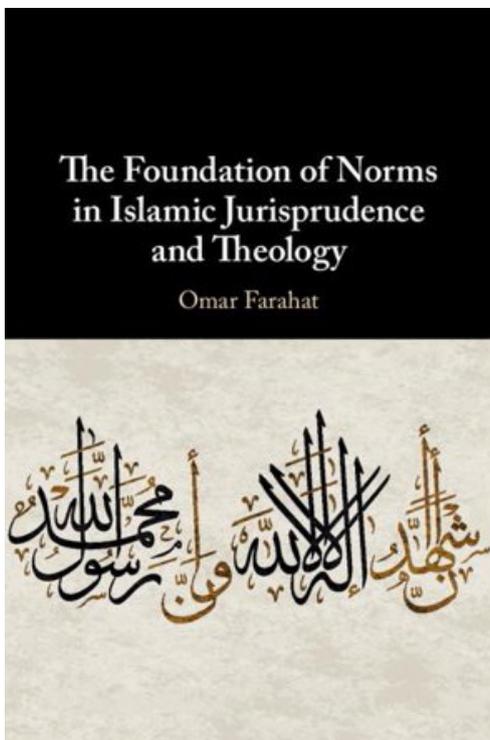


The Foundation of Norms in Islamic Jurisprudence and Theology

By Omar Farahat



Cambridge: Cambridge University Press, 2019. 256 pp., Paper.
£75.00 (Hardback). ISBN: 9781108476768.

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he *Foundation of Norms in Islamic Jurisprudence and Theology*, by Omar Farahat, far outstrips the run-of-the-mill translation in Islamic legal studies in significance. In that context, *Qiyas* (reasoning by analogy) is one of the four sources of the Islamic *fiqh* (jurisprudence). What is meant is that sometimes we discover a law of the *Sharie'a* by proof of reason. That is, by means of inference and logic of reason, we can learn that for a particular case a certain necessary law or prohibitive law exists, and we may discover what sort of law it is or not. The mandatory testimony of reason is proved by the law of reasoning – meaning that with the presence of reason, no other proof is required – and also by the confirmation of the Islamic norms *per se*.

The manuscript deals with the epistemological and metaphysical foundations of divine speech in classical Islam and the construction of norms in Islamic jurisprudence in two parts. Reading the book is essential for Muslims in the diaspora as well as non-Muslims who have difficulty in coping with the storm of misunderstanding pushed by right-wings, religious radicals, and extremist politicians along with media that does not try to distinguish between what is true and what is not. It is quite easy, convenient, and even cheap to attack *Sharie'a* and Islam to seek political office or recognition via the prism of mistaken engagements by a few. It is a much more complicated exercise to reach a dedicated, knowledgeable level of understanding.

The author points out in the first part that Muslim philosophers are mainly concerned with human happiness and its fulfillment. Irrespective of what they consider this happiness to be, all agree that the only way to achieve it is through *ma'rifah* (knowledge). Taking the possibility of knowledge for granted, Muslim thinkers dedicated their epistemological effort to the study of the nature and sources of knowledge and their scholarly queries, beginning with *mantieq* (logic) and ending with metaphysics (and in some cases theology or mysticism) were primarily directed towards helping to apprehend what knowledge is and how it comes about.

In Islamic philosophy, conceptions are mainly divided into the *maloum* (known) and *maghoul* (unknown). The former are that which is actually grasped

by the mind, while the latter is that which may possibly. Known notions are either self-evident – objects known to normal human minds with imminence as 'being', 'thing' and 'necessary' – or acquired (objects known over mediation). Accordingly, Muslim scholars divided assent into the known and the unknown, and the known assent into the self-evident and the assimilated. The self-evident assent is demonstrated by '*the whole is greater than the part*', and the acquired by '*the world is composite*'. In *Kitab at-tanbih 'ala sabil as-sa'ada* (The Book of Remarks Concerning the Path of Happiness), al-Farabi recites the self-evident objects: "the customary, primary, well-known knowledge, which one may deny with one's tongue, but which one cannot deny with one's mind since it is impossible to think their contrary."

