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Legal Absolutism and Ethical Relativism

A civilization is a manifest expression of collective, sophisticated, and adaptive values in critical areas of public life. The said expression must be propagated and preserved by effective iconic and monumental means. Although a civilization is not necessarily a moral good, the positive achievements must outweigh the negative aspects. To be elevated from a major power to the center of gravity of a world civilization, a community must establish peaceful cities with inclusive citizenship, achieve complementary organization of labor, acquire refined sciences, literature, and culture, elect/select attuned government, institutionalize complex and inclusive religious system, and exhibit the flexibility and capacity to dominate other cultures in a non-coercive manner. With this understanding of civilization, it becomes clear that no community can achieve such a status by excelling in one or few of the critical areas. To the contrary, there must be a comprehensive and all encompassing agenda that contribute to the well-being of the economic, social, and political life. In other words, it is not only the laws nor is it the political system that guarantees success; rather, it is through the collective input in all areas that legendary status of a civilization is realized. To be sure, one should not look for the secrets of success only in the centers of power, but also in the subtle discourses that shape public life, ethics, and social dynamics. Communities establish social order and declare collective expectations by relying on iconic, paradigmatic, and idiomatic tales that communicate public morality, which in turn dictate the place and function of women, ethnic groups, and individuals. In this context, the Qur'ān is full of "stories" that are not necessarily legal but just as effective in creating the "ideal" *ummah*. In order to understand the moral basis for the Islamic social order, I will begin by introducing and analyzing one of the most fascinating and intriguing stories of the Qur'ān: Moses' encounter with the "knower." This background information should lay the foundation to my argument against legal reform as the singular solution to widespread discrimination against women. Because this story shows that cultural and societal expectations are sometimes more oppressive than laws, I contend that encouraging a culture of diversity and pluralism that stretches the ethical and moral boundaries is, in the long run, more effective than short-sighted legal actions and solutions.

Throughout history, acts of murder, imprisonment, and war made human life and liberty a contested value. In religious and secular discourses, the context of any of the above acts made it possible to relativize the rights to life and freedom. They can be forfeited: The saving of some life might be cited to legitimize the destruction of another. In Islamic ethics, such acts are possible but they cannot be done under the umbrella of aggression:

My people! I have prohibited upon Myself aggression (*zulm*), and I have proscribed it for you too; so do not act aggressively towards one another.¹

Although it is difficult to define aggression in the modern political context especially,² it is fairly easy to characterize acts of aggression as violent undertakings by the powerful against the weak for no reason but to maximize one's dominion and hegemony.³ Aggression, as an act of violence, can only be justified when it is committed to redress a prior act of violence. Violence is any direct or indirect restriction of the movement and liberties of another person. Such restrictions may take the form of killing, injury, imprisonment, or depriving one of one's mental or material capacity and ability to pursue a normal life. In my view, to deprive women of equal opportunity to pursue a dignified and fulsome life constitutes an act of aggression. In the Islamic traditions, it is said that, before God, there is no other act more egregious than aggression and for that reason the deity promised to treat aggressors as his "personal" enemies in the Hereafter.⁴ In Islamic thought, the antonym of aggression is justice; and therefore, only acts in the name of justice and fairness may justify the taking of life or liberties of a person. Despite the existence of guiding principles such as the above, more often than not, we learn of acts that seem to be unjustified. That is when ethical and moral arguments emerge as a means to justify or criticize social and religious practices.

What should (or ought) one do if one knows for a fact that a person will cause some harm (in the future) to another person or to many people? Should a parent or both parents be allowed to kill (abort?) a child if they were to know with absolute certainty that such a child, were he to reach adulthood, will be an unrepentant criminal and a lethal menace to them and to others? Should a person or the government be allowed to restrict the travels and movement of adults and discerning people upon knowing that an eminent danger is awaiting them? Should the rights of the few be sacrificed for the rights of the many? If so, should women's rights be curtailed for simply being women because the community leaders see them as a disturbance to social order? And finally, how do we acquire the special knowledge (if it exists) that allows one to make these judgments; and which knowledge is supreme: acquired, revealed, or gifted knowledge?

