

## THE THIRD ASPECT

### CONSTITUENTS OF RULES

They are four:

*AL-HĀKIM* [THE RULER]; *AL-MAḤKŪM 'ALAYHI* [THE LOCUS OF OBLIGATION]; *AL-MAḤKŪM FĪHI* [THE SUBJECT OF RULE, ACTS]; AND *NAFS AL-HUKM* [THE RULE ITSELF]

Concerning rule [*ḥukm*] itself, we have discussed it [previously], namely that it is related to the [*Sharī'a*] address, which is the first constituent.<sup>1</sup>

#### THE SECOND CONSTITUENT: THE RULER [*AL-HĀKIM*]

He is the addresser, for the rule is address and speech. Its agent is every speaker. Therefore, the existence of the rule's form does not require more than this measure.

As for meriting the enforcement of the rule, this is for none save He to whom belongs the creation and the command. For the effective enforcement is the rule of the owner over his possessions, and there is no owner save the Creator. Thus, there is neither rule nor command save which belong to Him.

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<sup>1</sup>It should be noted that since Ghazālī opened the First *Quṭb* by discussions concerning the nature of *ḥukm*, he starts here by discussing the second constituent, which he lists first, *al-Hākīm* [the Ruler].

As for the Prophet, *صلى الله عليه وسلم*, the sultan, the master, the father, and the husband, when they command and oblige, nothing becomes obligated on the basis of their mandating. Rather, it is on the basis of Allâh, *دُعَاي*, obliging obedience to them. If it were not for this, the situation would be, with every creature obliging something upon others, that the one subjected to obligation could turn the obligation upon the former, since one of them is not worthier than the other. What is obligated, then, is obeying Allâh, *دُعَاي*, and obeying those to whom He obliged obedience.

If it is said: This is not so, but whosoever is capable of threatening and realizing *sensible* punishment, he is, then, capable of obliging, since obligation is only realized by punishment.

We shall say: We have mentioned the position of al-Qâdî, *رَجْمَةُ*, that if Allâh, *دُعَاي*, obliges something, it would be obligated, even though he does not threaten punishment for it. But upon investigating the essence of obligation, this amounts to nothing if a feared harm is not associated with it. Also, if it is in this world, one may be capable of it, except that the norm specifies this term '*darar*' by the *harm* which is feared in the Hereafter—none is capable of this, save Allâh, *دُعَاي*. Therefore, if it is used for every feared harm, even though it is in this world—so that a human being is capable of it—then, it is possible for it to be obliging, not in the sense that we are certain of one's capability of it, for he may fall short of it before realizing the threat. But we anticipate his capability, which yields a sort of fear.

THE THIRD CONSTITUENT: THE LOCUS OF OBLIGATION [AL-  
MAḤKŪM 'ALAYHI]

He is the locus of obligation. His qualifications [*shurûṭ*] are that he be sane and comprehending of the address. Therefore, addressing inanimate beings and beasts is not valid—and such is the case in addressing the insane and the minor who cannot discern [right from wrong], for *taklîf* [laying an obligation] requires obedience and compliance. This is not possible except by intending to comply, while the condition for intending [to comply] is knowing what is intended and the comprehending of *taklîf*. For every address implies a command to understand. For whosoever cannot understand, how can it be said to him, “Comprehend!” Also whatever cannot hear sound, such as inanimate things, how can it be addressed? Even if [something] is able to hear sound but does not comprehend, as in the case of a beast, it is similar to that which cannot hear. Furthermore, [as for] one who hears and may understand to some degree, but does not comprehend or sustain [knowledge]—such as insane or undiscerning persons—requiring compliance of him is impossible, even though addressing him is possible, aside from the fact that a valid intention from him is inadmissible.

If it is said: *Zakât*, compensation, and maintenance is obligated for minors.

We shall say: This has nothing to do with *taklîf*, since laying obligation is impossible upon the acts of others. Blood money is

obligated upon the male blood relatives [*'aqilah*],<sup>2</sup> not in the sense that /1:84/ they are obligated to do other's acts, but in the sense that the acts' of others are the cause for establishing liability on their part. Similarly, this is the case regarding damage [to others' property and self]. Moreover, possessing the minimum amount of assets is a cause for establishing these rights upon minors, namely that it is the cause for addressing the guardian with immediate performance and the cause for addressing the minor after coming of age. This is not impossible.

What is impossible, however, is to say to whosoever cannot understand, "Comprehend!" and to address that which neither hears nor comprehends.

As for the capacity for rules to be established upon individuals, it is derived from the *humanness* that enables [a person] to possess the power of reason, through which one [is able to] understand *taklif* in the second stage.<sup>3</sup> But since a beast does not have the capacity to comprehend address, neither actually or potentially, it is not prepared, then, to be charged with rules.

A condition, however, must be either existing or soon-to-be possible. Thus it can be said that it potentially exists, such as the condition for ownership being *humanness*, and the condition for *humanness* being life. Yet ownership may be established for an embryo in the womb by way of inheritance or will, while [full

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<sup>2</sup> See Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 301.

<sup>3</sup> Ghazâlî is most likely referring to a minor's coming of age.

human] life does not exist actually, but potentially, since it culminates in life. Such is the case with a minor; he becomes rational. Therefore, he becomes eligible for laying obligation upon his person. But he is not immediately [as a minor] eligible for *taklîf*.

If it is said: A discerning minor is commanded to pray.

We shall say: He is commanded through the guardian; and the guardian is commanded from Allâh, وَالْحَقُّ أَنَّهُ عَلَيْهِ وَسَلَّمَ, since he, وَالْحَقُّ أَنَّهُ عَلَيْهِ وَسَلَّمَ, said, "Instruct them to pray when they are seven [years of age], and hit them [for negligence] when they are children of ten."<sup>4</sup> This is because they understand the address of the guardian and fear his hitting. Thus, they become eligible for [prayer], though they do not comprehend the address of the Lawgiver, nor do they fear his punishment, since they do not comprehend the Hereafter.

If it is said: When one approaches puberty, the *Shari'a* does not lay obligation upon him. Does this indicate deficiency in his mind?

We shall say: Al-Qâdî Abû Bakr, رَحِمَهُ اللَّهُ, said that it does indicate this. But this is inadequate, for [the ability to] discharge semen on his part does not increase his rationality. But the address [of obligation] was removed from him for relief because his reason is hidden—and it becomes evident in him gradually. So, one cannot suddenly recognize the measure [of reason] through which he

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<sup>4</sup>Wensinck, *Concordance*, p. 505.

understands the *Shari'a* address and knows of the Addressor, the Messenger, and the Hereafter. Therefore, the *Shari'a* has raised for it [puberty] a demonstrative sign.

**I. DISCUSSION:** Laying an obligation on a forgetful person or one who is unaware of what is laid upon him is impossible. For he who does not comprehend, how can it be said to him, "Understand!"

As for the establishment of rules based on his acts [performed] during sleep or heedlessness, it is not denied, namely being liable to penalties and other things. Similarly, charging an intoxicated person who does not comprehend is impossible, as in the case of laying an obligation upon on the unmindful, the insane, or he who hears but does not understand. Indeed, the situation of the intoxicated person is worse than one who is sleeping—for waking him is possible—and the insane who does not understand much of speech.

As for the enforcement of his divorce [statement] or mandating penalty [upon him], this is through relating the rules to their causes, and this is not deniable.

If it is said: Allâh, ﷻ, has stated, "*Do not approach prayer while you are intoxicated*," and this is an Address for the intoxicated.

We shall say: If addressing him has been established by a demonstrative proof, it becomes mandatory to interpret the verse [differently]. It has two interpretations: One of them is that it is an

address to one who is in the early stage of intoxication, when the beginnings of merriness and rapture become evident in him. Still, his mind is not yet lost, /1:85/ for he may enjoy in playfulness and becoming happy that which he may not like prior [to drinking]. The meaning of His statement, *أَلَمْ تَعْلَمْ*, "... until you know what you say," becomes, "... until you are able to discern and your sobriety is completely [restored]," just as it is said to an angry [person], "Be patient until you know what you are saying," meaning, "until your anger subsides so that your awareness becomes complete," even though, in principle, his mind remains [active]. This is because such an intoxicated person should not engage in prayer, while uttering the sounds of the letters is difficult for him, as is attaining humility.

