Taha Abderrahmane and Abū Ishāq al-Shāṭibī

Comparative Reflections on Legal Thought and Ethics

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Introduction

The number of voices which call for reforms in different areas of modern Islamic thought is massive. Reforms are deemed as necessary in order to create an Islamic thinking and understanding that fits the needs of Muslims in today's world, and that is able to address the challenges of modernity from an Islamic perspective. Scholars, such as Khaled Abou El Fadl (2006, 269), opine that in order to be able to respond adequately to the challenges of modernity, a new ethical thinking is necessary, and this thinking should be the fundament for other disciplines such as law. This chapter aims to study the ethical concept of *ʾitimānīyya* (trusteeship) which was developed by the Moroccan philosopher Taha Abderrahmane. The notion of the *ʾitimānīyya* refers to the term *amāna* (trust, responsibility) which, according to many Muslim theologians, refers to the idea that before life on earth began God offered to the entire creations to accept the responsibility of living according to God's will on earth. They all declined to bear that burden except for the human species that accepted it (ʿAbd al-Raḥmān 2012, 449).

In this chapter, Abderrahmane's ethical ideas regarding human beings, their relationship with God and their ethical responsibility will be compared with the ideas of a scholar whose contribution is today regarded as indispensable in the contemporary legal-ethical thinking, i.e. the *maqāṣid*-thinking of the Andalusian scholar Abū Ishāq al-Shāṭibī (d. 790/1388). The two scholars have in common that in their thinking they deal both with ethics as well as with law. Therefore, the ideas of the ethicist philosopher Abderrahmane, who also holds certain opinions in the discipline of Islamic legal theory, will be compared with the ideas of the jurist al-Shāṭibī, who focuses on legal theory but who also has ethical considerations.

Therefore, the chapter first aims to compare the ethical aspects of the religious-philosophical concept of *ʾitimānīyya* with ethical aspects of the *maqāṣid*-ideas of al-Shāṭibī, for the purpose of detecting commonalities and differences in the thinking of the two reformers. It also aims to compare their legal and

maqāṣid-thinking, and finally aims to present reflections for the current debate on the role of ethics in law, and more precisely in legal thinking, to avoid equating Sharia law with modern positive law. This outcome will be achieved after having followed this structure: first the biographies of Abderrahmane and al-Shāṭibī will be presented. After that a short outline of the theory of *ʾitimāniyya* and of the *maqāṣid*-thinking will be given. This will be followed by a discussion of *ʾitimāniyya*-theory regarding humankind and their relationship with God, which will be subsequently commented by al-Shāṭibī's ethical considerations. Finally, legal aspects in Abderrahmane's thinking will be compared with those of al-Shāṭibī and commonalities of the two scholars in the fields of legal thought and the *maqāṣid* will be outlined.

1 Taha Abderrahmane and Abū Ishāq al-Shāṭibī: A Biographical Sketch

1.1 Taha Abderrahmane

As an ethicist philosopher, Abderrahmane calls for a moral and spiritual renewal in the Arab-Islamic world. This renewal should consequently be expanded to the globalized world (Hashas 2015, 72). He is convinced of the worldwide need for more solidarity between religions, peoples, philosophies and cultures. In order to realize his vision to formulate an ethical project of thinking, he has been working on the elaboration of a theory he calls *ʾitimāniyya* (trusteeship paradigm), or *al-naqd al-ʾitimānī* (trusteeship critique), since 2000. Central points in his thinking are his critique of Western secular modernity, the spirit of religion, and its practice (Hashas 2015, 73).

For an adequate understanding of the *ʾitimāniyya*-theory, a particular fact seems central: Abderrahmane's affiliation with the Moroccan Sufi-order of the Boutchichiya. This affiliation might be the reason for certain Sufi motives in his personal convictions and writings, such as the motive of the heart, purification, sincerity of intention, and a binary division of existence into the world of the seen and the unseen (Ben Driss 2002, 203). To express his conviction of the latter Abderrahmane speaks of *al-ʿālam al-marʿī* (the world of the seen) und *al-ʿālam al-ghaybī* (the world of the unseen). Also the purification of the soul and the character is a recurring motive in his thought, which he seems to regard as a prerequisite for any fundamental and positive change. For instance, when he speaks of the heart he says that there are things in the universe that can only be conceived with the *baṣīra* (spiritual farsightedness) and not with the *baṣar* (eyesight). In order to train the *baṣīra*, human beings need spiritual training and education (Ben Driss 2002, 47). This Sufi element is also found in

Abderrahmane's writings, as when he speaks about an educator (*murabbī*) who should accompany people in their spiritual and personal development.

