

THE SECOND ASPECT

THE CATEGORIES OF RULES

This is comprised of an introduction and fifteen discussions. As for the introduction, the categories of rules established for actions of the loci of obligations are five: Obligatory [*wâjib*], prohibited [*mahzûr*],¹ allowed [*mubâh*], recommended [*mandûb*], and reprehensible [*makrûh*]. The reasons for this categorization is that the *Shari'a* address comes either requiring *doing*, *not doing*, or the option between doing or not doing. Therefore, if it comes requiring action, it is then a command, and it is either associated with a notification of punishment for its abandonment—therefore becoming obligatory—or not associated [with punishment]—thus becoming recommended. As for that which comes requiring abandonment, if it indicates punishment for doing it, it is then a prohibition; otherwise, it is reprehensible. But if it comes as an option, it is allowed.

It is necessary to mention the definition of each [category] consecutively. As for the definition of obligatory [*wâjib*], we have mentioned part of it in the introduction of this book, and we shall

¹Ghazâlî uses the terms '*harâm*' and '*mahzûr*' interchangeably to mean prohibited. *Al-Mustasfâ*, 1:55.

now mention what has been stated concerning it.

Some people have said that it [*wâjib*] is that in which punishment is prescribed for its abandonment. But this was objected to on the basis that the punishment for abandoning an obligation may be waived. However, this does not remove it from being obligatory because obligatoriness is readily realized, while its punishment is awaiting.

Also, it has been said that /1:66/ it is that in which punishment is threatened for its abandonment. But this is objected to by saying that if He has threatened, then the realization of the threat would be necessary since the speech of Allâh, *قُلُوبُ*, is the truth. However, it is conceivable for Him to waive it [the threat] and not to punish.

It is also said that [an obligation] is that in which punishment is feared for its abandonment. But this [position] is refuted by [considering] that whose prohibition or obligatoriness is uncertain, for it is not an obligation. Yet punishment is feared for its abandonment.

Al-Qâdî Abû Bakr [al-Bâqillânî],² *رحمته الله*, said that it is best to say, with regard to its definition, that it [obligation] is that in which its abandoner is denounced and punished in accordance with the *Sharî'a* in a certain way. For its denunciation is readily realized,

²al-Bâqillânî was a prominent fourth century Ash'arî theologian and Mâlikite jurist. He is said to have been a major element in the systemization and growth of Ash'arite theology. See the Encyclopaedia of Islam, new ed., s.v. "al-Bâqillânî" by R. J. McCarthy.

while its punishment is uncertain. His [al-Bâqillânî's] statement, ". . . in a certain way," meant to include an obligation with options [*wâjib mukhayyar*] because one is still blamed for abandoning it and its alternative, as is the case with an obligation with latitude [*wâjib muwassa'*]. For one is still blamed for abandoning it and abandoning the intention to obey it.

If it is said: Is there a difference between '*wâjib*' and '*fard*'?

We shall say: In our view, there is no difference between them. Rather, they are synonymous terms, similar to '*ḥatm*' [necessary] and '*lâzim*' [must]. The followers of Abû Hanîfa have agreed to specify the term '*fard*' as that whose obligatoriness is decisively established, and specify the term '*wâjib*' as that whose obligatoriness is known only through conjecture [*zan*]. But we do not [specify] the categorization of an obligation as decisive or conjectural. And there is no restriction in the technical usage of terms after understanding the meanings.

Al-Qâḍî has stated that if Allâh obliged something upon us but did not threaten punishment for abandoning it, it is still an obligation because obligatoriness is [established] solely on the basis of His obliging, not on the basis of punishment. But this is an open question. For there is no sense in attributing obligatoriness to something whose doing and abandonment equiponderate with respect to us, since we do not conceive of the obligatoriness [of something] except when its doing preponderates over its abandonment with respect to our objectives. So if preponderance is negated, there is no meaning for obligatoriness at all.

Now, if you know the definition of *wājib*, that which is prohibited [*mahẓūr*] is its opposite. So its definition should not be difficult to perceive.

As for the definition of allowable [*mubâḥ*], it has been said regarding it that it is that whose abandonment and doing are equivalent. But this [position] is refuted by [considering] the acts of a child, an insane person, or an animal; it is also refuted by the acts of Allāh, ﷻ, since many of His acts in relation to us are equivalent to [their] abandonment. In fact, they are always indifferent with regard to Allāh, ﷻ. Similarly, acts before the revelation of the *Sharī'a* are equivalent to abandoning [them]. Thus, nothing of this [sort] is called *mubâḥ*. Rather, its definition is that whose permission to do or abandon has come from Allāh, ﷻ. [It is] neither associated with the denunciation or the praise of its doer, nor with the denunciation or the praise of its abandoner.

It is possible to define it [*mubâḥ*] as that whose doing or abandoning the *Sharī'a* declares as harmless; nor is there benefit with respect to its performance or abandonment. This [wording] guards against the abandonment of what is allowable for [what is] disobedient, for one suffers not by way of abandoning *mubâḥ*, but by way of committing disobedience.

As for the definition of what is recommended [*nadb*], it is said in its regard that it is that whose doing is better than its abandoning, where no blame follows its abandonment. But an argument posed against this [definition] is that of eating before the coming of the *Sharī'a*, for it is better [to eat] than to abandon [eating], because of both its pleasure and sustenance.

The Mu'tazilites said that it [*nadb*] is that whose doer, upon doing it, deserves praise, though he does not deserve blame for its abandonment. But an argument posed against this concerns the acts of Allâh, ﻏﻴﺮﻩ, for they are not called *mandûb* even though He is praised for every action and is never blamed. Thus, more appropriately, regarding its definition, it is that which is commanded where blame does not follow its abandonment, insofar as abandonment without a need for a substitute is concerned, guarding against obligations with options [*wâjib mukhayyar*] or with latitude [*wâjib muwassa'*].

As for *makrûh* [reprehensible], it is an ambiguous term of several meanings in the technical usage of the 11:67/ *fuqahâ'*. One of the [meanings] is *prohibited*. For al-Shâfi'î, ﺭﺟﻮﺀ, has often said, "I dislike [*akraha*] such and such," meaning *prohibition*.

Secondly, it is that which has been prohibited, but as a prohibition for purity—that is, that whose abandonment is indicated as better than its performance, even though there is no punishment prescribed for it, just as the recommended indicates that the performance of something is better than its abandonment.

Thirdly, it [*makrûh*] is the neglect of a worthier [act], although it is not prohibited—such as neglecting the mid-morning prayer [*duḥâ*], not because of a revealed prohibition concerning it [its abandonment], but because of the abundance of its excellence and reward. It has been said that its abandonment is reprehensible.

