a vacuum, but gradually and verse by verse in accordance with the case facing the Muslim nascent community at that time.

It is, therefore, very important for the Muslims to appreciate the historical dimension in the Sharī'a, including in this case the aspect of Christian-Muslim relations jurisprudence. Many rulings in this aspect were the product of generations of the Muslim jurists, conditioned by certain socio-economic circumstances, and tinged by more or less politically-motivated interpretations. When time passes and many changes happen as we are undergoing in the late twentieth century now, the application of those rulings raises serious questions in term of their relevance and adequacy in responding to modern needs. Therefore the need of reinterpretation of the Sharī'a, especially regarding Muslim-Christian relations jurisprudence in modern context, is unavoidable.

C. Concept, Sources, and Objectives of the Sharī'a

The Arabic term "Sharī'a" is usually translated into English as Islamic law. Even though this translation is true, but it does not comprise the whole concept contained in the term. However it should be acknowledged that, due to the nature of human language itself, it is always difficult to find a parallel word in a language to convey a certain concept from other language as the case with the word "sharī'a." This is on the one

hand. On the other hand many Arab writers, especially those who are trained in western legal tradition, use the word "sharī'a" in the sense of law.

However, the concept of Sharī'a in Islamic tradition is much wider than merely law. The religious scholars of Islam use the word "sharī'a" in two meanings: wide meaning and narrow meaning. In the wide meaning by the Sharī'a is meant, as in the word of al-Tahānawī, "norms laid down by God and revealed for humankind through a prophet of Him whether the norms are concerned with governing human conducts and named the branches of religion for which the science of jurisprudence was created, or concerned with the doctrines of belief and called the fundamentals of religion for which the science of theology was constructed."[15] According to this definition, law is only one dimension of the Sharī'a, for the Sharī'a includes theology as well. In other word, as put by some Muslim scholars, the Sharī'a is the totality of religion revealed in the Qur'ān and the Sunna of the prophet Muhammad no matter it is concerned with the doctrines or the practices.[16] Al-Shātibī (d. 790/1388) says that the Sharī'a contains the totality of the divine commandments regarding human conducts and belief.[17] Thus in this wide meaning, the Sharī'a is identical with the religion of Islam itself.[18]

Beside this broader meaning, the term "Sharī'a" is also used in a narrow and more specific sense in which it is defined as a body of norms governing human conducts in relation to one's self, to other human beings, to nature and to God. This narrow meaning of the Sharī'a refers to the practical aspect of Islam. If the reader takes another look at the above mentioned definition of al-Tahānawī once again he will find that the Sharī'a, according to him, consists of two aspects: doctrines and practices. In its narrow sense the Sharī'a refers to the second aspect, and it is in this meaning that the word "Sharī'a" is usually referred to as Islamic law. But, in fact, even here the Sharī'a is not necessarily identical with law in its strict meaning, because the Sharī'a comprises still more elements than law proper. For example the Sharī'a contains rulings related to ethics and ritual practices.[19]

The primary sources of the Sharī'a are the Qur'ān and the Sunna of Prophet Muhammad (peace be upon him). These two sources are regarded by the Muslims as divine revelation. The Qur'ān is the verbatim word of God revealed to Muhammad through the Angle Gabriel and therefore there is no intervention of Muhammad in wording and composing the

Qur'ān. In the case of the Sunna, God revealed the meaning to Muhammad and then the latter expressed that meaning through his utterances, deeds or decisions.[20]

As sources of the Sharī'a, the Qur'ān and the Sunna contain only the basic values and principles. There is no great detail of rules in them, except in few cases regarding rituals and personal status law. Although the Sunna carries more detailed rulings than the Qur'ān does, for it functions as an explanation of the latter, but it is subject to historical criticism for the sake of its authentication. As far as legal rules affecting Christian-Muslim relations as concerned, there is a couple of Qur'ānic verses which can be mentioned in this case. But the Muslim jurists in the past usually started their legal analyses from verse 29 of chapter 9 of the Qur'ān. Of course there are much more traditions related to this case, but they should be accepted carefully in term of their authenticity.

Anyhow, the Qur'ān and the Sunna do not carry all details of legal rules. Therefore Muslim jurists since an early period of Islam developed a set of methodological principles for interpreting these two primary sources and extracting legal rules therefrom. These methodological principles of extracting law which were much more known in the past as the subsidiary sources of Islamic law include consensus (*ijmā'*), analogy (*qiyās*), preference (*istiḥsān*), continuing effectivity of law (*istiṣḥāb*), good interest (*maṣlaḥa*), customs (*'ādāt*), Companions' legal decisions (fatāwā al-Sahāba), and laws of the previous peoples (shar' man qablanā, i.e. the laws brought by the previous prophets for their respective people). It should be noted that the last mentioned source has nothing to do with the jurisprudence of Muslim-Christian relations. What the classical Muslim jurists talked about regarding this source is whether the Prophet Muhammad, before he was appointed as a messenger of God, worshiped by using the liturgy of the previous religion or not. This question was not valid any more after Muhammad accepted revelation from God as starting point of his mission. However, their debates on this problem were very theoretical and did not touch a concrete or practical question.[21]

