Beyond Textuality in Islamic Legal Exegesis: Intertextuality and Hypertextuality for Codifying Legal Maxims of Islamic Criminal Law

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Abstract

When studying textuality in the codification[1] of Islamic legal maxims (*qawā'id fiqhīyah*), it is worth researching how intertextuality and hypertextuality can be used as linguistic mechanisms to help understand Qur'anic texts and how such texts cohere to form legal maxims in Islamic criminal law. An in-depth study of medieval Qur'anic exegetes reveals the length to which Muslim scholars have gone to link texts to extract contextual meanings from the Qur'an and, perhaps, to codify Islamic legal maxims. Two such approaches are intertextuality and hypertextuality.

This article examines how the linguistic mechanisms defined herein complement juristic methodology in codifying Islamic legal maxims from Qur'anic exegesis. It explores several relevant exegeses, illustrates that maxims codified through intertextuality and hypertextuality are more far-reaching than those codified through textuality alone, and emphasizes these legal maxims' application to aspects of criminal law. I conclude that were it not for juristic methodologies, many objectives of Islamic law would have been misconstrued in the process of identifying the texts' meanings.

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Introduction

Recent scholarship from both Muslim and non-Muslim writers has called for moving beyond textuality[2] when interpreting the Qur'an[3] in order to relate the historiology of revelation to the present so that it can answer contemporary questions. Hassan Hanafi recounts the trends in Qur'anic exegeses throughout Islamic history, pointing out that classical approaches were shaped by historical events.[4] In his enumeration of the advantages of classical interpretations, he points out that the classical Muslim scholars' methodology not only furthered understanding of the revelation's historical, linguistic, and social circumstances, but also informed readers about "the objective setting of the text."[5] Apart from ascribing rigidity and strict adherence to literal interpretations and rejecting *tafsīr bi al-ra'y* (rational interpretation) in the early period of Islam,[6] we still found some interpretations in al-Tabari's (d. 923) work that imply rational interpretations.[7] Indeed, reference to the accession of revelation in Qur'anic interpretation constitutes relevance of contextual consideration when interpreting the Qu'an.[8] However, Hanafi laments the classical method's shortcoming, especially in the "longitudinal interpretation": It does not connect a whole theme in a concentrated manner that refers to other fragments of the theme found in other passages.[9] Thus there is a need for a "thematic approach." One of his suggestions to realize this goal is to use intertextuality ("read in conjunction and understood together"[10]) and hypertextuality ("comparison between the ideal and the real" of the text[11]), both of which resonate with *asbāb al-nuzūl* (occasions of revelation).

Interpreting the Qur'an through the lens of intertextuality and hypertextuality is very important, for their use will pave the way for the necessary flexibility and dynamism in applying Islamic law and depart from the rigidity that mere "textuality" may impose.[12] Classical exegetes realized this fact by assenting to the principle of contextuality; any attempt to depart from this method is tantamount to rigidity.[13] The adoption of *tafsīr bi al-ra'y,* pioneered by Muhmud ibn Umar al-Zamakhshari (d. 1075), is considered to have the style of contextualization.[14] Abdullah Saeed's recent *Interpreting the Qur'an* alludes to early Muslim works that attempted to implement the contextual approaches.[15] One way to do this is to consider the *asbāb al-nuzūl al-Qur'ān*, which links the revealed verse(s) to a particular reason. That reason then indicates the restriction of the ruling established therein.

This approach is also found in some of the exegetical works on legal trends in classical scholarship, such as al-Qurtubi's (d. 1273) *Al-Jāmi' li Aḥkām al-Qur'ān* (*Encyclopedia of the Qur'an's Legal Rulings*) and Ibn al-Arabi's (d.

1148) *Aḥkām al-Qur'ān* (*The Qur'an's Legal Rulings*). However, the legal expressions mentioned therein were rendered in variations and unsystematic codification, which prompts Wansbrough to suggest that the "extrapolation of law from revelation was, in the Muslim community as in others organized on similar theoretic principles, a torturous and interminable process."[16] Although systematic codification might not be visible and standardized in classical Muslim works, they do contain trends on the essence of codification. Later exegetical writings, such as that of al-Shinqiti (d. 1974), contain many renditions of legal maxims in the author's locutions. Here, it is enough to state just one: *Al-'ibrah bi umūm al-lafẓ lā bi khuṣūṣ al-sabab* (Effect is given to the generality of the expression, not to the specific occasion behind the revelation).[17]

Islamic Legal Maxims

Legal maxims, as one of the sciences of Islamic legal theory, emerged during the late eleventh century as an independent subject[18] with its own "legal rules, coined in concise statements that encompass general rulings in case that falls under their subject."[19] Kamali further notes that such maxims are coined to depict a "general picture of the nature, goals and objectives of the Shari'ah."[20] Other maxims are subsumed under five basic legal maxims.[21] Many other maxims may appear to be a scholar's statement or the opinion of a particular school of thought. These are considered a *ḍābiṭ* (a rule that controls an opinion concerning a particular subject).

Legal maxims are generally codified through an extensive reading of those texts focused on the law's general objectives (*maqāṣid al-Sharī'ah*). As will be elaborated below, they attain legality from the texts' wordings. In some cases, they could be a replication of scriptural texts with or without changes, as with the maxim *lā ḍarar wa-lā ḍirār* (no injury or harm shall be inflicted or reciprocated).[22]

According to Muhammad ibn Abdullah al-Sawwat, a contemporary scholar who has written on Islamic legal maxims, *al-qawā'id al-fiqhīyah* can be established through six sources: namely, *naṣṣ* (the Qur'anic text and prophetic Sunnah), *ijmā'* (consensus), statements by the Companions, the Followers, and the *mujtahidūn* (experts in law), and the extrapolation of the branch of legal issues that have the same legal consequences.[23] Maxims derived from each of these sources are not on the same footing; however, some are very strong and apply more widely to many fields of Islamic jurisprudence. A maxim derived from the Qur'an and authentic Hadith is assumed to be more relevant, stronger, and more authoritative than others.[24] However, most maxims derived

directly from the Qur'an and quoted in the prophetic Hadith are restricted to particular issues and specific matters because they emerged from the circumstances within which the text was formulated.[25] One example is the hadith narrated by A'isha that a man bought and used a male slave, but then tried to return him [to the original owner] after discovering a defect in him. The original owner said: "O Messenger of God. He has used my slave." The Messenger of God replied: "*Al-kharāj bi al-ḍamān*."[26] This hadith, although it stands as legal maxim, is only applicable to matters of liability in the Islamic law of contract.

Nevertheless, the momentousness of deriving legal maxims from scriptural texts cannot be overstated. Ibn al-Qayyim (d. 1350) reflects on this:

> If the followers of the various schools of Islamic law have the ability to regulate the opinions of their legal school by using some general sayings that encompass what is lawful and what is not, in spite of their lack of eloquence compared to those of God and His messenger, then God and His messenger are more capable of achieving that. This is because the Prophet pronounces a comprehensive statement that is considered as a general principle and a universal proposition that encompasses endless detail.[27]

Maxims derived from *ijmā'* and the *mujtahidūn* are also considered a category upon which jurists may base their judgments. Many maxims emerged from the latter[28] due to their thorough investigation of the sources of Islamic jurisprudence. The expressions that form Islamic maxims could have stemmed from a Companion, a Follower, or later jurists. One of the most famous maxims abridged from leading Islamic scholarly expressions is *lā yunsab ilā sākit qawlun* (no opinion is imputed to someone who keeps silent).[29] This maxim was formulated from an expression by Imam al-Shafi'i (d. 820).[30]

Deriving a legal maxim directly from one source may be considered an instance of sheer textuality that ignores other factors that may affect the maxim by incorporating the spirit of the law.[31] But examining other texts and the contexts for establishing legal maxims will place the maxim in a stronger, more credible position when applied, as will be shown below via intertextuality and hypertextuality. These linguistic mechanisms are deemed suitable because they incorporate other textual elements, mobilize the legal schools' different approaches and methods, and accommodate dynamism in Islamic law.