Fourthly, it is that whose prohibition is liable to doubt and uncertainty, like the meat of predatory animals or a small amount of *nabîdh*. But this is an open question. For if one's own *ijtihâd*

leads him to consider it prohibited, it is thus prohibited for him. But if one's *ijtihâd* leads him to consider it permissible, then there is no meaning for reprehensibility in this regard, except when the arguments of the opponents agitate his soul and leave an impression on his heart. For he, *عليه السلام*, said, "Sin is that which agitates the heart." Therefore, it is not inappropriate to apply the term *karaha* here because of the fear of it being prohibited, even though it is most likely permissible. This is valid according to those who hold that the correct *ijtihâd* [*musîb*] is one.

As for those who regard every *mujtahid* to be correct, permissibility, according to them, is decisive when it overwhelms his [the *mujtahid*'s] conjecture.

Now, since we have completed clarifying the categories [of *ahkâm*], we shall next address the discussions that branch from them.

I. DISCUSSION: An obligation [*wâjib*] is divisible into that which is fixed [*wâjib mu'ayyan*] and that which is unspecified within particular categories. This is called an obligation with options [*wâjib mukhayyar*], as in the case of one option among those required for atonement; for that which is obligatory; among them [the options], one is not specifically defined.

The Mu'tazilites deny this and state that there is no sense in an obligation accompanied by options because they are contradictory. But we claim that this is rationally possible and that it has occurred in the *Sharî'a*.

As for the possibility of its rational proof, it is like when a

master says to his servant, "I have made either sewing this shirt or the construction of this wall an obligation upon you today. Whichever you do, I will be satisfied and will reward you for it. But if you abandon both, I shall punish you. Again, I am not obliging both, but I only oblige one—not specifically defined—namely which ever you wish to do." This is an intelligible discourse, and it is not possible to say that he did not make anything obligatory upon him because he exposed him to punishment for neglecting both. Therefore, he [the servant] is not free from obligation. Nor is it possible to say that he obliged both because he explicitly stated the opposite. Also, it is not possible to say that he obliged one [task] specifically, either sewing or constructing, because he explicitly stated the option. Thus, there is no alternative but to say that the obligation is one [of the options] but not specifically defined.

As for the proof of its occurrence in the *Shari'a*, it is in the characteristics of atonement. Indeed, the obligation of emancipating a slave has options with regard to which individual slave. Similarly, the marrying of a virgin woman seeking marriage to one of two suitable proposing men is an obligation, while there is no way to oblige [marrying] both. Also, confirming the imamate for one of two qualified for the imamate is an obligation, while [confirming] both is impossible.

If it is said: The obligation is all the options of atonement. Thus, if he abandons one, he is punished for all. But if he performs all of them, they are regarded as fulfilling the obligation. And if he

performs one, the other [options] are removed. Yet an obligation may be removed /1:68/ by reasons other than fulfillment, and this is not absurd.

We shall say: This rule is not consistent with the case of two *imâms* nor of the two eligible men, for combining in this regard is prohibited. Therefore, how could all [options] be obligatory? Moreover, this is in opposition to the consensus concerning the options of atonement. For the whole community is in agreement that all [options] are not obligatory.

They [the Mu'tazilites] have argued that if the characteristics of the three options are equal in the sight of Allâh, ﷻ, with regard to the benefit of the servant, then all must be obligated to ensure equality between the equals. But if one of them is distinguished by a characteristic requiring obligatoriness, then it must be the obligation and should not be left unspecified among the others so that it is not confused with the others.

We shall say: Who conceded to you that actions per se have characteristics for which Allâh, ﷻ, obliges them? Rather, obliging belongs to Him. It is for Him to identify one of three equal [options] and specify it as an obligation to the exclusion of the others. Furthermore, it is for Him to oblige one, but not specifically; He entrusts the specification to the choice of the locus of obligation for his acts, so that obedience does not become difficult for him.

They [the Mu'tazilites] have argued that an obligation is that to which obligatoriness is attached. So if what is obliged is one of the three options, then Allâh, ﷻ, would know that to which obligatoriness is attached; so it is distinguished in His knowledge.

Thus, it becomes the obligation.

We shall say: If He obliges one [option], but not specifically, then we know it as being unspecified. For example, if a master addresses his servant, "I have obliged you with either sewing or construction," then how could Allâh, ﷻ, know it, for He does not know it except by its characterization—and its characterization is that it is not specified. Thus, He knows it as unspecified, as it is. Now this is the substantiated [position]; that is, the obligation does not have an essential characteristic associated with the attachment of obligatoriness to it. It is merely an attribute of the address, and the address is based on utterance and remembrance.

Now, the creation of black color in one of two objects, unspecified, and the creation of knowledge in one of two persons, unspecified, is impossible. As for mentioning one of two [things], not specifically, this is possible, such as when one says to his two wives, "One of you is divorced." Hence, obligation is a statement that follows utterance.

If it is said: [If] one who obliges seeks something, his sought object must be distinguished in his mind.

We shall say: It is possible that his request is related to one of two things, such as when a woman says [to her guardian], "Marry me to one of the two seekers, regardless of which one he is"; or, [the statement] "Emancipate one of these slaves, whichever of them it might be"; or, "Give allegiance to one of these two imâms, whichever of them it may be." So what is sought after here is one of them, unspecified. And [as for] all that can conceivably be

sought, its obligatoriness is also conceivable.

If it is said: Allâh, ﷻ, knows what the locus of obligation will do and that through which the obligation is fulfilled. Therefore, it is specified in the knowledge of Allâh, ﷻ.

We shall say: Allâh, ﷻ, knows it as unspecified, then He knows that it will be specified by his [the locus'] action, so long as it was not specified before doing it. Furthermore, if one performs all [the options] or does none of them, how could one [option] be specified in the knowledge of Allâh, ﷻ.

If it is said: Why is it not possible for [Him] to oblige one of two persons but not specifically? And why do you say that a collective obligation [*fard al-kifâya*]³ is laid upon everyone although its obligatoriness is discharged by the action of one?

We shall say: [This is] because obligatoriness is realized by punishment, and it is not possible to punish one of the two persons, unspecified. But it is possible to say that one will be punished for [neglecting] one of two actions which is not specified. /1:69/

II. DISCUSSION: Obligation is divisible, with regard to

³The phrase '*fard al-kifâya*' refers to those obligations for which the Muslim community at large is responsible but can be discharged when a lesser number of individuals—or even one person—fulfill them. Funeral prayers, greetings, etc. are a few examples. See the *Encyclopaedia of Islam*, new ed., s.v. "Fard" by T. W. Juynboll.

time, into *mudayyaq* [confined] and *muwassa'* [latitudinal].