Consensus, customs, preference and good interest can be dynamic principles of Islamic law, for every new problem which is not covered by the explicit texts in the Qur'ān and Sunna can be judged on the basis of these principles. Modern Muslim jurists, however, give much emphasis on the importance of the latter principle, i.e. good interest. Actually, the first Muslim jurist to expound the theory of good interest (*al-maṣlaḥa*) as a ba-

sis of extracting law thoroughly and in a comprehensive manner was a Spanish Muslim jurist, al-Shātibī (d. 790/1388), of Maliki school of law.[22] The theological basis for the legitimacy of this principle, as al-Shātibī argued, is the Qur'ānic verses, of which is, for example, a verse saying, "We sent thee not save as a mercy for the peoples". [Q.21:107]. Reflecting on this verse and other similar verses, al-Shātibī came to a conclusion that the aim of law making must be a mercy for humankind, that is good interest for the community. Therefore all legal rules formulated have to be in accordance with this principle of the Sharī'a, otherwise they will be invalid.[23] In the present time this principle can be developed for the purpose of reinterpreting Islamic jurisprudence of Muslim-Christian relations.

D. Historical Islamic Jurisprudence of Christian-Muslim Relations

Before dealing with reinterpretation of the Sharī'a (Islamic law) in connection with Christian-Muslim relations, we have to investigate first how the historical Islamic law was described by the Muslim jurists in the past. The general principle of the Islamic teachings regarding the religious "others" as far as those who live in Muslim community is concerned is the acknowledgement of the essential humanness of them and the recognition of their *de jure* legitimacy as an integral part of a single community. Their laws, social norms and religious practices are respected. The relations between them to the Muslims are viewed in terms of communality as members who have respective responsibilities on the integrity of the community.[24] The indications of this general principle can be shown as follows: (1) the so called Charter of Medina comprises not only various Arab Muslim tribes but also non-Muslims as well; (2) A verse in the Holy Qur'ān clearly recognizes the opportunity to salvation for the religious others, such as a verse which reads, "Surely those who have faith and who are Jews and the Christian and the Sabaeans, whoever has faith in Allah and the Last Day and does good, they have their reward with their Lord; there is no fear for them, nor shall they grieve." [Q.2:26].

The aforementioned principle of Islam has enabled Muslim jurists in the past to maintained an acknowledgement, even in the most hostile environment and antagonist situation, of the presence of religious others coexisting with the Muslims. But, anyhow, the concrete socio-political circumstances encompassing them has conditioned and determined how they interpreted this principle and formulated legal rules therefrom. Before considering how the interpretation of the Sharī'a principle was tinged by

the actual concrete relation between the Muslim and Christians in the past, we need to make a brief glance at those rules and norms. For this purpose, let the writer summary the Islamic jurisprudence of Christian-Muslim relations as set forth in classical legal works.

The relation between Muslims and non-Muslims in a predominantly Muslim community, as can be understood from Islamic legal literature in the past, was based on a contract, that is the contract of protection.[25] From this basic idea, the Muslim jurists coined the term ahl *al-dhimma* literally meaning "the protected peoples." In this contract, the protected peoples have to pay the tribute (*al-jizya*) as the consideration of the protection given to them. Although the classical Muslim jurists were disagreed on the exact meaning of the term "al-dhimma", there were basic features characterizing this contract. In the first place, this contract is permanent in nature in the sense that it is not limited by time, so that it differs from peace agreement which is concluded for a certain period of time. In the second place, this contract is not predicated on the assessment of Muslim state head about the Muslims' interests, in the sense that once it is concluded by the protected peoples the Muslim state head has to accept it and he cannot alter the terms of the *dhimma*. He is obliged to accord the protected peoples the rights which they are entitled by the Sharī'a. Finally, this contract cannot be revoked on the ground of fear of treason, even if there strong evidence to this effect.[26]

In the contract of protection, as mentioned by the Hanbali jurist Abū Ya'lā Ibn al-Farrā' (d. 458/1066), the protected peoples were required by the law of Islam not to do the following things concerning Muslims and Islam:

1) conspiring to wage wars against the Muslims,
2) committing adultery with a Muslim woman,
3) making sexual intercourse with her on the name of marriage,
4) luring a Muslim away from his religion,
5) robbing a Muslim,
6) sheltering a spy of the associators (*al-mushrikūn*),
7) giving information about the Muslims to the associators,
8) killing a Muslim man or woman,
9) speaking of Allah, His book, His religion, and His Apostle in a derogatory statement.

If they do these prohibitions they break the contract of protection.[27] In another place of his book, Abū Ya'lā mentioned a view of vari-

ous Hanbali jurists to the effect that if the protected peoples break the contract their blood, property and progeny will be proscribed (no legal protection).[28] As far as their rights are concerned, Abū Ya'lā mentioned the right of religious freedom in the sense that the Muslims are not allowed to meddle in their religious affairs. But as a public policy in a Muslim land, they are not permitted to build any new church. It is only the one that is already in existence prior to the time of contract, but now broken down, that they can rebuild.[29] The Hanafi jurist, al-Shaybānī, mentioned more detailed rulings concerning the last point. Referring to a tradition in which the Prophet Muhammad was related as saying, "No church in Islam", al-Shaybānī contended that the prohibition of building new churches applies only in the case of a city or a land where the Muslims constitute a predominant population. If the Muslims were not predominant, the protected peoples would be not prohibited from building church. Al-Shaybânî wrote,

> If they want to build a new church in that city [where the Muslims are predominant] they will not be allowed to do that, because the city has become one of the Muslim cities where the Friday and 'Id Holiday prayers are done and the Islamic law of *ḥudūd* is enforced. To allow them to build any church in such a place means to cause weakness among the Muslims and let them oppose the Muslims formally...[30] As to the city where the protected peoples are predominant, such as Hira and the like where there are no Friday prayers and no law of *ḥudūd* enforced, they are not forbidden to do that.[31]

