

The Fiqh of
Contingencies

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SHAYKH ABDALLAH BIN BAYYAH

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By Shaykh Abdallah bin Bayyah

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In the name of God, the Compassionate, the Merciful

All praise be to God, Lord of the Universe. May God's blessings and peace be upon our master Muhammad, the final prophet, his family and companions in abundance until the Day of Judgment.¹

The world is experiencing a crisis like never before. Coronavirus has infected millions and taken the lives of hundreds of thousands, and continues to spread from one country to another. In fact, it threatens countries that have recovered once again with a second wave of infections and reinfections. The speed and extent of its spread has rendered it a pandemic by declaration of the World Health Organization.

It may be too premature to speak of results or glean lessons from this event which continues to consume our every waking moment. What is known about this pandemic is trivial compared to what is unknown, and what has been discovered so far is miniscule compared to what has yet to be discovered. Scientific research has yet to grasp all its aspects and specificities. Likewise, studies and reports have not yet presented in detail its long-term economic costs, psychological repercussions, and social ramifications.

Nonetheless, this crisis has so far taught us many important lessons and caused us to see afresh forgotten realities, most saliently the fragility of humankind and the weakness that is inherent in our very being and imprinted in our very nature: "man was created weak" (Quran 4:28).² Likewise, it has reminded us of the limitations of human knowledge, which are a cause for humility: "you have only been given a little knowledge" (Quran 17:85). It also given us a deep realisation that man, despite all of his progress and advancement, is not safe from sudden disasters and contingencies, and that the journey of those who dwell on this earth is not always secure or guaranteed.

The population of this planet is like a group of passengers on a large boat with multiple decks: though it may have different levels, it must nonetheless steer a single course and share a common destination. The destinies of mankind are united, and their pathways are shared because we have all been created from the same clay. The Creator (may His

1 This article is an edited and abridged version of the speech given by HE Shaykh Abdallah bin Bayyah at the Fiqh of Contingencies Conference of the Muslim World League on the 18th of July 2020.

2 Editor's note: All references from the Quran in this text, unless stated otherwise, are translated following the translation of M.A.S. Abdel Haleem, *The Qur'an: English Translation and Parallel Arabic Text*, Oxford University Press, 2004.

power and wisdom be exalted) created man weak so that he may become humble, and ignorant so he may learn, and He made the means of this world subservient to man so that he may till the land and labour: “He has made what is in the heavens and the earth beneficial to you, all as a gift from Him.” (Quran 45:13)

For this reason, certain cardinal values are necessary in this crisis. The most important of these is the virtue of solidarity among all of humankind. We face a danger that does not differentiate one nation from another, or one skin colour from another; it does not elevate one social class over another, or ravage one land to the exclusion of another. Rather, it affects all regardless of ethnic origin, religion, or creed, irrespective of their differences in level and rank.

Our need to revive these values has become clear. We must emphasize that all of humankind are God’s dependents, and that of creation the most beloved to Him are those who benefit God’s dependents the most, as is said in the Hadith: “All of creation are God’s dependents, and the most beloved of you to God are the ones who show true kindness to His dependents.”³ For this reason many people of refined intellect and inherent goodness have called for a global mobilization of conscience that emphasizes humanity’s shared destiny and their human fraternity. This is what we hope for and call others to. How many a trial holds within it a great gift!

There is no sphere of life today that is removed from the impact and effects of this crisis. It has penetrated the most minute details of human life and encompassed all its aspects. This has made it necessary to call upon all those concerned without exception. In addition to the work of our doctors, who are occupying a crucial position, it is important that we do not forget the contributions of others from equally important fields. For example, this crisis has raised questions that concern the economy and how people can secure adequate means of livelihood and subsistence; how they may continue in their jobs and professions; and how they may procure their food and nourishment and import their supplies and provisions.

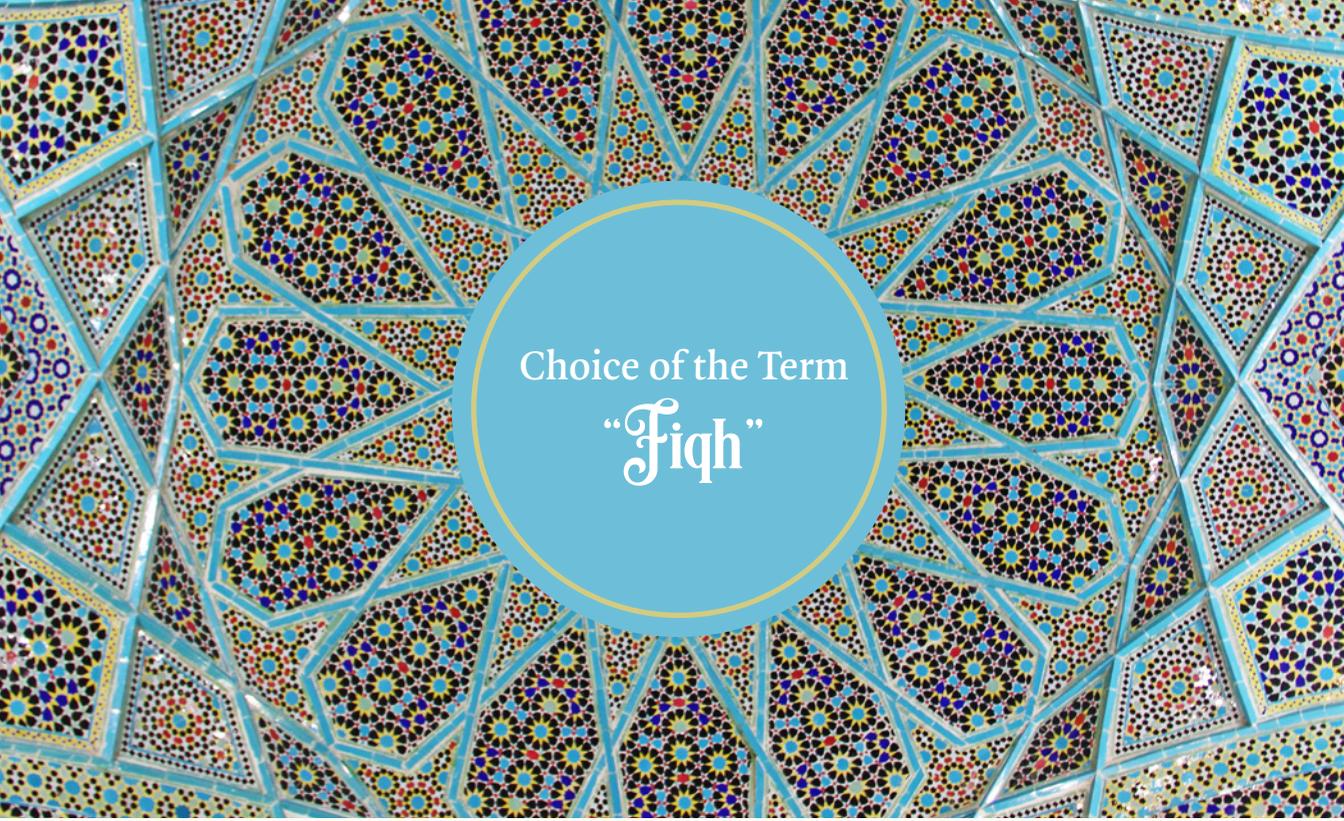
It has likewise raised questions about the functioning of our societies. We require sociologists and psychologists to begin examining the social condition and how it has been affected, and the psychological sphere and how it has been impacted by the pandemic. In the same way, many new issues have arisen in the religious sphere and in the context of spiritual relationships and interactions that have encompassed individual and communal acts of worship, and have incorporated contracts and business transactions, and in fact have extended even further to encompass thoughts, ideas and beliefs.

³ Al-Tabarani reports this in the *al-Mu‘jam al-Awsat* (5541), and Aba Nuaym in *Hilyat al-Awliyā’* (102/2), as does al-Bayhaqi in *Shu‘ab al-Imān* (7048) with a similar wording with an admittedly weak chain. However, its meaning has analogues in the Noble Quran, such as God’s word: “People, it is you who stand in need of God – God needs nothing and is worthy of all praise.” (Quran 35:15)

All this requires every scholar to expend their efforts in order to help humanity regain its balance so that life may continue as usual, in as much as this is possible. This calls for him to perform certain manoeuvres and movements, like someone is in control of sailing a lifeboat in the ocean. The situation requires that we tap into our intellectual powers and creativity to solve a novel problem, just as we have solved other problems before.

Our vision begins with the realization that there is a dimension that should not be overlooked in this situation. This is the dimension of religious jurisprudence. Jurisprudence is a system for Muslim ethical praxis, that informs the philosophies and principles governing the Muslim's life. It is also the source of his spiritual life. This dimension must not be oblivious to the present. The present reality on the ground is a factor in the function and application of religious law, as its principles and sources maintain, and as the actions and contextual legal reasoning of the righteous forebearers indicate. It is necessary to look into the effect of these exceptional circumstances at present upon the legal rulings of the Shariah, based upon a sound methodology in ascertaining the relevant universal principles, legal maxims, and effective causes latent and operating in the new cases and situations, in a manner that realizes the twin objectives of sound legal extraction and extrapolation (*istinbat*) and rigour and regularity in application (*indibat*).





Choice of the Term “Fiqh”

This lecture is given under the rubric of *Fiqh al-Tawari* (Jurisprudence of Contingencies). We have chosen the term jurisprudence (*fiqh*) because of the openness of its approach, breadth of its scope and extensiveness of its field. It is the science governing Shariah rulings that are extrapolated through independent legal reasoning (*ijtihad*). We now need to mobilise the tools of *ijtihad* and activate the instruments that generate particular rulings by stimulating and unleashing the hidden potential of the universal principles (*maqasid*), which the Muslim community has chosen as the foundations for extrapolating rulings from the texts to their various significations and designations. This system brings clarity to legal thought as it is focused on fulfilling the objectives of sacred law (*maqasid*). There are three levels of these objectives, termed necessary (*daruri*), complimentary (*haji*), and embellishing (*tahsini*).

Working with them is the craft of jurisprudence. There are three levels of this craft: independent legal deduction (*ijtihad*) in the absolute sense (*mutlaq*) by those qualified to do so; deriving practical legal rulings (*takhrij*) by someone qualified to do so based on the principles of his school of thought (*madhhab*); and preferring one view over another (*tarjih*). This is at the very bottom of the ladder and involves choosing the most appropriate judgment from the body of practical legal rulings.