1.2 *Abū Ishāq al-Shāṭibī*

The Mālikī scholar Abū Ishāq Ibrāhīm b. Mūsā b. Muḥammad al-Lakhmī al-Shāṭibī al-Gharnāṭī was born in Granada, the capital of the dynasty of the Nasrids, where he was taught by great scholars such as Ibn Lubb (d. 782/1380), and Abū 'Abdullāh al-Maqqarī (d. 759/1358). It is reported that he acted as a preacher (*khaṭīb*) and as an Imam in a mosque and that he also taught at the *madrasa* (university) in Granada. Already during his lifetime he was considered a famous scholar known for his profound knowledge in the disciplines of Islamic jurisprudence and language.

In modern times, al-Shāṭibī's reclaimed fame primarily goes back to his book *al-Muwāfaqāt*, considered an unprecedented work that attempted to conceptualize the intentions of the Sharia.

It is particularly his contribution in the field of *maqāṣid* which is adopted intensively today. Today his approach is regarded as a reaction to certain legal practices of jurists that do not look at the possible intentions behind divine legal prescriptions. His *maqāṣid*-ideas are seen as exemplary and necessary in order to respond to the challenges of modernity in a flexible way. Besides his advances in legal thought, his interest in social developments and changes are apparent in his works as well. For instance, in his book *al-ʾItṣām* he mentions certain Sufi practices which he criticizes for not having a theological basis and explanation for their specific spiritual convictions and rituals.

2 *ʾItimāniyya* and *Maqāṣid*-Thinking: An Overview

2.1 *The Concept of ʾItimāniyya*

This paradigmatic concept represents a late development of Abderrahmane's thinking, and many of his early interests and engagements are found in this concept. His criticism of Western hegemony, its influence on local intellectual developments, Western materialism, secularism, his attempt to elaborate an Islamic philosophical-ethical concept, his interest in language, are all themes and topics that lie at the background of the *ʾitimāniyya* theory in some way or another.

The idea of this concept is built on the Qur'anic conviction that human beings accepted the *amāna* (trust or responsibility) to be vicegerants on earth from God, which He had offered to all creatures and were not able to hold it or carry it out. By accepting it, humans also accepted the consequences of the

decision: the responsibility to act according to God's will on earth. The concept is also grounded in the idea that this life and the world of the unseen (*al-ʿālam al-ghaybī*) are connected and human beings are connected to it through their spiritual needs as well as acts. Abderrahmane concludes that due to the inter-connectedness between this world and the world of the unseen no separation is supposed to be drawn between worldly matters and spirituality ('Abd al-Raḥmān 2012, 449).

With the *ʾitīmāniyya* Abderrahmane intends to present a philosophical counter project to the Western secular and materialistic worldview. He criticizes the dichotomies that characterize Western thought, such as religion vs. politics, divine vs. secular, physical vs. metaphysical. Abderrahmane aims to overcome this dichotomy (Hashas 2015, 67). According to him this categorization and reductionist way of thinking lead to a moral dilemma and to several forms of injustice. He understands his philosophy as comprehensive and it includes four components: revelation, reason, ethics and doing (or practice). In order to work on the elaboration of a contemporary Islamic philosophy, these components are not supposed to be separated and their centripetal force is essentially ethical (Hashas 2015, 67).

Against the globalisation of the Western dichotomous thought, he regards it as essential that each and every culture should be allowed to generate their own philosophy (see 'Abd al-Raḥmān 2005). The *ʾitīmāniyya* should be the philosophy produced by the Arabic-Islamic world. The aspiration of *ʾitīmāniyya* is a life philosophy that is suitable for every person and which can be practised by everyone. On the global level, it is hoped that through the *ʾitīmāniyya* a peaceful, respectful and just society can be established (Hashas 2015, 104).

2.2 *The Maqāṣid-Thinking of Abū Iṣḥāq al-Shāṭibī*

The complex juridical and social circumstances at al-Shāṭibī's time demanded a new approach in order to find profound answers to questions of the time. Al-Shāṭibī was of the opinion that it was necessary to reflect on new approaches in the discipline of jurisprudence and to try to capture the aim(s) of the divine orders. Once unveiled, the law should be formulated according to these findings. Questions that were of importance for his reflections were as follows: "What are God's intentions when revealing the Sharia?", and "Can human beings know with certainty what the Sharia wants from them?" After he had studied the Islamic sources he was convinced that God aims to realise the interests of human beings and that the Sharia intends to protect the following values, which earlier scholars of Islam developed. Once the aims of the Sharia are recognized, any further *ijtihād* must be according to this principle and the law must be formulated according to them (Rifāʿī 2004, 238). If this is

not done, the interpretation of revelation will be restricted to the text, and will therefore be separated from the reality of human affairs (Rifāʿī 2004, 32).