Some people have said that [the notion of] latitude contradicts obligatoriness. But this is false [both] rationally and on the basis of the *Sharî'a*. For when a master says to his servant, "Sew this garment during the light of this day in either its beginning, middle, or end, in whichever one you wish. Whenever you do it, you will have fulfilled my obligation," this is rational. It does not go beyond [the three options]. Either it is said that he [the master] did not obligate anything at all, or he obligated something which is restricted [in time]. Both of these are absurd. So nothing remains except that he has given an obligation with latitude.

As for the *Sharî'a*, *ijmâ'* has fixed the obligatoriness of prayer at noon; and if a person prays [at that time], he is fulfilling the obligation and obeying the obliged command even though there is no restriction.

If it is said: The essence of obligation is that where abandonment is not permissible; in fact, one is punished for it. But [as for] prayer and sewing, if they are attached to the last part of the [prescribed] time, one is then punished for its abandonment. Therefore, its obligatoriness is in the last part of the time. As for before that [time], he chooses between doing or abandoning it—but its performance is better than its abandonment. This is the definition of '*nadb*.'

We shall say: Unveiling this question is to state that rationally there are three categories: First, an act in which there is absolutely no punishment for its abandonment—and this is

recommended [*nadb*]; second, an act in which absolutely there is punishment for its abandonment—and this is obligation [*wâjib*]; and third, an act in which there is punishment for its abandonment with respect to the entire time, but one is not punished in relation to certain parts of the time—and this is a third category, thus needing a third term, while its essence does not exceed *nadb* and *wujûb*. The most appropriate term for it is '*wâjib al-muwassa*' [obligation with latitude] or '*unabandonable nadb*.' But we have found the *Shari'a* calling this category *wâjib* on the grounds that *ijmâ'* has established that the intention to pray at the beginning of its time duration is for [discharging] the obligation; and one is rewarded for its performance [with] the reward of an obligation, not of a recommendation.

These three categories then cannot be denied rationally. Thus, the dispute is reduced to terminology. But what we have mentioned is more appropriate.

If it is said: This is not a third category but *nadb* with respect to the beginning of the time duration, since not doing it is possible at that time. Yet with respect to the last part of the time, it is inevitable because delaying it beyond that cannot be allowed. Also we concede to your statement that one intends [to fulfill] an obligation. Still, it is obligatory in the sense that it becomes an obligation, similar to when a person pays *zakât* in advance, intending to fulfill the obligation of *zakât*, and is rewarded with the reward of advancing an obligation, not the reward of *nadb*, nor the reward of an obligation which is not urgent.

We shall say: Your statement that it is possible to delay it with respect to the beginning of the time and is therefore praiseworthy [*nadb*] is wrong because this is not the definition of *nadb*. Rather, *nadb* is that whose abandonment is unconditionally permissible, while it is not permissible to abandon this except with a condition that it should be done afterward or [at least] intended to be done. And whatever is permissible to abandon for an alternative or a condition is not *nadb*, on the grounds that if one was commanded with, [say], manumission, then there would not be any slave but whose emancipation may be abandoned by him [the master], but on the condition of freeing another slave.

Similar [to this] is the case of the options for atonement. There is not one [option] but whose abandonment is possible, but for an alternative. This is not *nadb*. In fact, just as that is called an obligation with options [*wâjib mukhayyar*], this is called an unconfined obligation [*wâjib ghayr mudayyaq*]. Furthermore, since the meaning is agreed upon, namely the divisibility into the above three categories, there is no need to dispute. Moreover, that whose abandonment is permissible through a condition is different than that whose /1:70/ abandonment is not at all permissible and is different than that whose abandonment is unconditionally permissible, which is a third category.

As for what you have mentioned, that it is advancing the obligation and is therefore called an obligation, this is contrary to the *ijmâ'*, since the intention of advancing *zakât* is obligatory. But none among the early generations made his intention for prayer in the beginning of its time differently than the way he made his

intention in the last part; they did not distinguish [between them] at all. This is certain.

If it is said: Some people have said that [an act of worship] occurs as being supererogatory [*nafl*],⁴ while the obligation is dismissed on one's part. Others have said that it occurs as being uncategorized. For if it continues [as a command] with the loci of obligation until the end of the time, it then becomes evident that it occurs as an obligation. But if he dies or becomes insane, it occurs as supererogatory.

We shall say: If this were to occur as supererogatory, then it would have been permissible by intending [to perform] a supererogatory [act]. Rather, it is impossible for the intention of an obligatory [act] to exist on the part of one who knows it to be supererogatory, since intention follows knowledge. The position of suspension is invalid because the *ummah* is unanimous that whosoever dies in the middle of an [obligation's] time [period] after completing the prayers, dies fulfilling the obligation of Allâh, *عَلَيْهِ*, as he intended and performed it; for he said, "I intend to perform the obligation of Allâh, *عَلَيْهِ*."

If it is said: You have based your statement on [the premise] that abandoning it is permissible on a condition, namely having determination to obey or to perform [the command]. But this is not

⁴For a consise defintion, consult Qal'aji, *Mu'jam Lughat al-Fuqahâ'*, p. 485.

so because an obligation with options is that which has the option between two [or more] things, as in the case of atonement. But the *Sharî'a* does not give options between performing prayer and [simply] having the determination. For His statement, "Pray at this time," does not make any mention of determination. Therefore, obligating it is additional to the requirement of the expression, for if the person was heedless and did not actually make determination and died in the middle of the time range, he would not be disobedient.

We shall say: As for your statement that if such a person forgets, he would not be sinful, this is conceded. The reason for this is that a person who has become heedless is not responsible. But if he was not heedless of the command, then he cannot be free from determination except by its opposite, which is determination to absolutely abandon it. And this is prohibited. Also, that without which one cannot escape a prohibition is an obligation. Therefore, this proof indicates its obligatoriness even though the literal meaning of the expression per se does not indicate it.

Now the indication of the rational proof is stronger than that of [revealed] expression. Therefore, the essence of this discussion is reduced to [the fact] that an obligation with latitude is like an obligation with options, with respect to the beginning of [the prescribed] time, as well as its end. For if he were to be discharged from it by the end [of its time], he would not be disobeying, provided he has performed it in the beginning.

III. DISCUSSION: If one suddenly dies during the time

period of a prayer after resolving to fulfill it, he would not be disobeying.