However, in the case of the *maqasid* (higher objectives), we will pause to discuss only the necessary objectives and from the legal maxims only the following two: ‘hardship

calls for facilitation’, and ‘harm is to be removed.’ This is because they appropriately suit the current context, lived reality, and contemporary condition of the Muslim community. Facilitation (*taysir*) is authentically founded and textually grounded by the Lawgiver, and contextually required and called for by our current situation. Removing harm is required by sacred law (‘there is no inflicting harm nor reciprocating harm’) and deemed necessary by the condition that the world is living through.

Our engagement with these two maxims will focus upon mining their treasures and drawing from their bottomless wells. For this reason, facilitation will be the pivotal theme of our examination. We will draw upon an array of legal concessions and dispensations from rescission (*isqat*), substitution (*ibdal*), reduction (*naqs*), delay (*takhir*), advance (*tajil*), whether they apply to necessities (*darurat*) or complementary requirements (*hajat*). This system is founded on the statement of Almighty God, “God wishes to lighten your burden; man was created weak.” (Quran 4:28) This verse tells us that the sacred law interacts with human existence in all its vicissitudes, in applying strict law in times of strength and allowing for concessions in times of weakness. “It is God who creates you weak, then gives you strength, then weakness after strength, together with your grey hair: He creates what He will; He is the All Knowing, the All Powerful.” (Quran 30:54). In our struggle to keep up with this current tribulation affecting the inhabitants of the earth, we will adduce all the proofs that furnish and pave the way for its authentic scriptural grounding, promulgation and dissemination.





Choice of the Term 'Contingencies' (*Tawari*)

As for the second part of the compound '*Fiqh* of Contingencies (*Tawari*)', namely 'contingencies', we must first establish what is meant by this term. The term *tawari* (contingencies) linguistically comes from the verb *taraa*, which means 'to occur unexpectedly to people, come from a place, or emerge or appear to them suddenly or come to them unexpectedly without them knowing or exit from an opening'. It also refers to an unknown path or matter, as the ancient poet al-Ajjaj says:

Nor do I keep company with one who goes around, nor do I myself go around
divulging her secret, and that is *turani*⁴

... "and that is *turani*", that is, unknown and astonishing. *Tariah* (the singular form of *tawari*) means a disaster (*dahiyah*) of unknown origins.⁵ What is a *dahiyah*? It is a great and grave matter, one of the great calamities of the age, as the author of the *al-Qamus* tells us (together with the commentary of *Taj al-Arus*).

We chose the term 'contingencies' (*tawari*) because it indicates an element of surprise, obscurity of source, and severity of impact. Even though a similar term, *jawaih* ('blights' or 'plagues') is more widely used, these blights usually refer to particular circumstances, like meteorological disasters that afflict crops, for example. The primary meaning of

4 *Dīwān al-‘Ajjāj*, vol.1, p. 494. (Trans.)

5 *Taj al-Arus* commentary on the *Qamus*.

jaihah (blight, disaster) is that is beyond human control or volition. However, it is often expanded to include the action and handiwork of man, such invading armies.

But the calamity that we are speaking of today is universal because it relates to the totality of human existence; religion, life, property, intellect, and offspring. It represents blights not only blights upon crops, but also blights upon possessions, and blights upon lives. It is for this reason that we call them 'contingencies' (*tawari*), for they are unknown calamities which contain an element of surprise, an element of overwhelming impact, and an element of emerging from an unknown source.

What then of the compound term, "*Fiqh al-Tawari*" (Jurisprudence of Contingencies)? We will have recourse here to the structure of the four causes to elaborate its meaning, which underlie the reality of every structure according to the logicians. These causes are end, matter, form and agent (i.e. final cause, material cause, formal cause, and efficient cause).

First of all, **the end**: it is *fiqh* (jurisprudence) that enquires into and searches for ease in places of difficulty, lenience in places of harshness, and for concessions (when necessitating factors are available) in the place of strict rulings.

As for **its (subject) matter**:

It comprises the texts of the Quran and Sunnah that serve to authentically ground facilitation (*taysir*), and the evidentiary sources based on them, whether the matter relates to the linguistic indications (*dalalat*) of the lexical forms; the rational implications (*maqul*) of the texts; their higher objectives (*maqasid*); and their legal maxims (*qawaid*), while selecting those aspects of Islamic legal theory which are most relevant to facilitation and most related to amelioration (*takhfif*) and ease (*suhulah*). This applies specifically to the sections of Islamic legal theory that deal with the presumption that maintains the original state of non-liability and juristic discretion or preferential reasoning (*istihsan*) as exemplified in the exclusion or exception from the universal of necessity or complementary need, which involves leaving aside analogical reasoning (*qiyas*) for that which is more lenient toward the people (*arfaq*), in the technical parlance of the Hanafi scholars.

This also applies to public interest (*maslahah mursalah*) and more specifically the category of public interest that is free⁶ and that employs the primary and original state of public interest that does not return to a specific proof.

Among the legal maxims in this regard is the maxim: "hardship begets facility" and what derives and branches off from it such as the principle of "necessities that overturn prohibitions and overturn obligations". This maxim forms the basis of 'concession'

6 Translator's Note: 'Free' of Shariah approval or disapproval

(*rukhsah*) in the technical sense, which is changing a ruling to one of ease and facility (*suhulah*) due to a reasonable excuse (*udhr*) while the original *ratio legis*, or legal rationale for the ruling, is still operative. Among the legal maxims also is the maxim: “needs that are given the rank of necessities” which forms the basis of ‘concession’ in the ordinary lexical sense. This involves leaving aside analogical reasoning, such as in the case of forward contracts (*salam* contracts) and choosing from different views on an issue.

As for its **form**:

It is a combination of the current lived reality (*waqia*) and the legal proof (*dalil*).

As for its **agent**:

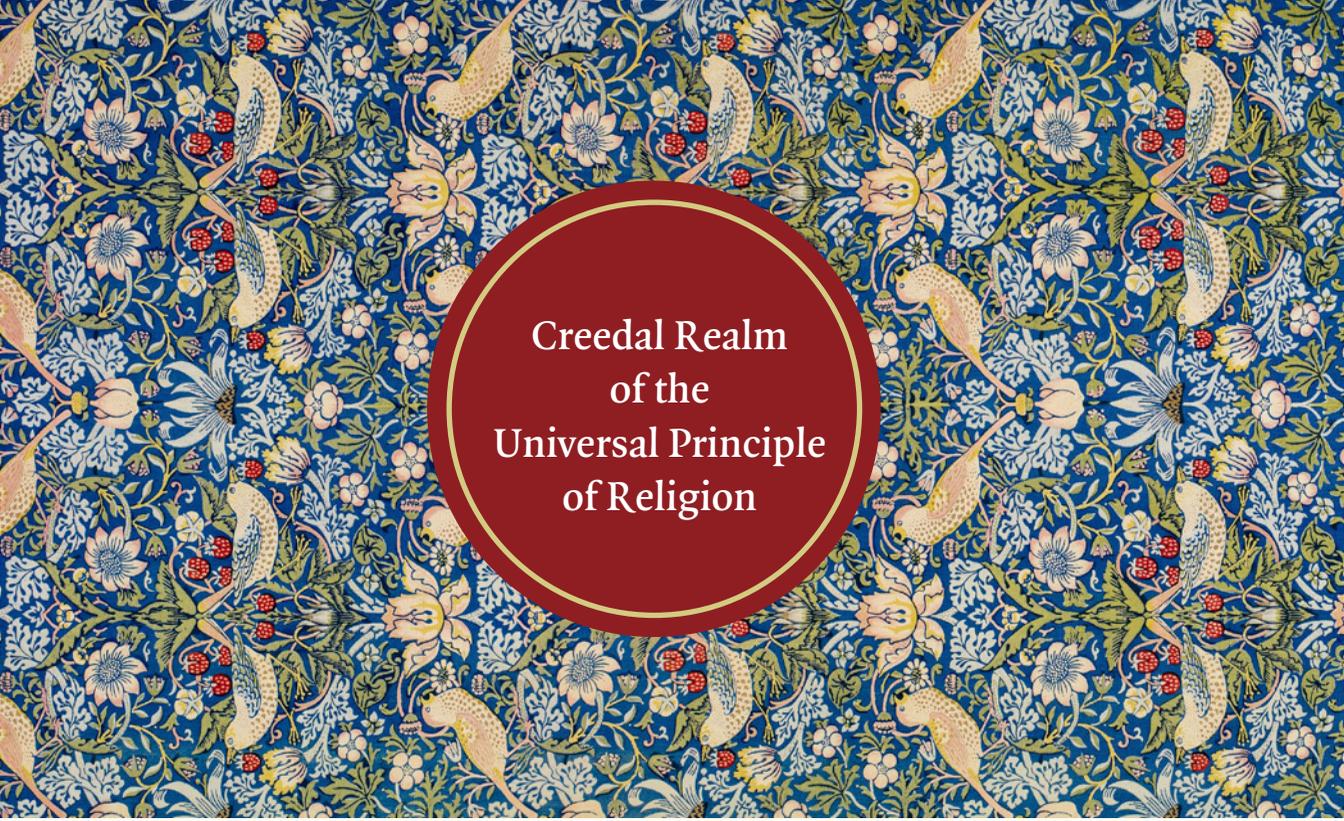
It is the jurist (*faqih*), the expert (*khabir*), and the ruler (*hakim*).

In short, it is the jurisprudence of facilitation and easement extrapolated from the texts of the Shariah and the understanding and interpretation of Muslim scholars and intimately woven with the contemporary lived reality; its basis is concessions and necessities which are estimated according to their degree, and which cease with the cessation of their cause.

Dealing with contingencies is an integral and indispensable component of every legal system. Our Shariah in this regard has received a great deal of attention and consideration as the devotional and legal system that governs the behavioural and normative pattern in the life of the Muslim individual and community. Through its holistic nature, it encompasses the five universal principles (preservation of religion, life, intellect, property, and offspring).

Hence, we will examine this topic in light of these universal principles, and we will do so by looking closely at them and exploring their the sudden impact that this pandemic has – both directly and indirectly - exerted on them.





Creedal Realm of the Universal Principle of Religion

The first universal principle is religion, which encompasses formal creeds and belief systems as well as individual acts of worship. The crisis has provoked followers of religion to reflect on such theological issues as the nature of good and evil; Divine predestination and predetermination; and the grand scheme of Divine decrees which overrides man's acts and free choice beyond his understanding.

Normally during crises, the world stands baffled before the utter horror of the event, in a state of confusion and doubt, commensurate with the words of Ibn al-Farid:

O driver of the howdah-laden caravans, folding up the open deserts beneath him! Kindly pause here upon the sand dunes of Ṭayy

Confused about what his affair will eventually result into; man stands before tribulation entirely helpless.