At first glance, these inquiries may appear to be a series of hypothetical questions similar to the ones asked in modern-day university level courses on ethics, moral philosophy, and jurisprudence. In reality, these are the kind of questions

faced by executive leaders, judicial authorities, and law enforcement agencies. Curiously, however, some of these are also the kind of situation presented in the story of Moses when he had an encounter with a person identified in the Qur'ān as a "knower" and a servant of God (or al-Khaḍīr in the exegetical collections). It provides a backdrop to the philosophical and jurisprudential discourse that informed Islamic law and practices throughout the history of the Islamic civilization. If we were to understand the arguments of this particular story, it would be easier to grasp the reach and scope of Islamic law and especially laws dealing with matters of social justice and individual entitlements.

For Muslims, the story of Moses' encounter with the "knower," like the rest of the Qur'ān, has moral and possibly legal implications. It teaches and justifies, it instructs and implies, it commands and inspires. It provides adherents with the comfort of knowing that there is a higher purpose and a nobler goal for acts even if they are not understood. In Islamic practices and traditions, one does what one can in keeping with the guidelines of legality and morality but doing so does not guarantee attaining the ultimate truth or the desired ends. For Muslims, the end and the beginning are in the hands of God. "It is fate (or *maktūb*)" Muslims declare every time an event (such as loss, death, or injury) strikes. In short, it is not up to the individual Muslim to negotiate the outcome of the passing of time or to explain the unexplainable. Moses' encounter with the "knower" is a powerful reminder of the limitations of human reason and need for broader perspective. More importantly, the passages of this story outline the moral and ethical foundation of acts when they are juxtaposed to legal judgments. For the author of this story to choose Moses—the man of the Tablets, the preacher of the Commandments, the legal genius—and contrast him to the "knower" of ethical judgments—a man of penetrating insight and mysterious wisdom—this setting is indeed compelling.

In understanding the balance between law and morality in Islamic tradition, I hope to achieve a sound understanding of the Islamic worldview in the broadest sense possible. In this chapter, firstly, I will introduce the story as told in the Qur'ān and in the exegetical works. Secondly, I will analyze the story in order to highlight the arguments that support the main thesis as posited in the introduction to this work. Finally, and in the light of the analysis and discussion, I will draw some conclusions and propose some answers to the above and other questions.

To Know or Not to Know: The Basis of Acts

And tell of Moses when he said to his assistant: "I will not rest until I reach the junction of the two seas or die trying." When the two reached midpoint, they forgot their fish which then quietly made its way into the sea. When the two passed beyond the location, Moses said to his assistant: "Bring us our lunch, indeed we have achieved an acceptable leg of our journey." He said: "Remember when we

retreated to the rock, there I forgot about the fish—and indeed it was Satan who caused me to forget about it—and it amazingly made its way into the sea.” He said: “That is what we were after.” And the two backtracked retracing their footsteps. There they found one of Our subjects to whom we gave some mercy from Us and We taught him a great knowledge from Us. Moses asked him: “It is great maturity that I desire, can I tag along so that you may teach me from that which you have been taught?” He replied: “You will not be patient with me; how could you be patient about that which you have no foreknowledge?” He said: “God willing, you will find me patient and I will not disobey any of your commands.” He said: “When you follow me, do not ask me about anything until I explain to you its purpose.” The two began their journey together and when they boarded the boat, he punctured it. He said: “You punctured it to drown its people; indeed you have done a wicked act.” He said: “Didn’t I tell you that you will not have patience with me?” He said: “Do not judge me by my forgetfulness and do not make it harder on me.” The two continued until they encountered a boy; he killed him. He (Moses) said: “Did you just kill a pure soul that did not cause the loss of soul? Indeed you have undertaken a sinful act.” He said: “Didn’t I tell you that you will not have patience with me?” He said: “If I ask you about one thing after this, then do not accompany me; indeed you will be excused from doing so.” They continued until they reached a village. They asked for food and they were refused and denied any hospitality. Therein, they found a wall that was about to collapse. So he rebuilt it. Moses then said: “Maybe you should ask the people of the town to pay you for rebuilding it!” He said: “This is the time of parting company. However, I will inform you of the interpretation of that for which you had no patience. As for the boat, it belonged to poor individuals who make a living by fishing in the seas. I wanted to disable it because there was a usurping king after it. As for the boy, his two parents were two faithful individuals but he would have driven them to arrogance and ingratitude. We wanted their Lord to offer them instead a child who is charitable and merciful. Finally, the wall belongs to two orphan boys from the town and there under was a treasure left for them by their righteous father. Your Lord willed that they reach adulthood and retrieve it. That is your Lord’s mercy; I did not do it on my own. That is the interpretation of that for which you had no patience.” [Q18:60–82]⁵