Al-Shāṭibī presented his conceptualized ideas on the law in his multi-volumed work *al-Muwāfaqāt*. One volume is entitled *Kitāb al-maqāṣid* in which he speaks of two main categories of *maqāṣid*: those of God and those of the *mukallaf*, i.e. the religiously responsible (rational and adult) person (al-Shāṭibī 2006, 7 f.). He divided the first main category again into four subcategories, but he did not categorize the second main category. He called the first subcategory the intention of the divine legislator when revealing the Sharia (*qaṣd al-shāriʿ fī waḍʿ al-sharīʿa*). The second intention of the divine legislator is that it may be understood by people (*qaṣd al-shāriʿ fī waḍʿ al-sharīʿa lil-ijhām*). The third one is the intention of the obligation towards the commandments of the Sharia (*qaṣd al-shāriʿ fī waḍʿ al-sharīʿa lil-taklīf bi-muqtaḍāhā*). The fourth intention is the subjugation of the *mukallaf* under the rules of the Sharia (*qaṣd al-shāriʿ fī dukhūl al-mukallaf taht aḥkām al-sharīʿa*).

In the second main category, al-Shāṭibī speaks about the intention of the *mukallaf* regarding the *taklīf* (*qaṣd al-mukallaf*). Al-Shāṭibī's treatise on the *maqāṣid* has become highly appreciated in modern times, and is considered a theory by some scholars like Aḥmad al-Raysūnī (1428/2007), and a central theme in the current *maqāṣid* and legal discourse.

3 The Ethical-Philosophical Concept of *ʾIṭimāniyya*: A Dialogue between Abderrahmane and al-Shāṭibī

3.1 *Humankind in the Paradigm of ʾIṭimāniyya*

The concept of *ʾiṭimāniyya* assumes that human beings are a special creature which differs fundamentally from the rest of creation. The reason for that is that they consist of two existences: of a created, mortal body and of an immortal soul. It is the mortal body that connects human beings with this life (or: the life of the seen, *al-ʿālam al-marʿī*). In this world, body and soul get connected. The other world, the world of the unseen, *al-ʿālam al-ghaybī*, human beings have access to through the soul only (ʿAbd al-Raḥmān 2017, 34).¹ Different from Abderrahmane, al-Shāṭibī does not use terms such as *al-ʿālam al-marʿī*, but he

¹ While Abderrahmane does not seem to be very clear what he means by *ghayb* and he himself declares that unlike other scholars regarding this term he does not refer only to the hereafter but to everything that exceeds an immediate experience. Whereas al-Shāṭibī is very clear when he speaks about ideas of this life and the hereafter. He mentions the existence of reward and punishment in the hereafter and he speaks about Allah's mercy due to which people can

uses common notions such as this life (*dunyā*) and the hereafter (*ākhirā*). He believes that this life is fading and that the hereafter lasts forever. Unlike his soul, the human body is mortal. People must be conscious of the fact that this life does not last forever and that they therefore better spend their time wisely and follow their religion to be happy in this life and in the hereafter (al-Shāṭibī 2006, 32).

Because the human being unites two realities: the mortal-sensible (i.e. the body) and the immortal and non-sensible (i.e. the soul), Abderrahmane calls human beings a being of existence with double dimensions (*muzdawaj al-wujūd*). But even when human beings live their life in this fading world it is possible for them to keep the connection with the unchanging world. This is possible because, according to Abderrahmane, human beings were created with a *fiṭra*. While this Islamic concept is usually translated as God-given natural nature of human beings, Abderrahmane interprets it as an expression of a particular memory (*dhākira sābiqa*) of human beings. This particular memory means that people, in a way or another, remember that they not only consist of a body but also of a soul and that their true homeland is not this world. Since Abderrahmane assumes that human beings are more than matter but that they also have the God-given *fiṭra*, he concludes that religion is a fundamental and indivisible component of human life (‘Abd al-Raḥmān 2012, 52).

On the one hand, Abderrahmane is convinced of the existence of this particular memory, but he says, on the other hand, that human beings are highly oblivious beings who forget who they owe their existence and sustenance to. Furthermore, the philosopher says that human beings often tend to forget the particularity of their creation. This happens because of people’s lust, egoism, and thirst for power and sovereignty (‘Abd al-Raḥmān 2012, 14).

To protect people from their forgetfulness, the *i’timāniyya* offers to human beings a way of life that differs from the Western materialistic worldview. It helps people to remember their extraordinary position in creation and reminds them that, according to the Islamic worldview, progress and true productivity are not represented by the accumulation of goods and by the realisation of worldly interests; this life should be first and foremost about striving for moral improvement (‘Abd al-Raḥmān 2012).