Al-Shaybānī's commentator, al-Sarakhsī, added that the jurists of their land were of the opinion that the peoples of the protection are not prohibited at all from building new churches in villages...because the prohibition is based on the consideration that the city is a place for raising the symbols of Islam such as Friday and Holiday prayers and enforcement of the law of *ḥudūd*.[32] Summarizing his discussions, al-Shaybānī said, "In sum, they are forbidden to do that in the city and its suburb, but are allowed in villages of predominant protected peoples. But as to the village inhabited by Muslims there are disagreements among the jurists."[33]

The other matter related to the ahl *al-dhimma* is the right to have their own courts to settle their disputes both in civil and criminal matters. Here we are faced with a question of multiple jurisdiction of law court. The classical Muslim jurists gave a positive answer to this question. Abū Ya'lā said, "If they dispute about a right and go to their own court of law they are allowed to do that."[34] But in the case they opted to go to Muslim court they would be treated according to Islamic law.[35]

What is discussed above regards the relations of Muslims to the Protected People who live in, and therefore become a part of, the Muslim community. As to non-Muslims other than these ahl *al-dhimma*, even though the classical jurists did not mentioned frankly, it seems that the underpinning basis for the relations to them, as can be perceived from reading through Islamic legal works especially those of the later period, was what is stated in the first parts of chapter 9 (*al-Tawba*) in the Qur'ān, especially what is mentioned in verse 29. This verse reads, "Fight against such of those who have been given the Scripture as believe not in Allah nor in the Last Day, and forbid not that which Allah has forbidden by His messenger, and follow not the religion of truth, until they pay the tribute readily, being brought low." Extracting a maxim from this verse, those jurists, although there was a degree of variety in their opinions in this regard,[36] contended that *jihād* against unbelievers is a permanent legal rule governing the relations to non-Muslims and is therefore obligatory upon the Muslims collectively "until persecution is no more, and religion is all for Allah." [Q.8:39]. But as to the People of the Book, an alternative was determined in which they could pay the tribute through the contract of protection rather than entering into the war relations.[37] Parallel with this theory they summed up the main tasks of the Muslim state head (*imām*), as the representative of the *umma*, in few points one of which is "to wage holy war (*jihād*) against those who stubbornly refuse to accept Islam after being offered to embrace it until they surrender and become Muslims or enter to a *dhimma* agreement."[38] Nevertheless there were jurists who contended that *jihâd* is only incumbent upon the faithfuls when resisting an aggressive enemy either invading or preparing to annex the Muslim lands.[39]

E. Toward Reinterpretation

So far we have seen several aspects of Islamic law pertaining to Christian-Muslim relations as depicted in classical legal works. It is not my intention to discuss here the arguments set forth by the Muslim jurists regarding the aforementioned rulings. What might be interesting to note is that, from a modern perspective, the language of Islamic jurisprudence of Muslim-Christian relations as reflected in those classical legal doctrines, even though we have to recognize its ability to acknowledge the others, tends to put them in an inferior position and in war relations except the protected peoples who could pay the tribute as a substitution of war.

Several explanations can be adduced in this connection. *First*, historically the cumulative effect of centuries of tension between Muslims and Christians combined with the idea of Islam being the universal religion for all humankind contributed to the creation of the supersessionist attitude toward the others -- the attitude in which the later religion superseded the previous one.

Second, the atomistic mode of thinking, which dominated Islamic culture in the past,[40] impeded the jurists from contextualizing and paying attention, while understanding the Sharī'a sources, to the overall context and historical development of the attitudes of the Qur'ān and the Sunna. They, rather, held the partial context of individual texts. This, in turn, coupled with the supersessionist theology, led the jurists to choose the last Qur'ānic texts revealed to Muhammad, i.e. the Chapter of Repentance (*Sūra al-Tawba*) which are clearly exclusivist ones, over the other texts, which may be more inclusivist. This is clear from a very brief summary made by Ibn al-Qayyim about the development phases of Muhammad's relations to non-Muslims of his time. According to him, Muhammad was appointed a prophet with the revelation of the first five verses of the *Sūra al-'Alaq* and then as a messenger with the revelation of the *Sūra al-Muddaththir* through which he was ordered to call [to his new religion] his close relatives, then his people, then the Arab tribes around him, then all the Arabs, and then the whole world. He stayed [at Mecca] for some ten years doing *da'wa* without war and tribute (*jizya*) and being ordered to refrain from, be patient with and forgive the other. Then God allowed him to emigrate [to Medina] and to fight those who fought him and refrain from those who desisted from, and did not fight, him. Then God ordered him to fight the Associators (*al-Mushrikīn*) until the religion is all for Allah.[41] Ibn al-Qayyim continues, "After the coming down of the *Barā'a* [Chapter IX of the Qur'ān] the unbelievers in relation to Muhammad became two groups: those who were fighting him and the people of protection."[42] Thus the last state of development was considered as a permanent rule of the relations to non-Muslims and this kind of view is bolstered by the theory of *naskh* that a later text abrogates the rule of the same case contained in a prior text.