The above passage is the full story as told in less than three pages of the Qur’ān. The only person mentioned by name is Moses. The location and the names of the other figures were described in specific terms by exegetes.⁶ Muslim scholars are not sure why certain information is left out in the Qur’ān although that is not unusual. Some argue that information is purposefully left out because it is not critical to the legal or moral purpose of telling the story. Others contend that the Qur’ānic style intentionally leaves critical information out in order to empower prophets and religious authorities to interpret it within the specific context and circumstances. Whatever the case may be, clearly the style of telling this story has focused attention on the three acts by the knowledgeable subject of

God (the knower) and contrasted them to the judgments issued by Moses who was given the divine commandments that prohibited these same acts. Even if the story is deemed nonhistorical, its philosophical implications are extraordinary. In other words, the selection of the acts (the three events) and the observer (Moses) do suggest a rationale behind the “telling” of this narrative, which does not appear to be that original in its totality.⁷ In the Qur’ānic contexts however, it brings to light the relationship between legal and moral imperatives on the one hand, and the value of life and human dignity on the other hand. This objective was achieved by making Moses, a personality that is universally associated with law and commandments, a central figure who is on a journey to learn beyond what he was taught.

Before I analyze the story and theorize about its ethical and legal implications, it is necessary to start with the interpretations of the traditional Muslim exegetes. Not only will the presentation of the views of Muslim commentators shed some light on the role of interpretations in the religious discourse, but it also helps in comparing and understanding the function and place of morality and ethics in the scripture and in the commentaries respectively.

Ostensibly, the usual cryptic style of the Qur’ān rarely tells a full story. However, in addition to this story, only the story of Joseph may come close to biblical style narratives that recount a story in a suspenseful and conclusive manner. Moses’ encounter with the curious figure, identified in exegetical works as al-Khaḍīr, is narrated with dialogues. The commentaries that will be analyzed in this chapter relate to the passages of the Qur’ān, all of which are taken from the chapter entitled *al-kaḥf* (the cave). The names (except Moses’) and some other details are found only in the *tafsīr* collections.

According to al-Ṭabarī and Ibn Kathīr, after a passionate and empowering speech to the Israelites, Moses was approached by a member of the audience and asked if there is any other human being more knowledgeable than him. Moses replied negatively arguing that with the revelation and the Commandments that God has bestowed on him, he had become the most knowledgeable person to ever live. Not long thereafter, Gabriel came with a message from God to rebuke him and inform him that there was in fact another person whom the deity had blessed with extraordinary knowledge. Disappointed and curious at the same time, Moses and his helper Joshua undertook a long journey to find this man.⁸ The only clue they were given was that a dead fish would come alive and disappear once they reached the place where lived this “knower.”⁹

After some time had passed along the coastal lines of some unspecified seas,¹⁰ the pair decided to rest. Joshua laid the jar containing the fish on the ground and they both fell asleep. During that time, the fish made its way into the water. Upon waking up, they resumed the journey, although Joshua noticed that the fish was missing. After some time, they decided to rest and Moses asked Joshua to check on the fish and serve him some food. At this point, Joshua blames his forgetfulness on Satan and reveals to Moses that the fish swam away when they were

asleep. Upon hearing the news, Moses realized that he had missed the location of al-Khaḍir so they backtracked all the way to the location where they lost the fish.

It did not take them long to find the mysterious person who seemed to have known about them and was expecting their arrival. He nonetheless entertains himself by asking Moses for the reason of traveling to see him despite the fact that he has a challenging task of leading his people. Moses answered by expressing his desire to learn from him some of what he had been given. To this, al-Khaḍir replied by predicting that Moses does not have the patience to observe and learn. When Moses insisted that he is patient, al-Khaḍir exclaimed: "How could you be patient in the face of that to which you have no exposure? You are given the knowledge that allows you to judge the apparent justness of acts but not the knowledge of the unseen." The predictions and warning did not discourage Moses. He promised that he will be patient and he will not antagonize him. To this al-Khaḍir agreed on the condition that he is not challenged about the validity of what he does.