If people’s worldview is narrow because of the exclusively materialistic dominant view, the *i’timāniyya* is supposed to expand people’s view of themselves and of the world in general. Because this life and the world of the unseen

enter paradise (al-Shāṭibī 2006, 54). He also explicitly says that this life was created so that human beings take the opportunity to provide for their hereafter (al-Shāṭibī 2006, 62).

are connected by the life philosophy of the *ʿitimāniyya* and because a connection between worldly activities and spirituality and the relationship with God is established through this ethics of *amāna*, Abderrahmane declares his interpretation of Islam as an encompassing philosophy, which comprises all aspects of human life (Abderrahmane 2008, 87).

Different from Abderrahmane, al-Shāṭibī does not mention a particular ethical concept. But the scholar does speak of the Islamic idea of the *naḥs* (appetitive soul) of people which needs to be controlled. If this is not done, they follow their desires and lust, deviate from Allah's path, and harm their life in the two worlds (al-Shāṭibī 2006, 292). To avoid this, the *dunyā* (life) should be understood as a means to gain salvation in the hereafter and not as a purpose to satisfy all fleeting needs (al-Shāṭibī 2006, 63). Although Abderrahmane and al-Shāṭibī have different approaches to the issue, they do arrive at the same conclusion: it is clear that the *naḥs* needs to be controlled and religion, spirituality and salvation are what human beings need to strive for in order to enjoy happiness in this world and in the hereafter.

3.2 *Human Beings and God: An Extraordinary Bond*

As it is common in the Islamic-religious thinking, Abderrahmane, too, believes in the existence of a creating God who holds the privilege of being worshiped by human beings (ʿAbd al-Raḥmān 2012, 479). Human beings differ from the rest of creation and were given the freedom to choose the way to live. This freedom entails responsibility. With this initial freedom, the existence of divine orders implies that human beings are capable to implement them (ʿAbd al-Raḥmān 2012, 450). Al-Shāṭibī, too, follows this religious assumption, and the existence of a creating, all-knowing God (al-Shāṭibī 2006, 168). The Andalusian scholar asserts that God does not require from human beings more than they are able to accomplish. This is a central point in al-Shāṭibī's legal thinking and he stresses it by mentioning that the Sharia considers the human nature and does not require from human beings to, for example, refrain from food. Also if the body is deformed or incomplete, human beings are not required to correct or beautify what cannot be changed. However, as long as they prevent their appetitive souls from doing what they are forbidden to do human beings are allowed to enjoy and to make use of what has been allowed to them, within certain limits (al-Shāṭibī 2006, 175).

If Abderrahmane argues that it is God's right to be worshiped, al-Shāṭibī says that human beings were created to worship God, and that people should always return to God and should implement His prescriptions. This is the true meaning of worship, *al-taʿabbud li-Llāh* (al-Shāṭibī 2006, 289f.). Worshipping Allah is the direct opposite of an uncontrolled surrender to lust, and the two

can never meet. Doing the one is correct, doing the other is wrong, and both decisions/choices have consequences: either they receive reward or punishment in the hereafter (al-Shāṭibī 2006, 290f.). A central aspect in al-Shāṭibī's concept of God is his conviction that God wants what is best for His creation. He has revealed the Sharia to protect human beings from blindly following their appetitive choices and to preserve their interests for this world and the next (al-Shāṭibī 2006, 291f.). Connected with this thought is al-Shāṭibī's conviction that Allah has made this Sharia easy so that people love it. This love is connected with the human confidence that they receive a reward for having accepted religion (al-Shāṭibī 2006, 233).

Although Abderrahmane and al-Shāṭibī express their views differently it is obvious that in their opinion worshipping God leads to the happiness of human beings in this world and in the hereafter. Abderrahmane says that *i'timāniyya* intends to prevent people from worshipping themselves. He says that this worship happens in one of two ways: either people think that they are sufficient unto themselves (*al-istighnā' bi-l-dhāt*) or that they become tyrannical ('Abd al-Raḥmān 2012, 482). Al-Shāṭibī raises a similar point, i.e. the consequences if people start to worship their appetitive choices: they set no limits to their lusts, which causes evil and injustice (al-Shāṭibī 2006, 292). According to Abderrahmane, this can be avoided by adhering to religious ethics and, thus, violence in worldly affairs can be avoided ('Abd al-Raḥmān 2017, 18). However, says al-Shāṭibī, if Muslims cause injustice they have to expect punishment for their evil deeds (al-Shāṭibī 2006, 282).

Differently from al-Shāṭibī, Abderrahmane speaks in his concept about the origin of human beings before they existed on earth. In the world of the unseen, human beings gave Allah the promise to act on earth according to His will. Unlike a civil contract, this promise has a spiritual basis and contends that humankind is not primarily connected with this world but with the world of the unseen. If people are conscious of the fact that they are not the real owners of this world and that they only steward it, they develop a responsible behaviour with creation. If human beings, after they have taken the responsibility in the world of the unseen, behave immorally, then it needs the *i'timāniyya* paradigm so that they remember who they really are and what their responsibility is.