Some of have said that if one were to adhere to the precise meaning of obligatoriness [*wujûb*], he [who had died] would be disobeying. But this is contrary to the *ijmâ'* of the early generations. For we know that they did not hold as disobedient he who died suddenly when a measure [of time] for four *rak'as* elapsed after the meridian time, or when a measure [of time] for two *rak'as* elapsed at the beginning of dawn. Nor did they attribute negligence to him, particularly if he had started performing ablution or proceeding to the Mosque but died on the way. Indeed, it is impossible that he be disobedient while deferral has been permitted to him. For if one does what he is allowed, how is it possible to pronounce him disobedient?

If it is said: Deferment is permitted to him on the condition that he remains safe.

We shall say: This is absurd because eventuality is undisclosed to him. If he were to ask us saying, "Eventuality is concealed from me, and I owe the fasting of one day. But I wish to delay it until tomorrow. Is this deferment permitted despite [my] ignorance of eventuality? Or will I be disobedient for delaying it?" he must be answered.

But, then, if we say that he is not disobeying, why has he been sinful for dying, which is /1:71/ beyond him? And if we say that he is disobeying, then this is contrary to the *ijmâ'* on obligation with latitude [*wâjib muwassa'*].

But if we say, "If it were in the knowledge of Allâh that you will die before tomorrow, you are then disobeying; and if in His knowledge you were to live, then you may delay," he shall say, "How will I know what is in Allâh's knowledge? So what is your opinion with respect to the one who does not know?" Thus, it is necessary to resolve its lawfulness or prohibition.

If it is said: If delay is always permitted and he is not disobeying if he dies, then what is the meaning of its obligatoriness?

We shall say: Obligatoriness is asserted by the fact that delay is not allowed except on the condition of resolving [to fulfill it]. Now, the resolve to delay is permitted only for a term wherein remaining alive preponderates in his thoughts, as in his delaying of the prayer from one hour to the next, and his delaying of the fast from one day to another, resolving at all times to attend to them.

Also, this is the case with his deferment of performing *hajj* from one year to another. For if an ill person facing death resolves to delay [fasting] for a month, or if a weak elderly person decides to delay [*hajj*] for several years and it preponderates in his mind that he may not live until that time, he would be sinning by such a delay. Even if he does not die and successfully performs [the obligations], he would [still] be accountable for the intent of his thinking. Such is the case with a *mu'azzir*⁵ beating a person

⁵The term '*mu'azzir*' refers to one who inflicts *ta'zîr*, which is the discretionary power of the judge to determine the penalty for crimes which have no prescribed punishment in the *Sharî'a*. See

devastatingly, or one lancing an abscess while it preponderates in his mind that it is fatal; he would be sinning even if the man survives.

It is for this reason that Abû Hanîfa said that delaying *hajj* is not permissible because surviving until the coming year is not likely.

As for delaying fasting and *zakât* for a month or two, this is permissible because death is not very likely during this period. Al-Shâfi'î, رَجْمُهُ، holds that surviving until the next year is highly expected in the case of a young healthy person but not in the case of an elderly or sick person. But, a *mu'azzir* who does what he strongly believes to be safe, and [yet] the person [being inflicted] dies, still he is liable; not because he has committed a sin, but because he made a mistake in his assumption, and a person in error is liable without being sinful.

IV. DISCUSSION: They have differed regarding that without which an obligation is not complete, as to whether it can be characterized as an obligation.

The fact of the matter is that this is divided into that which is not of the volition of the locus of obligation, such as the cases of the *faculty* of acting, the *hand* in writing, and the *leg* in walking. These cannot be characterized as obligatory. Rather, their absence prevents the laying of obligation, except in the view of those who permit obliging the unbearable. Similar to this is the obligation of

Qal'aji, *Mu'jam Lughat al-Fuqahâ'*, p. 136.

the presence of the *imâm* for Friday [prayer] and the presence of a sufficient number [of worshippers]; for this is not in his [power]. Therefore, this cannot be characterized as obligatory. Rather, the obligation is nullified by its infeasibility.

As for that which is contingent upon the choice of the worshipper, [this] then is divided into a *Sharî'a* condition and a perceptible [condition].

The *Sharî'a* [condition] is like ritual purity for prayer; it must be characterized as obligatory at the time prayer becomes obligatory, for obligating prayer also obligates that through which an action becomes prayer.

As for the perceptible—such as rushing to Friday [prayer] or walking to *hajj* and to the places where rites of worship are to be performed—[this] must, then, be characterized as obligatory as well. For commanding one who is far from the House to [perform] *hajj* is certainly a command to travel to it. Similarly, when it is obligatory to wash the face and it is not possible without washing part of the head, or when fasting is obligatory and it is not possible except by abstaining [from food, drink, etc.] during the part of the night before dawn, then this [also] is characterized as obligatory. So we say that the action of the locus of obligation, without which an obligation cannot be achieved, is an obligation.

This is more appropriate than if we say that it is obligatory to arrive /1:72/ at an obligation by that which is not obligatory, since our statement, "It is obligatory to do what is not obligatory," is contradictory.

But our statement, "That which was not obligatory has

become obligatory," is not contradictory because it *is* obligatory. Yet the *principle* has been obligated by intending its obligatoriness. The mean has become obligatory through the obligatoriness of the intended obligation. It has become an obligation, in any case, even though the cause of its obligation is different than the cause obligating the principle one.

If it is said: If [the mean] were to be obligatory, it should be measurable. So how much of the head is required to be washed, or what extent of the night is [required] for abstention?

We shall say: The mean of achieving an obligation is obligatory, and it is not specified. In fact, it is mandatory to wipe the head. But the minimum range to which the term [*mash*] applies is sufficient. But this is not specified. So, similarly, what is obligatory is the minimum with which washing the face is possible. This measurement is sufficient regarding obligation.

If it is said: If it [the means] were obligatory, then there would be reward for doing it and punishment for abandoning it, while one who abandons ablution is not punished for what he neglected in washing the head or the face. And one who abandons fasting will not be punished for neglecting to fast [part of the] night.

We shall say: Who told you of this? And from where did you know that the reward in *hajj* of one who comes to the Ka'ba from afar is not greater than the reward of one near? or that when one toils his reward does not increase, even though it be as a means?

As for punishment, it is for abandoning fasting or ablution. It is not distributable on the individual parts of the action. Therefore, there is no sense in relating it to particulars.

If it is said: If one were capable of confining [his ablution] to washing the face, he would not be punished.

We shall say: This is conceded, for it is obligatory only for a person who is unable [to wash only his face]. As for the able, there is no obligation on him [to wash part of his head].

