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Towards A New Model of *Qiyas*

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Abstract

This New Model of *Qiyas* aims to find solutions to emergent issues to which the Holy Qur'an and the practical Sunnah do not give direct clear-cut and practical solutions. It also aims to introduce solutions to new problems that fit the development of human life. The model also attempts to develop the concept of *Qiyas* in addition to updating the tools that deal with the attributes. This is an attempt to develop *Qiyas* depending on the spirit of jurisprudential *Qiyas* (analogy) and the means of modern *Qiyas*.

Key words: Fiqh, Qiyas, Islam, Analogy, fatwa

Islamic jurisprudence suffers from a stagnation of its centuries-old fundamentalist curriculum. Hallaq describes this situation "When it became apparent that the traditional law could no longer serve Muslim society in the modern world, there were several attempts at introducing European codes, lock, stock and barrel."[1] This crisis is reflected in Muslim scholars' calls to renew contemporary Islamic jurisprudence in order to bring it into line with modern requirements.

The jurisprudence crisis in the Muslim world is reflected in the demand of many Muslim intellectuals to renew the fundamental mechanisms of jurisprudence. The most important intellectuals who have called for reform are Rashid Rida, Turabi, Shahrur, Taha 'Abd al-Rahman, and Tariq Ramadan. Rashid Rida attempts to reform traditional legal theory by excluding the traditional *qiyas* (jurisprudence by analogic reasoning), instead putting forward the concepts of *maslaha* (public interest) and *darura* (exception).[2] In his book *"Tajdid Usul al-Fiker al-Islami*", Turabi expresses the intention to articulate a new approach. He

[1] W. B. Hallaq, *A History of Islamic Legal Theories* (Cambridge, 2008), 210.

[2] M. R. Rida, *Yusr al-Islām wa Uṣūl al-Tashrī' al-'Āmm* (Cairo, 1956), 88.

argues that "if we want to appreciate the necessity of developing a fundamentalist approach in thinking about the needs of the modern Islamic movement today, we find it to be a dire need."[3] Shahrur lists three requirements for resolving Islam's current dilemmas. "First, contemporary Islamic philosophy must reach the level of contemporary philosophy as such. Second, Islamic jurisprudence must be updated. Third, legislation must be improved in order to solve the problem of freedom and the state, society and progress, human rights and civil society."[4]

Taha 'Abd al-Rahman, considering how Islamic philosophy might rise to the level of modern Western philosophy, writes that "The nation cannot truly be a nation," he argues, "until it deals with the questions of its time in independent thinking."[5]

Finally Tariq Ramadan, in *Uṣūl al-fiqh*, wonders whether the classical tradition was right to restrict the sources of law to texts alone or whether should we question this restriction today, precisely because it causes us to reach limits that no longer produce more than formal or marginal ethical coherence. Should we, or should we not, consider the world, nature, and the human and exact sciences as sources of law?[6]

The majority of Muslim intellectuals recognize the existence of a crisis in the theory of jurisprudence and the need for it to develop the ability to address contemporary questions. This article proposes a new model that aims to develop *qiyas* in order to offer solutions to the problems of Muslims in the modern era. Rather than conflict with the classic *qiyas*, this development will complement

[3] Turabi, *Tajdid Usul al-Fiker al-Islami* (***Dar al-Bayda***, 1993), 68.

[4] M. Shahrur, *Towards New Fundamentals of Islamic Jurisprudence* (Damascus, 2000), 56.

[5] *T.* '*Abd al-Rahman*, al-Haqq al-Islami fi al-ikhtilaf al-fikri, ***(Dar al-Bayda,*** 2005), 15.

[6] T. Ramadan, *Radical Reform* (Oxford, 2009), 36.

them. It relies on the sources of legislation like the Qur'an and Sunnah, but draws on modern scientific and cognitive developments, as well.