Intertextuality and Codifying Legal Maxims

Exploring intertextuality in Qur'anic exegesis has acquired more importance because of the many challenges facing contemporary Muslims. Muslim schol-

ars are obliged to find and advocate solutions through their attempted deductions of the Lawgiver's objectives by reading fragmented revealed texts to establish the most likely intention. Modern Qur'anic exegetes have adopted this approach.[32] Intertextuality requires that they reach a sensible derived legal maxim via Qur'anic interpretation. Syed Anwer Ali connects these efforts to the science of the Qur'an (*'ulūm al-Qur'ān*), which leads to the principles of deduction: *'ibārat al-naṣṣ* (the text's explicit meaning), *ishārat al-naṣṣ* (the text's alluded meaning), *dalālat al-naṣṣ* (the text's implied meaning), and *iqtiḍā' al-naṣṣ* (the text's required meaning).[33]

The term *intertextuality* gained resounding success when Julia Kristeva, one of the most famous structuralists/post-structuralists,[34] first used it in the late 1960s. Many different approaches to and applications of the term have developed since then,[35] among them as a way of denoting imitation, plagiarism, and illusion, while in some modern usages it is perceived as the texts' connectivity to form a meaningful and healthy exegesis.[36] According to Genette, it is the "relation of co-presence of two or more texts."[37] Several incorrect interpretations have been drived from this basic definition, for some writers construe it as one author's borrowing parts of other's works to form his/her own.[38] This dimension reflects Kriseva's characterization of intertexuality that "any text is construed as a mosaic of quotations, any text is the absorption and transformation of another."[39]

Apart from its negative connotation, intertextuality has been used to indicate the importance of using of other texts, whether earlier or contemporary, to interpret the text being studied. Gail Ramsay's article refers to such a notion.[40] According to some modern writers on textual interpretation, Basil Hatim and Jeremy Munday affirm that "intertextuality ensures that texts or parts of texts link up in meaningful ways with other texts."[41] By and large, drawing from the earliest definitions formulated by modern linguists, *intertextuality* in this study implies a way of considering other texts or parts thereof related to the text in question to form a general ruling, as well as to avoid those inaccurate interpretations that may result if other texts are ignored.[42] The product of this intertextual exercise will give the extraction of legal maxims a grounded textual connectivity.This study will apply such maxims to Islamic criminal law.

Muslim exegetes and modern writers on Qur'anic sciences have delved briefly into the importance of intertextuality in Qur'anic interpretation. Abdel Haleem refers to this tool as an internal relationship that translates in classical Islamic authorship as *al-Qur'ān yufassir ba'ḍuhu ba'ḍan* (different parts of the Qur'an are self-explanatory)[43] or *tafsīr al-Qur'ān bi al-Qur'ān* (exegesis of the Qur'an by the Qur'an). In his words, Ibn Taymiyyah[44] (d. 1328) consid-

ered its use to be the most correct method (*aṣaḥḥ al-ṭuruq*) for exegesis[45] because "what is given in a general way in one place is explained in detail in another place. What is given briefly in one place is expanded in another."[46]

A particularly important work is al-Shinqiti (d. 1974) *Aḍwā' al-Bayān fī Īḍāḥ al-Qur'ān bi al-Qur'ān* (*Lights of Elucidation in Explaining the Qur'an by the Qur'an*). Here, he uses intertextuality to a large extent with great linguistic acumen to show how the Qur'an or other texts can be better used to explain, interpret, and understand the Qur'an's profound and hidden meanings.[47]

Intertextuality and Codifying Maxims Related to Criminal Law

Islamic legal maxims can be categorized in various ways. The first category includes the five basic agreed-upon legal maxims that are either constructed via intertextuality or hypertextuality.[48] However, several of them may have both mechanisms embedded in their construction, depending on how extensively they have been applied.

The first maxim, *al-umūr bi maqāṣidihā* (matters are considered according to [the actor's] intentions),[49] is said to have been coined through intertextualizing the textual evidence located in the Qur'an and the prophetic Hadith. Its significance in Islamic law lies in its incorporation of intertextuality. If only the text of a single hadith been used, this maxim's application might have appeared far-fetched and therefore remained unactualized. Intertextualizing various Qur'anic and Hadith texts to formulate it strengthens the argument for its wider application.

Before its establishment, jurists cited numerous textual references to justify its legal validity.[50] The most recurrent citation, among others, is the hadith reported by many traditionalists, including al-Bukhari and Muslim, that the Prophet is reported to have said: *Innamā al-a'māl bi al-niyyāt* (Actions are to be judged according to intentions).[51] In addition, many verses and hadiths emphasize sincerity in all endeavors, although most of them refer to rewards for these acts in the hereafter.[52] This by no means suggests that the primary hadith is not useful for determining the punishment for a criminal act if the action corroborates with intention. On the contrary, it has implications for any action, whether devotional, social, political, or commercial.[53] For many interpreters, the *ḥadīth al-niyyāt* (the tradition on intentions) cannot be discarded, as it is said to contain one-third of all Islamic knowledge.[54]

From the above-mentioned maxim, the *actus reus* and *mens rea* in Islamic criminal law are debated, and exactly what constitutes criminal intent in *qiṣāṣ*

(retaliation) and *ḥudūd* (predetermined punishments) crimes is disputed.[55] For instance, if someone steals from the public domain, there must first be an inquiry into his/her intentions before this action can be considered a criminal offence. His/her intention may have been to either save or steal the owner's property. Thus one can say that he/she acted as a trustee or assume that he/she committed theft.[56] The contentions that arise in determining *qaṣd al-jinā'* (criminal intent) is featured in this maxim's application. Without going into further detail, suffice it to say that the interpretation of the prophetic tradition that *al-qawad bi al-sayf* (the death penalty should be by sword)[57] has a major bearing and plays a vital role in the disagreement.

The second basic legal maxim, *al-yaqīn lā yazūl bi al-shakk* (certainty cannot be repelled by doubt), concerns certainty and doubt in Islamic law.[58] This maxim was also formed by the intertextualization of both Qur'anic and hadith texts to form a unique and consistent ruling in any litigation.[59] Its essence is visualized in the extent of the maxim's applications. Were texts treated in isolation, without simultaneously examining their contexts and legal tenets, many similar issues might be treated disparately and inconsistently. This maxim is used to determine criminal accusation and to establish commercial claims, among other uses. In a nutshell, it functions as a system of checks and balances in civil and criminal justice.

Jurists established this maxim by juxtaposing texts that invoke the importance of presumed continuity and innocence in the face of a criminal charge. The maxim is rooted in Q. 10:36, *wa mā yattabi'u aktharuhum illā al-ẓanna inna al-ẓanna lā yughnī min al-ḥaqqi shay'an* (and most of them follow nothing but conjecture, certainly conjecture can be of no avail against the truth…) and the prophetic hadith: "It is reported that Abdullah ibn Yazid al-Ansari asked God's Messenger about a person whom he thought had passed wind during prayer (*ṣalāt*). God's Messenger replied: 'He should not leave his *ṣalāt* unless he hears sound or smells something.'"[60] Al-Nawawi (d. 1277) remarked that this hadith serves as one of Islam's pillars and is an important jurisprudential maxim, for it indicates two points: that things remain in their original status until established otherwise and that there is no case for accidental doubt.[61]

The jurists' marked intertextualization effort to form this legal maxim is evident in its application to incorporate *shubha* (doubt) in all facets of Islamic law. This term leads to the codification of another legal maxim: *al-ḥudūd tudra' bi al-shubuhāt* (punishment [*ḥudūd*] should be avoided in case of doubt).[62] Intisar Rabb has exhaustively articulated this maxim's concept and content.[63]

Going by the legal schools' general hold on its validity, and despite the fact that individual positions on this maxim differ, a great deal of textual evi-

dence illustrates how *ḥudūd* punishment were avoided in such cases. An example of this is when the Prophet, upon hearing Ma'iz's confession, replied, "Maybe you kissed her" and "Maybe you touched her."[64] All of the Prophet's interpretations in this regard are a way to eliminate doubt and allow Ma'iz to retract his words, thereby casting doubt on his confessed "crime" and, by extension, to suspend his conviction.