In order to know what actions and behavior concord with God's will, human beings, and believers in the lead, presumably, have as a reference model the attributes and names of Allah (*asmā' Allāh al-ḥusnā*), considered absolute ideals and morals to follow in practice. Al-Shāṭibī mentions the names-attributes of God, but he does not mention exactly whether and which lessons human beings should take from them. (al-Shāṭibī 2006, 141). However, his

notion of morals gets clearer when he speaks of the noble character (*makārim al-akhlāq*). He says that teachings on the noble character were the contents of the first revelations and that these are the contents which can mostly be found in the Meccan suras (al-Shāṭibī 2006, 122). He mentions some immoral acts which are spoken of and criticized in the Qur'an, like the prohibition of polytheism and lying about affairs of the afterlife, drinking alcohol or gambling (al-Shāṭibī 2006, 123). The Sharia was revealed so that human beings strive through it to improve their character (al-Shāṭibī 2006, 124).

3.3 *Spirituality, This Life and the Hereafter*

According to Abderrahmane, human beings have a special relationship with God: even if someone only thinks materialistically, his soul remains in a way connected to the world of the unseen, even when he is not aware of it. He calls this unconscious person "a dead person"; an enlivenment of the person's heart can only happen if that person tries to improve his character and internalize certain virtues. The most important value human beings can internalize is decency (*ḥayā*) ('Abd al-Raḥmān 2017, 20). According to Abderrahmane, decency is the highest and best virtue. Once human beings have internalized it, it is possible for them to embrace *ʾitimānīyya* ('Abd al-Raḥmān 2017, 25). A person's heart can only be "alive" after the soul is purified through certain deeds or processes of purification (*al-ʿamal al-tazkawī*). After the soul is purified, this should be followed by positive changes in a person's behavior. Abderrahmane compares that to the state of a person that is reanimated (after death). If a person strives to change for good, Abderrahmane hopes that this can impact society positively as well. The key for this to happen is the purification of the soul by love for creation over hunger for power; by this purification the veil that covers the soul can be lifted. Only then a person reaches love for Truth, and the True (*al-ḥaqq*, i.e. God) ('Abd al-Raḥmān 2012, 503).

Al-Shāṭibī does not speak about the "death of the hearts" but he warns that even if people are religious there is still the danger of being seduced by this worldly life and people can still go astray (al-Shāṭibī 2006, 281); he mentions that the Qur'an confirms that property and children can be very demanding and may cause people to forget about their religious duties and the afterlife. Then he remarks that the Prophet Muḥammad allowed his companions to enjoy what is allowed in the *dunyā*, up to a certain limit, and that he did not command them to live an ascetic life (al-Shāṭibī 2006, 284). As indicated, he seems to think that people should strive to find a balance between their involvement in world affairs and religion's expectations. One way so as not to sink into world affairs is to perform good deeds. Thus a person's heart expands and becomes enlightened (al-Shāṭibī 2006, 150).

Even if it seems that al-Shāṭibī and Abderrahmane address the same issue, it has to be said that there is a difference in their perspectives. Abderrahmane holds the opinion that in order for the heart to be alive it needs the *i'timāniyya*, so that it does not become completely unconscious in this “dead” dominantly Western materialistic way of life. Indeed, al-Shāṭibī says that there are seductions in this world and that it can happen that human beings are tempted and abandon religious ethics. But he does not say that a certain concept is needed, which has to be internalized so that people are saved. He does not say either that for the salvation of a person someone else who acts as an educator is needed. Abderrahmane, however, does say that a certain educator, who he calls “*al-faqīh al-i'timānī*” [the trusted *faqīh*/educator], is needed for the improvement of character. This person is called a *murabbī* [educator/teacher] (‘Abd al-Raḥmān 2017, 23). It is the duty of the *murabbī* to care for the spiritual development of the individual; he is also supposed to help to solve problems on the social level (‘Abd al-Raḥmān 2017, 25).

One issue which both scholars speak about is the centrality of the sincerity of intention, and the question of when acts are accepted by God. Abderrahmane argues that no reinvigoration of ethics happens if the intention is not sincere. Humankind should therefore always take Allah as their witness for all their deeds; decency (*ḥayā*) stems from this fundamental point (‘Abd al-Raḥmān 2008, 88). Al-Shāṭibī does not speak about the spiritual aspect of the sincerity of intentions but about the conditions so that acts get accepted by God from a legal perspective. He mentions that if the *mukallaf* does not know in detail about the aims of the Sharia or about the ranking of the *maqāṣid* within the law, it is sufficient for him to know some of the *maqāṣid* and act according to them for Allah to accept them (al-Shāṭibī 2006, 160).