Crises such as this one lead us to ask: What? Why? How? We become imbued with questions pertaining to the laws operating in the universe, secondary causes – as Claude Bernard⁷ called them – and modalities. How did this pandemic start? How does man deal with such pandemics by producing vaccines, discovering appropriate treatments, predicting outbreaks, and alleviating disease-stricken areas?

⁷ The French scientist recognized as the founder of experimental science.

These are all legitimate and Shariah-sanctioned questions, as they do not contain anything that negates affirming the Power of the Almighty Creator and His Divine predestination. Our belief that these pandemics are all predetermined by God in accordance with the authentic hadith: “and that you believe in the Divine predetermination of both good and evil,”⁸ does not preclude our efforts to address and treat them, or to search for strategies based on rational results and human experience. Combatting pandemics falls under the same category as combatting all that is harmful and detrimental to humanity, such as dangerous predatory animals and poisonous creatures, which are common to both believers and non-believers.

Fighting disease is also a part of God’s Divine Decree. As our master Umar said: “we flee from one Decree of God to another Decree of God”. This is an exemplary way of looking at things in Islam. Reliance on God does not negate action, because reliance is a state of the heart; meanwhile relinquishing action shows blatant discourtesy towards God, as the people of spiritual purification (*ahl al-tazkiyah*) teach us. Giving up on fighting afflictions opposes the Law of the Universe and the Law of Divine Legislation. The Prophet (peace and blessings be upon him) said in an authentic hadith: “Seek medical treatment, O servants of God.”⁹ The best of those who place their reliance in God, the Messenger of God (peace and blessings be upon him), used to be treated medically and also treat others. Therefore, every effort towards prevention and treatment is needed and desired. These are strategies (*tadabir*) whose efficacy has been proven by scientific experimentation and which have been endorsed by the Islamic sacred texts and necessitated by the Higher Objectives and Legal Maxims of the Shariah.

In fact, Islam encourages the conduction of scientific research in pursuit of discovering cures. In *Sahih Muslim* on the authority of Jabir ibn Abd Allah (God be pleased with him), the Messenger of God (peace and blessings be upon him) said: “Every illness has a cure, and if the cure of the illness is found, the patient is cured by God’s permission.”¹⁰

In effect, this hadith calls on us to study medicine and search for a cure. It affirms the existence of a cure for every disease. If a person is certain that a cure exists for chronic diseases, let alone other diseases, then he is obliged to search for a cure. He will not be searching for something that does not exist, but rather for something that does exist but which simply has not yet been found. This should be a source of optimism for humanity and a source of encouragement for researchers.

This noble hadith also combines two attitudes:

8 Narrated by Muslim (8).

9 Reported by Abū Dāwūd, al-Tirmidhī, and al-Nasa’ī in *al-Sunan al-Kubrā*, as well as Ibn Mājah and Aḥmad with minor differences.

10 Muslim, al-Nasa’ī in *al-Sunan al-Kubrā*, and Aḥmad.

The first of these indicates man's efforts in the words of the Prophet (peace and blessings be upon him): "and if the cure of the illness is found..."

The second emphasizes reliance on God, glory be to Him, and seeking success and enabling grace from Him, because He is the creator of all things and the one who guides and leads, out of His beneficence, to all discoveries. This is affirmed by the part of the Prophetic statement which says, "... the patient is cured by God's permission." The human being thus strives and searches whilst also seeking to enable grace, success and divine assistance from the Highest Power that gives aid and inspiration.

Nonetheless, the human being slips into error in his thinking when he turns from a legitimate line of questioning to one that is impossible and absurd, whereby he lets himself be led by imagination and lets hubris get the better of him. This leads him to question God in His governance and predetermination of affairs, causing him to fall into the delusion that God's actions are like his own actions, and that God's judgments are like his own judgments. In the process, he loses sight of the lofty, transcendent nature of divine wisdom, which is not open to be judged according to the standards and measures of creation. God's wisdom is, by its nature, not amenable to comparison due to the absence of any likeness and similarity, let alone sameness and uniformity. He is the One and Only for whom "no one is comparable to Him" (Quran 112:4). His actions and commandments are all good and beautiful. As al-Amidi states, "the theologians are unanimous that God's action is good in every way, and the opposite forms of goodness are all negated from it, and these opposite forms are evil vis-à-vis good, badness vis-à-vis goodness, and ugliness vis-à-vis beauty.

So how do we understand good and evil? What do these designations apply to?

Words like good and evil evoke emotional and sentimental value judgements; they are not neutral words. Good is often taken to be congruous with ideals of nobility, virtue, justice, or benefit, and evil the opposite of these. So, can we refer to a global event like an earthquake or the outbreak of a pandemic as being good or evil? From what perspective can we do so? And in relation to what?

Here matters become elusive and obscure to those who do not understand the realities that these events convey to us. We will try to bring the idea of good and evil closer to home using the example of a single act, but every angle from which it can be viewed has its own particularity and peculiarity.

For example, and within the context of the acts of human beings: A peasant may burn weeds in his field, or cull disease-stricken animals. What do we characterize this act as? On the other hand, an arsonist may set people's fields on fire and kill their livestock, "destroying properties and lives" to use the Quranic expression. What do we characterize this act as? The act in each case is one and the same act, but it differs from the angle of end purpose, intent, and agent.

Another example, a doctor causes his patient pain through a surgical operation to save his life, while a criminal inflicts a similar deep wound on his victim. Or, a judge passes court ruling on a criminal that he be imprisoned or perhaps executed to protect society from his evil, while a thief kills human beings. The matter differs with reference to the reason for killing, its cause, and its end purpose. However, it also differs with respect to the ideas that we have of good and evil. We realize therefore that what defines goodness and its opposite, evil, is not the form or appearance, but rather the motives and end purposes.

A teleological explanation of God's acts and judgments from man's limited perspective casts him into confusion and leads him to misguidance. Hence, the boundedness of human knowledge that does not extend beyond the immediate here and now time durations and the outward forms of things may impede man from understanding God's wise governance of His cosmos, and the changes and transformations He effects in His creation. So, sometimes what appears as good may in reality be evil, and sometimes what appears as evil may in reality, and in terms of its final outcome, be good. "You may dislike something although it is good for you, or like something although it is bad for you: God knows and you do not." (Quran 2:216).

Moreover, divine time is time which is continuous and uninterrupted and in which the act connects to both its outcomes in this world and its effects in the next. Hence, the goodness of an act is measured in terms of its outcome in both timespans, but particularly the everlasting timespan which has no end and no termination in the Abode of Eternity.

God's absolute goodness and the negation of causes in the philosophical sense from His actions and rulings render man's questioning Him about His creation as nothing but ignorance and arrogance. "He cannot be called to account for anything He does, whereas they will be called to account." (Quran 21:23).

All of this teaches us that we cannot, based on the outward appearances of things, pass judgment upon God's actions and preordinances, and that the best stance is one of humility and submissive acceptance, such that it is satisfied with God's predestination while believing with full certainty and conviction in the goodness of the Source. With this faith-based stance, the soul finds peace and tranquillity, and does not despair in God's comforting mercy. Likewise, the intellect finds its comfort and rest, and does not transgress its limits or deviate from its course. Its energies are expended in their natural and appropriate channels, such that they are not wasted but are in fact invested profitably in that which is beneficial such as thinking about those existential questions for which it has been primed.

This is essentially the Islamic stance on dealing with contingencies from a creedal point of view. This planet and its inhabitants are exposed to the change of contingent quali-

ties and features, the alternation of states and modes, and the transformation of beings and creatures as a trial and test from God, the All-wise, the All-knowing. It is therefore appropriate for man in the face of these events to adorn himself with the garb of inner acceptance and submission to his Lord, hoping for the goodness and bounty that are with Him, and holding fast to virtuous and praiseworthy traits and noble and excellent values that He has prescribed and commanded – traits and values that are exemplified in solidarity and cooperation for good and public benefit, and using the intelligence, skills and abilities that we have been endowed with to ward off evil and to treat harm and injury. This, then, is a practical approach that should not have any relation to the metaphysical remonstrance against the supreme sphere of divine decrees, whose key questions, ‘what’, ‘why’, and ‘how’, we do not possess the answer to.

This is why Mutamir ibn Sulayman (a Muslim from the generation of Muslims that succeeded the Companions of the Prophet – peace and blessings be upon him) reported from his father, “I swear by God if the veil was removed, the Qadarites [those who deny predestination] would realize full well that what God does is not unjust towards His servants in the least.”¹¹ The meaning of this is that if we understood the supreme sphere of divine decrees, our vision of things would change and we would see things linked to their wisdom-driven final ends and connected to their completely developed and fully formed setting that is veiled through deficiency in our comprehension and hidden behind external appearances.

Likewise, we must believe in predestination, as it is of the affair of the all-dominating King.

Neither doing what is good here for the benefit of man nor doing what is best for him, is befitting that it be incumbent upon the Most High,

Because He is the Owner, the Majestic; and so everything He does is utterly beautiful,

And out of sublime wisdom, thus no questioning of Him can take place – even to entertain it is pure misguidance!

And what took place between Ali and Abu Ali,¹² has clarified the way for the

11 Ibn ‘Abd al-Barr *al-Tamhid*

12 Translator’s Note: Two historical theologians. The former was an eponymous founder of the largest Sunnī school of theology, and the latter a chief among those who denied predestination and affirmed free action outside of God’s determination. Ibn Khallikan narrates: Abu al-Hasan al-Ashari asked his teacher Abu Ali al-Jubbai about three brothers, one of whom was a (true believer, virtuous and pious; the second an infidel, a debauchee and a reprobate; and the third a child: they all died, and al-Ashari wished to know what had become of them. To this al-Jubbai answered: “The virtuous brother holds a high station in paradise; the infidel is in the depths of hell, and the child is among those who have obtained salvation.” “Suppose now,” said al-Ashari, “that the child should wish to ascend to the place occupied by his virtuous brother, would he be allowed to do?” “No,” replied al-Jubbai, “it would be said to him: “Thy brother

obstinate rejector.

Do you not see the surgeon when he cuts the heart's aorta, how he tears it apart?