Third, in general, any normative value system, such as a religion or an ideology, is undeniably a source, to some extent, of an exclusivity. Each normative system requires the commitment on the part of its followers and gives the sanction for compliance with its precepts. The basis

for this commitment and compliance is the conviction that conformity with the system will bring about some specific moral or material benefits which will not be achieved, at least not to the same extent, through complying with other normative systems. The effort made to demonstrate these benefits, which is in fact protracted and difficult, leads to exaggerating them and, in turn, generates a view to the others who do not comply with the system as inferior.[43]

Anyhow, the Sharī'a is very much present in the heart and minds of the Muslims all over the world. Even where it is not the formal legal system, the Sharī'a has a powerful influence on Muslims' attitudes and conducts. However, in the context of Muslim-Christian relations in the world of today, the historical Islamic law as inherited from the far past will raise a question as to its adequacy to response to modern need. Here a reinterpretation is unavoidable.

In order for a reinterpretation to be possible we have to take the following ideas to consideration. *Firstly*, a shift is needed from an atomistic approach which characterizes the classical Islamic (legal) reasoning to a holistic method through which the whole revelatory contextuality of the Sharī'a texts is brought into focus of study. In fact this holistic approach to legal reasoning is not new; it was proposed for the first time by a well-known Maliki jurist, al-Shātibī (d. 790/1388). According to him, if a jurist wants to extract a rule for a certain case he has to look for and collect all relevant pieces of the Sharī'a evidence and draw a conclusion from them collectively if a certainty of that rule is to be achieved. The certitude surrounding the Sharī'a rules can never or, at least, hardly be found in reasoning based on merely an individual text or evidence. It is the cor-roboration and the aggregation of pieces of Sharī'a evidence that bring a certainty in law. Al-Shātibī argued that the conclusive certainty we have about the Five Pillars of Islam and many other Sharī'a principles is established in this method of legal reasoning.[44]

As far as Islamic jurisprudence of Christian-Muslim relations is concerned, the implication of al-Shātibī's holistic approach is that the (Muslim) jurists cannot extract a legal principle concerning these relations just from certain texts of the Sharī'a, i.e. the texts of the last Medinan period. They might also have to consider the whole relevant texts including the Meccan texts, which, once again in al-Shātibī's theory, represent the very basic principles of Islam.[45]

Secondly, a shift is needed from a narrower concept of the theory of *asbāb al-nuzūl* and *asbāb wurūd al-ḥadīth* to a wider notion of historical background of the texts. Even though the classical Muslim jurists were aware to some extent of the historical dimension of Islamic law, their approach in this regard, however, is still limited in nature. While they paid much attention to the context of individual texts, as reflected in the theory of *asbāb al-nuzūl* (the occasions of the revelation, i.e. events occasioning the coming down of a Qur'ānic verse) and the theory of *asbāb wurūd al-ḥadīth* (the occasions of the emergence of a prophetic tradition), they did not show any serious attention to the overall socio-historical context of the texts. They were seemingly reluctant to cope with the question of contextualization of the texts beyond the search for individual occasion.[46] In general, as a modern writer argues, the classical, and still many modern, Muslim scholars view the sacred texts as if they are a meta-historical construction exempt from any human touch in the social process.[47] The Muslims' reluctance to pursue the historical dimension of the Sharī'a texts, especially the Qur'ān, is due to the strong willingness and the passionate commitment to preserve the otherworldly attributes of the sacred texts. It is also because of fear of destroying a universal value of them.

However, the socio-historical and linguistic background of the texts is reflected in the contents, styles and language of the texts. Therefore, there is a progressive development of these contents, styles and language which can be discerned in all phases of Meccan and Medinan periods of the Qur'ānic revelation.[48] Also the emergence of the theory of abrogation (*naskh*) reflects the awareness on the part of the Muslim jurists of the progressive development of Qur'ānic revelation. In this theory, the rule contained in a later verse abrogates and invalidates the rule of an earlier verse. Thus abrogation theory confines the law to the texts of the latest period. Some classical scholars, such as Abū Muslim al-Asfahānī (d. 1527), and some many modern scholars, such as Ahmad Khan, al-Fārūqīand the Indonesian 'ālim Hasby ash-Shiddieqy, reject the naskh theory.

As it is believed by all Muslims, the revelation (recited or unrecited) Muhammad received is divine communication to human being. What is to be aware about is that this communication took place in history and in socio-cultural settings surrounding the recipients. Thus translating and formulating of this divine communication into concrete moral guidelines and legal rulings need full understanding of the contexts of this

revelation and its progressive nature. As for relations to the other, one can see a gradual unfoldment of the Qur'ānic and Sunnatic attitudes in terms of this other's varied response to Muhammad in his time. Any failure to appreciate this gradual development in interpreting law pertaining to the other will lead to the conclusion that the Sharī'a sources present a confused and contradictory rulings regarding the other.[49]

The implementation of a historical approach and contextual analysis in understanding the Sharī'a texts regarding the question of Christian-Muslim relations and extracting legal rules therefrom does not mean that we are far removed from the methodological principles set forth by our jurists in the classical legal theory. It is a recognized maxim that laws can be changed when the subjects of the laws in question face changing times, places or customs. Law is always in the making. Article 39 of *Majalla al-Aḥkām al-'Adliyya* declares that "The modification of laws due to the change of times and places are not detested." Long before the *Majalla*, Ibn al-Qayyim had declared that the *fatwā* (legal decision) could be changed on the ground of the change of place, times and customs of people.