The Origins of *Qiyas*

Usul jurists have defined the *qiyas* as "attaching an event that has no ruling to another event that does have a ruling by applying the ruling that was mentioned in the text, given that the two events are equivalent in view of this ruling."[7] This means that the task of *qiyas* is to deal with emergency issues that do not have rulings or rules in the Qur'an and Sunnah/Islamic Law. It also means that *qiyas* are not be used to deal with issues that are dealt with in clear and explicit texts, because "*qiyas* is not permitted when the information exists."[8]

Qiyas means finding a meaningful relation between two different events, phenomena, fields, or systems. The first part is called *al-Asl* (the original basic principle), and the second *al-Far'* (the branch). Thus, *qiyas* is a connecting relationship between the origin and the branch. The main idea of *qiyas* is to make a comparison, to find the connecting attributes between the two systems, and to pass the ruling on *Asl* to *Far'* through the similarity of attributes between them.

The new model of *qiyas* goes beyond knowledge of the origin in order to reach the outcome or the judgment of the origin. This means the new model assumes the task of looking for the network of relationships among the attributes of objects, looking for the relationships among objects, and examining the steps of thought that were used to solve a previous problem (*al-Asl* = origin).

The new model of *qiyas* seeks to expand the limits of the origin, *Asl*, through the adoption of free rational thinking and reasoning in dealing with reliable transferred texts and practical human experiences. Muslim jurists have therefore been careful to identify a variety of ways to reach what leads to *'illa* (cause), and

[7] W. Khlaf, *'Ilm 'Usul al-Fiqh* (Kuwait, 1978), 52.

[8] Al-Shafi', *Risala*, ed. M. Shakir (Beirut, 1936), 599.

they avoided defining one single way. Such an approach would narrow the space of *Ijtihād* (personal opinion and reasoning). As Wehbi al-Zuhaily discussed it, "Confirmation of the cause in the parallel cause [*far'*] is done by perception, mind or custom."[9]

The Holy Qur'an is considered the first source (*asl*) to which the branches (*far'*) are referred to for support. In the absence of a clear text in the Qur'an, the next source (*asl*) to try is the practical Sunnah, meaning the Prophet's repeated deeds and sayings (rather than what has been known in Islamic history as "*Ḥadīth*"). "Reality" is the third source. It includes the objective conditions and the context that surrounds the issue that is dealt with and that requires a solution. It also includes the traditions, customs, and norms on which society relies in running its affairs. Reality is changeable and differs according to place and time. A fourth source is "interest." The definition of "interest" is based on the principle of "advantage" and "disadvantage," which implies bringing "benefit" and repelling "corruption." The interests of people differ from one society to another according to their needs.

The Qur'an and Sunnah represent the *n'aql* text, which means "evidence based upon testimony." It is a text that has been transferred and passed down through the generations, and constitutes the basis of Islam. Reality and interest, on the other hand, are sources that depend on the principles of *'aql*, which means evidence based on reasoning, rationality and human experiences that are characterized by change and relativity.

The *n'aql* text is considered to be definitive and decisive and is characterized by totality of discourse that allows multiple explanations and interpretations and gives the opportunity for reasoning and free thinking. This implies that there is a possibility of reconciliation between *n'aql* (testimonial) texts and *'aql*

[9] W. Al-Zuhaily, *'Usul al-Fiqh al-Islami* (Damascus, 1986), 662.

(intellectual) texts, supposing that *n'aql* texts represent the moral guarantee of rational and free discussion.

Definition of *Al-Asl*

The *asl* (original) cause, the first pillar of *qiyas*, is the event on which a *nuss* (text) was given as a ruling. It is unchangeable "because *U'sul al-Fiqh* [principles of jurisprudence in religion] are definitive and not speculative, and the evidence to that is that they go back to the universals of Shari'a, and if they are so, then they are definitive."[10] These original *'usul* are considered introductions of certainty and a fixed and correct basis on which *qiyas* is built": the introduction that is used in this science and the evidence used in it are nothing but definitive, because if they were speculative, they would not indicate definitiveness in the requirements that are relevant to it."[11]

Al-asl is not one specific thing but a variety of connections within a system, which include the attribute (*wasf*), the cause (*'illa*) and the ruling (*h'ukm*). There are two kinds of attributes: *ineffective attributes*, such as color, taste, and weight, which do not contribute to the cause, and *effective attributes*, which carry an amount of plausibility and the potential to be a cause in a ruling.