As opposed to the approach used in the case of Mai'iz, the Prophet never cast such doubt in cases related to the rights of humans (*ḥuqūq ādamīyah*). This indicates that caution should be taken in the execution of *ḥudūd*.[65] Caliph Umar is reported to have said: "For me to commit an error in averting the punishment of *ḥudūd* is preferable than to execute it in the face of *shubuhāt*."[66] Thus this maxim has important implications when it comes to applying such punishments. These implications can be considered a system of leniency in the absence of clear proof and the extent to which Islamic law protects human rights.

The third maxim, *al-mashaqqa tajlib al-taysīr* (hardship begets ease)[67] is considered to have been derived from all texts related to removing hardship (*raf' al-ḥaraj*).[68] Texts related to the many verses and prophetic Hadith on this issue have had a bearing on and are visible in this maxim's birth. Ibn 'Ashur (d. 1973) considers it one of the principles that embodies the *maqāṣid al-Sharī'ah*.[69] Scholars of both Qur'anic exegesis and jurisprudence locate its roots in many Qur'anic texts and prophetic hadiths that enjoin ease and leniency in cases that lead to difficulty: *yurīdu Allāh bikum al-yusrā wa lāyurīdu bikum al-'usra* (God intends for you ease, and He does not want to make things difficult for you ([Q. 2:185]); *huwa ijtabākum wa mā ja'ala 'alaykum fī al-dīn min ḥarajin* (and He has not laid upon you in religion any hardship [Q. 22:78]); and *yurīdu Allāh an yukhaffifa 'ankum wa khuliqa al-insān ḍa'īfan* (God wishes to lighten [the burden] for you; and mankind was created weak [Q. 4:28]). Many other verses offer a way out of any difficulty.[70]

Although they vary in context, their implications are identical: to ease difficulty and hardship and make people's legal ability commensurate with their legal responsibility. Thus, their similarity lies in the fact that Islam's legal obligations do not surpass human capacity.[71] The Prophet is reported to have said: "Religion is very easy, and whoever overburdens himself/herself in his/her religion will not be able to continue in that way."[72]

This legal maxim has produced many submaxims that revolve around removing hardship. *Al-ḍarūrāt tubīḥu al-maḥẓūrāt* (Necessities make unlawful things lawful)[73] is just one of the many fascinating maxims derived by this method. The marked effort of its codification stems from the fact that no single

text justifies the legality of breaching rulings or breaking laws. However, if many texts are drawn up either intra- or intertextually, reoccurring and thus core legal tenets can be noticed and better understood. Hence, legal maxims can be derived with reasonable assurance of their validity.

The implication of the maxim of facility and its related texts is prominently featured in criminal justice, for although some crimes (e.g., adultery, intentional homicide, and theft) are absolutely inexcusable, one is permitted to drink alcohol in extreme situations or to steal food to ward off starvation.[74] Nevertheless, if a fundamental rule is broken out of necessity and an individual's rights are involved, compensation is recommended. This is because, according to the maxim *al-iḍrār lā yubṭil ḥaqq al-ghayr* (necessity does not invalidate the right of others),[75] as opposed to the right of God which, if violated as a result of *mashaqqa*, attracts no penalty because it is based on forgiveness and therefore pardonable. One example occurred when Umar, during a famine in Madinah, suspended a *ḥadd* punishment for theft. He neither legalized nor "fiscalized" the crime, but rather waived or reduced its penalty depending on the perpetrator's circumstances.[76]

In some ways the fourth maxim, *al-ḍarar yuzāl* (harm must be removed),[77] has an identical relation with the maxim of facility. However, its essence goes beyond that scope. Some scholars refer to this maxim as evidence of the prophetic tradition of *lā ḍarar wa lā ḍirār* (no injury or harm shall be inflicted or reciprocated).[78] Muhammad al-Burnu holds that the hadith overrides the coined maxim because the prophetic tradition is more comprehensive, more encompassing, and contains a blessing in contrast to the cited maxim.[79] Whether that is true or not, the bone of contention in this article is that both the hadith and the coined maxim eliminate harm, whether resulting in aggression or retaliation. Ahmad al-Zarqa considers the hadith a maxim in its own right and distinguishes between the two: "The maxim stated by the tradition of the Prophet stands as a prohibition of inflicting *ḍarar* and the other one indicates that if *ḍarar* occurs for one reason or another, it should be removed."[80] The application of intertextuality in the maxim stems from the extraction of other textual evidence from both the Qur'an and Hadith.[81]

Taking the hadith *lā ḍarar wa lā ḍirār*,[82] regardless of how one interprets it, as legal justification for the maxim, shows that Islam prohibits inflicting harm on another person unjustly and beyond what is legally approved.[83] Preventing harm is a fundamental principle that is generally agreed upon and widely applied in Islamic jurisprudence. Q. 4:5 prohibits giving property to infants who cannot manage their affairs to avoid causing them harm in the future, as the property might be destroyed before the child reaches puberty.

Furthermore, on many occasions God warns against harming anyone without justification: "after payment of legacies and debts, so that no loss [harm] is caused [to any one] ... but do not take them back to injure [harm] them" (Q. 4:12) and "no mother shall be treated unfairly [caused harm] on account of her child, nor father on account of his child" (Q. 2:233). It is reported that a landowner once complained to the Prophet about a man who had planted a tree on his land and thereby harmed him. The Prophet asked the man either to pay compensation or to give the plant to the landowner as a gift. The man refused both options, and so the Prophet asked landowner to destroy the plant, saying to the planter: "You are harming someone."[84]

The maxim *al-'āda muḥakkima* (custom is authoritative)[85] is inferred from both Qur'anic verses and prophetic traditions. This shows the scholars' use of intertextuality when they established it. Had its source been restricted to a single verse, it could not have been applied to other related issues in which custom is considered an enactment of the rule. Business transactions, as well as family and criminal law, are formed on the basis of existing customs in a particular societal norm. A husband is obliged to pay the customary dowry to his wife, even though it could have a different value in another place. In criminal law, custom determines the legal requirements of what constitutes theft, for instance, the amount of property stolen and the fortification of the place where the it is kept must "be considered before an accused can be arraigned."[86] In commercial transactions, Article 45 of the *Majallah* states that "a matter established by custom is like a matter established by legal texts.[87] Thus, a contract concluded by local currencies must be used in settling the dispute between the contractual parties.

In addition to the five legal maxims explained here, many others can be intertextually codified for Islamic criminal law. Al-Suyuti (d. 1505) indicated one such legal maxim that emanates from Q. 7:157:

> "Those who follow the Messenger, the unlettered Prophet, whom they find described in what they have of the Torah [*Tawrah*] and Gospel [*Injīl*], who enjoins upon them what is right [*ma'rūf*] and forbids them what is *wrong* [munkar] and makes lawful for them the good things [*ṭayyibāt*] and prohibits for them the evil [*khabā'ith*]."