On the other side, the principle of ratiocination has been well established and accepted by nearly all Sunni legal schools of law. In this regard one finds a maxim stating that "a law becomes operative in conjunction with the presence of its *causa legis* (*al-'illa*)."[50] What is meant by the *ratio legis* is the cause behind a rule affecting why that rule is enforced. In some circles of the Islamic legal schools the concept of the *ratio legis* is widened to include not only the cause of a rule but also the value and objective of it, which are called *ḥikma*.[51] An example of the *causa legis* (*'illa*) can be seen in the case of pre-emption (*shuf'a*) according to the rules of which the joint, or the neighboring, owner of a real property has priority to buy the property whenever his partner (that is the other joint or neighboring owner) wishes to sell it. The *causa legis* (*'illa*) why the joint owner is given this priority is the fact of existence of the joint ownership itself. Thus the rule of priority in this case is in effect whenever there is joint ownership, and *vice versa*. The objective or *ḥikma* of the rule is to protect the partner against a possible harm that may arise from sale to a third person.[52]

Yet, in connection to Christian-Muslim relations, we have to widen the concept of the *causa legis* itself from a static, textual notion to include also a dynamic one which is more historical in nature. Such a legal

reasoning is not too new and, therefore, should not be deemed strange. In Indonesian context, especially among the Muhammadiyah[53] circle, *fatwās* and legal decisions are issued on the ground of this methodological principle. For example a couple of years ago, a hospital of Muhammadiyah was to appoint a new director and the only candidate who met all the criteria set forth by the Trustee Board was a woman, who happened to be a very committed Muslima. When offered the position, she rejected arguing that the Prophet Muhammad prohibits a woman from being in charge of Muslims' affairs, in a well-known tradition saying, "Such people as appointing a woman to be in charge of their affairs will never prosper" (*lan yufliḥa qawmun wallaw amrahum imra'a*). [Ḥadīth related by Bukhārī and others).[54] The Board of Trustee of the hospital wrote a letter to the Local Muhammadiyah Council of Weighing (Majelis Tarjih Muhammadiyah Wilayah) asking *a fatwā* regarding the issue in question. But the Local Council did not give the answer and instead sent the question to the Central Council of Weighing (Majelis Tarjih Pusat). Here the Council implemented the historical approach to investigate the conditions of women at the Prophet's time that led him (and, at the same time, functioned as *a causa legis/'illa*) to disallow them to be in charge of Muslims' affairs. The result is, in sum, that women's conditions and social experience at that time still did not enable them to rule or to be responsible on public affairs. In modern times the situations have so much changed so that the women no longer live under the shadow of men. In many cases in terms of education and involvement in socio-political life they have gained much progress and have been equal with men. Thus the *causa legis* of the Prophet's prohibition mentioned in the above-quoted tradition does not exist any more and whenever the *causa legis* of a prohibition is absent then the prohibition itself is no longer in effect in accordance with the maxim "A law is operative or not according to the presence or the absence of its *'illa*."

Part of the argument is a view that to rule or to be in charge of society's affairs is, in Islamic teachings, considered a kind of *al-a'māl al-ṣāliḥa* (good deeds) which is declared in the Qur'ān as one of the criteria of a good person, and sharing the reward of which every one, male or female, is entitled to. In an impressive verse of the Qur'ān God says, "Whosoever does good deeds, whether of male or female, and is a believer, him or her verily We shall quicken with good life, and We shall pay them a recompense in proportion to the best of what they used to do." [Q. 16:97,

cf. 4:124 and 40:40]. Thus men and women have the same right in this regard as far as they meet the required criteria.[55]

Another case in which Muhammadiyah implements a socio-historical consideration in understanding the Sharī'a texts is the question regarding the arts of sculpture and painting. According to the classical Islamic jurisprudence as held by the great majority of the Muslim jurists (*al-fuqahā'*), the Qur'ānic commentators (*al-mufassirūn*) and the traditionists (*al-muḥaddithūn*), making statues, relieves and pictures of human and animal beings is forbidden (*ḥarām*). Some modern Muslims even widen this ban to include photography. The textual bases for this ban are traditions of the Prophet Muhammad which, according to the Muslim criticism of *ḥadīth*, nearly reach the *mutawātir* (recurrent) status, i.e. very authentic. In one of these traditions, the Prophet is related as saying, "The people who will receive the severest punishment from God in the Day of Resurrection will be the picture-makers."[56]

Students and teachers at Muhammadiyah schools and colleges of art raise questions as to this ban of picture-making, because they do make it in their art classes. On the other side, painting, relief and statue are very useful, for example, for perpetuating historical events. Do not ask the urgent need, in modern times, of photographs. Questions then arise: Is not there still more room for a new *ijtihād* or a new interpretation regarding this issue? Does not God desire ease and detest hardship for us, as He declares in the Qur'ân? [Q. 2:185].

In its Twenty Third National Meeting in Banda Aceh (north part of Sumatera) in 1995, the Central Muhammadiyah Council of Weighing [Majelis Tarjih Muhammadiyah Pimpinan Pusat] took a decision to the effect that as far as the *causa legis* why the Prophet banned pictures (which include relief and statue-making) is not present, then there is no objection to do that. The *causa legis* of the ban, the Council argues, is the fact that the Prophet, at that time, was struggling to bring his community to a true monotheist understanding of God and to rid them of a belief of God's embodiment in physical objects such as statue or picture. Thus, provided one does not have such an animistic and polytheistic belief while making pictures, he or she is allowed to have or make pictures.[57]

According to the present writer's opinion, there is no objection in implementing a socio-historical approach to reinterpreting some aspects of Islamic law as far as three conditions are fulfilled: (1) social condition creates an urgent need of reconsidering the existing rules, (2) rule in question

is not pertaining to ritual aspects of Islam the rationale behind which is considered as unintelligible, and (3) a new alternative to which the text is taken to mean is supported by, or at least compatible with, the general spirit of the Sharī'a.