4 Ethical-Legal Reflections between Abderrahmane and al-Shāṭibī

A comparison of the legal reflections of Abderrahmane and al-Shāṭibī shows that they both speak about Sharia law, *fiqh*, but in a different manner. While Abderrahmane is the ethicist who also writes about legal thought (*al-fiqh* and *uṣūl al-fiqh*), al-Shāṭibī is the *faqīh* who writes about legal concepts, but in whose thought ethics also does play a great role. For instance, he discusses whether God asks more from human beings than they are actually able to do; he asks about the intentions of the Sharia. The aim of the Sharia according to al-Shāṭibī is the protection of humankind from blindly following their whims and lusts, so that they become true servants of God (al-Shāṭibī 2006, 264). His idea of the Sharia is clear: it is balanced and does not require from people more

than they are actually able to accomplish. If a person chooses religion, he will be rewarded. If he chooses the opposite he will be punished (al-Shāṭibī 2006, 280). Abderrahmane also says that after human beings got to know God and His names it is their duty to find out what God requires them to do (‘Abd al-Raḥmān 2017, 40).

Both scholars speak about the *ḥudūd* (the punishments for particular deeds which are mentioned in the Qur’an) but again in quite different ways: Abderrahmane criticizes the jurists for having used the Qur’anic term “*ḥudūd Allāh*” in an exclusively juristic manner. He suggests that *ḥudūd* should be understood as an ethical idea, which should be connected with *asmā’ Allāh al-ḥusnā* and their moral teachings and implications. Also al-Shāṭibī mentions the *ḥudūd* in one passage of his *Kitāb al-Maqāṣid* and it is clear that he speaks about juristic aspects (al-Shāṭibī 2006, 72). It would be interesting to know whether al-Shāṭibī would be amongst those jurists who Abderrahmane criticizes for their exclusively juristic approach, because the former, al-Shāṭibī, does not speak about the ethical aspects of the *ḥudūd* but only mentions them from an exclusively legal perspective without drawing any ethical conclusions. Despite their differences, there are similarities in their understanding of the *ḥudūd*: both scholars understand them as revealed by God and they are not supposed to enslave people. While al-Shāṭibī contends that the *ḥudūd* protect people from their whims Abderrahmane stresses their ethical aspect and argues that the *ḥudūd* help people to return to the idea of *ʾiṭimāniyya* (‘Abd al-Raḥmān 2017, 135).

4.1 The Role of the Faqīh

Abderrahmane distinguishes between *al-faqīh al-ʾiṭimārī* and *al-faqīh al-ʾiṭimānī*. He criticizes the first and accuses him of focusing only on the rules or religious orders (sing. *amr*, pl. *awāmir*) since he does not look at the law from an ethical perspective, whereas the second cares about morals in the divine orders, and the noble character they teach (‘Abd al-Raḥmān 2017, 21). Al-Shāṭibī does not use particular terms when he suggests or criticizes a particular behavior or understanding of scholars. But from his elaborations on the *maqāṣid*, one can understand that he strongly recommends jurists to build their legal thinking on an ethical basis. Regarding the role of the *faqīh*, both scholars are of the opinion that the jurist or scholar has a high religious and social responsibility. In Abderrahmane’s opinion the *faqīh* should ideally be a *faqīh ʾiṭimānī* who educates people and helps them to improve their character and to develop their spirituality; the *faqīh* should feel responsible to help in solving problems in society. Al-Shāṭibī is also of the opinion that the *faqīh* has a great responsibility. In his book *al-Iṭṭisām* he criticizes the jurists of his time. He writes that some of them issue legal opinions that do not have a strong juridical basis, and

are issued only to please changes in society (al-Shāṭibī 2005, 17 f.). However, in *al-Muwāfaqāt* his idea of a responsible *faqīh* gets clearer when he speaks of a group of scholars of whom he says that Allah has chosen them to reflect, study and defend religion with strong evidence. He calls this group “soldiers of Allah” and “defenders of religion” (*ḥumāt al-dīn*) (al-Shāṭibī 2006, 94 f.).