The second [interpretation] is that this address was revealed in the early stages of Islam before the prohibition of alcohol and what was meant is not preventing the prayer, but preventing excessive drinking at the time of prayer, such as saying, "Do not engage in *tahajjud* [praying late at night] while you have a full stomach," meaning do not fill [your stomach] so that *tahajjud* becomes burdensome upon you.

**II. DISCUSSION:** If one were to say that, according to you, command does not require that the commanded be existent. For you have determined that Allâh, *أَلَمْ تَعْلَمْ*, is commanding his servants in eternity before their creation. So, how could you require that the locus of obligation be hearing and sane, while the intoxicated, the oblivious, and the insane are closer to *taklîf* than the nonexistent?

We shall say: It is necessary to understand the meaning of our statement, "Allâh, **ٱلْأَلَهُ**, is commanding . . . and the nonexistent is commanded." For we mean by this that he is commanded upon his existence, not that he is commanded in the state of nonexistence—for this is impossible.

However, those who assert that speech inheres in the mind have demonstrated that it is not unlikely that bidding the ascertaining of knowledge could exist in the mind of a father concerning a son who *will* exist. Therefore, if this bidding were to continue until the son comes to be, he would be liable to this bidding and commanded thereby. Similarly, the meaning inherent in the mind of Allâh, **ٱلْأَلَهُ**, which requires obedience from people, is eternal and relates to his servants upon their existence. So when they exist, they become commanded with this requirement. The same applies to the minor and the insane because awaiting sanity is no different than awaiting existence.

Yet this meaning is not called, in eternity, an address, and only becomes an address when the commanded exists and is made to hear. Whether it should be termed '*amr*' [command] or not, there is a dispute concerning this. But properly speaking, it is so termed because it is appropriate to say, with regard to a person who charged his children to give his wealth in charity, "So and so has commanded his children with such and such," even though one of his children is hidden in the womb, or nonexistent. But it is not appropriate to say, "He addressed his children," except if they were present and heard. Then if he charges them and they execute his will, it is said, "They have obeyed his command," although the

commander is now nonexistent and the commanded was nonexistent at the time of the commander's existence.

Similarly, we now, because of our obedience, are complying with the command of the Messenger of Allâh, ﷺ, while he is nonexistent in our immediate realm, even though he is alive with Allâh, ﷻ. Therefore, if the existence of the commander is not conditional for the commanded to be obedient and complying, the existence of the commanded is not required because a command is a command.

If it said: Would you say that Allâh, ﷻ, in eternity is commanding the nonexistent in a mandatory way?

We shall say: Yes. We state He is commanding, but pending on existence, just as it is said a father mandates and obliges upon his children to give charity when they become mature and reach puberty. Mandating and obliging, then, /1:86/ accrue but conditional on the existence and ability [of the children]. If one were to say to his slave, "Fast tomorrow!" he would, at once, be mandating and obliging the fasting of tomorrow. Yet fasting tomorrow is not possible at the time [of the command]. Rather, [it is possible] tomorrow. But it is qualified as being mandating and obliging immediately.

#### THE FOURTH CONSTITUENT: THE SUBJECT OF RULE [AL-MAḤKŪM FĪH]

This is the [human] act because nothing except volitional acts enter under *taḳlīf*. For those [acts] coming under *taḳlīf* there are

conditions.

The first is the rectitude of its origination because of the impossibility of associating the command with the eternal and everlasting, or to denature genera [into a different form], or to combine contradictions, or other such absurdities with which *taklîf* cannot be laid, according to those holding it impossible to lay an obligation which is not bearable. Therefore, there is no command of a nonexistent [thing] except when its existence is possible. But they have disputed regarding what is originated in the initial state of its origination, as to whether it is commanded in the way it was before origination or removed from being commanded, such as the case in the second stage of existence. This, however, is a theological [*kalâmî*] discussion whose mention is inconsistent with the aims of the principles of jurisprudence [*usûl al-fîqh*].

The second is the possibility of it being attainable by man, occurring by his own volition, since charging Zayd with the writing or the sewing meant for 'Amr is not possible, even though its existence is possible. Therefore, along with being possible [to exist], it must be attainable by the addressee.

The third is that it be known to the commanded and distinguished from other [commands], so that one's proceeding with it is conceivable. Moreover, it should be known that it is commanded by Allâh, ﷻ, so it becomes conceivable on one's part to comply; but this is restricted to [rites of worship], where intention of obeying and seeking nearness [to Allâh] is necessary.

If it is said: An unbeliever is commanded to believe in the

Messenger, *رَسُولُ اللَّهِ*, yet he does not know that he is commanded with this.

We shall say: A condition must be known or considered known, such that knowing it is possible, in the sense that proofs are being established and reason and the power of thinking are existent. So it is not valid where there is no proof or with regard to one without [sound] reason, such as a minor or an insane person.

The fourth is that it [the act] must exist, whereby willing its performance as obedience is valid, which is the case with most of the rites of worship. However, two things are excluded.

One of them is the primary obligation, namely the thinking that identifies obligatoriness. For intention to perform it as obedience is not possible when a person does not know its obligatoriness until after its performance. The second is the essence of intending obedience and devotion. For if an act were to lack intention, the intention would lack intention, thus leading to a vicious circle.

Now, five discussions issue from the conditions of acts.

**I. DISCUSSION:** Some people have held that the subject of *taklîf* may exist unconditionally. Indeed, it is possible to charge [one] with what is not bearable, command combining contradictions, denature genera, abolish that which is eternal, and create that which is existent. This is attributed to Shaykh Abû al-Hasan al-Ash'arî, and necessarily follows his position in two ways.

The first of them is that a person who is sitting, according to him, is not able to stand for prayer because ability, in his view,

becomes [available] during the act, not before it, while one is commanded before it [the act]. The second is that originated power has no effect in bringing that which is possible into being. Rather, our acts are originated by the power of Allâh, ﷻ, and His creation. Therefore, every person, in his view, is commanded by the doings of others. He [Ash'arî] has supported /1:87/ this by three things.

The first of them is His statement, ﷻ, "... *'And do not burden us beyond what we have the strength to bear.'*"<sup>5</sup> Yet one does not seek the removal of what is impossible, for it is removed by its very nature.

But this is weak. For what is meant is what is difficult and burdensome for us, since one may be burdened with the charge of acts leading to near destruction due to their severity, such as His statement, "... *'Slay yourselves' or 'leave your habitations' ...*,"<sup>6</sup> [For] it may be said with respect to him that he has been burdened with what is beyond his ability. But the apparent, interpreted [meaning] is weak in indicating decisive [issues].

The second is their statement that Allâh, ﷻ, has informed that Abû Jahl will not believe. Still, He charged him with belief—namely to attest to Muhammad in what he has brought—while in what he has brought is that he [Abû Jahl] will not attest to him. [It is] as if He has commanded him [Abû Jahl] to

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<sup>5</sup>Qur'ân, 2:286.

<sup>6</sup>Qur'ân, 4:66.

attest to [the Prophet] that he [Abû Jahl] will not attest to him. This is absurd.

But this is also weak. For Abû Jahl was commanded by faith, oneness [of Allâh], and the message, while the proofs are demonstrated and reason is present, since he was not insane. Therefore, the possibility existed. But Allâh, ﷻ, knew that he [Abû Jahl] would abandon what is attainable by him out of envy and obstinacy. For knowledge follows that which is known but it does not change it.