To implement a socio-historical approach to understand the Sharī'a texts regarding Christian-Muslim relations --bearing in mind the idea that Muhammad's attitudes toward the Christians of his time unfolded gradually and contextually-- means that one cannot cling tenaciously to texts of the latest period without considering their socio-historical context and their relation to other texts. Thus one cannot speak of final, immutable rules in the sources of the Sharī'a regarding the Christians and the adherents of other religions. Furthermore it cannot be accepted to apply texts of opprobrium in a universal manner to them as permanent relations.

F. Concluding Remarks

From what has been discussed above we can draw some concluding remarks regarding the issue in question as follow:

First, although they lived in such an antagonist situation and a cumulative effect of centuries of tense relations between Muslims and Christians, the Muslim jurists in the past could acknowledge the *de jure* legitimacy of legal position of Christians who chose to coexist with the Muslims as an integral part of the Muslim community. *Second*, the responses that the Christians showed toward the Muslims on the one hand and the failure or even unwillingness on the part of the Muslim classical jurists to perceive the gradual and historical development of the Qur'ānic and Sunnatic attitudes toward the others gave a great influence in shaping the legal language which sees the Christian others in an exclusivist view.

Third, the contextualization of the varied positions the Qur'ān and the Sunna demonstrate is an inevitable task in order to get more appropriate understanding of these texts as two sources of the Sharī'a. This will have implications (1) that one will not be able to speak of a final position of the main sources of the Sharī'a toward the Other, and (2) it is inappropriate to take texts of opprobrium as a general principle in dealing with the Other. Therefore new approaches are needed in Islamic jurisprudence in order to be able to cope with the new demands in building relations to the religious others.

End Notes

[1]Ahmad Dallāl, "Yemeni Debates on the Status of Non-Muslim in Islamic Law", *Islam and Christian-Muslim Relations, Vol. 7, No. 2 (1996), p. 181.*

[2]See Wadi Z. Haddad, "*Ahl al-Dhimma* in an Islamic State: the Teaching of Abū al-Hasan al-Māwardī's *Al-Aḥkām al-Sulṭāniyya*", Islam and Christian-Muslim Relation, Vol. 7, No. 2 (1996), p. 169.

[3]This book was translated into English by Majid Khaddury and appeared in 1966. See Majid Khadduri (tr.), *The Islamic Law of Nations: Shaybānī's Siyar* (Baltimore: The Johns Hopkins Press, 1966).

[4]See al-Sarakhsī, *Sharh Kitāb al-Siyar al-Kabīr li Muhammad Ibn al-Hasan al-Shaybānī*, ed. Salah al-Dīn al-Munajjad and 'Abd al-'Azīz Ahmad (Cairo: Matba'a Syirka al-I'lānāt al-Sharqiyya, 19971).

[5]Ibn Qayyim al-Jawziyya, *Ahkâm Ahl al-Dhimma*, ed. Subḥī al-Ṣāliḥ (Beirut: Dār al-'Ilm li al-Malāyīn, n.d.).

[6]See, for example, *Himpunan Putusan Tarjih Muhammadiyah* (the Collection of the Decisions of Weighing Council of Muhammadiyah] in which only one decision out of the whole collection is about theological issues, while the rest decisions are concerned with legal issues. This shows that the expression of religious experience, in Muhammadiyah, takes place much more in the legal than in other spheres of Islam. *Himpunan Putusan Tarjih* (Yogyakarta: Central Board of Muhammadiyah, n.d.); *c.f.* Asjmuni A. Rahman et. al., "Majlis Tarjih Muhammadiyah: Studi tentang Sistem dan Metode Penentuan Hukum," a research rapport for Lembaga Research dan Survey IAIN Sunan Kalijaga Yogyakarta (1985), pp. 81-2. Another example is *fatwās* of the Council of Indonesian *'Ulamā'* which in most parts address legal issues. See Muhammad Atho Mudzhar, *Fatwās of The Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988*, bilingual edition (Jakarta: Indonesian-Netherlands Cooperation in Islamic Studies [INIS], 1993), pp. 71-3 (English version).

[7]See Frederick M. Denny, "Islamic Theology in the New World. Some Issues and Prospects", *Journal of the American Academy of Religion*, LXII:4 (Winter 1994), p. 1069.

[8]Cited by al-Ghazālī in his *Ihyā' 'Ulum al-Dīn* (Cairo: Mu'assasa al-Halabī wa Shurakāh li al-Nashr wa al-Tawzī', 1967), I:130, "Kitāb Qawā'id al-'Aqā'id."

[9]Ibn Qudāma, "Tahrīm al-Nazar fi Kutub Ahl al-Kalām", in Makdisi, *Ibn Qudāma's Censure of Speculative Theology* (London: Luzac and Company Ltd., 1962), Arabic text p. 17, pr. 26.

[10]Liebesny, *The Law of the Near & Middle East. Reading, Cases*, and Materials (Albany: State University of New York Press, 1975), p. 3.

[11]The fate of sufism is just a little better than that of *kalām*, but it has never managed to challenge the pre-eminence of the Sharī'a in the Muslims' mind.