In general, an effective attribute can turn into an ineffective one, and vice versa, if the object changes. Color, smell, and taste, for example, can be effective attributes in the case of "pure water," but these attributes are not effective with regard to "wine."

The clarity of *asl* is considered a condition fundamental to the process of *qiyas*, meaning clarity among connections within the system of *asl*, that is, among the attribute (*wasf*), the subject (*mawdou'*), the cause (*'illa*), and the ruling (*h'ukm*).

[10] Al-Shattibi, *Al-Muwafaqat fi 'Usul al-Shari'a*. Ed. M. al-Iskandarani wa Adnan Darweesh, (Beirut, 2002), 17.

[11] Ibid, 19.

The Example of Wine

Take the example of the subject "wine," a liquid or drink that contains ethanol (C_2H_5OH), and has various attributes, some effective and others ineffective. The effective attributes of wine include intoxication, alcoholic substance, mental distraction, health, and physical damage. The ineffective attributes include color, kind, and taste.

The cause is the connection between the effective attribute and the subject (intoxication and wine), the connection between the object and the ruling (wine and prohibition), and the connection between the *asl* (origin) and the *far'* (branch), which are wine and drugs.

The connection between the attribute and the subject (alcohol and wine) causes intoxication. It is a proportional reversal of connection. If there is alcohol in the liquid, then it is "wine," and if there is no alcohol in the liquid, then the liquid is not considered to be wine. We can generalize this connection by saying that every liquid that includes alcohol is equivalent to wine.

The effective cause (*'illat al-Asl*), which is the connection between the effective attribute and the subject, is considered the most significant part of the process of *qiyas*. To specify the cause is not an easy task; this is a source of disagreement in many changing and complicated subjects such as economics, politics, and sociology.

The cause of the connection between the subject and the ruling (wine and prohibition) is intoxication. The connection between *al-Asl* and *al-Far'* (wine and drugs) indicates that drugs are similar to wine because they have the same cause, which is intoxication.

The Principle of Benefit in Legal Rulings

Muslim scholars have classified legal rulings on actions into five categories called *al-ʾaḥkām al-khamsa:* compulsory, obligatory *(farḍ/wājib*); recommended (*mustaḥabb*); allowed (*mubāḥ*); disliked (*makrūh*); and forbidden (*ḥarām*).[12] Each of these commandments, which are derived from Islamic jurisprudence, has degrees of relationship to each another. Some duties, such as praying, are more important than others. Ignoring them is more serious than other commandments. Some forbidden and unlawful actions, such as charging interest on loans, are more sinful than others. Some disliked and hated actions, such as miserliness, are more hated than others. Some recommended actions, such as "praying at night," are more recommended than others. Other actions are less recommended.[13]

We conclude from this classification that legal judgments are divided into two main groups: the permissible and the forbidden. The third group, falling between these two, is the allowed. The *halal* (permissible) is a pole around which many actions revolve. The relation between action and center can be understood to mean that the more beneficial an action, the closer it is to the center, i.e., to the permissible (*halal)*. The forbidden (*haram*) represents the opposite pole, the contradiction of the *halal*. The relationship between the action and the center is as follows: the more harmful the action is, the closer it is to the forbidden (*haram*).

The center of each pole is clearer and more defined than the actions that revolve in their orbits. In spite of that clarity, it is characterized as gradual and hierarchical, on a spectrum from the obligatory to the forbidden.

[12] Al-Ghazali, *Al-Mustasfa fi 'Usul al-Fiqh* (Beirut, 1996), 52.

[13] Khaf, *'Ilm Usul al-Lugha* (Al-Qahira, Syria, 1978), 105.