The generality of *khabā'ith* is thought to have included all sorts of harmful consumptions. The legal maxim is coded as *inna kulla tayyib mubāḥ wa kull khabīth muḥarram* (all lawful things are permissible and all unlawful things are forbidden).[88] This prohibition inevitably includes any harmful drug, although the verse quoted to support this legal maxim cannot stand on its own. However, it relates to other verses that prohibit consuming harmful substances

or drugs that could lead to death, such as *wa lā tulqū bi aydīkum ilā al-tahluka* (do not throw [yourselves] with your [own] hands into destruction; Q. 2:195) and *wa lā taqtulū anfusakum* (and do not kill yourselves; Q. 4:29). In an effort to intertextualize these verses to justify the maxim, al-Suyuti remarks: "*Wa ta'āṭī al-mukhaddirāt yukhālif muqtaḍā al-amr fī hātayn al-āyatayn, li anna al-mukhaddirāt tu'addī ilā al-halāk wa ilā qatl al-nafs kamā athbata dhālik al-ṭibb*" (Consuming [dangerous] drugs opposes the virtues of the two verses, because drugs lead to perdition and the ruin of life, as medically proven).[89]

In addition to these verses, prophetic narrations indicate the prohibition of consuming harmful edible or drinkable items. Muslim reports from Abdullah ibn Umar that the Prophet said "*kull muskir khamr wa kull khamr ḥarām*" (all intoxicants are alcohol, and all alcohol is forbidden).[90] Ibn Hajar remarks that one can infer from this hadith's unrestricted perlocutionary act an extension of this prohibition to all sorts of intoxicants even if they are not drinkable (*sharāb*), such as include cannabis (*hashish*) and the like.[91]

Another legal maxim worth noting with regard to intertextuality in the Qur'anic discourse on criminal liability is *lā jarīma wa lā 'uqūba illā bi al-naṣṣ* (no crime and no punishment without textual evidence).[92] Muslim exegetes and jurists have justified this maxim by referring to many pieces of textual evidence, including "and We never punish until We have sent a messenger" (Q. 17:15). Al-Qurtubi (d. 1273) considers this verse evidence for due process in criminal law.[93]

Al-Shinqiti explains that due process applies to punishments awarded both in this life and the Hereafter.[94] Thus, in criminal law one is exonerated if no explicit rule prohibits the specific act. In other words, Muslim jurists and exegetes have reached a unanimous agreement that worldly punishments should be inflicted only on those who have intentionally committed a crime.[95]

Intertextually, such verses as *rusulan mubashshirīna wa mundhirīna li-allā yakūna li al-nāsi 'alā Allāh ḥujjatun ba'da al-rusul* ([We sent] messengers as bearers of good news as well as warning so that mankind will have no argument against God after the [coming of] messengers; Q. 4:165); *wa law annā ahlaknāhum bi 'adhābin min qablihi la qālū rabbanā lawlā arsalta ilaynā rasūlan fa nattabi'a āyātika min qabli an nadhilla wa nakhzā* (and if We had destroyed them with a torment before this [sending a Messenger] they would surely have said, "Our Lord! If only You had sent us a Messenger we should certainly have followed Your verses [proof, evidence] before we were humiliated and disgraced"; Q. 20:134); and *dhālika an lam yakun rabbuka muhlika al-qurā bi ẓulmin wa ahluhā ghāfilūn* (this is because your Lord would not destroy the [populations of] towns for their wrongdoing while their people were

unaware [of the forbiddance of the action]; Q 6:131)[96] prove this particular maxim's legal validity.[97]

The essence of this connectedness lies in the facts that fair punishment follows an established, clear law whereas an unjust punishment will result from an unclear rule. Thus, the jurists and exegetes' formulation of a maxim inferred from various texts serves the law's core objectives.

Hypertextuality and Extracting Legal Maxims

Beyond its terseness, a text may be used in congruence with other quality features that necessarily broaden the text's relevance. This leads us to examine how hypertextuality affects the interpretation of a text for the purpose of codifying legal maxims. Hypertextuality is a post-modern theory that involves the inter-connectedness of all literary works and their interpretations. According to Oblak, in general terms it is "a matter of inter-connection between different sets of text in a more or less coherent way."[98] According to Burnet and Marshall, it can be described as "the extension of an existing text into other areas and other domains."[99] This description suggests that if a text must be broadly applied, then other aspects must be taken into consideration to extend the existing text's meaning. In other words, from a post-structuralist perspective, a text has to be viewed not from its "authorial origin, but from 'various interconnections that are embedded in' that text."[100]

The term was first coined by Ted H. Helson in the late 1960s.[101] The prefix *hyper* is derived from the Greek and means "above," "beyond," or "outside." Thus, *hypertext* seeks to describe a text that has a network of links with texts that are outside, beyond, and above itself. There is a cardinal difference between Nelson's hypertextuality and that of Genette, who considered hypertextuality to be a transformation, be it imitation, parody, travesty, and so on.[102] Nelson's definition has to do with electronic devices while Genette's focuses on printed text.[103] Roland Barthes, considered "a pioneer and theoretician of hypertextuality,"[104] viewed it as over-reading with a deeper perusal of an ancient text that potentially yields fruitful meaning.[105] Ganascia considers "indexation, every note and every comment" as a "potential rudimentary hypertext."[106] This forms the basis for my proposal of hypertextuality as a dynamic way of reading meaning into the text rather than perceiving it as being static, which at this point in time could lead to a psycho-fixation of social rupture.

Having said that, it will not be an intellectual digression to develop the term beyond its original connotation. As Mary Orr observes, hypertext should not be restricted to:

> … some huge electronic memory storage bin, or a non-canonical form to replace elitist print forms of thinking culture and its works. Neither should it be envisaged as serving some memorial function, to preserve or store 'dead' text, but leave it relatively inaccessible on the outer reaches or links.[107]

In other words, it should be widened to include not only scientific-oriented theory, but also all interpretation that involves "post-Enlightenment knowledge accumulation."[108]

From Orr's dynamic assertion, I propose that hypertextuality, as a linguistic mechanism, could be better used to develop positive and constructive ideas aimed at better understanding textual evidence in Islamic law. This will pave the way for the texts' organic interpretation and enhance one's ability to extrapolate legal maxims from them. Conversely, this mechanism would not only be used to study a text beyond its literal, lexical meaning, but also to take into consideration the context in which a text operates, as wel as the circumstances that brought it into being, when discussing the law's overall objectives.

Al-Shatibi, as a point of reference in this regard, says:

> The science of *ma'ānī* [meaning], and *bayān* [factual and figurative expression] by which the *i'jāz* [inimitability] of the Qur'an is recognized, revolves around knowing the requirements of the situation during the discourse from the point of view of the discourse itself, the discussant, the discursee or all of them together; for the same statement can be understood in different ways in relation to two different addressees or more. A question with one and the same form can imply other meaning, such as agreement, scolding, etc. Likewise an imperative can have meaning of permission, threat, incapacity/impossibility.[109]

The idea of hypertexuality is not an innovation in Islamic legal theory, but rather a novel style of capping numerous secondary sources for Islamic law in a unified term. Of course, *istiḥsān* (juristic preference), *al-maṣālih al-mursalah* (unrestricted interests), *sadd al-dharā'i'* (blocking evil means), and so on, could well be termed hypertexual mechanisms in legal discourse with the notion of interpreting the text beyond itself. The essence of hypertextuality in aiding the codification of legal maxims lies in deconstructing the text and attempting to decipher its coded meaning in order to provide a rational, rather than a literal, meaning. This exercise essentially requires familiarity with the text's language and the social background underpinning its rubric meaning.

Stressing the essence of hypertextaulity in understanding the Qur'anic message, Taufik Adnan Amal and Samsu Rizal Panggabean identify passages in which historical phenomena dictate the meaning of words used.[110] Thus

they argue that "studying the historical context and background for specific verses of the Qur'an becomes an indispensable tool for the understanding of the Qur'an."[111] This does not preclude utilizing these historical events for contemporary ones, especially when they are identical, for one of the principles of the science of the Qur'an states that *al-'ibrah bi humūm lafẓ lā bi khuṣūṣ al-sabab*.[112] Their view suggests that the principle/maxim can be arrived at if the basic steps are taken into consideration, among them (1) "understanding the Qur'an in its context," which involves, inter alia, (2) "arriving at the principle(s) or purpose(s) of the Qur'an with regard to the theme or term," and (3) projecting the understanding of the Qur'an in its context."[113]

Hypertexuality in Extracting Legal Maxims Related to Criminal Law

Hypertextuality in Islamic law resembles what Rosalind Ward Gwynne called "rule-based reasoning." In her *Logic, Rhetoric, and Legal Reasoning in the Qur'an*, she considers rule-based reasoning one of the best ways to answer questions related to applying a certain rule to a particular situation.[114] From this premise, one can question why verses revealed in fragments on certain issues rather than as a whole. In other words, why injunctions on prohibitions and commandments of certain things revealed in a gradual manner?