V. DISCUSSION: Some say: If a lawful wife were to be mistaken for an unrelated woman, then it is obligatory to desist from both of them, though the unlawful one is the unrelated woman and the wed wife is lawful.⁶ However, it is incumbent to abstain from her.

But this is contradictory. Rather, prohibition and lawfulness are not inherent characteristics of them. In fact, they are related to the act. Thus, [since] the act of sexual intercourse is prohibited with regard to both of them, what is the sense, then, in our saying that sexual intercourse with the lawful wife is lawful and with the unrelated woman prohibited? Rather, both are unlawful. One of them for the reason of her being unrelated, and the other for being mistaken for the unrelated woman.

Therefore, the dispute concerns the *'illa* [underlying reason], not the judgment as such. This has only entered imaginations

⁶This refers to marital sexual intercourse.

because the characterization as lawful and prohibited resembles the characterization of inability and ability, black and white, and other perceptible and physical characteristics. This is a delusion, to which we have already called attention, since [the *Sharî'a*] rules are not at all essential characteristics of objects.

Indeed, we say that if a foster sister is suspected to be among the women of a town and the [foster brother] marries one of these [towns-women], it [the marriage] is lawful, although it is possible that she be the foster sister in the knowledge of Allâh, ﷻ. But we do not say that in the knowledge of Allâh, ﷻ, she is not his wife, since there is no meaning for *wife* other than the lawfulness of having sexual intercourse with her on the basis of [lawful] marriage—and it has been lawful [for him] to have sexual intercourse with her. Therefore, she is lawful as far as he is concerned, and in the sight of Allâh, ﷻ. Nor do we say that she is unlawful in the sight of Allâh, but lawful for him based on his assumption. Rather, if lawfulness is assumed, it is lawful in the sight of Allâh, ﷻ. A verification of this will be given in the discussion regarding the rectitude of *mujtahids*.

As for when a person says to his two wives, "One of you is divorced," it is then possible to say that sexual intercourse with both of them is lawful. Divorce is not in effect because he did not specify one as the locus; it is as if he sold one of his slaves. But it is [also] possible /1:73/ to say that both are unlawful [to him] because it is not required to specify the locus of divorce. But then he must specify. Most *fuqahâ'* have adhered to this. Still, what is to be followed regarding this is what the *mujtahid's* opinion necessitates.

As for concluding that one of them is unlawful while the other is [a lawful] wife—just as they have imagined with regard to confusing a legal wife with an unrelated woman—this sheds no light here, for that [the former case] was ignorance on the part of the man, occurring after the specification. But as for [the latter] case, it is not in itself specified. But he is known to Allâh, ﷻ, to have divorced one of them, not specifying her.

If it is said: When it is incumbent for him to specify, Allâh, ﷻ, then, knows which one of them he will specify. Therefore, she becomes the unlawful, specified divorced one in the knowledge of Allâh, ﷻ. And this is only difficult for us [to comprehend].

We shall say: Allâh, ﷻ, knows things as they are. So, He does not know a divorce whose locus has not yet been specified as the particular [one]. Rather, He knows it is subject to specification when the divorcing one specifies it. Furthermore, He knows, for example, that he will specify Zaynab; and therefore the divorce will be specified when he specifies it, not before.

So, we say in regard to that which is an obligation with options [*wâjib mukhayyar*], Allâh, ﷻ, knows what the worshipper will choose from among the options of the atonement. But He does not know it as specific obligation [*wâjib bi'aynihî*], but as an unspecified obligation [*wâjib ghayr mu'ayyan*], which is not specified immediately. Then He knows it as becoming identified by way of specification. The proof is that if He knows that one will die before atonement and before specifying it, then He knows the obligation or the divorce the way they are, that is, as unspecified.

VI. DISCUSSION: They have disputed with regard to an obligation which is not circumscribed by definite limits, such as wiping the head, tranquillity during bowing and prostration, and the duration of standing [in prayer]; for if he exceeds the minimum requirement for [fulfilling] the obligation, will the addition be characterized as obligation? For example, if he wipes the entire head, is it considered in its entirety an obligation? Or what is obligated is the minimum [requirement] and the rest is recommended?

Some people have opined that the entire [action] is characterized as obligatory because the relationship of the entirety to the command is one, and the command, itself, is one, which is an obligating command. Furthermore, some [parts] are indistinguishable from others, for [performing] all is [considered] obeying.

It is more appropriate to say that the addition exceeding the minimum is recommended [*mandûb*] because nothing was obligated except the minimum, to which the term [*'wâjib'*] applies. This is also with regard to tranquillity and standing [in prayer]. As for those [rites] which occur sequentially, they are more evident. And so it is with wiping [the head], when it occurs in succession, and that of its totality, which occurs simultaneously, though the parts [of wiping] are indistinguishable by either gesture or specification. Hence, it is possible to assert that the minimum portion of it is mandatory, and what remains is recommended, even though what is recommended is not distinguished from what

is obligated. For even without requiring a substitute there is absolutely no punishment for abandoning the remainder that exceeds the minimum. Therefore, the definition of obligatory does not apply to it.

VII. DISCUSSION: *Obligatoriness*, by definition, is distinguished from *allowability* and *permissibility*. This is why we assert that whosoever assumes that when an obligation is abrogated permissibility occurs is in error. Rather, the truth is that when it is abrogated, the matter reverts to the state that preceded obligation—be it prohibition or permissibility and obligatoriness becomes, due to abrogation, as if it did not exist.

If it is said: Every obligation is permissible and more, for the permissible is that which upon doing there is no punishment. Also, there is no punishment for executing an obligation, which is the very notion of permissibility. Therefore, when an obligation is abrogated, the /1:74/ punishment for abandoning it is annulled, as well, and the annulment of the punishment for doing it continues, which is the very meaning of permissibility.

We shall say: This resembles one's statement, "Every obligation is permissibility and more [i.e., what makes it an obligation]; so when the obligation is abrogated, permissibility remains." No one adheres to this—and there is no distinction between the two statements. Furthermore, both of them are delusions. Rather, an obligation does not imply the notion of permissibility; for the essence of permissibility is choosing between

doing and *not doing*, and the equiponderance between them is determined by the *Sharî'a*. This is negated in an obligation.

The mention of this question here is more appropriate than discussing it in the "Book of Abrogation." For it is an investigation of the essence of obligation and permissibility, not of the essence of abrogation.