The relationship between judgments and actions is based on the principle of benefit and harm. It is necessary to define "benefit" and "harm" clearly, because it is impossible to consider them to be relative or subjective, as if everyone were free to decide what is beneficial and harmful in his or her own way and as he or she likes. It is therefore essential to give a reasonable and comprehensive definition based on the clear judgments (*ahkam*) of the Holy Qur'an. Regarding the issues for which there are no texts that offer guidance, however, the principle of benefit and harm should be based on the calculation of the result of every action according to its clear remoteness or closeness to the two poles of the allowed/permissible (*halal*) and the forbidden (*haram*) in the Holy Qur'an.

Conditions of the Valid Cause (*'Illa*)

A cause (*'illa*) must meet four conditions to be considered valid: relevance, effectiveness, comprehensiveness, and flexibility.

Relevance: Al-Ghazali defines *munasaba* as the inference or deduction that the *attribute* (description) is the cause of the suitability between it and the ruling.[14] He stipulates that this suitability should be clear in its meaning so that it can be proved by mental (*'aql*) reasoning, rather than by past testimony (*n'aql*): "We mean by *munasaba* a reasonable explicit meaning in the mind that can be proved against a rival by mental reasoning."[15]

Al-Basri the Mutazili, however, claims that *munasaba* is defined by bringing *benefit* and keeping away *damage*. Benefit is the pleasure and its way, and damage is the pain and its way; the imagining of pleasure and pain is taken for granted.[16]

[14] Al-Ghazali, *Shifa'a al-Ghalil* (Beirut, 1999), 71.

[15] Ibid., 72.

[16] A. H. B. al-Mu'tazelli, *Al-Mu'tamed in 'Usul al-Fiqh*, vol. 2 (Damascus, 1965), 784.

This concept involves the relevance of the attribute to the ruling, the achievement of a specific interest that benefits people or protects them from damage, or advantages and disadvantages that result by cancelling differences of time. Is it possible to achieve a specific intended interest for people, such as repelling a certain evil that involves mental aberration and damage to body and health, when the interest includes materialistic, moral and ethical dimensions? This indicates the connection between a specific interest and a moral value.

Effectiveness: The concept of *effectiveness* means that "the description is to be influential in the ruling text [*nuss*] without the others."[17] Effectiveness dictates that the ruling must correlate with the existence of the cause, either with its presence or absence. Prohibition should exist if intoxication exists and should cease to exist when intoxication disappears.

Comprehensiveness: One of the conditions of *qiyas* is "that the ruling of the original cause [*asl*] is not exclusive to another text [*nuss*], because a requirement of *qiyas* is the transference of the ruling from an original cause [*asl*] to a branch [*far'*]. If it were proven that the ruling was exclusive to the original cause, transference is forbidden."[18] This means that a ruling should be applicable to other cases and not limited to specific ones; every intoxicating drink is therefore also prohibited. The ruling of the cause that we call "*qiyas*" or "fixed *'illa*," by relying on opinion, is a transference of the ruling of the text to the analogous case (*far'*) for which no specific text exists.

Flexibility: Flexibility means considering the relevance of the cause to the context and circumstances, which means, in regard to alcohol, that the attribute should be prohibited in the case of drinking, but not be prohibited in other situations, such as its use as a medicine to treat a patient or its use in a laboratory to conduct experiments.

[17] Ibid., 784.

[18] Al-Sarkhasi, *'Usl al-Sarkhasi*, vol. 3 (Beirut, 1973), 150.

The Second Stage of *Qiyas*

The second stage of *qiyas* is composed of three moments. First, the relevance of all the connections in *al-Far'* (the branch) to all of the connections in *al-Asl* (the source) must be determined (e.g., the fact that drugs are similar to wine). Second, the attributes of *al-Far'* (the branch) must be analyzed in order to determine the effective attribute, which is the cause. Finally, the cause must be specified (e.g., "intoxication"). This stage defines all of the conditions of a common cause between original and analogous cases (e.g., wine and drugs).

Qiyas Applied to Usury (*Riba*) and Bank Loans

Muslim scholars (*'ulama*) have varying attitudes towards bank loans. Most consider charging interest to be usury (*riba*, an unjustified charge in exchange for borrowing money), though some do not. At this point, I would like to introduce two divergent views on this issue held by two contemporary scholars (*'ulama*): Yusef al-Qaradawi and Muhammad Said al-Tantawi. I will then apply the new model of *qiyas* (analogical reasoning) to the issue.