[12]Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), p.1.

[13]Al-Jābirī, *Takwīn al-'Aql al-'Arabī* (Beirut: al-Markaz al-Thaqāfī al-'Arabī li al-Tibā'a wa al-Nashr wa al-Tawzī', 1991), p. 96.

[14]Walid Saif, "Human Rights and Islamic Revivalism", *Islam and Christian-Muslim Relations*, Vol. 5, No. 1 (1994), p. 59.

[15]Tahānawī, *Kashshāf Istilāḥāt al-Funūn* (Beirut: Shirka Khayyāt li al-Kutub wa an-Nashr, 1966), III:759.

[16]Muhammad Yūsuf Mūsā, *Aḥkām al-Aḥwāl al-Shakhṣiyya fī al-Fiqh al-Islāmī* (Egypt: Dār al-Kitāb al-'Arabī, 1956), p. 9; cf. Muhammad Sallām Madkūr, *Al-Fiqh al-Islāmī* (Cairo: Maktaba Wahba, 1955), pp. 11-2.

[17]Al-Shātibī, *Al-Muwāfaqāt fi Usūl al-Aḥkām* (Beirut?: Dāral-Fikr, AH 1341), I:53, "al-Muqaddima al-'Ishira."

[18]Tahānawī, *loc. cit.*

[19]The preoccupation to use the term "shari'a" in its narrow meaning as mentioned above is already old enough. At least one can trace it back to the time of al-Ash'arī (d. 330/), the founder of the Ash'arite theology of kalām in the fourth/tenth century. In his *Risāla fī Istiḥsān al-Khaud fī 'Ilm al-Kalām* [A Vindication of the Science of Kalam], al-Ash'arī distinguishes between theology and law and said that judgment on legal questions belongs to the category of the traditional and is to be based on reference to legal principles which likewise belong to the category of the traditional. See al-Ash'arī, "Risāla fi Istihsān al-Khaud fi 'Ilm al-Kalām" in Richard J. McCarthy, S.J., The *Theology of al-Ash'arī. The Arabic text of al-Ash'arī's* Kita al-Luma' *and* Risāla Istihsān al-Khaud fī 'Ilm al-Kalâm *with briefly annotated translations, and Appendices containing material pertinent to the study of al-Ash'arī* (Beirut: Imprimerie Catholique, 1953), p. 89 of Arabic text.

[20]Ibn Hazm (d. A.D. 1064) distinguishes the Islamic divine revelation into two categories: *first*, what he calls the recited revelation, that is the Qur'ān, and, second, what he calls the unrecited revelation, that is the Sunna. See Ibn Hazm, *Al-Iḥkām fī Uṣūl al-Aḥkām* (Cairo: Matba'a al-'Isima, n.d.), I:87; cf. al-Ghazālī, *Al-Mustaṣfā min 'Ilm al-Uṣūl* (Būlāq, Cairo: al-Amīriyya Press, 1322 A.H.), I:129.

[21]For a classical account of this source see al-Ghazālī, *op. cit.*, I:260); for modern critical study see Bernard Weiss, *The Search for God's Law. Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 1992), p. 664-8.

[22]Of course there were some jurists who studied the concept of good interest before him, but they never developed it in such a way al-Shātibī did. For example al-Ghazālī investigated this principle in his *al-Mustaṣfā min 'Ilm al-Uṣūl*, but he put it under the heading of the false principles. See al-Ghazālī, *op. cit.*, I:283.

[23]Al-Shātibī studied this principle primarily in his *al-Muwāfaqāt fī Uṣūl al-Aḥkām*, ed. M. Muhy al-Dīn 'Abd al-Hamid (Cairo: Maktaba wa Matba'a M. 'Ali Sabīh, n.d.), II:3 etc.

[24]See Farid Esack, *Qur'ān, Liberation & Pluralism. An Islamic Perspective of Interreligious Solidarity against Oppression* (Oxford: Oneworld, 1997), p. 159; cf. Abdulaziz Sachedina, "Political Implications of the Islamic Notion of 'Supersession' as Reflected in Islamic Jurisprudence", *Islam and Christian-Muslim Relations*, Vol. 7, No. 2 (1996), p. 162.

[25] It is called in Arabic *'aqd al-dhimma*. This term was used for example by the Hanafi jurist al-Sarakhsī in his commentary on al-Shaybānī's *Kitāb al-Siyar al-Kabīr*. See

al-Sarakhsī, *op. cit.*, IV:1529; see also its use in Ibn al-Qayyim, *Zād al-Ma'ād fī Hady Khair al-'Ibād*, ed. Hasan Muhammad al-Mas'ūdī (Egypt: al-Matba'a al-Misriyya, 1928), II:79.

[26]Al-Murtaḍa, *Al-Baḥr al-Fakhkhār al-Jāmi' li Mazāhib 'Ulamā' al-Amṣār*, ed. 'Abdallah Muhammad Siddiq and 'Abd al-Hāfiz Sa'd 'Atiyya (Cairo: Maktaba al-Khanjī, 1948), V:456-7 and 450, cited by Ahmad Dallāl, *op. cit.*, p. 188.

[27]Abū Ya'lā al-Farrā', *Al-Aḥkām al-Sulṭāniyya* (Egypt: Muṣṭafā al-Bābī al-Ḥalabī , 1966), pp. 158-9.

[28]*Ibid.*, p. 162.