VIII. DISCUSSION: As you understand that obligation does not contain permissibility, then understand that the permissible does not include obligation. Furthermore, the permissible is not obliged due to their mutual contradicting definitions, as it has been mentioned above, contrary to al-Balkhî. For he said that the permissible is commanded but is short of the recommended [*nadb*], just as the recommended is commanded but is short of obligation. This is absurd, since command is requiring and bidding, while permission is not bade, but rather there is permissibility therein and no restriction. So when the term *command* [*amr*] is used for permission, it is figurative.

If it said: Abandoning the prohibited is obligatory, while permissible repose [in marriage] is abandonment of the prohibited, such as adultery, stealing, and theft. Also, the permissibility of silence or utterance is abandonment of infidelity and lying; and abandoning infidelity, lying, and adultery is commanded.

We shall say: A prohibition may be abandoned by what is recommended. Should it then be an obligation? Also, a prohibition may be abandoned by another prohibition. Should a single thing,

then, be an obligation and a prohibition? This is mutually contradictory. This follows necessarily the position of those claiming that the commanding of something is a prohibition of its contrary, and the prohibition of something is commanding one of its contraries. Furthermore, it necessarily follows that prayer is prohibited if it is used as sanctuary by one abandoning the obligatory *zakât*. For it is one of the obligation's contraries. All of these are logical conclusions from their position, though they did not state them.

If it is said: Concerning the permissible [*mubâh*], does it fall under religious obligation? Is it considered of the commands?

We shall say: If *laying obligation* means bidding what is burdensome, this is not in the [definition of] permissible [*mubâh*]. But if it means that whose freedom and permission on the basis of the *Sharî'a* is known, it is [implied in] *laying obligation* [*taklîf*]. Also, if it means that whose obligation on the basis of *Sharî'a* is believed, then it is obligated, but not by permissibility per se, but on the basis of the principle of faith. *Al-Ustâdh* Abû Ishâq [al-Isfrayînî] called it '*taklîf*' based on this latter interpretation. This is remote, although it is a dispute in terminology.

If it is said: May *permissible* be described as good?

We shall say: If good is that which its agent is to do, this is good. If it is that in which extolling or praising its agent has been commanded, or that whose deservingness of praise is necessary to believe—while bad is that which necessitates believing that its doer

deserves blame or punishment—then the *permissible* [*mubâh*] is not good.

Now, we have stipulated [the definition] with “believing the deservingness,” thereby we excluded the sins of the prophets. For there is proof indicating that they have issued from them. But there has not been a command to debase or blame them. Yet we do believe their deservingness of this in spite /1:75/ of the grace of Allâh, ﷻ, omitting this entitlement [from them] because He has commanded us to extol and praise them.

IX. DISCUSSION: The permissible [*mubâh*] is [one of the categories] of the *Shari'a*.

Some of the Mu'tazilites have held that it is not [of the categories] of the *Shari'a* because the meaning of *permissible* is the removal of restrictions from either doing or not doing, and this is established before the [arrival of] revealed authority. So the meaning of permitting something by the *Shari'a* is leaving it as it was before the arrival of revealed authority and that it, [upon arriving], did not change its status. Everything whose prohibition or obligatoriness has not been established remains in the original state of negation. So it has been [categorized] as permissible [*mubâh*].

This requires deep examination. To shed light on it, acts are [divided] into three categories:

One category [is what which] remains in its original status. So nothing from the *Shari'a* has come concerning it, neither in explicit expression nor through evidence of *Shari'a* proofs. Therefore, it

should be said that whatever has [originally characterized it] continues and revealed authority has not effected it. Thus, there is no [legal] judgement concerning it.

As for the second category, *Shari'a* permits choice regarding it and states, "If you will, do it; and if you will, do not do it." This is an address, and command has no expression but through an address. There is no way to reject it after it has been revealed.

The third category is that for which a choice-permitting address was not revealed. But the evidence of revealed authority indicates the removal of restriction with respect to doing it or abandoning it. Therefore, it has been recognized on the basis of revealed authority. If it were not for this proof, the rational proof would have acknowledged the removal of restrictions from an agent [of such acts] and his continuance in the original state of negation. But this is an open question, since revealed and rational proof have joined together concerning it.

As for the other two categories, they are also open questions because it is possible to say that the *Shari'a* statement, "If you will, stand; and if you will, sit," is not renewing the command. Rather, it is an affirmation of the previous one. The meaning of its affirmation is that He does not change His command. Rather, He leaves it the way it is. Therefore, this is not a command issued by the *Shari'a*. So it is not of the *Shari'a*.

As for the other category, that is, where neither an address nor a proof has arrived concerning it, it is also possible for it to be denied by saying that the proof of revealed authority has indicated—regarding that which nothing has arrived [from *Shari'a*]

bidding to do or bidding not to do—that a locus of obligation has a choice with regard to it.

This is proof for the generality [of a command] concerning endless acts. Thus, there will not be a single act without an indication from the *Sharî'a*. So its permissibility becomes from the *Sharî'a*; otherwise, it could be disputed that permissibility on the part of the *Sharî'a* is affirmation, not alteration. With affirmation, there is no renewal of the command. Rather, it is an explanation that nothing new has been originated with regard to it. In fact, it is an abstention from treating it. Verification of this will come in the discussion concerning the establishment of proof against a denier.

X. DISCUSSION: That which is recommended [*mandûb*] is commanded, while the permissible [*mubâh*] is not commanded. For command is requiring and bidding, but the permissible is not required.

As for the *mandûb*, its [doing] is required but with the omission of denouncing whoever abandons it. *Wâjib*, however, requires doing, but with the denunciation of whoever abandons it, either by abandoning it absolutely or abandoning it by changing it.

Some people have said that the *recommended* is not implied in a *command*. But this is corrupt for two reasons.

One of them is that it has become common knowledge in the language of the '*ulamâ*' that command is divisible into obliging commands [*amru ijâb*] and recommending commands [*amru istahbab*]. It [may] also be divisible into permitting commands [*amru ibâha*] and obliging commands—considering that the

imperative mood may be applied to mean permission, as in His saying, *فُكِّلَ*, "... And when you end your pilgrim sanctity, then hunt . . .,"⁷ and, "When 11:176/the [Jum'a] prayer has ended, you may spread throughout the land."⁸

The second is that performing the permissible [*mandûb*] is unanimously regarded as obedience. But it is not obedience because of its being intended, for command, according to us, is different from will; nor because of its being existent, contingent, or owing to its essence or essential characters, for all of these apply to the permissible; nor for being rewarded for it, for the commanded person, even if he is neither rewarded or punished for obeying, is regarded as obedient. Reward is only to induce obedience, for the reward of his obedience is negated by infidelity. However, he is not excluded from being obedient.