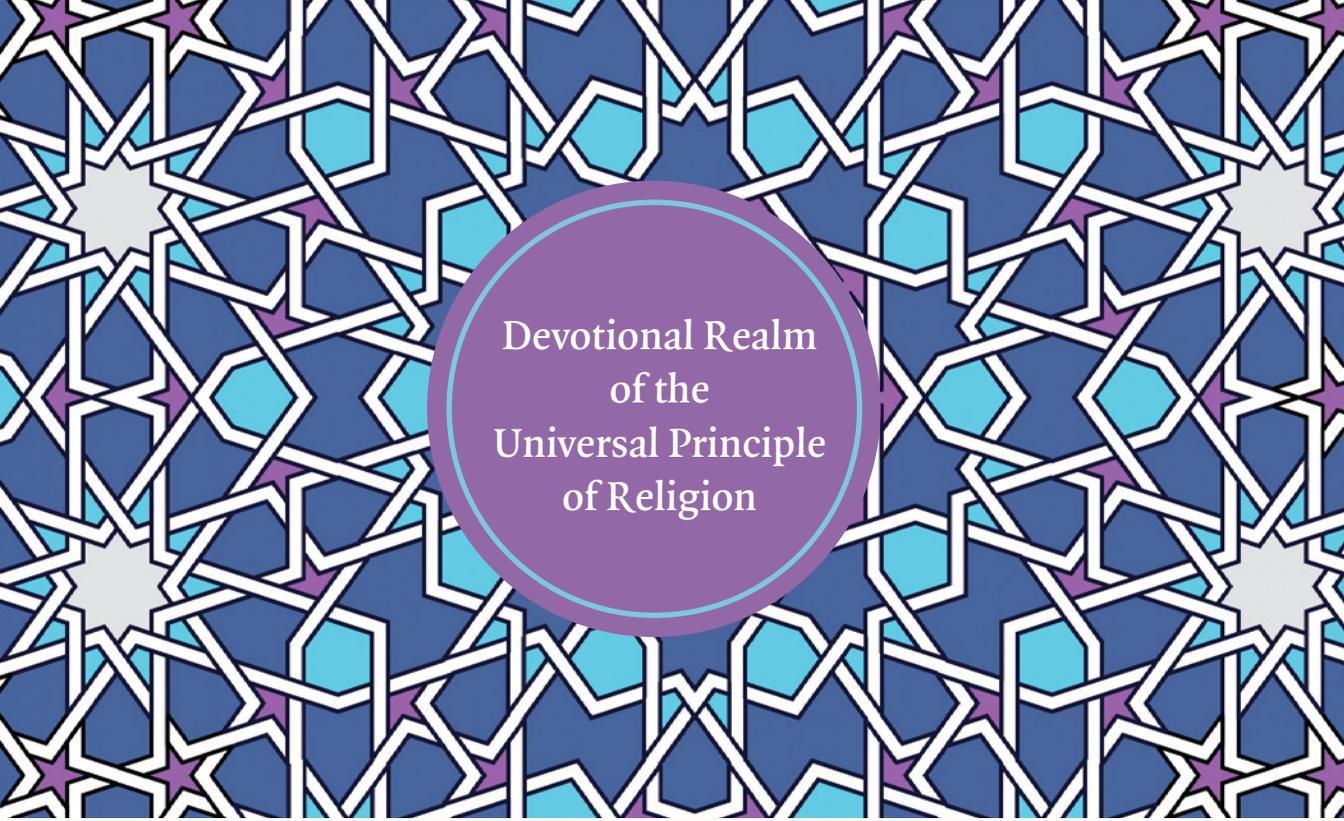
He does this for the good of the patient. If it were not for the motive, you would claim this man is a wanton criminal.

So how can you grasp the fine and subtle wisdom in the cosmos, whilst its entire operation lies in wisdom's most general sphere?

We ask Him, may He be glorified, for a good decree, and that we find in His Decree acceptance and satisfaction.



arrived at this place through his numerous works of obedience towards God, and thou hast no such works to set forward.” “Suppose then,” said al-Ashari, “that the child say: ‘That is not my fault; you did not let me live long enough, neither did you give me the means of proving my obedience.’” “In that case,” answered al-Jubbai, “the Almighty would say: ‘I knew that if I allowed thee to live, thou wouldst have been disobedient, and incurred the severe punishment (of hell); I therefore acted for thy advantage.’” “Well,” said al-Ash‘arī, “and suppose the infidel brother were here to say: ‘O God of the universe! since you knew what awaited him, you must have known what awaited me; why then did you act for his advantage and not for mine?’” al-Jubbai had not a word to offer in reply.



Devotional Realm of the Universal Principle of Religion

Regarding the realm of worship, our investigation is directed towards what we term causes (*asbab*), conditions (*shurut*), and hindrances (*mawani*); that is to say, the divine communication that relates to declaratory law (*khitab al-wada*)¹³ and that lays out and organizes strict law (*azaim*) and concessionary law (*rukhas*). So, for example, prayer itself is not omitted, however certain related considerations may come under the concession of omission, such as the omission of Friday and congregational prayers. Likewise, fasting and the legal obligation to fast may come under certain concessions of omission or deferment in the case of a sick person infected by the current pandemic. Scholars also discussed whether a person merely engaged in nursing the sick has an excuse thereby to break their fast, or whether their nursing must also involve the added difficulty of sustaining and providing for the sick person. This added difficulty would then allow them to break their fast to carry out their responsibility with greater energy. For example al-Quhistani inclined toward the first opinion, whilst Ibn Abidin favoured the latter.

On the level of acts of worship, the jurisprudence of contingencies activates the level of concessions; assigns to the universal principle of necessity the power of adjudication; and brings into force the higher purpose of facilitation. It is here that the first of

¹³ Translator's note: That is to say, it declares something in relation to the actions of legally responsible person (*mukallaf*) as a cause, condition, hindrance, strict law and concessionary law as opposed to *khitab al-taklif* which is the divine communication that relates to defining law, that is to say, it defines something in relation to the actions of legally responsible person (*mukallaf*) as obligatory, recommended, permissible, reprehensible or prohibited.

the maxims of the jurisprudence of contingencies come into effect, namely: “hardship begets facility,” and “if the matter is constricted, it expands,” as al-Shafii (may God be pleased with him) said. It is one of the five foundational maxims upon which Islamic law is founded and is extrapolated from the texts of the Quran and Sunnah.

The Quran teaches: “So truly where there is hardship there is also ease; truly where there is hardship there is also ease.” (Quran 94:5-6); “[God has] placed no hardship in your religion” (Quran 22:78); “God wants ease for you, not hardship” (Quran 2:185).

The Sunnah teaches: “Make matters easy for people, and do not make them difficult for them.”¹⁴, “God loves that His concessions be taken just as much as He loves that His strict laws be performed.”¹⁵

And there is more, as regards the proofs which al-Shatibi has enumerated in his book *al-Muwafaqat* and upon which he has established facilitation as one of the higher objectives of the Shariah.

The importance of facilitating people’s affairs has meant that Islamic law classically valued the difference of opinion between scholars as the faithful were encouraged to choose an easier ruling as a dispensation taken from another legal school. Moreover, where there is disagreement on a point, there is scope for find a suitable ruling, unlike when there is a unanimous consensus or where disagreement is prohibited.

This is why in the Emirates Fatwa Council – with the aim of putting into operation this higher objective and applying this maxim – we called attention to the concessions which the Shariah has granted in terms of abstaining from congregations and suspending such congregations to safeguard the health and wellbeing of the worshippers; in terms of following the voice of the Imam without seeing him directly and without the rows of worshippers connecting one to the other by relying on the sound position of Malik’s school. It is recorded in the *al-Mudawwana* that Malik said: “there is no problem with praying in closed-off houses following the prayer of the imam, as long as it is not the Friday prayer itself, if they can see the movements of the imam and the people from windows or apertures belonging to them, or special chambers, or by merely hearing his *takbir*¹⁶ and so they make *takbir* with him, and bow when he bows and prostrate when he prostrates, it is permissible. The wives of the Prophet (God bless him and his kinfolk and grant them peace) followed the prayer of the imam from their apartments. If the homes are in front of the imam, I dislike this be done. However, if they do pray in such a situation their prayer is complete and valid. It has come to my knowledge that

14 Al-Bukhari (69), Muslim (1734).

15 *Targhib* 1/147. Likewise, Imam Ahmad narrates that: God loves [for His servant] to take licenses just as much as He hates performing acts of disobedience” Musnad (5703).

16 Translator’s note: The words “*Allāhu akbar*” ‘God is greatest’ said when moving from one position of the prayer to another)

the house of the family of Umar ibn al-Khattab (may God be pleased with him) which was in front of the mosque's direction of prayer, they used to pray in it following the prayer of the imam in the past; though I do not like this to be done today. However, if one does so his prayer remains valid.”

Nonetheless establishing the Friday prayer at home is not valid, just as it is not permissible to pray the Friday prayer at home following the voice of the imam, or via direct transmission. This is because the Friday prayer has its own special format which differs from that of the five daily prayers.

Just as the higher objective of facilitation is applied to the rulings of prayer, it is likewise applied to fasting, via both scripture itself and scholarly extrapolation. God Almighty says regarding fasting:

It was in the month of Ramadan that the Quran was revealed as guidance for mankind, clear messages giving guidance and distinguishing between right and wrong. So any one of you who sees in that month should fast, and anyone who is ill or on a journey should make up for he lost days by fasting on other days later. **God wants ease for you, not hardship.** He wants you to complete the prescribed period and to glorify Him for having guided you, so that you may be thankful. (Quran 2:185)

Thus, the negation of hardship and affirmation of ease as a higher objective is a general feature in the Shariah and a specific feature in the laws of fasting. For this reason, we issued in the Council the fatwa that those infected with COVID-19 are given the ruling of a sick person, such that it is recommended for him to break his fast if it poses hardship for him and it is obligatory for him to break his fast if fasting is going to aggravate his illness or expose him in danger. The would be ascertained through the expert opinion of doctors or relevant government bodies.

We also called attention to the opinion of some of the early generations of scholars such as Ibn Sirin and al-Bukhari who viewed it permissible for the sick person who does is not find fasting difficult to break his fast. This is because rationale behind the concession according to them is the mere designation of the term “sickness”, without consideration for the level of sickness. In fact, anything to which the term “sickness” applies constitutes an excuse for breaking fast.

Likewise, we issued a fatwa allowing medical crews and personnel who oversee patients (including doctors, nurses, paramedics, and so on) and those who are on the frontline of combatting the pandemic to break their fast on the days that they are on duty if they fear that their fast would weaken and compromise their immune system or cause them to not take proper care of their patients. We based our opinion on the school of Abu Hanifa, as Ibn Abidin reports from the Hanafi scholars that nursing and looking after the sick constitutes a valid excuse that permits breaking the fast. He states:

[(or a sick person) fearing aggravation] or slowing down the recovery or an organ becoming worse or aching of the eye, or a wound, or headache, or some other thing. And likewise if he is nursing the sick. (Quhistani (*T*))¹⁷ Ibn Abidin adds, “that is, by nourishing, sustaining and providing for them, and his fast would necessarily result in them being neglected and in their demise because he would be too weak to take care of them and sustain them if he fasts.”