[29]*Ibid.*, pp. 161-2. See also al-Qurtūbī, *Al-Jāmi' li Ahkām al-Qur'ān* (Cairo: Dār al-Kātib al-'Arabī li al-Tibā'a wa al-Nashr, 1967), VIII:113.

[30]Al-Sarakhsī, *op. cit.*, IV:1531, pr. 3009.

[31]*Ibid.*, p. 1533, pr. 3013.

[32]*Ibid.*, p. 1534.

[33]*Ibid.*, pr. 3014.

[34]Abū Ya'lā al-Farrā', *op. cit.*, p. 161; cf. al-Qurtūbī, *loc. cit.* Portraying this matter from a Christian perspective, Bert Breiner, a priest of the Episcopal Church, writes, "In most classical forms of Islamic government, Christian and Jews are allowed -in fact encouraged- to settle their disputes, both civil and criminal, within their own communities. Church courts in Muslim lands became powerful instruments of government and church law became highly developed. There are vestiges of this system throughout areas that were once a part of the Muslim world." See Bert Breiner, "The *Shari'ah* and Islamic Law: A Christian's Reflection", *Church & Society* (Jan. and Febr. 1994), p. 45.

[35]Abū Ya'lā al-Farrā', *loc. cit.* But according to al-Qurtūbī, in this regard a Muslim judge are given the choice to try them in accordance with Islamic law or to reject their case. Al-Qurtūbī, *loc. cit.*

[36]While some argued that *jihād* is obligatory only for the defensive aims, the others were content that it could be waged for the offensive objectives to launch the religion of Islam. See Ahmad Dallāl, *op. cit.*, p. 183.

[37]Theory of paying tribute as an alternative to war was confirmed by al-Qurtūbī. See his al-Jāmi' li Ahkām al-Qur'ān, *op. cit.*, 110.

[38]Abū Ya'lā al-Farrā', *op. cit.*, p. 27.

[39]Al-Hasan Ibn Ahmad al-Jalāl, *Daw' al-Nahār al-Mushriq 'alā Saḥāt al-Azhār* (San'ā Maktaba Ghamdan li Ihyā' al-Turāth al-Yamanī, n.d.), IV:2501.

[40]For recent critical study on the deep influence and vast domination of atomism in Islamic thought as a whole see al-Jābirī, *Bunya al-'Aql al-'Arabī: Dirāsa Tahlīliyya li Nuzum al-Ma'rifa fī al-Thaqāfa al-'Arabiyya* (Beirut-Casablanca: al-Markaz al-Thaqāfī al-'Arabī, 1993).

[41]Ibn al-Qayyim, *op. cit.*, II:81.

[42]*Ibid.*, p. 82.

[43]Abdullahi Ahmed an-Na'im, "Toward an Islamic Hermeneutics for Human Rights", in Abdullahi A. an-Na'im et. al. (eds.), *Human Rights and Religious Values. An Uneasy Relationship?* (Michigan: William B. Eerdman Publishing Company, 1995), p. 231.

[44]Al-Shāṭibī, *op. cit.*, I:13-16; Hallaq, "On Inductive Corroboration, Probability and Certainty in Sunni Legal Thought," in Heer (ed.), *Islamic Law and Jurisprudence. Studies*

in Honor of Farhat J. Ziadeh (Seattle and London: University of Washington Prees, 1990), p. 25.

[45]According to al-Shātibī it is not valid to understand Medinan texts on its own right without relating them to, and basing our understanding of them on, the Meccan texts of the Sharī'a. See *ibid.*, III:274, case 11.

[46]Farid Isack, *op. cit.*, p. 53.

[47]Nabil Abdul Fattah, "Teks dan Peluru: Hukum Islam dan Hukum Positif dalam Sistem Politik Mesir Tahun Tujuh Puluhan dan Delapan Puluhan", in Johannes den Heijer and Syamsul Anwar (eds.), *Islam, Negara dan Hukum*, tr. into Indonesian by Syamsul Anwar (Jakarta: Indonesian-Netherlands Cooperation in Islamic Studies, 1993), p. 27.

[48]Farid Isack, *loc. cit.*

[49]*Ibid.*, p. 147.

[50]Cf. Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Text Society, 1991), p. 207.

[51]*Ibid.*, p. 35 and 207.

[52]*Ibid.*, p. 207.

[53]It is one of the oldest and the largest socio-religious associations in Indonesia at the present, and was founded in 1912 in Yogyakarta, Central Java. Its main goal is to promote Islamic *da'wa* (mission) through carrying out activities in the field of education, social services and health nurses.

[54]*The Translation of the Meanings* of Sahīh al-Bukhārī *Arabic English*, tr. by Dr. Muhammad Muhsin Khan (Chicago: Kazi Publications, 1979), V:508, no. 709.

[55]See the letter of Muhammadiyah Council of Weighing for the Region of Surakarta, March 5 1993; and a draft for issuing *fatwā* by the Muhammadiyah Central Council of Weighing regarding this question was prepared by the writer of the present paper.

[56]*The Translation of the Meanings of* Sahīh al-Bukhārī: *Arabic-English*, op. cit., VII:540, no. 830, Chapter 88 on pictures. The original Arabic word al-sūra, rendered here picture, actually means painting, relief and statue.

[57]Majelis Tarjih PP Muammadiyah, "Hukum Islam tentang Seni," paper presented at The 23rd National Conference of Majelis Tarjih PP Muhammadiyah, Banda Aceh (July 4, 1997), pp. 9-11.

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