So, if it is known that something is performable by a person and possible for him, but is abandoned on his part despite [his] power over it and then it becomes impossible, then knowledge would become ignorance and no longer possible or attainable. Similarly, we say that the Resurrection is within the power of Allâh, ﷻ, at this moment, even though He informed that He will not establish it and will set it aside despite having power over it. Yet contradicting His information is absurd because His threat then becomes false. But this impossibility does not reflect on the thing itself; consequently, it does not effect it.

The third is their statement that if it is impossible to lay an impossible obligation, then it would not be possible owing to its linguistic mode or meaning, or the harm associated with it, or its contradiction of conventional wisdom.

However, it is not impossible due to its linguistic mode because it is possible for Him to say, “. . . *Be you apes, miserably*

*slinking!*"<sup>7</sup> or for a master to say to his blind slave, "Look!" or to the paralyzed, "Go!" As for the establishment of its meaning independently, it is also not impossible. For it is possible for one to ask his slave to be at one state in two places in order to protect his businesses in two cities. But, it is impossible to say that it is not possible because of corruption or contradiction of conventional wisdom. For establishing things on this basis with regard to Allāh, ﷻ, is absurd, since nothing of Him is bad and [doing] what is best is not incumbent upon Him. Also, dispute is the same either in regard to His [acts] or human ones. Yet corruption or incompetence on the part of humans is possible. Therefore, this is not absolutely impossible.

The preferred opinion is the impossibility of laying an impossible obligation, not because it is bad, nor for a corruption that issues from it, nor due to its linguistic mode—since it is possible for its mode to be rejected—but rather for incapacitation; and not for bidding, as in His statement, ". . . *Let you be stones, or iron,*"<sup>8</sup> [or] as in His saying, ". . . *Be you apes, miserably slinking!*"<sup>9</sup> nor to demonstrate power, such as His statement, ﷻ, ". . . '*Be!*' and *it is.*"<sup>10</sup>—not in the sense that He has bid the nonexistent to *be* by

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<sup>7</sup>Qur'ân, 2:65; 7:166.

<sup>8</sup>Qur'ân, 17:50.

<sup>9</sup>Qur'ân, 2:65; 7:166.

<sup>10</sup>Qur'ân, 40:68.

itself. But it is impossible for its meaning, for the definition of 'taklîf' is bidding what is burdensome, and bidding requires a bade object. And this bade object must, in all opinions, be understood by the locus of obligation. Therefore, it is possible to say "Taharrak! [Move!]" since *moving* is understood. Yet if one were to say, "Tamarrak!"<sup>11</sup> this is not a responsibility because its meaning is neither intelligible or understood, nor has it any meaning in itself, for it is an unconsidered word.

Even if it were to have /1:88/ meaning in some languages known to the commander, [but] not the commanded, this also would not be *taklîf*. For *taklîf* is addressing [one] with something that is burdensome. So, that which is not understood by the addressee is not an address to him. It is required [for the address] to be understood only to conceive obedience on the part of [the addressee], for *taklîf* requires obedience.

Accordingly, if it is not comprehended in the mind, requiring obedience will neither be conceivable nor intelligible, since it is impossible to establish in the mind of the sane, [say], bidding tailoring from trees because bidding first calls for an intelligibly bade object—and this is unintelligible; that is, it cannot exist in the mind. For a thing, before it exists in itself, has an existence in the mind. Furthermore, bidding it can only occur after it accrues in the mind, and the origination of the eternal does not inhere in the

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<sup>11</sup>Ghazâlî created 'tamarrak,' which has no meaning, after the pattern of 'taharrak' by changing the 'hâ' to 'mîm' to illustrate his point.

mind. So how could bidding the origination of the eternal be established per se? Again such is the case with the "blackness of the white"—it does not exist in the mind—and with the "standing of the sitting." For how can one say to another, "Stand while you are sitting!"

Therefore, this bidding, because of the nonexistence of the bade object, is impossible to inhere in the mind. For as it is required with respect to the bade object to be nonexistent in reality, it is required [of it] to exist in the intellect, that is, in the mind, in order that presenting it in reality be in accordance with that which is in the mind. Therefore, it becomes obedience and compliance, namely following the model which is in the mind of the bidder. Thus, that which has no model in the mind has no image in reality.

We shall say: This is a bidding based on ignorance. But an ignorant person may think that this is *taklîf*. Yet when it is manifested, it becomes clear that it was not bidding, and this is inconceivable from Allâh, سُبْحَٰنَهُ.

If it is said: If the originated power, while being in the act, does not effect performance, every *taklîf*, then, would be obligating that which is unbearable.

We shall say: We know necessarily the distinction between saying to one sitting, who is not paralyzed, "Enter the house!" and saying to him, "Climb to the heavens!" or saying to a person, "Stand while remaining sitting!" or, "Change blackness into motion and a tree into a horse!" Nevertheless, examination of this distinction

should clarify from whence it originates. It is known that it is related to an ability and a power in relation to one of these commands to the exclusion of the rest. Then looking into the details of the power's effect at the time of the origination of the power—in whatever way it has been established—should not cause us to doubt this. That is why it is possible for us to say, “. . . *And do not burden us beyond what we have the strength to bear.*”<sup>12</sup> Thus, if all matters equiponderate, what is the sense of this supplication? And what is the sense for this necessary distinction? Our objective in this discussion, however, does not depend on inquiring into the manner of the power's effect and its time.

In sum, the reason for this obscurity is that *taklîf* is a special type of speech inherent in the mind, and there is difficulty in understanding the principle of speech inherent in the mind. Therefore, building details upon it and dividing its category would necessarily be even more obscure.

**II. DISCUSSION:** Just as it is impossible to say, “Combine motion and idleness!” it is impossible to say, “Do not move and do not remain still!” For refraining from both of them is impossible, as it is impossible to combine both of them.

If it is said: When one is situated in the middle of a usurped farm, /1:89/ so that staying becomes prohibited for him and leaving is also prohibited because with each one there is damaging of the

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<sup>12</sup>Qur'ân, 2:286.

crops of others, then he is disobedient in both.

We shall say: The task of an *uṣūlī* here is to know that it should not be said to him, "Neither stay nor go!" Furthermore, he cannot be prohibited from the two contraries, for it is absurd and he is not commanded to combine both of them.

If it is said: What should be said to him?

We shall say: He is to be commanded to exit, just as a person inserting [his penis] into a forbidden vaginal orifice is commanded to withdraw, even though [in doing so] he will be touching the forbidden vaginal orifice. It is said to him, "Withdraw with the intention to repent, not with the intent of pleasure." Similarly, in exiting from the usurped [farm], there is a minimization of harm, while staying increases it. The lesser of the two harms becomes obligatory and obedience in relation to the graver of the two—just as drinking alcohol becomes an obligation [when no other fluid is available] on the part of one choking on a bite [of food]. Similarly, eating the food of others becomes incumbent upon a person compelled by starvation and damaging the property of others is not prohibited *per se*. This is why if one is threatened with death to do it, it becomes obligatory or permissible.

If it is said: Why then is liability required for what he damages in exiting [the farm]?

We shall say: Liability does not call for aggressiveness, for it becomes necessary on the compelled—even in starvation—despite mandating damage. Also, it [liability] is forced upon a minor or

whoever shoots into the ranks of the unbelievers,<sup>13</sup> even though he is being obedient through it.

If it is said: If proceeding with an invalidated *ḥajj* is prohibited due to the necessity of *qadā'* [restitution], it is not, then, obligated. But if it is obligatory and binding, why then is *qadā'* obligated? And why would one be disobeying because of it?

We shall say: He disobeys by [for example] the invalidating sexual intercourse but is obedient by the completion of the invalid [*ḥajj*]. *Qadā'* is required by a renewed command or may be required by that which is obedience if deficiencies infringe upon it. Also, *qadā'* is omitted by praying in the usurped home despite it being an offense, for *qadā'* is similar to liability.

If it is said: On what basis do you object to Abû Hâshim [al-Jubbâ'î] for holding that if such a person stays, he would be disobeying and if he exists, he would be disobeying? For he has thrown himself into this dilemma; therefore, his action is characterized as disobedience.