Al-Qaradawi's Attitude

Al-Qaradawi not only considers bank interest on loans to be unlawful usury (*riba*), but also laments fact that there is even a current debate of the issue, contending that the decision was already made twenty-five years ago by Islamic conventions, conferences and specialized forums. He also claims that a conspiracy of anti-Muslim forces is involved in this debate.[19]

Al-Qaradawi distinguishes between wisdom in the prohibition of usury (defined as the oppression of the indebted by the debt holder or of the borrower by the lender by exploiting the borrower's need through charging for a loan) and the cause of prohibition (*'illat al-tahrim*). He maintains that the rulings of *sharia*

[19] Y. Al-Qaradawi, *Fawa'id al-Bunuk hiya al-Riba al-Haram* (Beirut, 1996), 29.

(Islamic law) are based on cause rather than on "wisdom," because the cause is the controlled explicit description that constitutes a clear sign about a ruling (judgment). Wisdom, in contrast, is uncontrolled, because subjective. People's concepts of wisdom might differ and be confused; they might not agree on anything.[20] Despite this distinction between wisdom and cause (*hikma* and *'illa*), al-Qaradawi does not mention the cause of usury (*riba*).

In another place, however, al-Qardawi defines the cause of the prohibition (*tahrim*) of usury (*riba*) in the same way that he defines wisdom. He gives up the distinction between the two terms and deals with them in the same way, as if they have the same meaning: "The usurers who denounced the prohibition of usury (*riba*), though it has large increments of money, which are the cause of prohibition, due to its oppression and injustice, said that this happens also in trade, as the merchant gains many times more than the real value of the goods."[21]

In his book *Al-Halal wa al-Haram* (*The Permitted and the Prohibited*), Al-Qardawi uses the term *hikma* (wisdom) instead of *'illa* (cause), and adopts ideas mentioned by al-Imam al-Razi in his interpretation of the wisdom of prohibiting usury (*tahrim al-riba*):[22]

Usury (*riba*) entails taking money from another person without returning it. Dependence on usury prevents people from being engaged in working to earn their living. It encourages people to avoid the hardships of earning wealth through trade and industry, which leads to shortage of people's facilities. Loans lead to people refusing to help each other. If the usury is prohibited, people's

[20] Ibid., 37.

[21] http://www.maghress.com/attajdid/18704. This website shows Dr. Yusef al-Qaradawi and Muhammad bin Hamad Al-Thani in a legal debate on pre-arranged interest and dealing with the banks between prohibition and permission.

[22] Y. Al-Qaradawi, *Al-Halal wa al-Haram fi al-Islam* (Cairo, 1985), 255.

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souls will be happy to give loans of *dirhams* and retake them, but if usury is permitted, it can lead to an absence of consoling, doing favors, and benevolence. In most cases, the lender is rich and the borrower poor. Usury enables the powerful to take extra money from the weak, which is not permitted.

Al-Qardawi goes on to say that the result is that the rich become richer and the poor poorer, one class of society benefitting at the expense of another. This, in turn, creates grudges and hatred and ignites the fire of conflict between groups and classes of society, ultimately leading to radical revolutions and destructive principles.

We conclude from the abovementioned argument that al-Qardawi relies on received evidence from past traditions and rulings of the ancestors in a literal way, without taking the change and development of concepts and criteria into consideration. Nor does he make use of the tools of analogy (*qiyas*) that were known to the ancestors, let alone develop and update them by making use of modern information.

It is possible to argue that al-Qaradawi's attitude towards bank loans is confused and unstable, for four reasons. First, despite his distinction between cause (*'illa*) and wisdom (*hikma*), al-Qaradawi does not define the cause of prohibition of usury in a clear way, and he relies for evidence on the wisdom of prohibition rather than the cause.

Second, Al-Qaradawi denies considering "injustice and exploitation" as a cause of prohibition (*tahrim*), but he approves in another place something that he denied before, saying: "the additional charges… constitute a cause [*'illa*] of prohibition [*tahrim*]."