This comment of Ibn Abidin is questionable.¹⁸

As for the rulings related to zakah, the concession for paying it in advance of the due date rests upon the hadith of al-Abbas ibn Abd al-Muttalib (God be pleased with him) in which the Messenger (peace and blessings be upon him) gave him a concession to pay his zakah in advance. Scholars have differed as to the nature and form of paying zakah in advance, with some construing it in a broad sense and others in a narrow sense. They have considered issues such as the repercussions of paying zakah in advance; asking, for example, what happens if the property you paid zakah for perishes before the due date of zakah (i.e. so that zakah is now no longer due on it, though an amount has been paid forward), or whether someone who has paid an amount forward and then becomes needy can request to have his zakat returned to him to help with his newfound expenses?

This was a matter about which Imam al-Haramayn al-Juwayni had complained concerning the confusing nature of the source texts and the scholarly “stumbling” in his school’s position, as he expressed it. Is it a true advance payment or does it have some unique ruling? So, in this issue are we to look at the criterion of closeness and remoteness, according to the maxim:

Is something that is close to something else the same as it [in terms of legal ruling]? Like the one making intention [for a devotional act close to the time the intention for that act is due] or cleansing the contaminated private part with rocks or paying *zakah*¹⁹

Or, in this instance are we to look simply at it occurring properly and correctly at the time it is taken out, and then that time is actually the time it is due? Furthermore, what is the angle of preferential reasoning that the Malikis follow in differentiating between the item being present and intact with the poor and needy or with the sultan and it having already been ‘spent’?

17 Al-Tahtawi’s commentary on the *al-Durr*.

18 Because he added the condition of having to monetarily spend upon the sick, not merely care for them as in the case of a medical worker. (Trans)

19 From al-Zaqqāq’s poem on legal maxims (Trans.)

As for the concession to delay the payment of zakah, this is based upon what Abu Ubayd reports in the *Amwal* of Umar's (God be pleased with him) concession to delay the zakah during the Year of the Dust Storms.²⁰ Such a delay is valid according to most Hanafis.

As such, advance payments for the benefit of the poor and needy could be considered commendable and meritorious given the widespread unemployment that has resulted from the pandemic. On the other hand, delayed payment could inadvertently benefit financiers and investors following liquidity crises and commodity slumps, advantaging them when the funds were intended to benefit the receiver. This leads to a confluence of impediments and causes, not in the Islamic legal and jurisprudential sense, but from a practical perspective which calls for independent juridical reasoning (*ijtihad*) and varied solutions.

As for the rulings of Hajj and Umrah, we stressed in the Emirates Fatwa Council upon the importance of abiding by the decision of the government of the Custodian of the Two Holy Sanctuaries. This decision stems from its sovereign and legal responsibility to look after the Hajj pilgrims and Umrah visitors and help to safeguard the health, wellbeing and safety of all. The decision that was issued this year to restrict Hajj to residents only and to curtail the numbers of pilgrims was informed by the possibility of a disease outbreak in their own countries. This is therefore an example of *ijtihad* based on public wellbeing emanating from those qualified and entitled to so and occurring within its appropriate sphere. Moreover, it is an *ijtihad* that is regulated and rendered more precise by proper Shariaah regulation and sound scientific methodological precision. It keeps in mind that the Hajj and upholding the Hajj event and season are considered by scholars to fall in the category of communal obligations such that if it is performed by some the obligation is omitted from the rest of the community. The learned Maliki scholar, Khalil, states:

“... just like visiting the Kaabah, (it) is considered a communal obligation”

His commentators say:

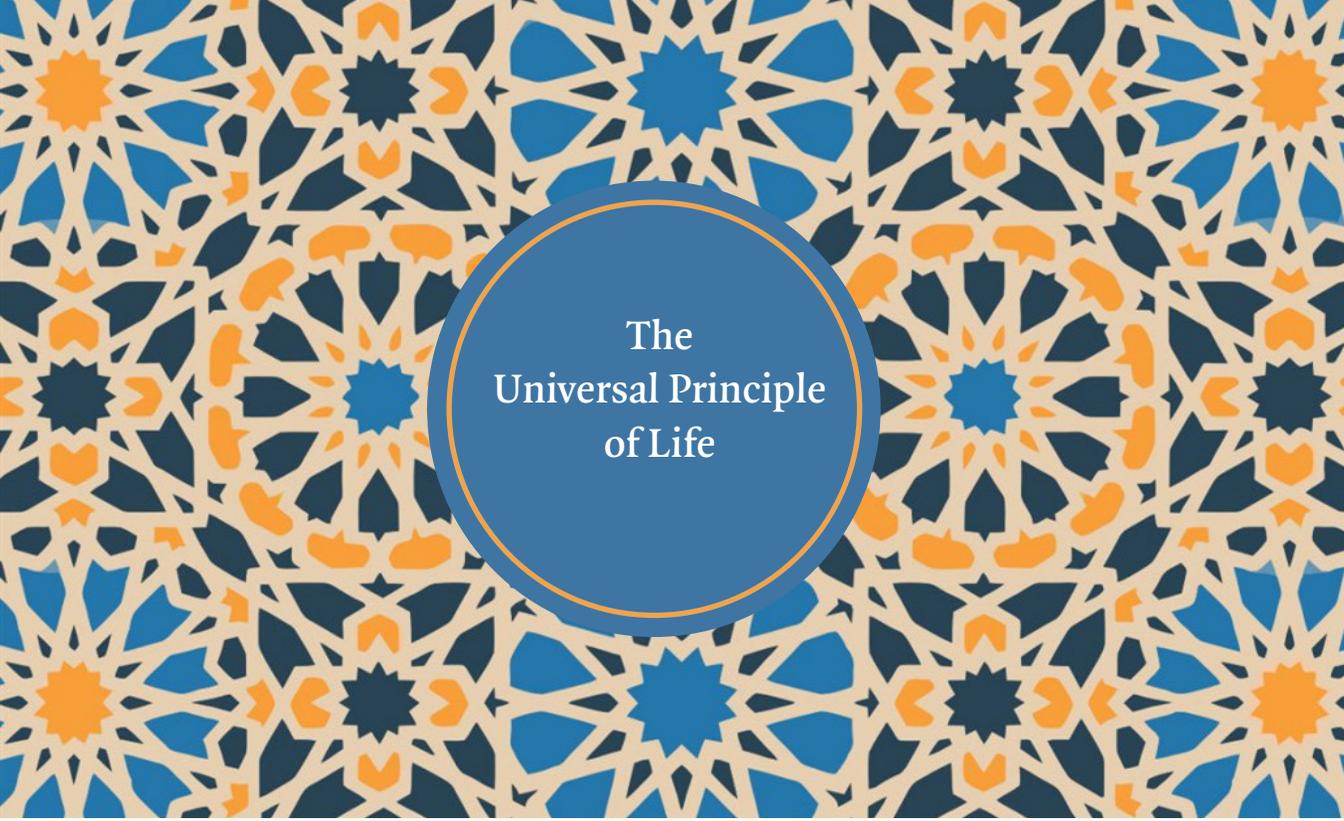
“that is to say, upholding the event and season through Hajj each year [al-Dard-ir], and the meaning is not visiting it for *tawaf* (circumambulation of the Kaabah) only or for performing Umrah. [al-Dusuqi]”

20 Translator's note: Abu 'Ubayd says: Likewise, delaying zakah is valid if the imam considers it to apply to zakāh due on livestock, due to a disaster that befalls people, and causes their land to become parched. So the Imam delays the payment of zakāh on livestock until the land is green and fertile. He then takes the zakāh due from the people through a comprehensive payment in the following year, just as 'Umar did in the Year of al-Ramadah (Ashes/Dust Storms). A tradition is reported from the Prophet (God bless him and grant him peace) which supports Umar's decision to do so. *Al-Amwal*, p. 705. The 'Year of the Ashes/Dust Storms' refers to a year of extreme drought during the reign of Umar, God be well pleased with him, that caused the earth to become parched and blackened like burnt and black ash.

With this sound and rational decision, the obligation demanded by the sacred law and fulfilled by those fit and qualified to establish the rites and rituals, took place, with no specific number of attendees being prescribed by the sacred law. The sin of leaving aside the obligation has therefore fallen from the Muslim community because they have a valid excuse under the sacred law. This is especially the case if we keep in mind the well-known scholarly disagreement about the individual obligation to perform Hajj: is it immediately effective, or can it be delayed?

Many scholars such as al-Shafii and the West African Malikis held that the obligation to perform Hajj for those able is based on flexibility and reprieve. Their evidence for this was that the Prophet (peace and blessings be upon him) did not perform the Hajj for several years after it was made obligatory. They held that if it was an immediate obligation then he (peace and blessings be upon him) would not have delayed it, and that if he delayed it for some excuse, he would have made this excuse known.





The Universal Principle of Life

The universal principle of life is the most central issue of the pandemic. The objective of facilitation in the Shariah teaches us to place the universal imperative of life before all particular issues of the law, including those related to the universal imperative of religion. Here we need to draw the audience's attention to a matter that often confuses some interpreters. Scholars mentioned that the universal imperative of religion is placed *before* the universal imperative of life, as the author of *Maraqi al-Suud*²¹ states:

Religion then life, then intellect, offspring, and wealth are considered necessities (universal imperatives).

Arrange them in this order and conjoin honor on an equal level with wealth, and you would have fulfilled (what is required)

Protection of these interests is an absolute obligation upon man in every law from the (previous) religions.

However, what is meant by religion in this context is faith, not the entire Shariah with all of its branches and particulars. Rather, what is placed before the universal principle of life is faith which all the messengers were addressed with:

²¹ *Maraqi al-Su'ud*

In matters of faith, He has laid down for you [people] the same commandment that He gave Noah, which We have revealed to you [Muhammad] and which We enjoined on Abraham and Moses and Jesus: ‘Uphold the faith and do not divide into factions within it.’ (Quran 42:13)

Protecting the lives and safety of people and preventing the spread of contagious disease is a sound Shariah course of action that is part of the appropriate and effective underlying legal cause.

We must also clear the confusion some people have here regarding the issue of contagion. The hadith, “there is no contagion...” which scholars have written much about throughout Islamic history, and whose narrator Abu Hurayra (may God be pleased with him) later recanted, contains a logically required meaning (*iqtida*). *Iqtida* is when what is uttered indicates something elided without which the statement is incomplete and does not make sense from a logical or Shariah perspective. This is the case with the hadith, “there is no prayer for the one neighboring the mosque, except inside the mosque.”, that is to say, “there is no prayer *that is perfect and complete* for the one neighboring the mosque, except inside the mosque.”