We shall say: No one is allowed to throw himself into a situation of undertaking what is impossible. Therefore, whosoever throws himself from a roof, thus breaking his leg, would not be disobeying for praying while sitting. Rather, he disobeys by breaking his leg, not by abandoning prayer in the standing position.

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<sup>13</sup>Ghazâlî is referring to the accidental killing of a Muslim while aiming into the ranks of the enemy.

And if by stating that such [an act] is characterized as an offense, one intends to mean only that he was prohibited from it along with being prohibited from its opposite, then this is absurd.

Disobedience expresses the perpetration of a prohibition that has been forbidden. Therefore, if there is no prohibition, there is no disobedience. How could a prohibition from something and from its opposite as well be obligated? Thus whosoever rationally permits the laying of an unbearable obligation prevents its [occurrence] in the *Shari'a* because of His statement, لَا يُكَلِّفُ, "Allâh charges no soul except by its capacity."<sup>14</sup>

If it is said: If you make preponderant the side of exiting for minimizing harm, what do you say, then, concerning a person who has fallen on the chest of child who is surrounded by other children—knowing that if he stays he will kill [the child] beneath him and that if he moves he will kill those around him—and there is no given preference? What then is the solution?

We shall say: It is possible to tell him, "Stay!" because moving is an initiated act which is not valid except from a living and able [person]. As for abandoning motion, it does not employ /1:90/ power. It is possible to say, since there is no given preference, that he may choose. Also, it is possible to say that Allâh, لَا يُكَلِّفُ, does not have a judgment with regard to it. Therefore, he does what he wills because a rule cannot be established except on the basis of a text [*nass*] or analogical reasoning based on a text

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<sup>14</sup>Qur'ân, 2:286.

[*qiyâs 'alâ mansûs*]. But there is no text concerning this question nor has it a parallel in the texts with which it can be analogized. Thus, he remains as in the state prior to the arrival of the *Sharî'a*. Nor is it unlikely for a case to be uncharacterized [by the *Sharî'a*]. All of this is possible. However, charging an impossible obligation is impossible.

**III. DISCUSSION:** They have differed with regard to that which is required by *taklîf*.

The opinion of most theologians is that what is required is proceeding or refraining, and each is attainable by man. Therefore, commanding fasting is a command to refrain; and refraining is an act for which one is rewarded. Furthermore, what is required in the prohibition of fornication and drinking [alcohol] is involvement with one of its opposites, which is abstention. Therefore, one is rewarded for abstaining, which is his act.

Some Mu'tazilites said that one may be required to refrain. Thus, it becomes like an act. Or he may be required not to act but not intend to involve with its opposite.

The above opponents, however, denied this and stated that whoever stops or refrains because of prohibition is rewarded; and he will not be rewarded except for something, while not acting is nonexistence and not a 'thing.' Furthermore, power does not adhere to it, since power adheres only to something. Therefore, nonexistence cannot be considered a fact of power. Also, if nothing issues from a person, how could he be rewarded for nothing?

The truth of the matter is that command, here, is divisible:

On one hand, refraining while fasting is deliberate. This is why intention is required for it. As for fornication and drinking [alcohol], one is forbidden from doing them. So, those doing [either of] them are punished. But those who do not do them are neither punished nor rewarded, except when one controls his desires for them in spite of being able [to commit them]. He is then rewarded for his act.

As for those who do not commit the prohibited acts, they are not punished for it nor rewarded because nothing has issued from them. Still it is not unlikely that the *Shari'a* intent is that one should not commit obscenities, yet not intending that he involves its opposite.

**IV. DISCUSSION:** It is possible for the acts of a compelled person [*mukrah*] to be included under *taklîf*, contrary to the acts of an insane person or a beast, for deficiency in this case is in the locus of obligation, not in the subject of *taklîf*. Besides, the conditions for laying an obligation upon a locus of obligation are hearing and comprehension, and this is nonexistent with regard to the insane or a beast. A compelled person, however, does understand, and his act is within the limits of possibility because he is able to either perform it or abandon it. Thus, if he is compelled to kill, it is possible to oblige him to abandon killing, for he is so able, even though it has the risk of [his] destruction. Even if his obligation is consistent with the compulsion, it is also possible, like when one is compelled by sword to kill a serpent heading to kill a Muslim, for it is incumbent to kill it; or when an infidel is

forced to become a Muslim, if he accepts Islam, we say he has fulfilled his obligation.

The Mu'tazilites say that this is absurd, for it is adequate only to do the acts forced upon him until no choice remains for him. But this is false because he is able to abandon them. This is why it is incumbent upon him to abandon that which has been forced upon him when he is compelled to kill a Muslim.

Similarly, if one is compelled to kill a serpent, killing it then would become obligatory. If he is forced to spill alcohol, it becomes incumbent upon him /1:91/ to spill alcohol. This is obvious. However, it has a deeper meaning because compliance becomes obedience only if its origin is based on the incentive of command and obligation, not because of the compulsion; for whosoever proceeded to save himself from the sword of the compeller is not answering the call of the *Shari'a*. But if one is motivated by the call of the *Shari'a* in such a way that he would have performed it if it were not for compulsion—indeed, he would perform it even when he is compelled to abandon it—then it is not unlikely for this to be considered obedience. But one is not regarded as being forced, even though the form of the threat is present. One should be attentive to this subtle point.

**V. DISCUSSION:** The occurrence of the condition of a commanded act is not required at the time of commanding. Rather, the command is issued together with the stipulation and the stipulated act, and [a person] is commanded to start with the stipulation. Therefore, it is possible for the unbelievers to be

addressed by the details of Islam, such as a ritually impure person is addressed to pray with the condition that he first perform ablution, and an atheist [is addressed] to attest to the Messenger with the condition to first believe in the Sender.

The Hanafites have denied this. The dispute concerns either its [rational] possibility or occurrence. As for the rational possibility, it is evident because it is not impossible for the Lawgiver to say, "Islam is based on five [essentials], and you are commanded with all of them or to start with the [declaration of] submission<sup>15</sup> from among them." Thus, faith is commanded in itself and is a condition for all the rites of worship, such is the case with the ritually impure and the atheist.

If someone prohibits everything, saying, "How could one be commanded with that with which it is impossible to comply? Furthermore, the ritually impure is not able to pray because he is commanded with ablution; and upon performing ablution, the command to pray is directed to him."

We shall say: If he were to abandon ablution and prayer all of his life, he would not be punished for neglecting prayer because he was never commanded to pray. But this is contrary to *ijmâ'*. And it necessarily follows that commanding him to pray after ablution is not valid. Indeed, [it is the same with commanding]

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<sup>15</sup>Ghazâlî uses the word *Islam* meaning the declaration that there is no god but Allâh and Muḥammad is His Messenger.

*takbîr*,<sup>16</sup> since commencing with it is required—not even with *takbîr*, it should be the ‘*hamza*’ of *takbîr* first; then the ‘*kâf*’ second, following this sequence. Similarly, the command to proceed to Friday congregation must not issue except for the first step and then the second.

As for occurring in the *Sharî‘a*, we shall say it was possible to restrict the address’ details to believers, like the obligatoriness of the rites of worship being restricted to the free, the resident, the healthy, and the ritually pure—not those who are in the menstrual period. However, proofs have come addressing them.

There are three proofs for this: First, His statement, *لَا إِلَهَ إِلَّا اللَّهُ*, “‘What thrust you into Hell-fire.’ They shall say, ‘We were not of those who prayed . . .’”<sup>17</sup> So He informed that He punished them for abandoning prayer and cautioned Muslims by it.

If it is said: This is quoting the statement of the unbelievers. Therefore, there is no validity in it.

We shall say: Allâh, *لَا إِلَهَ إِلَّا اللَّهُ*, has mentioned it, according to the consensus of the community, in the context of attesting to them [unbelievers]. Based on it, warning accrues. For if it were false, it

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<sup>16</sup>This refers to saying of *Allâhu Akbar* [Allâh is great] at the commencing of every prayer.