They started by walking along the coast soliciting rides from boat masters. Not only did the crew of a new, reliable, clean, and decorated boat offer them a ride, but they did not even charge them for it. Despite that, al-Khaḍir sabotaged the boat by cutting a hole in it and concealing it and thereby rendering the craft unfit for sailing. Irritated by the seeming ingratitude and criminal behavior of his companion, Moses complained judgingly: "Did you puncture it to drown its crew? Indeed that is an abhorring act." Upon hearing the criticism, al-Khaḍir reminded Moses that he was warned against such behavior. Moses apologized and begged him to forgive his forgetfulness.

They left the boat and started to walk in the town where they encountered a number of children playing. One of these children was a clean, polite, and well-behaved boy. Without warning, al-Khaḍir kills the boy by intentionally striking his head with a rock. Appalled by the cold-blooded murder of an innocent child, again Moses objected to this undertaking and expressed his disapproval. Once reminded of his impatience, Moses declares that he agrees to end the arrangement if and when he violates it one more time.

They left that town and went to another one. The people of this town were neither hospitable nor accommodating to these traveling strangers: They denied them water, refused them food, and declined them rest. Despite the townspeople's attitude, al-Khaḍir decided to waste his energy and time rebuilding a wall of a house that is falling apart. Possibly amused and probably irritated by the irony, Moses commented: "Maybe you should ask to get paid for doing that!" Upon hearing that, al-Khaḍir asserted: "That is it. We are done: You go your way and I am going mine. But before you do that, I will inform you of the interpretation of that which tested your patience. As for the boat, it belonged to some poor individuals who rely on it for a living. However, were they allowed to continue their voyage to the next city, its ruler would have usurped it from them and deprived them of their means of support. The boy on the other hand, is a

child of two believing and righteous people whom he would have tortured and coerced to disbelieve. I did what I did so that they are given another merciful and kind child. Lastly, the wall stood as a protection of and marker for a treasure that was left by two righteous parents for their two orphan children. Rebuilding and maintaining the wall until they are old enough to extract it was the purpose of my undertaking.”

Some early Muslim scholars saw this story as a metaphor for the vastness of divine knowledge and a lesson in humility. The context they provided suggests that even those given special knowledge such as revelations are still limited in their wisdom. Some Sufi masters and Shi`ite theologians rely on this story to instill in the mind of their followers the need for a teacher (*`arif*) or an *imām* respectively.¹¹

For Shi`ites, the existence of the Qur`ān or the books of interpretations and laws is not enough to guide the adherent to the right path. There must be a living knower or infallible living person who leads, teaches, and initiates. For Sufis, life is a journey into learning, and knowing that requires a seasoned master and guide. For Shi`ites, reason and intellect are fallible and because of that there must be an infallible person who can interpret and apply the divine knowledge at any given time. The presence of a *`arif* or an *imām* is therefore seen as the manifestation of God's grace, wisdom, and mercy upon his creations.¹²

For Sunni Muslims, the story teaches humility and speaks for God's vast and absolute knowledge. This view is underscored by an anecdote that is embedded in the exegesis dealing with these verses. It is reported that, while the “knower” and Moses were riding on the ship, a bird landed near the sea and took a sip of water. The “knower” then pointed to the bird and told Moses that his knowledge compared to God's is similar to the amount of water taken by the bird from the sea: it is so minuscule that it hardly adds to or subtracts from the divine knowledge.

Sufi scholars argue for a literal meaning (*ẓahir*) and a hidden meaning (*bāṭin*). The literal meaning is that accepted by the majority of Muslim scholars and they do not contest those interpretations. However, Ibn al-`Arabī contends that there is another meaning for the story:

When Moses spoke to his young companion (*fatāh*), it was analogous to Moses the heart (*qalb*) speaking to the young soul (*nafs*) when it first attaches itself to the body (*badan*); telling it that he will not stop journeying until he reaches the intersection of the two worlds: the world of spirit (*rūh*) and the world of form (*jism*). They are the pure and clear in the human form and locus of the heart.