The Prophet’s statement (peace and blessings be upon him) in the hadith narrated by Hafsa, “there is no fast for the one who does not make an intention the night before” means “there is no *valid* fast” for such a person. Likewise, the hadith, “mistakes and forgetfulness have been lifted from my community” means “*the sin of* mistakes and forgetfulness”. The negation here is not a negation of the essence of a thing. For this reason, the negation in the hadith, “there is no contagion...” is a negation of the primary nature, not a negation of the natural occurrence. It has to be interpreted as Ibn Rushd says²² in the sense of him (peace and blessings be upon him) negating that one thing should have a contagious effect on another thing by affecting it and acting on it directly by itself and of its own accord, since there is no agent in reality except God (may He be exalted). The Prophet (peace be upon him) thus refuted the belief of the time of pre-Islamic ignorance that contagion had independent effect and influence outside of God, just as he refuted the statement, “We were given rain by such-and-such a star.” Thus, the Prophet (peace and blessings be upon him) did not negate the existence of that which exists in terms of what gets transmitted, transferred and passed on in a location or through intermixing, mutual touching or smell. Rather, he corrected the misconception about agency and causation. For this reason he (peace and blessings be upon him) commanded us to flee from the leper just as one flees from imminent harm and death, and likewise to flee from other visible illnesses, as a means of fleeing “from one Decree of God to another Decree of God”. Similarly, he also prohibited the one who has sick camels to put them with the one who has healthy camels, in order that the healthy camels not become sick, and a sick person from visiting someone who is well

22 *Al-Muqaddimat al-Mumahhidat*

so that those who are well do not become sick. Al-Nawawi reconciled and harmonized between these hadiths.

This method of harmonizing between seemingly contradictory hadiths, between those that negate something and others that affirm it, is the one most congruous with the methodology of the Shariah. This is because the sacred law did not come to negate causation or render natural principles and laws false and invalid. Rather, it came to affirm causation and these natural principles and laws by way of expanding the locus via the effective cause:

The effective cause may render specific or may render general its source text, but it cannot render (the source text) null and void²³

The locus here is, “one who has sick camels should not go with them to the one who has healthy camels”; “flee from the leper like you would from a lion”; and the prohibition of entering a land in which the plague has broken out. If the effective cause or *ratio legis* here is fear of contagion, then being in close proximity to those who are ill is prohibited. From here one can deduce the importance of maintaining social distancing, lockdowns and the restriction of movement.

Islamic legal theory requires that we identify and isolate the effective cause through eliminating differences and discrepancies and deeming them insignificant, or what Ibn Rushd considered to be from the category of indicating the general intent through a particular word. On this basis, everything that leads to contagion is prohibited.

Pre-Islamic understandings of contagion viewed the phenomena somewhat superstitiously, and not as something which could be viewed under a microscope (that is, the movement of extremely small particles observable *via* sense perception). This shifts the idea of contagion from the realm of metaphysics to the sensory world and allows us to deal with it in the same way as we deal with all other diseases.

Some classical scholars like al-Sanusi held that fear of infection should not permit us to stop visiting our sick relatives, which is a religious duty, because this fear would close the door on acts of kindness and goodness. It appears that al-Sanusi’s words are based on a belief that contagion is a weak causal probability, whose occurrence is doubtful, if at all possible. Theologians held that positing unseen factors as effective causes is improper. However, our understanding today of the way in which illness spreads has become much more precise, and the level of probability we attach to its occurrence has risen to a higher degree. Thus, there is no reason to see it as any different to other forms of danger and harm, like falling from a height or being burned by fire.

Based upon this, the Islamic legal ruling on protective and safeguarding measures, es-

23 *Maraqī al-Su’ud*

pecially if issued by the ruler, ascends to the rank of religious obligation, and their contravention to a religious prohibition. This is because they belong to the Shariah rulings regarding the protection of life. These are necessary rulings, not merely advice or guidelines. In fact, punishment is consequently sanctioned by the sacred law for those who willingly contravene them. Whoever is infected is therefore responsible for their actions, and they are liable for damages and losses. This is a responsibility with repercussions in the hereafter; that is to say, it warrants punishment for the one who wilfully disobeys based on his circumstances.

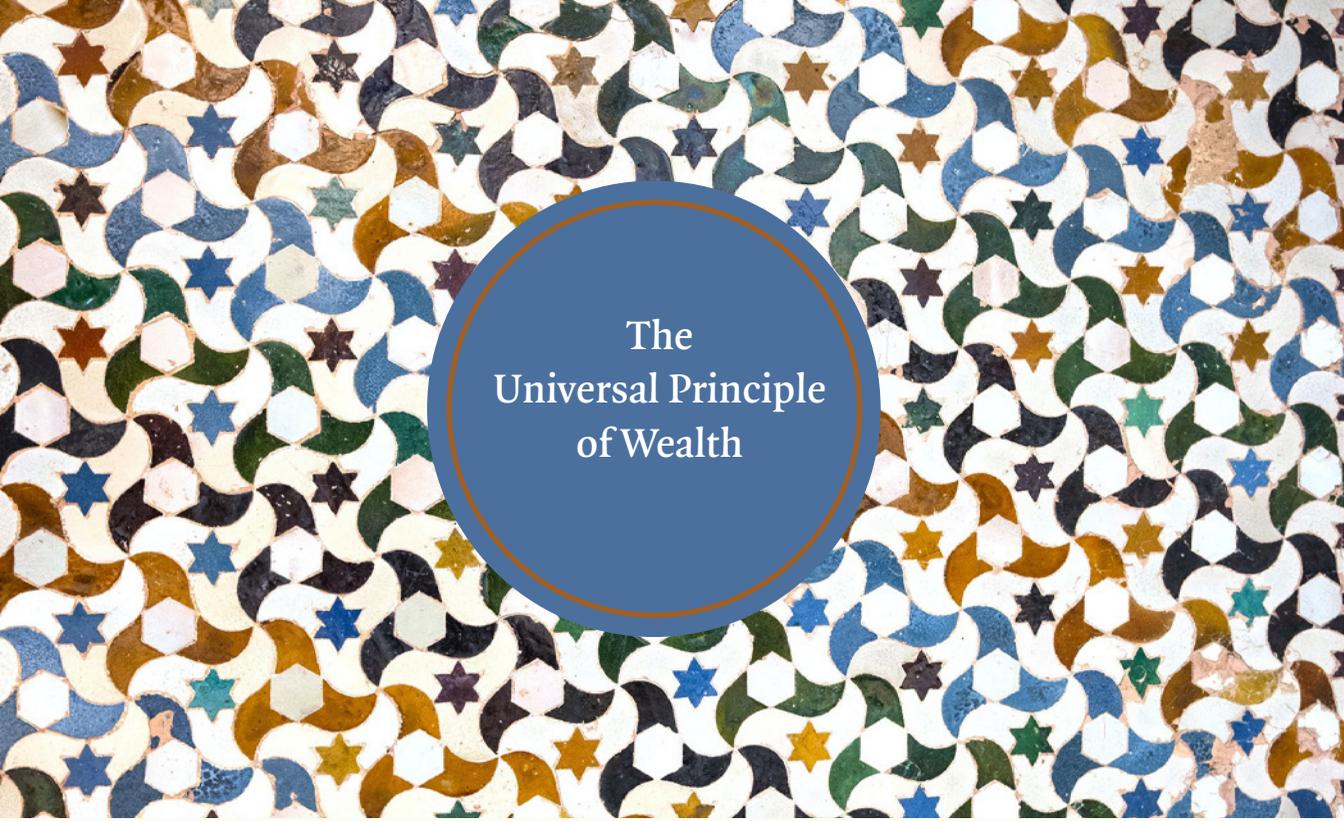
There is no doubt that the universal principle for the protection of life means the preservation of life based on both duties of commission and duties of omission: duties of commission, by developing the human being's abilities to resist and withstand this illness, and duties of omission: by avoiding all things that can lead to the illness.

The Maliki jurists and others have clearly stated that there is liability for losses incurred because of a transgression, even when they are unintentional and unpremeditated. This is because this liability is from the divine communication that relates to declaratory law.²⁴ In fact, some of the Malikis read this very broadly and considered that someone who is known to possess the 'evil eye' can be liable in damages to the one whom he afflicts with his eye.

As for the one who spreads his disease intentionally, it is most befitting that he be subject to discretionary punishment as a deterrent measure because he has contravened the prohibition, "one who has sick camels should not go with them to the one who has healthy camels." The ruling of prohibition can be extended to it by way of analogy by eliminating the discrepancy between the two cases *a fortiori*, because the former case involves wealth and latter affects life. This legal argument is rendered stronger by the Lawgiver's prohibition of leaving or entering a land afflicted with the plague. From the foregoing it is clear that the issue turns upon two principles: negating harm, and a clear analogy drawn between two things while negating the discrepancy between them.



²⁴ Translator's note: a communication in which the Lawgiver declares losses due to transgression as a cause (*sabab*) for liability even when they are unintentional and unpremeditated.



The Universal Principle of Wealth

In addition to these aspects of the protection of religion and life, there is another aspect that is no less important to the jurisprudence of contingencies related to contracts and legal transactions. It is based upon the principle, “harm is to be removed.” This is an affirmative universal that jurists drew from a negative universal reported from the Prophet (peace and blessings be upon him): “there is no inflicting harm nor reciprocating harm.”²⁵ This principle is taken from the Holy Quran by way of induction, from the Sunnah by way of an explicit and categorical statement, and from scholarly consensus by way of transmission. Al-Qadi Abu Bakr ibn al-Arabi said, “harm is impermissible by consensus.”

The jurisprudence of contingencies as it applies to contracts and legal transactions closely resembles what is known in modern western law as the theory of *force majeure*. It is a theory that arose in the West and Western legal systems differed regarding it for some time. However, they were adopted by some Arab civil law codes, such as the Egyptian Civil Code after al-Sanhuri, and they considered it to be in line with the Shariah. Natural hazards legally termed ‘an act of God’ are usually considered among the *force majeure* in these legal systems.

25 Narrated by Malik in the *al-Muwatta* as a *mursal* report, and it was connected by others with chains containing weak links. However, it was considered rigorously authenticated by al-Hakim and sound by al-Suyuti.