<sup>17</sup>*Qur’ân*, 74:42-43. Ghazâlî, of course, cited the first verse, but immediately stated “*al-âyah*” assuming the reader’s familiarity with the rest of the statement in the *Qur’ân*, which continues as follows: “*Nor did we feed the needy. And we plunged along with the plungers. And we used to deny the Day of Judgement.*”

would be like their statement, "He punished us because we are created and for being in existence." How could this be, while He has linked to it His statement, ". . . *And we used to deny the Day of Judgment?*" So, how could this be conjoined to that wherein there is no punishment for it?

If it is said: The punishment is for [their] denial; but He solemnly conjoined the abandonment /1:92/ of rites of worship to it.

We shall say: It is not possible to be solemn by abandoning the rites of worship, in the same way that it is not possible to be solemn by abandoning the permissibles [*mubahât*], which were not addressed to them.

If it is said: They have been punished, not for abandoning prayer, but for abandoning faith, thereby excluding themselves from learning the evil of abandoning prayer.

We shall say: This is false on a number of grounds. One of them is abandoning the evident meaning without necessity or proof. For abandoning knowledge of the evil of neglecting prayer is different than prayer; for they have said, "*We were not of those who prayed.*"

Second, this necessitates equiponderance between an unbeliever who committed murder, and other prohibitions, and an unbeliever who was confined to disbelief. For both of them are equal in excluding themselves from learning the evil of

prohibitions because of unbelief. Furthermore, equiponderance between them is contrary to *ijmâ'*.

Third, none abandoning either discursive thought or reasoning should be punished for neglecting faith, for by abandoning discursive thought one would then be exempting himself from the capacity of perceiving the necessity of knowing and believing.

If it is said: "*We were not among those who prayed,*" means from among the believers; but they have identified themselves by the hallmark of the believers—as he said, *صلى الله عليكم وسلم*, "I have forbidden the killing of those who pray," namely the believers. But He distinguished them by that which is their mark.

We shall say: This is possible. However, the apparent cannot be abandoned except by a proof; and the opponent has none.

The second proof is his statement, *ذُكِرَ*, "*Those who call not another god with Allâh, nor slay the soul that Allâh has forbidden, except by right, nor fornicate, for whosoever does this shall meet the price of sin—punishment will be doubled for him . . .*"<sup>18</sup> The verse, therefore, is explicit in doubling the punishment of he who combines unbelief, killing, and fornication, like he who combines unbelief, eating, and drinking.

The third proof is that *ijmâ'* has been constituted concerning the punishment of an unbeliever for denying the Messenger as he

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<sup>18</sup>Qur'ân, 25:68-69.

is punished for disbelieving in Allâh, ﷻ. This destroys their basis [of argument]. For they said that worship is inconceivable with disbelief; therefore, how can it be commanded?

They argued that there is no sense for obliging *zakât* and the *qadâ'* [restitution] of prayer upon him, despite the impossibility of doing it while disbelieving, and despite the omission of mandating his punishment if he were to accept Islâm. Therefore, how could that with which it is impossible to comply be obligated?

We shall say: It is obligated. Even if one were to die disbelieving, he would be punished for abandoning it. But, upon accepting Islâm, his preceding [acts] are pardoned. For Islâm severs what preceded it. And it is not impossible to abrogate a command before having the ability to comply with it. Thus, how could the omission of obligatoriness be impossible by [accepting] Islâm?

If it is said: Since *zakât* is not obligated except with the condition of [accepting] Islâm—while Islâm, which is the condition for obligation, is itself severing [the obligatoriness]—then deducing from this that it is not obligatory is more appropriate than obligating it, and then ruling that it has been severed.

We shall say: There is no absurdity in our statement that obligatoriness has been established by [accepting] Islâm and omitted on the authority of pardoning. So, there is nothing in this that contradicts a text. Rather, passages of the Qur'ân indicate the punishment of an unbeliever who commits obscenities. Similarly,

*ijmâ'* indicates the distinction between an unbeliever—who killed prophets and *walîs*, and disrupted religion—and an unbeliever who did not commit any of these things. Thus, what we have mentioned is more appropriate.

If it is said: Why then do you oblige *qadâ'* for an apostate but not an original unbeliever? /1:93/

We shall say: *Qadâ'* has been obligated only on the basis of a renewed command. Therefore, with regard to it, the requirement of the proof should be followed. Yet there is no valid argument in it because *qadâ'* is incumbent upon a menstruating woman, although *adâ'* [timely performance] was not obligated upon her. Indeed, one may be commanded by *adâ'*, yet not be commanded with *qadâ'*.

The *faqîhs* have argued that an apostate has pledged restitution by [returning to] Islâm, while an unbeliever did not pledge [this]. But this is weak because what Allâh, ﷻ, has obliged is obligatory whether a person obliges himself with it or not. Therefore, if it is omitted because of the absence of his pledge, then the original unbeliever—who did not oblige himself with the rites of worship and the abandonment of prohibitions—must not be obliged with this.

## THE FOURTH ASPECT

### REGARDING THAT WHICH MANIFESTS THE RULE, NAMELY WHAT IS CALLED *SABAB* [REASON] AND THE MODE RELATING RULE TO IT

This has four sections.

#### SECTION ONE: *ASBĀB* [REASONS]

Know that since it is difficult for people to know the address of Allāh, ﷻ, in all conditions—especially after the discontinuance of revelation—Allāh, ﷻ, has manifested His address to His creatures by way of certain perceptible things which He established as reasons for His rules and made them necessitating and requiring of the rules, in the same way that a perceptible cause necessitates its effect.

So we mean by '*asbâb*', here, that they are the [reasons] to which the rules refer, such as in His statement[s], ﷻ, "*Perform the prayer at the sinking of the sun to the darkening of the night*";<sup>1</sup> "*So let those of you who are present at the Month [of Ramadân] fast it*";<sup>2</sup> and his saying, ﷺ, "Fast for sighting it [the crescent],

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<sup>1</sup>Qur'ân, 17:78.

<sup>2</sup>Qur'ân, 2:185.

and break the fast for sighting it.”<sup>3</sup>

Now this is evident in what is repeated among the rites of worship, such as prayer, fasting, and *zakât*; for that whereby obligatoriness reoccurs, whenever it [the reason] reoccurs, is, then, rightfully called *sabab* [reason].

But as for that which does not reoccur, such as [accepting] Islam and performing *hajj*, it is possible to say that these are known by His statement, *قُلْ*, “*It is a duty of all men towards Allâh to come to the House a pilgrim.*”<sup>4</sup>

Similar [to this] is the mandatoriness of knowledge on the part of every locus of obligation who knows the fundamentals [of Islam]. Thus, there is no need to relate them to a reason. However, it is possible to say that the reason of the mandatoriness of faith and knowledge are the demonstrated proofs; and the reason for the obligatoriness of *hajj* to the ancient House, other than ability, is that *hajj* is not obligated except one time, since the ancient House is [only] one. Also, since faith is recognition, once it accrues, it continues.

In any case, this matter is simple. This is the category of the rites of worship. As for the category of penalties, atonements, and legal punishments, their reasons should not be difficult to perceive.

Also, the category of human transactions has clear reasons for

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<sup>3</sup>Consult *Ismâ'il al-'Ajlûnî, Kashf al-Khafâ' wa Muzîd al-'Ilbâs 'ammâ Ashtahar min al-Aḥadîth 'alâ Sunnat al-Nâs*, 2 vols. (Beruit: Mu'assat al-Risâla, n.d), 2:42.

<sup>4</sup>*Qur'ân*, 3:97.

the lawfulness and prohibition of properties and sexual intercourse, such as marriage, trading, divorce and other things. This is evident. The intent is only to demonstrate these reasons as causes for rules that are also considered *Sharî'a* rules. For Allâh, ﷻ, concerning a fornicator [for example], has two rules: One is the mandatoriness of [inflicting] punishment upon him; the second is establishing fornication as a reason for obliging punishment upon him because fornication does not in and of itself oblige stoning, contrary to /1:94/ rational causes. It became obliging only because the *Sharî'a* made it obliging. Therefore, it is a category of rule. This is why we have mentioned it here in this *Quth*. Also, it is for this reason that it may be rationalized.