5 Abderrahmane's Discussion of the *Maqāṣid* and His Reference to al-Shāṭibī

Although Abderrahmane does not debate the *maqāṣid* as a part of the *i'timāniyya* he pays attention to this concept; and because of his reference to al-Shāṭibī, his opinions will be discussed here. In his book *tajdīd al-manhāj fī taqwīm al-turāth* he discusses the *maqāṣid* and criticises their traditional classification. His debate of the *maqāṣid* is preceded by his statement that traditional Islamic sciences were characterized by the interconnectedness of disciplines. Therefore, when these disciplines are studied separately from each other no researcher can get a full understanding of that particular discipline. He calls this interconnectedness *tadākhul dākhilī*. He states that the best and most perfect proof of his claim is found in the understanding of al-Shāṭibī ('Abd al-Raḥmān 1993, 92). Abderrahmane is of the opinion that al-Shāṭibī was as much concerned with the *tadākhul* as he was concerned with the establishment of the universal aims (*kullīyyāt qaṭ'iyya*) of the Sharia, and that this engagement is clear in *al-Muwāfaqāt* ('Abd al-Raḥmān 1993, 95). In the book, Abderrahmane refers once again to al-Shāṭibī when he speaks about the traditional categorisation of the levels of the *maqāṣid* into necessities (*ḍarūriyyāt*), needs (*ḥājīyyāt*) and luxuries (*taḥsīniyyāt*).

Abderrahmane raises two points of criticism. First, he regards it as wrong that the *maqāṣid* represent merely one domain amongst many others within *uṣūl al-fiqh*. Another point of criticism is that he does not agree with the levels of *maqāṣid* and the way they were established by the *uṣūlīs* in the past. Abderrahmane expresses his astonishment especially about the traditional classifications of *ḍarūriyyāt*, *ḥājīyyāt* and *taḥsīniyyāt*. Usually the *ḍarūriyyāt* concern five values or aims: religion (*dīn*), life (*naḥs*), reason (*'aql*), offspring (*nasl*) and assets (*māl*). The philosopher criticizes that these aims are restricted to this number. He says that there is no reason why this restriction should be continued. Also there is no reason why other aims should not be added to the traditional ones. At this point of his argumentation the reader would expect to find reference to current *maqāṣid*-debates which discuss vividly the necessity to add further values and to overthink the traditional classification, but Abder-

rahmane does not do that. He does not consider developments and efforts of modern scholars and intellectuals in this point, such as those led by the renowned scholar Muḥammad al-Ṭāhir ibn ‘Āshūr (d. 1394/1973) in his famous publication *Maqāṣid al-Sharī’a*. Abderrahmane states that all the three levels, and therefore not only the *ḍarūriyyāt*, aim to protect the five traditional values/aims. Therefore, there has to be something that stands above the three-level-categorisation, which he calls the highest, universal aims (*al-ghāyāt al-kulliyā al-quṣwā*) (‘Abd al-Raḥmān 1993, 111).

As for the aims which are ascribed to the *taḥsīniyyāt*, many *uṣūlīs* (*uṣūl* scholars) mention “good character” (*makārim al-akhlāq*). Regarding this norm, Abderrahmane raises the following points of criticism:

1. To ascribe *makārim al-akhlāq* to the *taḥsīniyyāt* implies that they are only seen as complementing aims, which, therefore, are dispensable and the *mukallaḥ* is free to act according to them or to dismiss them.
2. The expression “*makārim al-akhlāq*” is taken from the prophetic tradition “Verily, I was sent to perfect the good character” (*innamā bu’ithtu li-utammima makārim al-akhlāq*). Abderrahmane argues that it is simply impossible that the Prophet’s mission is restricted to something that is complementary and only supports what is necessary (*ḍarūri*) (‘Abd al-Raḥmān 1993, 112).

The philosopher says that *makārim al-akhlāq* encompass all benefits (*maṣāliḥ*) within the Sharia. He states that al-Shāṭibī ascribed *makārim al-akhlāq* only to the *taḥsīniyyāt* because he followed a tradition which was already established at his time, without necessarily sharing the opinion of former *uṣūlīs* on that classification (‘Abd al-Raḥmān 1993, 112). This point needs a pause: Abderrahmane claims to know what al-Shāṭibī’s intention was on this point, which is not tenable especially because al-Shāṭibī does not discuss this point and does not mention critical comments on the issue.

Abderrahmane’s points of criticism on the traditional classification of the *maqāṣid* lead him to think of a new classification that is primarily ethical.

1. The values of benefit and harm (*qiyam al-naḥḥ wa-l-ḍarar*), which he also calls *al-maṣāliḥ al-ḥayawīyya*. These can be identified by feelings such as pleasure (*ladhdha*) when experiencing benefit, and pain when experiencing harm. Aims which are assigned to these values are benefits (*maṣāliḥ*) which are related to life (*naḥḥ*), health (*ṣiḥḥa*), offspring (*nasl*) and assets (*māl*). Abderrahmane does not mention an example which would clarify how his suggestion could be implemented and practised, for example, by a jurist. This is also noticed by Ebrahim Moosa who assumes that perhaps Abderrahmane would leave other scholars to accomplish this task (Moosa 2014, 187).