If it is said: Command means a determined requirement wherein there is no option. But the recommended is associated with the allowability of abandoning it and exercising choice with regard to it. Yet your statement that he is called 'obedient' is opposed by the fact that if he were to abandon [*mandûb*], he would not be called 'disobedient.'

We shall say: Recommendation is a determined requirement where there is no option. For exercising choice [between options]

⁷*Qur'ân*, 5:2.

⁸*Qur'ân*, 52:10.

means equiponderance. Therefore, when the side of doing preponderates by attaching reward to it, equiponderance and the exercise of choice are removed. For Allâh, ﷻ, has said, with regard to prohibited acts, "*So let whosoever will, believe, and let whosoever will, disbelieve.*"⁹ Therefore, it must not be considered that command [*amr*] is a determined requirement in the sense that the *Shari'a* [necessarily] bids something of it per se. Rather, the *Shari'a* seeks it for its benefit. Indeed, Allâh, ﷻ, requires of his worshippers what is beneficial for them, and "*He likes not ingratitude from them.*"¹⁰ Similarly, He requires the recommended for gaining the reward and says that doing or not doing are equal with respect to "Me." As for you, there is no equality, nor do you have a choice, for abandoning it is abandoning your benefit and your reward. Therefore, it is a determined requirement.

As for their statement that one would not be called 'disobedient,' it is because *disobedience* is a term of denunciation, while denunciation has been removed from him. Certainly, he may be called a 'violator,' or 'uncomplying,' just as its doer is called 'complying' and 'law abiding.'

XI. DISCUSSION: If you know that the prohibited is in opposition to the obligatory—for its abandonment is required, while

⁹Qur'ân, 18: 29.

¹⁰Qur'ân, 39:7.

fulfilling an obligation is required—then you should be well aware that it is impossible for one and the same thing to be obligatory and prohibited or obedience and disobedience. However, the real meaning of *one* [*wâhid*] may be hidden from you. So *one* is divisible into that which is *one* by species or *one* numerically.

As for one by species, such as prostration [*sujûd*], which is one species of acts, it may be divisible into the obligatory and the forbidden, where its divisibility is based on attributes and relativities, such as prostration to Allâh, ﷻ, and prostration to an idol, for one of them is obligation and the other is forbidden. Yet there is no contradiction.

Some Mu'tazilites hold that there is contradiction because prostration is one commanded species. Therefore, it is impossible to forbid it. Rather one prostrating to an idol is disobeying by intending to glorify the idol, not by prostration.

This is an obscene error. For whenever the object of command and prohibition differ, it is not contradictory. Prostrating to an idol is different than prostrating to Allâh, ﷻ, because the difference of relativities and attributes necessitates dissimilarity, and something cannot be different than itself. Also, dissimilarity is, at times, based on the difference in species; at other times, it is based on the difference of characterizations; and sometimes it is based on the difference in relationships. Allâh, ﷻ, has said: *"Prostrate not yourselves to the sun and the moon; but prostrate yourselves to Allâh, who created them . . ."*¹¹ And what is

¹¹Qur'ân, 41:37.

commanded is not the same as what is prohibited. Furthermore *ijmâ'* has been constituted that he who prostrates to the sun is disobedient /1:77/ by both the prostration itself and the intent. Therefore, their statement that prostration is of one species is worthless, along with the divisibility of this species into various categories differing in purpose. For the aim of this prostration is the glorification of the idol to the exclusion of the glorification of Allâh, ﷻ.

Now the difference in the aspects of the act is similar to the difference in the act itself, insofar as the occurrence of *otherness*, which removes contradiction. For contradiction exists only in relation to one, and there is no unicity with dissimilarities.

XII. DISCUSSION: What we have mentioned concerning that which is one by species is evident.

[This is not] the case as far as that which is one by specification, such as the prayer of Zayd in a home that is usurped from 'Amr, so that his movement in the prayer is one specific act which is attained by him and is related to his power. Therefore, those who concede with regard to the one species disputed here say that this prayer is invalid because holding that it is correct concludes that one and the same act is both prohibited and obligatory.

But this is contradictory. So it is said to them that this is contrary to the *ijmâ'* of the preceding generations, for they did not instruct the transgressors, upon repentance, to make up for the prayers performed in the usurped homes, despite the frequency of

its occurrence. Nor did they prohibit the transgressors from praying in the usurped estates.

The answer to this question was problematic for al-Qâdî Abû Bakr, **وَجُمُ'ُ** **اَس**. So he said that obligation is removed at its [occurrence], not by it [praying in an usurped estate] being based on the proof of *ijmâ'*, nor does it occur as an obligation. For an obligation is that for which there is reward. But how could one be rewarded for that which he is to be punished? Furthermore, his act is one, namely being in the usurped home. His prostration and bowing are voluntary existents for which he is to be punished and from which he is prohibited.

Anyone who is overwhelmed by *kalâm* decisively affirms this [position] due to the unicity of its existence in all of its situations. But that from which it has come into being is none other than its incidents. Yet he is to be punished for them and is disobeying through them. So how can he be seeking nearness [to Allâh] on the basis of that for which he is punished and obedient on the basis of that wherein he is disobedient?

This is not satisfactory to us. Rather, we say that it is possible for an action having two differing aspects, even though it is one in itself, to be sought through one of the aspects and reprehensible from the other. What is impossible is only the seeking of [it] through the aspect which is particularly prohibited, while the performing of it as a prayer is sought. Yet it is prohibited as usurpation.

Now, usurpation is conceivable without prayer; and prayer by itself is conceivable without usurpation. But the two aspects have

joined in one action. But that which the command and prohibition are dependent upon are the two differing aspects.

Similarly, it is conceivable on the part of a master to say to his servant, "Today, pray one thousand *rak'as*, sew this garment, and do not enter this home. If you pursue the prohibition, I will beat you. But if you obey the commands, I shall emancipate you." So the slave sews the garment and prays one thousand *rak'as* in the home. Thus, it would be appropriate for the master to beat him and emancipate him, saying that he obeyed by sewing and praying, but he disobeyed by entering the home.

So it is with the case we are considering without any difference. Furthermore, an act, even though being one, may include the accomplishment of two different things. One of which is demanded and the other is prohibited. Now, if a person were to shoot a single arrow at a Muslim in such a way that it pierces a disbeliever, or if he [shoots] it at a disbeliever in such a way it pierces a Muslim, then he would deserve reward and punishment. He would have rights to the booty /1:78/ of the disbeliever; but he would be executed in punishment for [killing] the Muslim because his one action includes two different aspects.