We say, [for example], that fornication has been established as the underlying cause [*'illa*] for stoning and that theft is the underlying cause for amputating so and so's [hand]. Thus, homosexuality is in the same category [as fornication], this is why it is considered a reason for punishment. Likewise, the grave robber is in the same category as the thief. An elaboration of this will follow in the "Book of Analogy [*Qiyâs*]." <sup>5</sup>

Know that the term '*sabab*' is ambiguous in the usage of the *faqîhs*. It is originally derived from '*ṭarîq*' [route] and from '*ḥabl*,' the [rope] used to draw water from a well.

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<sup>5</sup> Ghazâlî's more elaborate treatment of *qiyâs* is in his book *Shifâ' al-Ghalîl fî bayân al-Shabah wa al-Mukhîl wa Masâlik al-Ta'lîl*, Ed. Hamad al-Kabîsî (Baghdad: Dîwân al-Awqâf, 1971). His treatment of *qiyâs* in *al-Mustasfâ*, 2:228-349, and *al-Mankhûl*, p. 323-350, is shorter.

Its definition is something *through* which a thing occurs, not *by* it; for arriving occurs *through* walking, not *by* the route; but the route is necessary. Also, the drawing of water is *through* the vessel, not *by* the rope; but the rope is necessary. So the *faqîhs* have borrowed the term '*sabab*' from this case and applied it in four ways.

The first way—which is the closest of them to the original meaning— is what is used in correspondence to performing [an act], for it is said that a well digger along with a killer [who had pushed someone in the well] are accomplices in the reason. But the killer is the underlying cause, for killing is *through* pushing, but [only] *by* the existence of the well. So that *through* that which killing takes place, not *by*, is called *sabab*.

The second is their calling *shooting* a reason for killing, whereas it is the reason of the underlying cause. It is, properly speaking, the cause of the underlying cause. Since death has occurred through shooting, not in itself but as a mean, it resembles that without which a rule does not occur.

The third is their calling the underlying cause, itself, a reason, despite the absence of what characterizes it, such as their statement that an atonement is mandated by an oath, not its breaching. So the oath is the reason, or that possessing *nisâb*<sup>6</sup> is the reason for *zakât*, not the passing of a year, even though both of them are required for obligatoriness. They mean by *reason* that to

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<sup>6</sup>This is the minimum required amount of property subject to *zakât*. Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 480.

which relating the rule is appropriate. They correlate this to the object and the condition. Therefore, they say possessing the *nisâb* is a reason and the passing of year is a condition.

The fourth is their calling the necessitating [factor] a reason, thus using reason to mean the underlying cause, which is the furthest away from the literal meaning. For *reason*, linguistically, is that through which a rule occurs, not by it. However, this is appropriate with regard to the underlying causes in the *Sharî'a* because they do not necessitate the rule per se; rather, it is [necessitated] through the obliging of Allâh, ﷻ, and for establishing these reasons by Him as signs to manifest the rule. Also, because the underlying causes of the *Sharî'a* mean the manifesting signs of [the obligation], they resemble that through which the rule occurs.

## SECTION TWO: THE CHARACTERIZATION OF REASON [SABAB] AS BEING VALID [SAHĪH], INVALID [BĀTIL], AND CORRUPT [FĀSID]

Know that these [characterizations] are used at times concerning the rites of worship and at other times concerning contracts. The usage concerning the rites of worship is subject to dispute.

What is correct according to the theologians is that which is consistent with the *Sharî'a*, whether restitution [*qadâ'*] is required or not. According to the *faqîhs*, it is that which suffices and [thus] omits restitution to the extent that the prayer of a person thinking that he is ritually pure is valid, according to the definition of the

theologians, for he has complied with the command directed to him immediately. /1:95/

As for restitution, its obligatoriness is based on a renewed command. Thus, the term *validity* cannot be derived from it. So this prayer is invalid because it is not sufficient. So it is with the case of one who interrupts his prayer to rescue a drowning person; his prayer is valid according to the theologian, but invalid according to the *faqîh*.

These various usages, although they differ, have no harm in them, since the meaning is agreed upon.

As for when they are used in contracts, every reason is established for a rule. When it imparts the rule intended from it, it is said, with regard to it, that it is validated. But if its intended [rule] fails, it is said to be invalidated. Therefore, the invalidated [*bâtil*] is that which does not have effect because the reason is sought for its impartation.

The valid, then, is that which has effect. But the corrupt [*fâsid*] is synonymous with the invalid [*bâtil*] in the terminology of the followers of al-Shâfi'î, رَجُمُوهُ. Therefore, a contract is either valid [*sahîh*] or invalid. Thus everything that is invalid [*bâtil*] is corrupt [*fâsid*].

Abû Hanîfa, however, has established another category between invalidity and validity, concerning contracts, namely creating the [category of] corrupt [*fâsid*], claiming that a corrupt [contract] is constituted for imparting the rule. But what is meant by its corruption is that it is unlawful because of what characterizes it, and what is meant by it being constituted is that it

is essentially lawful, such as the contract with usury. It is lawful because it is, on one hand, selling and it is unlawful, on the other hand, because it contains overcompensation. Therefore, this required a category between that which is prohibited, both essentially and for certain characteristics, and that which is lawful, essentially and for certain characteristics.

If this category of his were to be correct, one could not argue with describing it as *fâsid*. But he is disputed concerning it because every [contract] prohibited, for its character is prohibited essentially, as has been mentioned previously.

### SECTION THREE: THE CHARACTERIZATION OF WORSHIP AS *ADĀ'* [TIMELY PERFORMANCE], *QADĀ'* [RESTITUTION], OR *I'ĀDA* [REPEATING]

Know that an obligation, when it is performed in its [prescribed] time, is called *adâ'*; and when it is performed after the expiration of its given restricted or latitudinal time, it is called *qadâ'* [restitution]; and when it is performed once in a deficient way but then performed again during the prescribed time, it is called *i'âda*. So *i'âda* is the term for the equivalent of what has been [deficiently] performed, while *qadâ'* is the term for the equivalent of what has missed the limitation of its time.

The discussion should address two questions:

The first of which is that if it preponderates in the mind of someone, concerning an obligation with latitude, that he may die before performing it, and then he delays, he is disobedient in the delay. But if he delays and lives, then his performance, al-Qâdî, ۱

'*زُجْمَةٌ*', says, is *qadā'* [restitution] because its time was determined by the preponderance in his thinking. This is not, however, acceptable to us because when it appeared different than what he thought, its rule was removed, and it becomes as if he had known that he would live. Thus he must intend to perform it, such as when an ill person near death delays *hajj* to the following year and then recovers.

Second is that, according to al-Shāfi'ī, *زُجْمَةٌ*, *zakat* is an immediate [obligation]. Therefore, if one delays it and then gives it, it necessarily follows, according to al-Qādī's position, *زُجْمَةٌ*, that it would be [considered] *qadā'*, while the correct position is that it is *adā'* because its time was not determined for a specified or particular [time].

Yet we have only considered the obligation to be immediate by the circumstantial evidence of the need [of the poor]. Otherwise, performance at all times is in conformity with the command's requirement and is in compliance with it. Such is the case with a person who is obligated to make restitution for a prayer immediately but delays it. /1:96/ We do not, then, say that this is the restitution of the restitution. This is why we say that the mandatoriness of restitution requires a renewed command, and the command that simply commands performance in itself is sufficient for the continuance of its requirement. Therefore, it does not require another proof or a renewed command.

What is correct, then, is that the term *qadā'* is confined to that wherein its [prescribed] time is determined whereas the time lapsed before performing [the act].

**A Subtle Point.** Know that *qadâ'* may be used figuratively or literally because it comes after *adâ'* [timely performance].