Third, Al-Qaradawi considers "any amount of money added to the borrowed principal for a fixed period" to be usury, irrespective of its amount.He adds [23]

[23] Al-Qaradawi, *Fawa'id al-Bunuk hiya al-Riba al-Haram*, 44.

that "the traditional *Sunnah* in Islam is to prevent the little things for fear of falling into the big things."[24] He does not define, however, the maximum level of interest that should be allowed as legitimate. In his *fatwa* (religious decree) regarding purchasing houses taking bank loans in Morocco, he wrote that "I heard that Morocco hardly requires interest, and if it does, it's very small, something that can be considered a kind of service charge."[25]

Finally, in his *fatwas* on bank loans, al-Qaradawi relies on the rule that "necessities justify prohibitions." Necessity "is not merely an extension of commodities and luxuries; it is something that we cannot do without—existential requirements, such as food and medicine; the essentials."[26] Al-Qaradawi considers housing a necessity in his *fatwa* allowing Muslims in Morocco and Muslim minorities in Europe to buy houses with bank loans, due to the circumstances that surround the Muslims who live in those countries, and to their strong need to live in a house that they own, rather than in a house where the landlord feels unhappy with the Muslim renters who live in his house with their large number of children, something the Europeans do not like. The majority of the *majlis* (councils) issued this *fatwa*, which rests on the principle that "necessity allows prohibitions."[27]

Al-Qaradawi makes reference to concepts such as luxuries and necessity as if they had fixed meanings, but, in reality, these concepts differ from one context to another. He put "housing" on the list of "necessities," but what about children's education, for example? Is it a luxury or a necessity in modern times?

[24] Ibid., 60.

[25] http://www.forsanhaq.com/showthread.php?t=11353

[26] Al-Qaradawi, *Fawa'id al-Bunuk hiya al-Riba al-Haram*, 256.

[27] http://www.forsanhaq.com/showthread.php?t=11353

Al-Qaradawi ignores changes in the value of currency from time to time, as certain changes take place in the purchasing power of money. Dealing with money is different from dealing with commodities. The formula that argues that "a commodity is equal to a commodity" does not mean that "the same amount of money is equal to the same amount of money."[28] Probably, this *Ḥadīth* (tradition) about the equality between gold and wheat results from the fact that their value at that time was equal and stable. This *Ḥadīth* can be seen as true about the circumstances of Muslims in those days, and it was probably intended to encourage cooperation and social solidarity among Muslims.

The ruling that al-Qaradawi adopts regarding the prohibition of usury (*riba*) does not meet the complete conditions of jurisprudent cause (*'illa*) in *qiyas* from the point of view of *munasaba* (appropriateness/relevance), effectiveness, *'al-Sabr wa al-Taqseem* (the examination and isolation of attributes), and *Dawaran* (rotation/ change/co-extensiveness). It also does not suit the spirit of the modern age, which differs a lot from other historical contexts. If this ruling proves to be correct in regard to usury, it does necessarily have to apply to bank loans, too.

[28] Muslim (2917) ascribed the following statement to Abi Said al-Khodri: "Sayeth the Prophet (peace be upon him): 'Gold is for gold; silver for silver; wheat for wheat; barley for barley; dates for dates; salt for salt; like for like; a handful for a handful. If anyone adds or takes more, he is taking usury (*riba*); the giver and the taker alike.'"

وروى مسلم (2917) عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : (الذَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ يَدًا بِيَدٍ ؛ فَمَنْ زَادَ أَوْ اسْتَزَادَ فَقَدْ أَرْبَى ، الْآخِذُ وَالْمُعْطِي فِيهِ سَوَاءٌ) .