Force majeure events are extraordinary events or circumstances that are unforeseen and from which we cannot ordinarily protect ourselves. In the event of their occurrence carrying out one's legal obligations becomes, if not impossible, extremely difficult. For example, the debtor becomes liable for tremendous losses²⁶ and, in accordance with the principles of equity and fairness, "the judge may, in accordance with the particular circumstances of the case, and after striking a balance between the interests of both parties, reduce the massive liabilities to an acceptable level."²⁷ This was from the text of the Egyptian Civil Code. In Article 273 of the Emirates Law of Civil Transactions it is stated:

1. In bilateral contracts, if a *force majeure* arises that makes the performance of the obligation impossible, the corresponding obligation shall, be extinguished and the contract ipso facto rescinded.
2. If the impossibility is partial, the consideration for the impossible part shall be extinguished...²⁸

The theories of *force majeure* and act of God strive to correct an imbalance in the contract as a result of a matter that was unforeseen. How do we address the shortcoming and tackle the unforeseen emergency? How do we assimilate to the new situation so that it can be brought closer to normalcy, in as much as possible? This involves a search for alternatives, jettisoning problematic clauses, and performing the lesser of two harms.

The great scholar al-Sanhuri considered the theory of *force majeure* to apply to the excuses in lease contracts which Ibn Abidin summarized stating: "every excuse that hinders delivering upon the contract in a manner unaccompanied by some harm afflicting the contractor's person or their wealth affords the contractor the right to rescind the contract." The same applies to the case of plagues afflicting crops in Islamic jurisprudence.

However, it appears the rulings related to contingencies in the Shariah, as Ibn Rushd calls them, are broader, more equitable, and also more flexible than the theory of *force majeure* in civil law. This is the case even when they both agree upon the principle of re-examining the effects of the contract causing undue hardship on one of the parties; amending it to remove harm from both parties; and the condition of exceptional circumstances. However, the condition that these circumstances be general is not a condition in many issues founded on the principle of emergency. Rather this theory encompasses what contemporary laws term acts of God, *force majeure*, as well as prospects that are more general than these two.

26 *Nazarrīyat al-Dhuruf al-Tari'a*, Abd al-Salam al-Turbani, p. 109.

27 *Ibid.* p. 105.

28 Federal Law No. (5) of 1985 On the Civil Transactions Law of the United Arab Emirates

It is apparent that Islamic jurisprudence is unique in the way in which emergency rulings fit within the holistic system of the Shariah in a manner that unites many branches and subsections of it. This is because of the flexibility afforded to the definition of pandemic in Islamic jurisprudence. Contingencies are not limited to blights that affect crops but have been read in an expansive sense to include the rulings related to all kinds of contingencies, as Ibn Rushd termed them.

In the words of the scholars we find an expansive reading of term ‘pandemic’ or ‘plague’ that includes unforeseen events and contingencies which may cause losses to one of the contracting parties, even if the subject of the contract was for other than harvests and crops. Hence, the death of silkworms allows the buyer of berries²⁹ to return these berries to their seller and rescind the sale. Likewise, someone who leases a bathhouse or hotel and then finds the town empty during holiday season because of some trouble affecting the area, or someone who leases a laundry and then has a competitor open up a laundry next to him decreasing his income – given that this was not anticipated – may consider their case to fall under the category of ‘pandemics’ indicating the flexibility of this concept.

Decades ago, I issued a fatwa that hyperinflation leading to the depression of currencies and a loss of their value may be considered a plague that affects the repayment of debts. I considered this opinion to be more just and more correct in situations when paper currencies crash since these currencies have no value in and of themselves. We considered the disagreement regarding currencies to be based in understandings of context and application of law.

I demonstrated in my answer about the additional amount that a debtor pays back to his creditor in order to make up for the harm the latter has suffered that it is an addition in form only, not in substance. This is because the relevant factor here is the value which has become the standard of measure, like the unit of measure for which the weight difference of two [mineral] currencies is ignored (according to those scholars that held this to be the case), or the measure of weight for which the formal amount of currencies is ignored.³⁰

Considering these suggestions, judges and muftis can examine novel contingencies and cases from a unique perspective to ascertain the effective legal cause. Here it is the presence of harm that necessitates partially or wholly rescinding a contract or terming it non-existent. They may do this by extending the scope of what is understood by the term ‘plague’ as al-Maziri and al-Tunisi of the Malikis have done, or by finding a new

29 Translator’s note: Which serve as food for silkworms.

30 Translator’s note: in the era before paper currency, gold and silver currencies were traded and exchanged based either on the perceived value of the coins themselves, ignoring the actual ‘weight’ of the metals therein; or, on the contrary, only according to the weights or volumes of the given metals therein without regard to ‘amounts’ the coins represented in their native currencies.

universal designation to refer to this broader meaning. This is all the more crucial given what we have said before of the encompassing nature of the Coronavirus pandemic in its effects upon all the universally protected interests countenanced by the sacred law.

The sphere of the universal principle of reason and offspring incorporates investigations of mental health and wellbeing and familial relations that have been affected by the pandemic. Are people's actions and behaviours under severe psychological stress and mental pressure, as regards divorce and marital discord, to be looked at as having legal repercussions?

This is because among the effects of the pandemic and the quarantine and lockdown that the pandemic has forced upon people is an increase in family fights and strife. Concerned organizations worldwide have noted an increase in the rates of domestic violence and the rates of divorce. This makes it incumbent on religious scholars, preachers, social scientists, expert educators, and psychologists to search for the correct ways and means to create awareness and educate in order to inculcate a spirit of serenity and harmony in the family. This is so that it can be what it is supposed to be: a source of psychological peace and tranquility for the soul.

Are these psychological and material impacts a sufficient reason to free members of the family from their responsibilities and the consequences of their actions? This is especially pertinent in the domain of divorce, given the fact that most scholars hold the view that a divorce pronounced by someone who is angry is nonetheless effective and legally binding.

This is in contrast to those who interpret 'being closed-off' in the hadith as anger.³¹ Is it possible to interpret the words of Ibn al-Qayyim and Ibn Abidin in his *Hashiyah* as not contravening the scholars before who stated categorically that a divorce uttered by an angry husband is effective and that 'being closed-off' here means 'under coercion,' since they are speaking of a state in which anger causes a person to lose his mind and self-awareness as al-Hafiz Ibn Hajar and others have clarified. In other than this extreme state, his divorce is effective, as are his oaths and all transactions that stipulate consent and agreement.

It is our opinion that legal rulings cannot be made to hinge on inward and psychological states leaving aside their outward manifestations and effective causes for which it is stipulated that they be open and manifest and constant and regular. Thus, for example, if anger is unaccompanied by some disorder or illness such as diabetes for example, it

31 Referring to the ḥadīth narrated from 'Ā'isha (peace be upon her) that the Messenger (God bless him and grant him peace) said: "there is no divorce or freeing of bondsmen whilst being closed-off (*fi ighlāq*)." It is reported by Ibn Mājah (2046) and others. (Trans.)

cannot be an effective cause without psychically manifesting and because its bouts are not constant and regular.

Perhaps the way out of this conundrum is not to generalize the ruling and instead give a single individual ruling. That is to say, looking at each person's case and every questioner's circumstances from the point of view of realizing and ascertaining the relevant universal principle, legal maxim, or effective cause in the particular case being presented so as to arrive at the proper legal conclusion, in order to either be spared from divorce or to be legally bound by it.

It has not been my aim to issue in this discussion any fatwas or endorse any particular legal rulings. Rather, I invite scholars to practice *ijtihad* (independent legal reasoning), just as the scholars who came before them practiced *ijtihad*. Thus, they broadened concepts, ascertained the relevant universal principles, legal maxims, and effective causes latent and operating in the new cases and situations that they were constantly being presented with, and effectively derived the branches of sacred law from their foundational principles. They connected rulings and their objectives with the particular branches of law and their principles, and they developed laws to encompass all contingencies. Contingencies have their legal rulings, their novel considerations, and their appropriate fatwas. It is necessary for us today to uncover them and take upon ourselves to elucidate them. Likewise, it is incumbent upon us to teach people the correct understanding of predestination and establish in their hearts confidence and serenity which protects them from despondence and hopelessness.

I distract my soul with hopes, waiting for their manifestation. How constricted life would be, were it not for the expansion of hope!³²

Likewise, is it incumbent upon us to remind humanity of its excessive ignorance of virtue and noble character which was established by the Prophets (peace be upon them); those values of goodness, love, and mercy which are the unfailing support of human civilization, especially in crises and confounding darkness. We likewise remind ourselves of man's intrinsic poverty in the face of the mercy of the All-merciful, his need to renew repentance, to seek God's forgiveness, and to petition Him (Mighty and Majestic) and to seek the support of His power, His all-encompassing grace, and His abundant mercy. This is because He, glory be to Him, is the All-gracious who is capable of all things. He has not sent down a disease except that He also sent down its cure. We should therefore not lose hope of His mercy or despair of His generosity. God (Most High) says, "and do not despair of God's mercy – only disbelievers despair of God's mercy." (Quran 12:87)

³² Line 38 of the poem *Lamiyyat al-Ajam* by the Vizier Muayyid al-Din Abu Ismail al-Husayn bin Ali al-Isfahani who was known as al-Tughra'i (d. 515 AH).

In closing we pray that God protects our homelands and preserves His blessing of safety and wellbeing upon us; that He remove from us all worry and grief, and that He treats all of mankind with His subtle grace. Certainly, He is the One who is capable of this and omnipotently able to do so.





H.E. Shaykh Abdallah bin Bayyah is recognised by Muslim scholars around the world as perhaps the greatest living authority on the Islamic legal methodology known as *Usul al-Fiqh* (Principles of Jurisprudence). Beyond that, he is known for his scholarship drawing on scripture and traditional texts across all four major Sunni schools of jurisprudence to address the crucial contemporary concerns of Muslim communities. In recent years, he has been the driving force behind the establishment of the Abu Dhabi Forum for Peace, which seeks to unite Muslim scholars around the world in pursuit of peace, and to address the crises facing Islamic communities worldwide.

Born in eastern Mauritania in 1935, the Shaykh grew up in a family known for its grasp of the Mauritanian classical curriculum. His father, Shaykh al-Mahfudh bin Bayyah was regarded as one of the great West African scholars of his time. From an early age, the Shaykh demonstrated his exceptional memory and understanding of the Mauritanian texts.

Under his father's tutelage, he developed an advanced understanding of Arabic grammar and rhetoric, and knowledge of pre-Islamic Arab poetry. He also developed an advanced understanding of the Qur'anic sciences: legal theory, syntax, language, orthography and the ten forms of Qur'anic recitation. He specialised in the Maliki school of jurisprudence, and was qualified to give authoritative legal opinions (*fatwas*).