*Adâ'* has four categories:

The first is [when] it is obligated. Therefore, when the locus of obligation abandons it, either deliberately or inattentively, *qadâ'* becomes mandatory upon him. However, punishment is waived for him by way of pardon due to his inattentiveness. Therefore, performing its equivalent afterward is termed *qadâ'* in the true sense.

Second is [when] *adâ'* is not obligated, such as fasting with respect to a menstruating woman, for it is prohibited. Therefore, when she fasts during ritual purity, calling this *qadâ'* is clearly figurative; rather in its true sense it is primarily an obligation. But, when this obligation is renewed because of an occurring condition that prevented obliging *adâ'* until it [the obligation] elapsed, due to the elapsing of its obligatoriness, it is called *qadâ'*.

This is difficult for some people. Consequently, they say that fasting, not prayer, is obligatory for a menstruating woman because of the necessity of *qadâ'*. And considering this term to be figurative, however, is more adequate than opposing *ijmâ'*, for there is no dispute that if a menstruating woman were to die, she would not be disobedient. So, how could she be commanded with that for which she would be disobeying if she were to perform it. However, menstruation is not like ritual impurity, for removing the latter is possible.

If it is said: Why then does she make the intention for the

*qadâ'* of *Ramaḍân*?

We shall say: If you mean by this that she makes an intention for the *qadâ'* of that [span] in which menstruation prevented its obligatoriness, this is correct. But if you mean that it is a *qadâ'* for that which has been obligated for her during menstruation, this is wrong and absurd.

If it is said: Then the adults should have the intention of *qadâ'* for that which has not been obligated because of juvenility.

We shall say: If one were to be commanded with this, he should have the intention to [comply]. However, suspending obligatoriness based on juvenility was not made a reason for mandating a new obligation after puberty. How could this be, while figurative usage becomes appropriate [only] because of commonness? This has been widely accepted concerning menstruation, not juvenility.

The reason for wide-spread acceptance [concerning menstruation] in particular is that juvenility suspends the principle of charging with obligation, while a menstruating woman is a locus of obligation. Accordingly, she is liable to obligation.

The third category is the status of the sick and the traveller, since [fasting] is not obliged for them. However, when they fast, their fasting stands in the place of obligation. It is possible in this case to say that it also is figurative usage since there is no obligation. But it is possible to say that it is used in the true sense. For if he were to do it at the prescribed time, it would be valid on

his part.

But when one breeches an act—in spite of its validity if he were to do it [again]—this is like a person who is obliged but neglects to act, either inattentively or deliberately. Or we may say that Allâh, ﷻ, said, “Then a number of other days [are prescribed to make up for fasting],”<sup>7</sup> for this opens a way for options. Therefore, what is obligated is one of them, unspecified, except that this option cannot be realized until after the lapsing of the first. The first precedes in time. Therefore the [option] is called *qadâ'* because of its being related to its lapsing, contrary to manumission or fasting with regard to atonement, since none of them is related to the passing of the other.

But based on this, it necessarily follows that prayer should be called *qadâ'* at the end of the prescribed time, for one has an option between immediate performance or postponement, such as the traveller.

What is more evident /1:97/ is that calling the fasting of a traveller *qadâ'* is figurative, or that *qadâ'* is an ambiguous term which applies on one hand to that whose mandated timely performance has lapsed, and on the other hand to that which exceeds its time, which is widely known.

But *Ramadhân* has a special relationship with fasting that does not exist for other than it, based on the proof that if a travelling minor were to reach puberty during *Ramadhân*, he would not be obliged to fast. But if he were to reach puberty by the end of a

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<sup>7</sup>Qur'ân, 2:185.

prayer's prescribed, time it [prayer] becomes incumbent upon him.

So, excluding it from the state of *adâ'* [timely performance] on the part of those generally [obligated] indicates mistakenly that it is restitution [*qadâ'*]. But examination dictates that it is not *qadâ'*.

If it is said: A sleeping person and one who is heedless should perform *qadâ'*, since there is no address [directed] to them, for they are not subject to obligation.

We shall say: They are related to heedlessness and negligence. But Allâh, ﷻ, has pardoned them and removed punishment from them, contrary to a menstruating woman and a traveller. Therefore, abstention [from food, drink, etc.] is mandatory upon them for the remainder of the day resembling those who are fasting, but not the menstruating woman.

Regarding the traveller, there are two weak opinions:

The first of them is the opinion of the Zahirites that a traveller's fasting during a journey is not valid because of His statement, ﷻ, "*Then a number of other days [are prescribed to make up for fasting].*" For He did not command him except by "a number of other days." But this is corrupt because the context of the verses indicates to us the implication of breaking the fast, meaning that whosoever of you is ill or on a journey and breaks fast should [fast] "a number of other days," just as His statement, ﷻ, "*We said, 'Strike with your staff the rock', and there gushed forth from it . . .*,"<sup>8</sup> meaning that he struck, thus it gushed. Also,

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<sup>8</sup>Qur'ân, 2:60.

the Companions of the Messenger of Allâh, ﷺ, when travelling used to fast or break fast, and none of them objected to either.

The second is the position of al-Karkhî that what is obligated is "*A number of other days.*" But if one were to fast in *Ramadhân*, it is valid, and he would be advancing the obligation just as one who pays *zakât* [in advance] before the end of the year. This is corrupt because the verse does not indicate other than concession in delaying and latitude concerning time for a person. Thsu he who performs in the beginning of a time with latitude is not advancing; rather, he is performing it within the prescribed time, as mentioned previously concerning prayer in the beginning of the prescribed time.

The fourth category is the case of an ill person. If he does not fear death from fasting, he is like a traveller. As for he who fears death or grave harm, he would be disobeying by abandoning eating. Therefore, it resembles [the case of] a menstruating woman from this aspect. So if he were to fast, it is possible to say it would not be valid, for he is disobeying in committing it. Thus, how can he seek nearness [to Allâh] in that by which he disobeys.

It is possible to say he has disobeyed by harming life, which belongs to Allâh, ﷻ. Consequently, he is like one who prays in a usurped home, who disobeys by utilizing the property of another.

It is possible to say that it has been said to the ill person,

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"Eat!" So how could it be said to him, "Do not eat!" which is the meaning of fasting, contrary to prayer and usurpation?

It is also possible to answer that it has been said to him, "Do not destroy yourself!" and it has also been said to him, "Fast!" So he did not disobey by fasting, but by way of proceeding to destruction, and it is necessarily incumbent upon him [due to this position] to fast on the Day of Sacrifice. For it was prohibited because [in so doing] one abandons the invitation to eat the offerings and sacrifices, which is the hospitality of Allâh, ﷻ. Yet the distinction between them [*qadâ'* and *adâ'*] is very difficult.

These are the plausibilities engaged by *mujtahids*. So when we say that his fasting is not constituted, then to call making up for it *qadâ'* is purely figurative, as is the case of the menstruating woman. Otherwise, he is like a traveller.

#### SECTION FOUR: 'AZÎMA [RESOLUTION] AND RUKHṢA [CONCESSION]

Know that *resolution* [*'azîma*] means confirmed intent. Allâh, ﷻ, has said: "... But he [Adam] forgot, and We found he had no firm resolve,"<sup>9</sup> that is, intense intent. Also, some of the messengers are called the *foremost of resolution*<sup>10</sup> to confirm their intent in pursuing the truth.

And *resolution* in the language of the bearers of the *Sharî'a* expresses that which is incumbent upon people on the basis of the obliging of Allâh, ﷻ.

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<sup>9</sup>Qur'ân, 20:115.

<sup>10</sup>Ghazali is alluding to 46:35 in the Qur'ân.

*Concession* [rukḥṣa] linguistically means *ease* and *facility*. It is said, "The price has *eased*," if it decreases and buying is facilitated. In the *Sharī'a* terminology, it expresses that for which the locus of obligation has latitude in doing because of difficulty and incapacity, together with the enforcement of a prohibiting reason. For that which Allāh, ﷻ, has not obliged upon us, such as fasting *Shawwāl* and the late morning prayer, is not called concession. Also, what He has originally permitted, such as eating and drinking, is not called concession. However, eating carrion is concession, and the waiving of fasting *Ramaḍān* for a traveller is called concession.