Al-Tantawi's Attitude

Al-Tantawi distinguishes between usury (*riba*) and investment bank loans: "the unlawful, prohibited usury, according to Shati'a, is the usury in which the extra increment of money is renewed each time the period of the loan is renewed."[29] The wisdom in its prohibition is that "usury destroys the spirit of cooperation between people and creates grudges and enmity between them because of the exploitation of those whose hearts are hardened and whose consciences are dead to the needy and the desperate, who are in the thrall of exploitation."[30]

As for bank dealings, they are permissible and lawful "if the dealings are void of cheating, deception, usury, injustice, exploitation or not, and if they are free of the vices that are prohibited by the law of Islam (*shari'a*)."[31]

Al-Tantawi tries to prove that bank loans are not usury and denounces their prohibition. He distinguishes between usury and bank loans and claims that conditioned increments[32] and limitations on interest and benefits do not turn the loan into usury.[33] He says elsewhere that "limitation or non-limitation, in advance, of the amount of interest and profit in bank transactions, has nothing to do with permission or prohibition if it is done by the agreement and satisfaction of the two sides and if the transactions are free of cheating, deception, lies, oppression, usury, and anything that God prohibited."[34]

It is worth mention that al-Tantawi draws distinctions among debts, loans, deposits and investments. He permits interest payments in investments, for example, but he considers it usury in a deposit, loan, or debt. He emphasizes

[29] M. S. Tantawi, *Mu'amalat al-Bunuk wa Ahkamuha al-Shar'iyya* (Cairo, 1997), 90.

[30] Ibid., 82.

[31] Ibid., 134.

[32] Ibid., 84.

[33] Ibid., 130.

[34] Ibid., 135.

that if a person who is in need of the necessities of life (such as food, clothing, medicine, or housing) approaches the bank or another person to borrow from him to meet his needs, the lender is not permitted to charge him more than his supposed right.[35]

Though al-Tantawi did not mention the role of the borrower, it is possible to conclude that the borrower is not permitted to pay more than the value of the loan to the lender. What can the needy do in this case? Al-Tantawi hints at the fact that there are "bank services that give loans to the needy, such as free assistance and loans that are paid back in easy installments."[36]

This is an unrealistic solution, however, because the majority of the world's banks require interest on loans, at various rates. Since the conditioned interest is unlawful in loans, whether they be small or large, the suffering of the poor continues and the problem remains, with no realistic solution. If conditioned interest is permitted for investments, it is more appropriate to add in the necessities of life.

Al-Tantawi depends for his ruling on transmitted evidence, such as the Holy Qur'an and the *Ḥadīth sharif* (sayings of the Prophet, holy ancestors, and contemporary scholars [*u'lama*]). He also relies on an analysis and study of modern bank transactions and the realities of modern economics. He does not, however, exploit the tools of *qiyas* in his research, which were set up for the treatment of new-fangled problems. The solutions that al-Tantawi introduces are therefore partial, do not meet the needs of the modern Muslim, and provide neither real opportunities for social development, opportunities for poverty eradication, nor solutions that suit the needs of the modern individual.

Despite the differences between al-Tantawi and al-Qaradawi on the ruling regarding the issuance of bank loans, both of them depend on "transmission" for

[35] Ibid., 140.

[36] Ibid., 139.

their main evidence, ignoring *qiyas* (analogy) as an experimental method that leads to a ruling. It is possible to say that depending on transmission for modern issues, which are extremely different from what was experienced in the past, reflects an ignorance of changes that have taken place in the concept itself, in view of its epistemological context. It reflects an assumption about the stability of something that necessarily changes, and an attempt to impose the principle of identicalness, the opposite of the principle of mutability.

Application of *Qiyas* to Usury and Loans

The First Stage of *Qiyas*

Usury is conditioned interest that is paid as an extra charge for lending money for a specific period only. The attributes and subject are the conditioned extra payment and the existence of a proportional and reverse relationship between the two parties. If interest (extra payment) is required, lending money is considered to be usury, while without this extra payment (interest), lending money is not considered to be usury.

It is possible to generalize the connection by saying that every loan that requires an extra payment of money can be considered usury if it is attached to a specific period of time.

Discussing the Attributes of Usury

The attribute is the effect or the cause of the cause. The attribute is a cause; the cause is a result of the attribute. Interest is a cause of injustice and exploitation of poor people. The specification of the cause refers to the definition and specification of the effective attribute that is appropriate to the ruling. Injustice and exploitation of the poor, for example, is a cause of prohibition. The condition of the attribute is that it should be appropriate, effective, generalizable, applicable to other issues, flexible, and open to changes of context and circumstance.