In the same vein, prevalent interpretations of the *Mu'tazilite's* teachings typically focus on their unique dogmatic doctrines. To the philosopher, yet, their cosmology, which was recognized by the *Ash'ariyya* and other religious schools, is a more proper starting point. According to the Muslim intellectuals, the *Mu'tazila* movement adhered to five principles, (1) God's unity; (2) divine justice; (3) the *alwa'id* (promise) and the *alwa'id* (threat) – the former means that he whom God promises a reward for his good activities will certainly receive it, but the latter means that he whom God has threatened with a penalty may have an alternative – So, if He punishes him, it is His justice; but if He forgives, it is His generosity; (4) the intermediate position; and (5) the commanding of good and forbidding of evil. The fifth principle, which is derived from several *Qur'anic* texts (for instance, *Surah* 9:71), understood by *Mu'tazilites* as a duty incumbent on all Muslims to interfere in the state's affairs, was hardly put into practice. On the other hand, for the *Ash'arites*, the commanding of good and forbidding of evil was the privilege of the *Caliph* (head of state), who acted on behalf of the Muslim *ummah* (community). By differentiating the valid from the invalid *al-qawl ashshar'ih* (explanatory phrase) and the *al-burhan* (proof), logic serves a higher purpose, specifically that of revealing the natures or essences of things. It does this because origins reflect the authenticities or natures of things and are the keystones of the explanatory phrase and proof. Therefore, logic is labelled as the key to the knowledge of the natures of things and this knowledge is described as the key to happiness; hence the special status of logic in Islamic thinking.

One of the clear elements of Islamic law, is that the *Sharie'a* exists in accordance to what encompasses the best *maslaha* (interests) of human beings and their best welfares. That is, each *'amr* (command) is due to the *darourah* (necessity) of meeting the common good and benefits of the community and each *nahi* (prohibition) arises from the necessity of refraining from their worst interests (things that corrupt them). Consequently, in order to inform the community members of their best interests – in which lies their happiness and prosperity – it has made a chain of commands *wajib* (obligatory) or *mustahab* (desirable) for them. This is why the practitioners of Islamic law and the *'ulama* (jurists) consider that, because the norms of the *Sharie'a* accord to and are considered to embody wisdom of what is best and worst for human beings wherever laws of reason exist, consistent rules of the Islamic law also exist, and wherever there survives no law of reason, there exists no law of the *Sharie'a*. Accordingly, *istislāh* (public interest) is another legal practice which is controlled within legal reasoning. The reasoning of public interest does not seem to be founded on the *Qur'ān*. Public interest, yet, plays an irrefutably critical role in the determination of the ratio's appropriateness peculiar to analogy. This robust connection between the ratio and suitability has caused in considering public interest by some jurists an extension to analogy. There are certain common principles on which the *Sharie'a* is generally based. These reside in the protection of one's life, his/her mind, offspring, religion as well as property. If the feature of public interest in a case is in line with these general principles, the reasoning in accordance with public interest must be exercised. It should be noted that the element of universality is of dominant importance as the law intends to serve interests of Muslims at large. Islamic Law, like any other law, is full of a set of legal terms with concepts which may not exist in other legislations, notwithstanding the fact that such legal notions endure conceptual progresses across different legal systems. Thus, even though concepts peculiar to legal terms go through certain processes of development across miscellaneous sets of laws, they, yet, have different legal existence in various laws.

In the second part, especially on the structure of legal rules in the Islamic legal thought, the *'usuliyyin* (Islamic scholars) consider *qiyas* or *ijtihad* (reasoning by analogy) and the *Sharie'a* inseparable from each other, as whatever law is recognized by analogical

deduction is also established by Islamic legal principles. Thus, it should be noted that the *'Issues of Principles'* are all divided into two parts, the "Deduction Principles" along with the "Application Principles." The Principles of Deducing are in turn divided into two parts; the *Narrated* and the *Reasoned*, and mostly the former are relevant to all the discussions focused on the *Qur'anic* texts, the *Sunnah*, and *ijma'a* (consensus), while the *Reasoned* is related to objective.