In sum, then, this term is used literally and figuratively. However, the literal [usage] is of a higher degree, like the permissibility of uttering the statement of disbelief under compulsion; and such is the case with drinking alcohol, or damaging the property of others because of compulsion, hunger, or choking on a morsel [of food] that cannot be swallowed except with the alcohol that one has.

On the other hand, the figurative usage, which is remote from the literal, is to call concession that which is waived for us from the burdens and the yokes that were incumbent upon those past communities. As for that which has not been obliged upon us nor upon others, this is not called concession. But since these [burdens] have been imposed on past communities, when we compare ourselves with them, then applying the term *concession* figuratively becomes appropriate. For the obliging of others is not restriction with respect to us. Concession is latitude as opposed to

restriction. Wavering between these two degrees are [various] modes, some of which are closer to the literal and some of which are closer to the figurative, for example, shortening [the prayer] and breaking the fast for a traveller. This is appropriately termed concession literally because the reason [of fasting], that is, the month of *Ramaḍān*, is in existence. Yet the traveller's [case] comes under His statement, *فَمَنْ كَانَ مِنَ الْقَائِمِينَ فِيهِ فَلْيَصُمْهُ*—"So those of you who are present in the Month, let him fast therein."<sup>11</sup>—and has been exempted from the generality by an excuse and hardship.

As for *tayammum*<sup>12</sup> in the absence of water, it is not appropriate to call it concession because it is not possible to oblige the use of water in its absence. Therefore, it is not possible to say that the reason in effect, in spite of the impossibility of the obligation, is contrary to the [case of] being compelled to disbelief or to drink [alcohol], for one is able to resist. Certainly, allowing this during sickness or injury, or the remoteness of water from a person, or selling it at more than normal is concession. In fact, *tayammum* in the absence of water is like feeding [the needy]<sup>13</sup>

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<sup>11</sup>Qur'ān, 2:185.

<sup>12</sup>*Tayammum* is a substitute for the ritual ablution before prayer in the absence of water or in special circumstance. For details see *The Shorter Encyclopaedia of Islam*, p. 588; and W. Zahīlī's *Al-Fiqh al-Islāmī wa Adillatuhu*, 1:406.

<sup>13</sup>Ghazālī here is referring to the prescribed acts for the atonement of *zihār* (a man prohibiting the lawfulness of his wife by declaring her as his mother), that is *fasting* two consecutive months or *feeding* 60 needy people only if *freeing* a slave is unattainable. See the Qur'an, 58:3-4.

when there is no slave [to free]—and this is not concession. On the contrary, [freeing] the slave is obligatory in one case, while feeding [is incumbent] in another. Therefore, we do not say that the reason is in effect in absence of the slave. Rather, *zihâr* is the cause obliging the manumission in one case and obliging feeding in another.

If it is said: If the reason for obliging ablution is removed by the absence of water, then the reason prohibiting disbelief, drinking, and [eating] carrion would be removed by fear of destruction, as if the unlawful is prohibited on the condition that fear is not present.

We shall say: What is prohibited in [eating] carrion is repulsiveness; in alcohol, intoxication; and in disbelief, being ignorant of Allâh, ﷻ, or attributing falsehood to Him. But these prohibitions /1:99/ are in effect, while their rule has been removed by fear. Therefore, the suspension of every prohibition, which is removed by hardship or fear despite the possibility of resisting it, is termed concession; and changing the expression does not prevent this by making the discontinuance of hardship an added condition to the obligating [command].

If it is said: Concession is divisible into that which one disobeys by abandoning it—like the abandonment of eating carrion or breaking fast from fear of destruction—and into that which one does not disobey [for abandoning it], like breaking fast, shortening [prayer], resisting the statement of disbelief, and abandoning the

killing of the person who is compelled to kill him. So how could that whose fulfillment is necessary be called concession? And how is the distinction made between one and the other?

We shall say: As for describing it as concession, although it is mandatory, it is because it has latitude, since a person is not obligated to kill himself by thirst while it is permitted for him to relieve it with alcohol, while punishment would be waived for him. Thus, insofar as waiving punishment for his act, it is latitude and concession. But with respect to necessitating punishment for abandonment, it is resolution [*'azîma*].

As for the reason for the distinction, it is a matter of interest acknowledged by the *mujtahids*, and they have differed with regard to it. So some of them do not allow surrender to an attacker, while others allow [it], saying that the killing of another by him is prohibited, just as is his own killing; yet it has been permitted to him only because of [the attack on] him, although he may waive his own right when it confronts an equal [right].

Nor is he to destroy himself for the sake of abstaining from carrion or alcohol. For preserving life is of greater importance in the *Sharî'a* than abandoning carrion and alcohol in a rare circumstance.

For instance, [regarding] *salam*<sup>14</sup> [futures], which is selling what one cannot deliver immediately, it may be said that this is

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<sup>14</sup>In addition to Ghazali's definition of '*salam*,' see Aḥmad Sharabâḡî, *al-Mu'jam al-Iqtigâdî al-Islâmî* (Beirut: Dâr al-Jîl, 1401/1981), p. 225.

concession because of [the Prophet's] general prohibition, *حَدَّثَنَا أَبُو هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ وَوَسَّالَهُ*, in the *hadith* [related by] *Hakīm b. Hazām* against selling what one does not have, necessitating its prohibition. But the need of the insolvent individual requires concession regarding *salam*.

Also, there is no doubt in that giving in marriage an escaped female slave is correct. However, that is not termed concession. But when compared with the sale of a male fugitive slave, then it [the former case] has latitude.

However, it is said that marriage is another kind of contract, where its conditions differ from the conditions of *sale*. Thus, there is no correlation between them. Furthermore, it is possible to say that *salam* is a another contract, for it is sale of debt while the latter is sale of corporeal property, so they are distinguished. So their differing as to conditions does not necessarily enter one of them under concession. It is likely, then, that this is figurative. Thus, the statement of the reporter, "He prohibited a person from selling what he does not have, and gave concession regarding *salam*," is a figurative expression.

You should know that some of the *Hanafites* have stated that the definition of *concession* is that which has been allowed despite being prohibited. But this is contradictory, for that which has been allowed is not to be prohibited.

Others cleverly state that it [concession] is that to which concession is granted despite its being prohibited. But this is like the former because concession is also permission.

They have based this on their principle, for they say that

infidelity is bad per se; therefore, it is prohibited. Yet because of compulsion, one is granted concession concerning what is bad per se. Accordingly, if one were to persist and not pronounce infidelity, he would be rewarded.

In addition, they claim that if one compelled to break fast does not break it, he would be rewarded because breaking fast is bad and fasting is fulfilling the right of Allâh, ﷻ. Furthermore, if one compelled to destroy [another's] property yields, they say that he will also be rewarded. Also, they claim that a person compelled to eat carrion and drink alcohol sins if he does not partake of them.

However, in these details, there is legal discussion that does not pertain to pure *usûl*. Yet the intent is to [indicate] that their statement that there is concession in what is prohibited is contradictory and has no validity, and Allâh, ﷻ, knows best.

Examination of the First *Quṭb* is complete, namely examining the essence of *ḥukm* and its parts. Let us now examine what imparts the *ḥukm*, namely the sources.

**THE SECOND *QUTB***  
**THE SOURCES OF THE RULES**  
**THEY ARE FOUR: THE BOOK, THE *SUNNA*, THE *IJMA'*, AND**  
**THE RATIONAL PROOF ESTABLISHED ON THE ORIGINAL**  
**STATE OF NEGATION**

**(AS FOR THE STATEMENTS OF THE COMPANIONS AND THE SHARI'AS OF THOSE  
PRECEDING US, THERE IS DISAGREEMENT ON THESE.)**