The Second Stage of *Qiyas*

The second stage of *qiyas* consists of establishing the relevance of all of the connections in the *far'* (branch) to all of the connections in the *asl* (origin). The first step is to recognize that bank loans and governmental loans *resemble* usury. Like usury, loans include an advance condition requiring the extra payment of interest on the deposit for a specific period of time. The second step is to discuss the attributes of bank loans in an attempt to reach the effective attribute, which is the cause. The cause of prohibiting usury is injustice and exploitation of the poor. Can this cause be considered a cause for prohibiting loans? Does this cause apply to bank loans?

Application of the Criteria of Valid Cause (*'illa*) on Loans:

The five criteria for the validity of a cause—relevance, effectiveness, flexibility, comprehensiveness, and reasonableness—can now be applied to the question of usury.

Consider, first, the relevance of the attribute to the ruling. Do loans achieve a specific intended end for people? In other words, do they bring benefits to people and achieve specific ends such as housing, decent clothing, food, and children's education? Do they prevent evils like homelessness or the creation of refugees? Do they prevent poverty, humiliation, family breakdowns, and ignorance?

In the modern age, Muslims face new economic challenges that they did not face in previous periods. To cope with these challenges, they have only two options: either resorting to taking out bank loans in order to live with dignity, or forgoing bank loans and accepting a life of poverty and humility.

Despite the fact that usury and bank loans share the same attribute of the "conditioned extra payment of interest," they do not share the same cause, because usury causes constant "injustice and exploitation." The extra payment of interest for taking out a loan, on the other hand, does not always cause injustice, because the loan is sometimes considered to be assistance that the state

gives to the citizen. Thus, we can distinguish between unjust assistance and beneficial assistance with reference to a specific economic situation and the ability of the borrower to repay the debt.

The effectiveness criterion refers to the argument that a ruling exists if there is a certain meaning, whether positive or negative: there should be prohibition of usury if it involves injustice and exploitation. Prohibition ceases to exist when injustice and exploitation disappear.

The comprehensiveness criterion refers to the argument that the ruling should have the ability to be generalized and applied to other conditions, and not limited to specific conditions.

The flexibility criterion refers to the relevance of the cause to the context and condition. This means that the attribute should be prohibited in usury, which is characterized by injustice and exploitation, while in other cases, such as taking out a loan, it should not be prohibited, as the loan is used for assistance and making good things available.

By *qiyas* (analogy), we conclude that not all loans are forms of usury. An example: a certain Muslim lives in Germany and does not have enough money to buy a house. He has two options. Either rent a house for 700 euros a month or take out a loan to buy a house and pay 500 euros a month for 25 years, after which, the house becomes his property. Is this housing loan considered to be assistance to the citizen or a form of injustice and exploitation?

The ruling rests on the cause and not on the attribute, which means that prohibition of usury is not related to the attribute. The attribute is the conditioned extra payment of interest, but the prohibition is related to the cause, which is injustice and exploitation.

Conclusion

Legal rulings depend on the cause (*'illa*) for the prohibition of something. The cause is considered an attribute of that something, but it varies with the context, and this requires a reconsideration and review of the conditions of the cause on which a ruling was based, because the changes impinge on the attributes of the concept in addition to the concept itself. Previous rulings must be reconsidered, therefore, in light of changes of context, time and place, because these changes affect the form and content. The new model of *qiyas* is based on the study of the cause (*'illa*) that represents the condition of the ruling. Returning the ruling to the cause involves a definition of the subject itself; it makes the possibility of reaching a proper ruling easier, opens new horizons for the solution of problems and newly-created issues, and provides solutions that suit the spirit of the age.

This new model is characterized by a study of the concept that is the subject of discussion, and a study of the effective cause (*'illa*) of the ruling. The model is characterized by flexibility, relativity, probability and comprehensiveness, which makes it suitable for addressing issues of a changeable nature, especially in Islamic jurisprudence.