With regard to the maxim of intention, jurists have gone beyond texts in the application of intention to action on the ground that it could not solve some problems that emerge from mere intention due to disagreement on a particular issue. This has led them to differ on whether the effect should be given to intention and intended meaning or to words and forms. In response, they coined a maxim *al-'ibrah fī al-'uqūd li al-maqāsiḍ wa al-ma'ānī lā li al-alfaẓī wa al-mabānī* (in contracts, effect is given to intentions and intended meaning not to words and forms)[115] by taking the spirit of the law into account in regard to the law governing commercial law. This maxim examines an expression's meaning to determine the intention of a locator. Using this extended mechanism to formulate this maxim is necessary to determining right from wrong in any litigation that involves human rights in contrast to God's rights.

Here, hypertexuality is the in-depth consideration given not only to the speaker's inner intention, but also to the environment and circumstances in which the expression is uttered. What a person utters before a court is assumed to be his/her intention, since otherwise the illocutionary act of the utterance will be valueless. In other words, the utterance made by a litigant while taking an oath should mean what is outwardly said according to the understanding of

the judge and the other litigants, whose rights depend upon the oath's outward meaning. The Prophet said: "An oath must conform to the intention of the party tendering it."[116] As the right of the other party should be protected by law, and because any means to obstruct justice should be prevented, the litigant is obliged to utter an explicit statement that concurs with that statement's agreed-upon meaning, rather than an implicit one that hides the meaning and could lead to confusion in rendering judgment.[117]

Furthermore, Muslim jurists codified a maxim to the effect that not only could necessity render unlawful things lawful, but also that what is deemed as general or individual needs should be considered as necessity: *Al-ḥājah tunazẓzal manẓila al-ḍarūrah 'āmma kāna aw khāṣṣah* (Need, whether of public or private nature, is considered as necessity).[118] Certainly, *need* here embodies a degree lesser than *ḍarūrah* (necessity), for *ḥājah* means that a person could face hardship if he/she does not commit what is unlawful, although his/her life may not be in danger. Need could be seen as a complementary action without which the obligatory may not be achieved. Jurists opine that needs could be elevated to necessities if the actor would be in danger otherwise.[119] For instance, taking out a mortgage may be seen as a need originally for those Muslims living in the West, but from the text's hypertextuality it could become a necessity because living without a mortgage, whether conventional or otherwise, might eventually cause hardship for Muslims and their families.[120]

In addition, from an ontological perspective, people tend to be culturally and customarily heterogenic. However, their most static nature is that customary norm must be upheld even if it is not practiced. The Shari'ah would suffer it it could not incorporate such a dynamic positive culture. But to what extent can the authority of custom make decisions regarding new laws today? This question forms the basis for the emergence of another legal maxim: *Lā yunkar taghayyur al-aḥkām bi taghayyur al-azmān* (It is undeniable that rules change as times change).[121]

Also, by contextualizing the texts that prohibit alcohol, hypertexuality establishes gradualism, a tenet of Islamic law. In other related verses and texts, for example, gradualism is observed to be an incremental procedure that corrects the existing norm in that particular age. Gradualism proves God's flexiblity as regards changing concrete societal norms, a much-needed approach itoday, especially when many Muslims live as minorities. Esack observes that despite the Qur'an's inner coherence, it "was never formulated as a connected whole, but was revealed in response to the demands of concrete situations."[122] This cognitive exegesis, which Amal and Panggabean call "the chronological context of the Qur'an," reveals the gradual approach in revelation.[123] a legal

maxim can be extracted from the gradualism shown here: *Al-tashrī'i al-islāmī mabniyun 'alā al-tadarruj* (Islamic legislation is based on gradualism).

This implies that any corrective measure to establish justice and order after a social breakdown has to be implemented or implanted gradually. For example, fixed *ḥudūd* punishments cannot be applied before the people have been given a periodic orientation and every measure to justify the necessity of such punishments have been put in place. For example, Tariq Ramadan opines that the death penalty should be suspended due to the lack of adequate infrastructures in many Muslim countries.[124] This opinion is in tandem with that of Umar's suspension of the punishment for theft during a period of famine because people were in dire need of food.[125]

Conclusion

This study has explained how linguistic mechanisms can be used to develop and deduce legal maxims from texts and their context. It states that inaccurate verdicts may be pronounced when insufficient effort is paid to intertexualizing and hypertextualizing texts related to the issues in question. It further asserts that these two methods achieve the objectives of Islamic law when properly used, because both of them consider many factors surrounding the texts and incorporate the core spirit of the law's overall objectives. However, while recognizing their importance, one should be cautious not to employ them excessively so that misinterpretations of texts can be avoided. This study suggests that hypertextuality, when applied, must conform to the sound interpretation of the text to avoid misrepresentation of the Shari'ah's purpose.

Endnotes

1. The notion of codifying Islamic law is contested. However, I maintain that Islamic law was unofficially codified from the second Islamic century and was gradually officially codified during the Ottoman Empire. I do not seek here to justify Islamic law's codification per se, but rather to relate how the linguistic mechanisms mentioned herein are significant in deriving legal maxims from the Qur'an and Hadith. Thus, this article depicts the process of unofficial codification that started with the work of Imam Anas ibn Malik (d. 795) and continued until the law became officially codified in most part of the Muslim world. See E. Ann Mayer, "The Shari'ah: A Methodology or a Body of Substantive Rules," in *Islamic Law and Jurisprudence*, ed. Nicholas Heer and Farhat J. Ziadeh (Seattle: University of Washington Press, 1990), 179; Bakr ibn Abdullah Abu Zaid, *Al-Taqnīn al-Ilzām 'Arḍ wa Munāqasha*, 2d ed. (Riyadh: Dar al-Hilal, 1983), 13-21.

2. Textuality is defined as "aspects of text …which contribute to the overall effect of texts handing together internally, reflecting coherence and cohesion and responding to context." See Basil Hatim, *Teaching and Researching Translation* (United Kingdom: Pearson Education Ltd., 2001), 234. For details on the concept of 'Textuality and how it is used to aid codification of Islamic law in Luqman Zakariyah, "Textuality as a Linguistic Mechanism for codifying Legal Maxims in Islamic Criminal Law, *American Journal of Islamic Social Sciences* 30, no. 1 (2013): 22-47.
3. See, in general, Abdullah Saeed, *Interpreting the Qur'an: Towards a Contemporary Approach* (New York: Routledge, 2006).
4. Hassan Hanafi, "Method of Thematic Interpretation of the Qur'an," in *The Qur'an as Text*, ed. Stefan Wild (Leiden and New York: Brill, 1996), 195.
5. Ibid., 195.
6. See Ignaz Goldziher, *Schools of Koranic Commentators* (Wiesbaden: Harrassowitz Verlag, 2006), 36-64.
7. Ibid. 61-64.
8. Farid Esack, *The Qur'an: A User's Guide* (Oxford: Oneworld, 2005), 124-27.
9. Ibid., 196.
10. Ibid., 204.
11. Ibid., 205.
12. See Zakariayh's conclusion on the use of 'Textuality in codifying legal maxims in Zakariyah, *Textuality*, 40.
13. Esack, *The Qur'an*, 121.
14. Ibid. 132-34. The idea of contextualization in Qur'anic interpretation is embedded but undeveloped in classical *tafsīr*s. Contemporary Muslim scholars have taken this task further and call for connectivity between the history and context of revelation. This effort may (or may not) help one understand the Qur'an. The two waves in the approach of contextualization can be found in most of the writing of the modern Muslim progressive scholars on the use of contextualization in understanding the Qur'an. For more information, see Esack *The Qur'an*, 142-45; Abdullah Saeed, *The Qur'an: An Introduction* (London and New York: Routledge, 2008), 220-32; Abdullah Saeed, *Reading the Qur'an in the Twenty-First Century: A Contextualist Approach* (New York: Routledge, 2013).
15. Saeed, *Reading the Qur'an*, 26-37.
16. J. Wansbrough, *Qur'anic Studies: Sources and Methods of Scriptural Interpretation* (Oxford: Oxford University Press, 1977). Quoted in Esack, *The Qur'an*, 139.
17. Muhammad al-Amin al-Shinqiti, *'Aḍwā' al-Bayān fī 'Iḍāḥ al-Qur'an bi al-Qur'ān* (Beirut: Dar al-Fikr li Tiba wa n-Nashr, 1995), 1:312. He has excessively fashioned his work with numerous maxims, both legal and exegetic.
18. Al-Nadwi, *Al-Qawā'id*, 120-50.
19. Mustafa al-Zarqa, *Al-Madkhal al-Fiqhī al-'Āmm*, 7th ed. (Damascus: Matba'ah Jami'ah, 1983), 2:933.