2. The values of good and evil or beauty and ugliness (*qiyam al-ḥusn wa-l-qubḥ*) (Abderrahmane 1993, 113). Feelings by which these can be identified are: joy (*faraḥ*) when experiencing something positive and sadness when experiencing loss. Benefits that fall under these meanings are values like safety, freedom and peace.
3. The values of righteousness (*ṣalāḥ*) and depravity (*fasād*).² Feelings which identify these categories are: happiness (*sa'āda*) when experiencing a benefit and misery (*shaqā'*) when experiencing adversity. Feelings which belong to these values are spiritual aspects of religion such as compassion (*rahma*) and love.

According to Abderrahmane, the benefits of this categorization are as follows. First, the increase of values (*takāthur al-qiyam*): a juridical judgement (*ḥukm shar'ī*) is not grounded on one value or is not only justified by one benefit (*maṣlaḥa*) any longer. Abderrahmane gives the example of the prohibition of murder (*al-qatl*). Several values are protected with this prohibition: life, society and the “divine breath” (*naḥḥa rabbāniyya*).³ Second, the primacy of spiritual values (*qiyam rūḥiyya*). He argues that until now jurists and scholars focus on “life-values” (*qiyam ḥayawīyya*) such as life, offspring, whereas spiritual benefits (*maṣāliḥ rūḥiyya*) are regarded as part of the *taḥsīniyyāt*. These *maṣāliḥ rūḥiyya* are now raised to the highest level because they are the most capable to promote the good character (*akhlāq*), and influence the other two value-levels, i.e. life values and rational values respectively. Abderrahmane says that after the true attitude of al-Shāṭibī on ethics is clarified, the claim of some *uṣūlīs* that ethics in *uṣūl al-fiqh* is a restricted field can be rejected (‘Abd al-Raḥmān 1993, 114).

Conclusion

Comparing Abderrahmane’s and al-Shāṭibī’s thought reveal communalities and differences which can enrich today’s reflections on ethics and Islamic law.

First, it should be mentioned that both scholars share a “classical” understanding of religion. Both believe in the existence of one God the Creator. Human beings are different from the rest of creation and they have the rational faculty and freedom to decide how they want to live. Either they decide to accept God’s will or not to. In both cases, they are responsible for their actions.

2 Or, as it is mentioned in his book *Su'āl al-Manhaj*: The values of good and evil (*qiyam al-khayr wa-l-sharr*) (‘Abd al-Raḥmān 2015, 85).

3 That is, the divine spirit (*rūḥ*) that is in human beings.

However, what makes the two scholars differ from one another is that Abderrahmane with his *i'timāniyya* elaborates a whole paradigm and creates new terms and gives in-depth explications of his ideas, as it is the case with '*al-faqih al-i'timārī*' and '*al-faqih al-i'timānī*.' This distinction cannot be found in al-Shāṭibī's work, although both scholars share the same ground regarding the essential teachings of Islam.

Second, ethics plays a major role in both of their thinking. Although they have different approaches about how they tackle the subject, it certainly is of decisive importance in their thought.

Third, in both their understanding, ethics is considered an aspect only, but is seen as the very basis of Islamic law.

Fourth, the figure responsible to produce a correct understanding of Islamic law and to erect it on ethical foundations is the jurist. In addition to his main scholarly function of the production of knowledge, he also carries the responsibility of guiding and educating people and contributing to the establishment of ethics in society. A practical implementation of this idea today is that scholars, besides their scholarly activities, upheld this responsibility of the jurist.

Fifth, strongly linked to ethics is the field of the *maqāṣid* which in the opinion of both scholars should be the very basis of legal thinking. However, it should be mentioned that their approaches differ from one another. One aspect concerns systematization. While al-Shāṭibī lays down an ethical basis for a meaningful legal thinking he does not do it in the very systematized approach of Abderrahmane. Furthermore, what makes the two scholars differ from one another is that al-Shāṭibī works with the five classical values of religion, life, reason, progeny and property that should be protected by the Sharia, whereas Abderrahmane criticizes this classification and suggests a new and different order that is more ethicist, according to him. What makes Abderrahmane's view also differ from al-Shāṭibī's is his critique of the classical division of the *maqāṣid* in *ḍarūriyyāt*, *ḥājjiyyāt* and *taḥsīniyyāt*. He asserts that scholars in the past used to count ethics under the category of *taḥsīniyyāt* and argues that ethics should form the basis of any legal considerations.

The comparison of the thought and contributions of the two scholars showed that despite their very different historical and social contexts and the different approaches they took in their scholarship they arrived at similar conclusions. These can be taken for today's scholarship and inspire the debate on topics that need a new outlook on ethics and their role in the discussion on the *maqāṣid* and on the premisses of contemporary Islamic legal thinking.

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