There are four principles of application that are used in all the sections of *fiqh*: (a) the *i'fā'a* (exemption) norms; (b) *ihtiyat* (precaution) principles; (c) *takhyir* (option) rules, and (d) *istishab* (mastery/presumption of continuity) principles. Each of these four categories of doctrines have a distinctive circumstance. The rule of exemption means that individuals are released from their obligation and have no responsibility, but precaution is the principle that people must act according to preventive measures, which means that individuals need to act in such a way that if the duty truly exists as a law, that duty have to be performed. On the other hand, the standards mean that practitioners have the option to select one of two *things*, whichever they like, and the master principle is the one that existed remains in its original status – or masters the doubt that contradicts it – while the doubt is disregarded. As a result, a *mujtahid* (qualified jurist) must, have great power of judgement in the execution of these principles. These philosophies are not particular to *mujtahids* for understanding the divine laws, but they are also relevant to other themes. Individuals – who are not *mujtahids* – and who must therefore use *taqlid* (legal imitation) as the *mujtahid* can also benefit in case of certain doubts.

Indeed, a huge bulk of Islamic Law is subject to legal reasoning and is dependent thereon. This is because that only restricted legal rulings stated in the *Qur'anic* texts and the *Sunnah* have a definitive nature, and the rest of the legal body of the *Sharie'a* is contingent upon the jurists' *ijtihad* (legal reasoning). This is not at all a shortcoming in the law, since the lawmaker who set out conclusive legal rulings, was certainly able to enforce an exclusively definitive law, the application of its legal rulings is not subject to any analogical deduction. However, there have been significant reasons behind this flexible nature of Islamic Law. This very nature of Islamic norms has made the law flexible and adjustable to all societies and regions (at any time and

place). Furthermore, the law has become susceptible to develop and change in different ways, as its development can be shown through selecting certain legal interpretations that are more proper than others in addressing the legal cases concerned. The progress can go even further than that by generating new legal views as new legal cases arise. This aspect does explicitly make Islamic law legally valid for all legal cases irrespective of time and place. The importance of the interpretation of the *Shari'ah* does not lie in the different legal views held by several scholars concerning a particular legal case, rather it primarily resides in the way in which the jurist interprets the law. When interpreting a specific *Qur'anic* verse, for example, the *mujtahid* (jurist) cannot interpret it in isolation. He should, nevertheless, consider the verse, its legal and linguistic frameworks, its occasion of revelation and all the events that surround the revelation thereof. In other words, a particular legal text never stands on its own according to Islamic legal system, but it is with no doubt influenced by a various of events that support the jurist to infer the most suitable legal ruling for the legal case in question. Consequently, elements of coherence and intertextuality are of chief significance and should always be in the jurist's mind during the interpretation process of the legal provisions.

To conclude, Professor Mohammad H. Kamali stated that:

It is equally evident that the methodology of *usul al-fiqh* would have little meaning and purpose if the *Shariah* were meant to be a fixed and unchangeable entity. *Usul al-fiqh* is predicated on the idea of development and growth, and functions as a vehicle of accommodation and compromise between the normative values of *Shariah* and the practicalities of social change.

Despite being 250 pages long, the book was easy to read as the importance of the subject and Farhat's clear, robust writing style keeps one reading. He brings out the differences between the numerous schools of jurisprudential thought, which will give both Muslims and non-Muslims a much deeper appreciation of the fruitfulness of the Islamic legal thought. It demonstrates the great care Muslims have taken over the interpretation of the *Qur'an* and *Hadith*, and how they were able to extend these sources to

generate new laws as circumstances changed. All too often, some Muslims proclaim that their(s) is the only true Islamic interpretation, with their allegations often being supplemented by threats of *takfir*(sm) (doctrine of excommunication) directed against anyone who dares to disagree with them. Thus, reading this book will equip Muslims to treat such contentions with the skepticism that they deserve.