As one can see from these interpretations, the same story could be used as a building block for the creation of a comprehensive worldview that is informed by the beliefs and ideas of the adherents of any given religious entity. The same story can be “modeled” in a way that will reenforce the teachings and practices of the community.

Muslims, regardless of their theological tendencies, do not see this story as an imperative or a command that asks them to imitate the knower. For legal and ethical scholars, the style in which the story was composed, *khbar* (neutral narrative), relieves Muslims of any obligation or prohibition. Nonetheless, it teaches them to accept the unexplainable: things that are seen as acts of God.

For the purposes of this study, the story of the knower and Moses is significant in that it is indirectly used to argue for a “natural” order of things: Women, disabled, underprivileged, the poor, the exploited, and anyone not sharing the bounties of this world are consoled by the promised bigger plan that may explain their worldly distress. For that reason, I consider this and other metaphors in the Qur’ān and Islamic traditions significant. The status of women in Islam cannot be understood in the context of isolated legal rulings and limited practices. Rather, it is dependent on a broader worldview that is anchored on philosophical, theological, legal, and practical considerations. As the popular cliché states, knowledge is power. In the case of the Islamic discourse on ethical questions, knowledge is context. Those who know ask those who do not know to trust them in creating categories, assigning entitlements, and awarding rights. For the majority of Muslims, not even religious scholars claim access to divine knowledge. Religious authorities, in their view, possess methods and processes of ascertaining that near absolute knowledge is acquired. The absolute knowledge is especially required in matters of law and religious practices.

Cognition through Models and Paradigms

The above story (and many other similar stories that I will introduce in the following chapters) suggest that there is an extraordinary function played by models, anecdotes, paradigms, allegories, and parables. They are stories stripped of most of the specifics and particulars and told in an imaginative way in order to provide clarity and assign meaning to abstract concepts. A model allows the author to place the listener into the story and make her a character, an actor, an agent, a participant not only in the story, but also in imposing the meaning of the model on the events of today. The use of paradigms and models is a powerful tool that explains, and most importantly, makes the past relevant to today if not a replay of it anew. It is a powerful tool when the consumer of these images sees herself as part of the story. When that happens, status is established, privileges are preserved, and acceptance is guaranteed.

The utility of models and metaphors in society is underscored by the frequency of their appearances in the Qur’ān and Ḥadīth . The story of Moses and “the knower” is thus one good example of how stripped-down parables are employed in assigning meaning and establishing social order. In this particular case, the three events of the story justify acts that appear to ordinary (or not so ordinary as is the case with Moses) people to be unfair and unjust. The impact

and effect of this approach is to encourage acceptance of things the way they are, tolerate conditions regardless of their immediate impact, and resign oneself to the course of events. In terms of our case study, it can be argued that parables give meaning and purpose to one's status as being a significant part in a bigger and extraordinary world that may not be well understood in its totality. In other words, such tools (parables and models) suggest to women that their status and their rights are not measured by comparing them to members of the other sex or members of other species for that matter; rather, by the function they provide and the place they hold in the "bigger picture." That is being on the belief and thought level. On the practical level, jurists will establish more mundane rules and guidelines that will ensure that everyone performs her or his function in the desired manner and time; and that is the role of legal philosophical discourses.

The majority of legal rulings governing the status and rights of women are not decided only by anecdotes and hypothetical arguments. Admittedly, their status is informed by metaphors like the one about the knower and Moses but the practical steps are decided by explicit and implicit directives that adherents are asked to follow in their personal and communal lives. The next chapter focuses on the parts of the Qur'ān and Islamic jurisprudence that concretize the boundaries and govern the social order in the Muslim community. The overview and explanations of Islamic jurisprudence will provide the reader with another layer of Islamic tradition analysis that will help establish a solid background. I argued in other publications that some of the laws of inheritance in Islamic law do not conform to the explicit legal proofs found in the Qur'ān.¹³ It is essential, therefore, that I examine the legal theory that constituted the basis of the legal rulings on Inheritance. The next chapter will accomplish that task.