20. Muhammad H. Kamali, "*Qawā'id al-Fiqh*: The Legal Maxims of Islamic Law," *Journal of the Association of Muslim Lawyers in Britain* 3, no. 2 (1998), www.aml.org.uk.journalviewed, last accessed 21/06/2006; cf. Mawil Izzi Dien, *Islamic Law: From Historical Foundations to Contemporary Practice* (Edinburgh: Edinburgh University Press, 2004), 113-14.
21. These are *al-umūr bi maqāṣidihā* (Actions are judged according to the intentions); *al-yakīn lā yazūl bi al-shakk* (Certainty cannot be repelled with doubt); *al-mashaqqāt tajlīb al-taysīr* (Hardship begets facility); *al-ḍarar yuzāl* (Harm must be eliminated) and *al-'ādah muḥakkamah* (Custom is authoritative). See Jalal al-Din al-Suyuti, *Al-Ashbā' wa n-Naẓā'ir* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1403 AH) and Zayn al-'Abidin ibn Ibrahim ibn Nujaym, *Al-Ashbā' wa n-Naẓā'ir 'alā Madhhab Abī Ḥanīfah al-Nu'mān* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1993).
22. Al-Zarqa, *Al-Madkhal*, 586; al-Suyuti, *Al-Ashbā'*, 83; Ibn Nujaym, *Al-Ashbā'*, 85.
23. Muhammad ibn Abdullah al-Sawwati, *Al-Qawā'id wa al-Ḍawābiṭ al-Fiqhīyah 'inda Ibn Taymīyah fī Fiqh al-Usrah* (Ta'if: Dar al-Bayan al-Hadithah, 2001), 114-20.
24. Muhammad H. Kamali, "Legal Maxims and Other Genres of Literature in Islamic Jurisprudence," *Arab Law Quarterly* 20, no. 1 (2006): 80.
25. Zakariyah, "Textuality," 25-26.
26. Al-Trimidhi, *Sunan al-Trimidhī* (Beirut: Dar al-Gharb al-Islami, 1998), 2:572, hadith no 1285; Ibn Majah, *Sunān Ibn Mājah*, hadith no. 2243.
27. Ibn al-Qayyim al-Jawzi, *'Alām al-Muwaqq'īn* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), 1:251.
28. A *mujtahid* is someone qualified to formulate Islamic verdicts based on personal opinion. Such people must have attained that status and proved themselves learned according to the relevant and regulations. See Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3d ed. (Cambridge, UK: The Islamic Texts Society, 2003), 468-70.
29. Muhammad ibn Bahadur al-Zarkashi, "Al-Manthūr fī l-Qawā'id," in *Taysir*, ed. F. A. Mahmud, 2d ed. (Kuwait: Ministry of Endowment and Islamic Affairs, 1405), ii:206.
30. Al-Suyuti, *Al-Ashbā'*, 142.
31. Zakariyah, *Textuality*, 40.
32. Milhan Yusuf, "Hamka's Method in Interpreting Legal Verses of the Qur'an," in *Approaches to the Qur'an in Contemporary Indonesia*, ed. Abdullah Saeed (Oxford: Oxford University Press, 2005), 50-52.
33. Anwer Ali Syed, *Qur'an: The Fundamental Law of Human Life* (Karachi: Syed Publication, 1982), 117-18. The English meanings of Arabic terms used here are adopted from Kamali, Muhammad Hashim, *Principles* 118-23.
34. Mary Orr, *Intertexuality: Debates and Contexts* (Cambridge, UK: Polity Press, 2003), 1.

35. Thais E. Morgan, "Is There an Intertext in This Text? Literary and Interdisciplinary Approaches to Intertextuality," *American Journal of Semiotics* 3, no. 4 (1985): 1-40.
36. Orr, *Intertexuality*, 170-71; Judith Still and Micheal Worton, "Introduction," in *Intertextuality Theories and Practices*, ed. Micheal Worton and Judith Still (Manchester: University of Manchester Press. 1990), 1-44; John Frow, "Intertextuality and Ontology," in ibid., 45-55; cf. Basil Hatim and Jeremy Munday, *Translation: An Advanced Research Book* (London and New York: Routledge, 2004).
37. Gerard Genette, *Palimpsests* (1930), trans. Channa Newmane and Claude Doubinsky (Lincoln: University of Nebraska Press, 1997), 10.
38. That is one reason why some Biblical exegetes delve into comparison between the Old and New Testaments in an attempt to intertextualize the two. George Wesley's work on intertextuality in the Bible is based on the comparison of the two books. However, his work goes beyond plagiarism to what intertextuality means in contemporary application. See George Wesley, *Introduction to Intertextuality* (Lampeter, UK: Buchanan Mellen Biblical Press, 1994), 4-5.
39. Julia Kristeva, *World Dialogue and Novel: The Kristeva Reader*, ed. Toril Moi (Oxford: Oxford University Press, 1986), 37.
40. Gail Ramsey, "The Past in the Present: Aspects of Intertextuality in Modern Literature in the Gulf," in *Intertextuality in Modern Arabic Literature since 1967*, ed. Luc-Willy Deheuvels, Barbara Michalak-Pikulska, and Paul Starkey (Durham, UK: Durham Modern Language Series Publication, 2003), 161.
41. Hatim and Munday, *Translation*, 68.
42. Cf. other definitions of intertextuality by such linguistic scholars as Basil Hatim and Ian Mason, e.g. (1) "a standard of textuality which taps our knowledge of previously encountered texts and regulates how text types, genre, convention and ultimately discursive formations evolve"; Basil Hatim, *Teaching and Research Translation* (England, UK: Pearson Education Ltd., 2001), 34; (2) "The dependence of one previously encountered texts"; Hatim, *Teaching*, 231; Basil Hatim, *English-Arabic/Arabic-English: A Practical Guide* (London: Saqi Books, 2001), 230; (3) "A semiotic parameter exploited by text user which draws on the sociocultural significance a given occurrence might carry as well as on recognizable socio-textual practices (text, discourse and genre)." Basil Hatim and Ian Mason, *The Translator as Communicator* (London and New York: Routledge, 1997), 19.
43. Muhammad Abdel Haleem, "Context and Internal Relationship," in *Approaches to the Qur'an*, ed. G. R. Hawting and Abdul-Kader A. Sharieef (London and New York: Routledge, 1993), 73; Ismail K. Poonawala, "Muhammad 'Izzat Darwa's Principles of Modern Exegesis: A Contribution toward Qur'anic Hermeneutic," in ibid., 234.
44. Muhammad Abdel Haleem, *Understanding the Qur'an: Themes and Style* (London and New York: I.B. Tauris, 1999), 160.
45. Ibn Taymiyyah, *Muqaddimāt al-Tafsīr,* vol. 8, in *Majmu' Futāwā ibn Tayymiya* (Riyadh: 1382 AH), 362. Quoted in Abdel Haleem, *Understanding*, 160.