In his early 20s, he was selected as part of a group of scholars to go to Tunisia for training in modern legal systems, which were to be introduced to Mauritania. He graduated at the top of his group, and on his return to Mauritania was appointed a judge, rising to become Minister of Justice, Minister of Islamic Affairs, and eventually Vice President.

When some government officials criticised his lack of fluency in French, he taught himself the language by listening to French radio with a dictionary in hand. He later surprised his critics by addressing a ministerial meeting in the language. His mastery of French has allowed him to study European thought and the history of ideas. He is rare among contemporary Muslim scholars for his knowledge of the work of Western philosophers and social theorists.

In 1978, his government was overthrown in a coup, and he was imprisoned for some months. On his release, due to ill-health, he left politics to devote his time to study and teaching, joining the faculty of King Abdulaziz University in Saudi Arabia. Here, he developed his expertise in all four major schools of jurisprudence. This allows him to combine the study of the scriptural sources of Qur'an and Hadith, the various schools' approaches to *Usul al-Fiqh* (the theoretical foundations of jurisprudence), and Maqasid al-Shariah (the purposes of Islamic law). This breadth of study has allowed the Shaykh to develop a universal framework in which Islamic jurisprudence can be adapted to local contexts while maintaining its essential principles and purposes, and ensuring its continued relevance in the lives of an increasingly diverse global Muslim population.

The Shaykh has developed theories of Islamic jurisprudence in secular or non-Muslim societies, called the Jurisprudence of Minorities (*fiqh al-aqalliyyat*). He is also an outspoken critic of terrorism, authoring several articles and books exploring Islamic responses to the issue. He has applied this work practically, not least in the successful efforts to secure the release of French war correspondent Florence Aubenas, and her translator Hussein Hanun, in Iraq in 2005.

Over the past 25 years, the Shaykh has taught students who have become some of the most prominent scholars in the Middle East and North Africa. In the late 1990s, he also started to visit the West, particularly teaching British and American students, and gaining a following amongst prominent Western Muslim leaders. He has written several books and hundreds of articles and essays, mostly in Arabic, which are used by scholars around the world.

The Shaykh's work has not been focused on scholarship for its own sake, but on applying it to address some of the most pressing issues facing global Islam. In 2008, he became the founding President of the Global Centre for Renewal and Guidance, a London-based think tank that applies scholarship to strategic solutions to pressing

intellectual and spiritual issues facing global Islam. This reflects the Shaykh's belief that ideas can only be defeated by ideas, and that Islamist extremism must be answered by sound reasoning drawn from orthodox, accepted sources of Islamic jurisprudence.

This approach was applied in Mardin, Turkey, in 2010, when his organisation convened a conference to examine a *fatwa* issued by the 14th century scholar Ibn Taymiyyah. His 'Mardin Fatwa' is widely used by jihadi groups to justify attacks on both non-Muslims and Muslims who do not follow their understanding of Islam. The 2010 Mardin Conference revealed that a transcription error had been introduced in a 1909 edition of Ibn Taymiyyah's *fatwa*, turning the verb "to treat" into the verb "to fight", and that jihadi groups were relying on the incorrect version. Under the Shaykh's leadership, the conference published a report ("Challenging the al-Qaida Narrative: The New Mardin Declaration") attacking the jihadi understanding of the *fatwa*. Three separate spokesmen of al-Qaida responded to this threat, attacking Shaykh Abdallah bin Bayyah by name.

In 2014, the Shaykh established the Abu Dhabi Forum for Peace (FFP) in Abu Dhabi, under the patronage of Sheikh Abdallah bin Zayed, the Foreign Minister of the United Arab Emirates. The vision of the FFP was to address the crises facing global Islam from a framework of Islamic tradition and legal theory, applied to local contexts. Over 1,000 of the world's leading Islamic scholars from a variety of traditions, as well as academics and thought leaders, attended the FFP's launch. The FFP is the first global gathering of scholars designed to provide a response to extremism, sectarianism and terrorism.

Since the 2014 Forum, the Shaykh has travelled widely to advance its work, in North Africa, the Middle East, Far East and the West. This included a conference with the African Union on tackling the religious conflict in the Central African Republic, and the release of the Chibok girls by the Nigerian jihadi group Boko Haram. He has led Imam training initiatives in the US, UK and Europe, and spoken widely on the issue of global peace, including at the World Economic Forum in 2015 and 2017, and at the UN Countering Violent Extremism Summit in 2015. In 2014, the Shaykh's work and that of the FFP were referenced by President Barack Obama at the UN General Assembly.

In January 2016, the Shaykh convened the Marrakesh Declaration, as the culmination of an effort running since 2011 to address the issue of violence and oppression against minorities in Muslim majority countries. The Declaration applied traditional Islamic texts, and in particular the Prophet Muhammad's Charter of Medina, to affirm the Islamic principle of equal citizenship as prescribed by the Prophet. It was signed by scholars and politicians from across the Muslim world.

In February 2018, following the Shaykh's initiative, hundreds of American religious

leaders, scholars and politicians, as well as others from around the world gathered in Washington DC to discuss the 'Alliance of Virtues for the Common Good'. This conference promulgated the Washington Declaration, calling on the leaders of the Abrahamic faiths to join together in a new Alliance of Virtues, using their shared values to promote the global commonweal.

The Shaykh has received multiple awards recognising his work, and serves in the leadership of many organisations seeking peace, including as one of four Executive Co-Presidents of Religions for Peace, the largest interfaith organisation in the world.





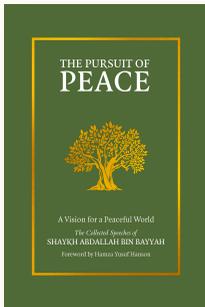
The Abu Dhabi Forum For Peace, under the patronage of H.H. Sheikh Abdullah bin Zayed Al Nahyan, Minister of Foreign Affairs and International Cooperation of the United Arab Emirates was established during the pinnacle of social strife in the Muslim world following the Arab Spring. The Forum works earnestly to bring an end to conflict and establish peace through facilitating spaces for dialogue and the dissemination of a discourse of moderation. It strives to allow its participants to put behind them the differences of the past and focus on a secure, peaceful societies future together.

The Forum takes an academic and theological approach to the problem of violence, holding that any violent act begins as ideology before emerging as action. Wars are waged in the realm of ideas before they devastate the physical world. Shaykh Abdallah bin Bayyah, the Forum's founder, teaches that we must construct defenses of peace in the heart and mind and inculcate a correct understanding of Islam. This is one of the primary roles of the scholarly elite and religious leadership in our time.

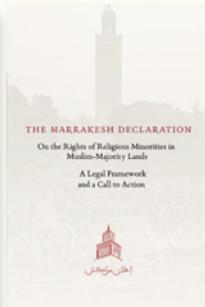
Likewise, the Forum focuses on securing the rights and safety of religious minorities living in Muslim lands. The Marrakesh Declaration launched in 2016 calls on Muslim states to accord the rights of equal citizenship to all minorities in their midst on the basis of the Charter of Medina and the Islamic values of benevolence, solidarity, human dignity, peace, justice, mercy and the common good. Most recently, the Forum has focused on elevating interreligious cooperation from the discourse of shared rights and responsibilities to the heights of a common conscience and genuine loving kindness towards the other. This is profoundly showcased in the promulgation of the 2019 Charter for a New Alliance of Virtue and the 2021 Abu Dhabi Charter of Inclusive Citizenship.



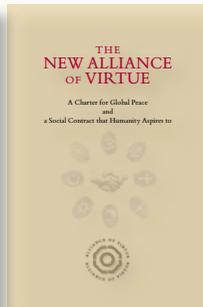
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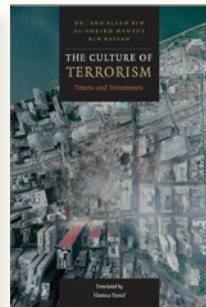
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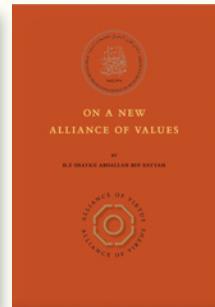
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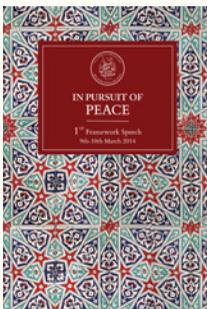
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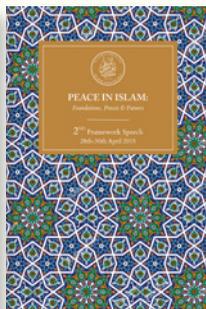
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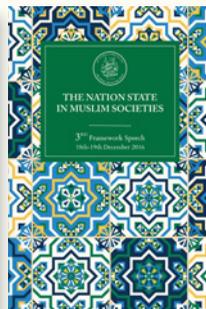
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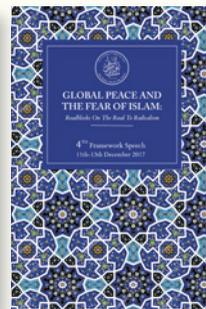
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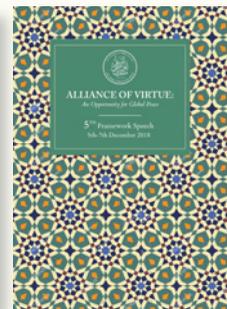
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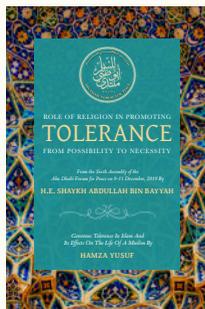
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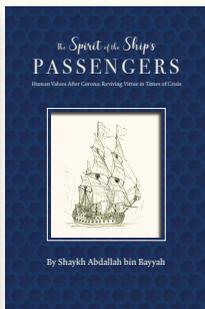
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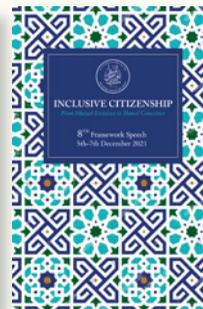
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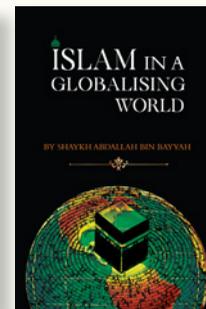
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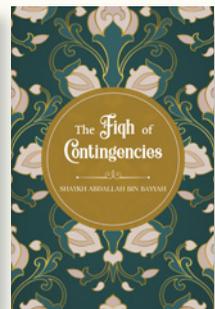
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