46. Ibn Taymiyyah, ibid., 254. Quoted in Abdel Haleem, *Understanding*, 160.
47. Al-Shinqiti, Adwa', esp the last volume, "Daf' Ihab al-Idtirab 'an ay al-Qur'an – Repelling Claim of Incoherence from the Verses of the Qur'an) where the author uses many other verses to explain any inherent ambiguity in a verse.
48. See Muhammad Siddiq Ahmad al-Burnu, *Al-Wajīz fī 'Iḍāḥ Qawā'id al-Fiqhīyah al-Kullīyah*, 5th ed. (Beirut: Mu'assasah al-Risalah, 2002), 122-24, 166-69, 218-22, 251-53, 270-74; Ali Ahmad al-Nadwi, *Al-Qawā'id al-Fiqhīyah: Mafhūmihā, Nash'atuhā, Taṭawwurhā, Dirāsatuhā, Mu'allafātuhā, 'Adillatuhā, Muhim-matuhā, Taṭbiquhā*, 4th ed. (Damascus: Dar al-Qalam, 1998), 282-308, 351-57.
49. Al-Suyuti, *Ashbā'*; 8; Ibn Nujaym, *Ashbā'*, 27; Ahmad ibn Muhammad al-Hamawi, *Ghamz 'Uyūn al-Baṣā'īr Sharh al-Ashbā' wa al-Naẓā'ir* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1985), 37; Ahmad ibn Shaykh al-Zarqa, *Sharḥ al-Qawā'id al-Fiqhīyah*, 2d ed. (Damascus: Dar al-Qalam, 1989), 47.
50. Muhammad Mustafa al-Zuhayli, *Al-Qawā'id al-Fiqhīyah wa Tatbiqatihā fī al-Madhāhib al-Arba'* (Damascus: Dar al-Fikr, 2006), 2:796.
51. Al-Bukhari, *Ṣaḥīḥ al-Bukhārī,* vol. 1, hadith no. 1; Muslim, *Ṣaḥīḥ Muslim*, hadith no. 1907.
52. See Q. 4:100, 4:134, 17:19, and 30:39.
53. Abd al-Rahman ibn Ahmad ibn Rajab, *Jami' al-'Ulūm wa al-Ḥikām*, 7th ed. (Beirut: Mu'assasat al-Risalah, 2001), 1:61.
54. Al-Burnu, *Al-Qawā'id*, 122-25; Ahmad ibn Hajar al-'Asqalani, *Fatḥ al-Bārī Sharh Ṣaḥīḥ al-Bukhārī* (Beirut: Dar al-Ma'rifah, 1379 ah), 1:11; Yahya ibn Sharaf al-Nawawi, *Sharḥ al-Nawawī 'alā Ṣaḥīḥ Muslim*, 2d ed. (Beirut: Dar Ihya' al-Turath al-'Arabi, 1392 ah), 13:53.
55. Luqman Zakariyah, "Islamic Legal Maxims for Attainment of Maqasid al-Shariah in Criminal Law: Reflections on Implications for Muslim Women in the Tension between Shariah and Western Law," in *Women in Islam*, ed. Terence Lovat (Dordrecht: Springer, 2012), 120-25.
56. Al-Zarqa, *Sharḥ al-Qawā'id*, 49; Subhi R. Mahmassani, *Falsafāt al-Tashrī' fī al-Islām* (Philosophy of Jurisprudence in Islam), trans. J. Farhat (Kuala Lumpur: The Open Press, 2000), 160.
57. Ali ibn Umar al-Daraqutni, *Sunān al-Dāraquṭnī*, 1:3, hadith no. 89; Al-Madanī, (Ed.), (Beirut: Dar al-Ma'arifah, 1966) at 107, hadith no. 89; Ahmad Ayni, *'Umdat al-Qārī* (Beirut: Dar Ihya' al-Turath al-'Arabi, n.d.), 24:39.
58. Al-Suyuti, *Ashbā'*, 55; Ibn Nujaym, *Ashbā'*, 59; Al-Zarqa, *Sharḥ al-Qawā'id*, 79; Al-Burnu, *Al-Wajīz*, 166.
59. Some of the Qur'anic verses and hadiths from which the maxim is coded are Q. 10:36; al-Bukhari, *Ṣaḥīḥ at Kitāb al-Wudū'*, hadith no. 137; and Muslim, *Ṣaḥīḥ*, hadith no. 362.
60. Al-Bukhari, *Ṣaḥīḥ*, "Kitāb al-Wudū'," hadith no. 137; Muslim, *Ṣaḥīḥ*, hadith no. 362.
61. Al-Nawawī, *Jāmi'*, 4: 49-50; cf. Hadith Abi Hurayrah, in Muslim, *Ṣaḥīḥ,* 4:51.

62. Al-Suyuti, *Ashbā'*, 123; Ibn Nujaym, *Ashbā'*, 127; al-Hamawi, *Ghamz*, 46; al-Zarkashi, *Al-Manthūr*, 400. Almost all jurisprudential schools accept the maxim in principle and apply it as they see fit. The exception is al-Zahiri, who objects to it based on the rejection of the Hadith, reported with regard to the maxim (see Ibn Abdul al-Barr, *Al-Tamhīd li mā fī al-Mu'aṭṭa' min al-Ma'ānī wa al-Asānīd* (Morocco: Ministry of Endowment and Islamic Affairs, 1387 AH), 15:34; al-Shinqiti, *Aḍwā'at*, 5:392; Muhammad ibn Ahmad al-Sarakhsi, *Al-Mabsūṭ* (Beirut: Dar al-Ma'rifah, 1986), 18:127.
63. Intisar A.Rabb, "Islamic Legal Maxims as Substantive Canons of Construction: *Ḥudūd* – Avoidance in Cases of Doubt," *Islamic Law and Society* 17 (2010): 63-125. She has also elucidated in her PhD dissertation on the history of Islamic legal maxims in general and the root of the hadith of avoiding ḥudūd in the benefit of doubt. See Intisar Rabb, Doubt' Benefit: Legal Maxims in Islamic Law 7th -16th Centuries, (USA, Princeton University, PhD Dissertation, 2009).
64. Al-Bukhari, *Ṣaḥīḥ*, hadith no. 6438.
65. Muḥammad ibn Abd al-Waḥid ibn Humam, *Fatḥ al-Qadīr Sharḥ al-Hidāyah* (Cairo: Al-Amiriyyah Press, 1336 AH), 4:139-40.
66. Muhammmad ibn Ali al-Shawkani, *Nayl al-Awṭār* (Egypt: Dar al-Hadith, 1993), 7:125.
67. Al-Suyuti, *Ashbā'*, t 76; Ibn Nujaym, *Ashbā'*, 74; Al-Zarkashi, *Al-Manthūr*, 169; al-Zarqa, *Sharḥ*, 157; Mahmassani, *Falsafah*, 152.
68. Q. 2:185, 22:78, 4:28, 5:7, and 2:286; Al-Bukhari, *Ṣaḥīḥ*, hadith no. 39.
69. Muhammad al-Tahir ibn Muhammad ibn Ashur, *Tafsīr al-Tahrīr wa al-Tanwīr* (Beirut: Mu'assasat al-Tarikh al-'Arabi, 2000), 2:597.
70. Cf. Q. 5:7 and 2:286.
71. Al-Nadwi, *Al-Qawā'id*, 303.
72. Al-Bukhari, *Ṣaḥīḥ, "Kitāb al-Īmān*," hadith no. 39.
73. Al-Suyuti, *Ashbā'*, 83; Ibn Nujaym, *Ashbā'*, 85; Al-Zarqa, *Sharḥ*, 185.
74. Q. 2:173, 5:107, 6:119, 6:145, and 16:115.
75. Ibn Rajab, *Jāmi' al-'Ulūm*, 36.
76. Abdul Rahman Doi, *Shariah: The Islamic Law* (London: Ta Ha Publishers 1984), 225.
77. Al-Suyuti, *Ashbā'*, 83; Ibn Nujaym, *Ashbā'*, 85; Al-Ḥamawi, *Ghamz*, 37.
78. Al-Suyuti, *Ashbā'*, 83; Ibn Nujaym, *Ashbā'*, 85.
79. Al-Burnu, *Al-Wajīz*, 251.
80. Al-Zarqa, *Sharḥ*,166.
81. Al-Burnu, *Al-Wajīz*, 251-54.
82. Al-Suyuti, *Ashbā'*, 83; Ibn Nujaym, *Ashbā'*, 85.
83. Al-Barr, *Al-Tamhīd*, 20:158; Al-Hamawi, *Ghamz*, 118; Al-Burnu, *Al-Wajīz*, 252.
84. Abu Dawud, *Sunān Abī Dāwūd* with Sharḥ, 15:321-22; Ibrahim Muhammad ibn Muflih, *Al-Furū'* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1418 AH), 4:219.
85. Al-Suyuti, *Ashbā'*, 89; Ibn Nujaym, *Ashbā'*, 92; Al-Zarkashi, *Al-Manthūr*, 356; Al-Zarqa, *Sharḥ*, 219; al-Hamawi, *Ghamz*, 37.

86. L. Zakariyah, "Custom and Society in Islamic Criminal Law: A Critical Appraisal of the Maxim '*al-adah muhakkamah'* (custom is authoritative) and Its Sisters in Islamic Legal Procedure," *Arab Law Quarterly* 26, no. 1 (2012): 90.
87. See al-Zarqa, *Sharḥ*, 209; Kamal al-Din ibn Humam, *Fatiḥ al-Qadīr* (Beirut: Dar al-Fikr, n.d.), 8:32.
88. Jalal al-Din al-Suyuti, *Al-Durr al-Manthūr* (Beirut: Dar al-Fikr, 1993), 2:238.
89. Ibid.
90. Muslim, *Ṣaḥīḥ*, hadith no. 2003.
91. Ibn Hajar al-Asqalani, *Fatḥ al-Bārī: Sharḥ Ṣaḥīḥ al-Bukhārī* (Beirut: Dar al-Ma'rifah, 1379 ah), 10:45.
92. See Muhammad Abu Zahra, *Al-Jarīmah wa al-'Uqūbah fī al-Fiqh al-Islāmī* (Cairo: Dar al-Fikr al-'Arabi, 1998), 143; Abdul Qadir Awad, *Al-Tashrī' al-Jina' al-Islāmī, Muqāranan bi al-Qānūn al-Wadhi* (Beirut: Dar al-Kutub al-'Arabi, n.d.), 1:112.
93. Muhammad ibn Ahmad al-Qurtubi, *Al-Jāmi' li Aḥkām al-Qur'ān* (Beirut: Dar al-Fikr, 1998/1419 ah), 9:209.
94. Muhammad al-Amin al-Shinqiti, *'Aḍwā' al-Bayān fi 'Iḍāḥ al-Qur'ān bi al-Qur'ān* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2000/1421 AH), 3:347-53.
95. Al-Sarakhsi, *Al-Mabsūṭ*, 1:239; Abu Zahra, *Al-Jarīmah wa al-'Uqūbah*, 274 and 289.
96. See Q. 5:19, 6:155-57, and 28:47.
97. See Abu Zahra, *Al-Jarīmah wa al-'Uqūbah*, 143; Abdul Qadir Awad, *Al-Tashrī' al-Jin'ī al-Islāmī: Muqāranan bi al-Qānūn al-Wad'i* (Beirut: Dar al-Kutub al-'Arabī, n.d.), 1:112.
98. Tanj Oblak, "The Lack of Interactivity and Hypertextuality in Online Media," *Gazette* 67, no. 1 (2005): 96.
99. R. Burnet and Marshall, *Web Theory: An Introduction* (London: Routledge, 2003), 83-84.
100. Oblak, "The Lack of Interactivity," 94.
101. Orr, *Intertexuality*, 50.
102. Ibid.; Urike Stehli-Werbeck, "Transformation of the Thousand and One Nights: Zakariyya Tamir's 'Shahriyarwa–Shahrazad' and Muhammd Jibril's 'Zahrat al-Sabah,'" in *Intertexuality in Modern Arabic Literature since 1967*, ed. Luc Deheuvels, Barbara Michalak-Pikulska, and Paul Starkey (Durham, UK: Durham Modern Languages Series, Durham University, 2006),105.
103. Orr, *Intertexuality*, 29.
104. See Jean-Gabriel Ganascia, "On the Supposed New-structuralism of Hypertextuality," *Diogenes*, No. 196, Vol. 4(9/4), 2002, 14.
105 Ibid., 15.
106. Ibid., 8.
107. Ibid., 57.
108. Ibid.
109. Abu Ishaq al-Shatibi, *Al-Muwāfaqāt fī Uṣūl al-Aḥkām* (n.p.: Dar ibn Affan, 1997/1417 AH), 4:146. Quoted in and translated by Muhammad Abdel Haleem,

*Understanding the Qur'an: Themes and Styl*e (New York: I.B. Tauris, 2011), 163.

110. Taufik Adnan Amal and Samsu Rizal Panggabean, "A Contextual Approach to the Qur'an," in *Interpreting the Qur'an*, 117.
111. Ibid.
112. Al-Shinqiti, Adw*ā*', 2:359; For Amal & Panggabean's stand on this, see their "A Contextual Approach," 121.
113. Amal and Panggabean, "A Contextual Approach," 124.
114. Rosalind Ward Gwynne, *Logic, Rhetoric, and Legal Reasoning in the Qur'an* (New York: Routledge Curzon, 2004), 61-62.
115. Ibn Nujaym, *Ashbā'*, 207. This is in contrast to the Shafi'i school, which questions the maxim that intention and meaning are not always considered in a contract. In other words, the contract's expression and form may be taken to the consideration. See Al-Burnu, *Al-Wajīz*, 87.
116. Muslim, *Ṣaḥīḥ Muslim*, hadith no.1653.
117. Al-Nawawi states that if the oath is taken outside the court or if there is no right of humanity attached to it, then effect will be given to the intention of the oath taker as opposed the mere word and form of the expression uttered. Thus, this indicates that in al-Shafi'i opinion, the question mark in the maxim is only relevant in issues related to humanity's right. If no such right is attached, their view agrees with that of the Hanafis and the Malikis (Al-Nawawi, *Sharḥ al-Nawawī 'alā Ṣaḥīḥ Muslim*, 1:117).
118. Al-Suyuti, *Ashbā'*, 88; Ibn Nujaym, *Ashbā'*, 91; Al-Burnu, *Al-Wajīz*, 242.
119. Al-Shatibi, *Al-Muwāfaqāt*, 2:21-258; Ali ibn Abi Ali al-Amidi, *Al-Iḥkām fī Uṣūl al-Aḥkām* (Beirut, al-Maktab al-Islami, n.d.), 3: 274-75.
120. This may be the case for someone who cannot buy a house with cash or rent an home that can properly shelter both the person and his/her family. See L. Zakariyah, "Necessity as a Pretext for Violation of Islamic Commercial Law: A Scenario of Mortgage Contract in the UK," *Journal of Islamic Economics, Banking, and Finance* 8, no. 1 (2012): 41-49.
121. Al-Zayla'i, *Fakhr al-Dīn*; Uthman, *Tabyīn al-Ḥaqā'iq* (Cairo: Dar al-Kutub al-Islamiyyah, 1313 AH), 1: 140; al-Zarqa, *Sharḥ*, 227-29; al-Nadwi, *Sharḥ*, 158; al-Burnu, *Al-Wajīz*, 310. See Zakariyah, "Custom and Society in Islamic Criminal Law," *Arab Law Quarterly*, 75-97, esp. 90-97 for a detailed explanation of this legal maxim.
122. Esack, *The Qur'an*, 122.
123. Amal and Panggabean, "A Contextual Approach," 123.
124. See Tariq Ramadan, "An International Call for Moratorium on Corporal Punishment, Stoning and the Death Penalty in the Islamic World," http://www.tariqramadan.com/spip.php?article264 (last visited 21/02/2013).
125. Doi, *Shariah*, 225.