If it is said: It is unanimous that committing what is prohibited annuls a rite of worship when it violates its condition, in spite of intending to seek nearness [to Allâh] by prayer. Yet seeking nearness by disobedience is absurd. So how can one intend nearness?

There are several ways to answer this:

The first is that when *ijmâ'* is constituted on the rectitude of this prayer, then, accordingly, it must be necessarily known that the intention of seeking nearness is not a condition, or the intention of seeking nearness with this particular prayer is possible. Now, Abû Hâshim, al-Jubbâ'i and those who disputed the rectitude of this prayer are preceded by the *ijmâ'* of the *ummah* to disregard requiring the transgressors to make up for their prayers in spite of their numerousness. But how could the omission of intending nearness be denied while they have differed in requiring the intention of [fulfilling] an obligation and the intention of relating it to Allâh, ﷻ?

Some people have said that it is not obligated unless one intends the noon or afternoon prayer. Therefore, it is in the domain of *ijtihâd*. Others have held that the prayer becomes mandatory at the end of [its] time. For example, if a minor were to pray at the beginning of [a prayer's] time and then reach puberty by the end of [its] time, it is sufficient for him even if he were to reach puberty in the midst of the time, even though obligatoriness is not established with respect to him.

If it is said: Whosoever intends to pray, his intention includes seeking nearness [to Allâh].

We shall say: When the prayer is validated on the basis of *ijmâ'* and the intention of nearness is impossible, this intention is then nullified. It is adequate to say that the intention of nearness is related to some parts of the prayer, such as remembrance, recitation, and ali that does not contest the rights of the

usurpation's victim. For the existents are those [things] which are the recipients of the [usurped] home's facilities.

Moreover, how could this be correct on the part of the Mu'tazilites, while according to them the commanded does not know that he is being commanded nor that the rite of worship is mandatory before the completion of obedience, as it [its discussion] will follow. Therefore, how can one intend seeking nearness through an obligation while he does not know its obligatoriness?

The second answer, which is more proper, is that one intends seeking nearness by praying, but disobeys by usurping. We have demonstrated the separation of one of them from the other. Therefore, one who prays finds in himself the intention of nearness by praying even though this was in a usurped home. For if he remains idle and does not perform any act, still he will be a usurper in the state of sleep, even though [he] is not using [his] power. For he only seeks nearness [to Allâh] by his acts, while those acts are not conditions for him being a usurper.

If it is said: He is usurping by his act in the state of sitting and standing, though he has no act other than his standing and sitting. Yet he is seeking nearness by his acts. Therefore, he turns to seeking nearness by the very thing that renders him disobedient.

We shall say: Insofar as receiving the facilities of the home, he is a usurper. But insofar as performing the motions of prayer, he is [considered] to be seeking nearness, just as we have mentioned in the discussion concerning sewing. For it is

conceivable for him to be a usurper while it is not known that he is fulfilling the prayer. And it is [likewise conceivable] to know that he is fulfilling the prayer, while it is not known that he is a usurper. Therefore, they are two different aspects, even though the act itself is one.

The third answer is that we say on what basis do you object to al-Qâdî, رَجُلٌ، when he concluded that an obligation is removed at its [occurrence]—not by it—based on the proof of *ijmâ'*? For he conceded that it is disobedience, but that command does not indicate fulfillment when one performs what is commanded, nor does prohibition indicate the lack of fulfillment. Rather, fulfillment is derived from another proof, as it will follow.

If it is said: Is this question /1:79/ subject to *ijtihâd* or is it decisive?

We shall say: It is decisive. Only one [answer] hits the truth concerning it because he who holds this to be correct relies on *ijmâ'*, which is decisive. Yet those who void it, they rely on the contrariety between seeking *nearness* and [engaging in] *disobedience*, claiming that it is impossible [to combine them] on the basis of rational proof. Therefore, the question is decisive.

If it is said: You have cited *ijmâ'* concerning this question, while Aḥmad b. Ḥanbal has held this prayer to be void and the invalidation of any prohibited contract, even sales at the time of calling for the [congregational] prayer on Friday. Therefore, how could you argue on the basis of *ijmâ'* against him?

We shall say: *Ijmâ'* is a valid proof against him since we know that the transgressors were not commanded to repeat [their] prayers despite the numerousness of their occurrence. At the same time, if they had been commanded to do this, it would have been well known. And if he [b. Hanbal] denied this, he would be compelled [to accept] what is more evident than his [denial], namely that a woman will not be lawful for her husband while he is liable to a *dâniq*¹² which he took unjustly. Nor will his sale, prayer, or conduct be adequate, leading to the position of most women being prohibited [from him] and the relinquishment of most properties. This is certainly a violation of the *ijmâ'*. So this cannot be allowed.

XIII. DISCUSSION: Just as what is prohibited is in opposition to what is obligated, the reprehensible is in opposition to the obligated. Therefore, a reprehensible [act] does not fall under a command such that one and the same thing becomes commanded and reprehensible—unless [its] reprehensiveness is diverted from the essence of the command to something else, such as the reprehensibility of praying in public washrooms, in a rest area for camels, in the bottom of a valley [in which water may flow], or similar places. For what is reprehensible concerning the bottom of a valley is risking the danger of flood; regarding the public washroom, it is exposure to slime or to Satan's overcoming [of a

¹² *Dâniq* ' is a silver coin which, according to Qal'ajî, *Mu'jam Lughat al-Fuqahâ'*, p. 206, has the weight of value of 0.496 grains.

person]; and concerning the camel's rest area, it is due to being in risk of their stampede. All of this would occupy the heart during the prayer and may disturb submissiveness in a manner that does not demonstrate the diversion of the prohibition from that which is prohibited to that which resides near it and accompanies it due to its [the bidding's] being outside of its [the prohibition's] essence, conditions, and constituents.

Therefore, command and prohibition cannot be combined, for His statement, *لَا تَجْرُوا*, "Let them . . . go about the Ancient House,"¹³ does not include the circumambulation of the *muhdith*,¹⁴ who has been prohibited from it, for that which is prohibited cannot be commanded. Likewise, what has been prohibited in the question of praying in a usurped home is separated from what is commanded, since the subject of command is prayer and the subject of prohibition is usurpation. Yet it is in its vicinity.

XIV. DISCUSSION: According to those agreeing on the rectitude of the prayer in the usurped home, prohibition is divisible into that which returns to the essence of what is prohibited—thus contradicting its obligatoriness; to that which returns to other than its [essence], whereas it does not contradict its obligatoriness; and to that which reverts to a character of the

¹³Qur'ân, 22:29.

¹⁴'*Muhdith*' refers to a person who either does not have ablution or has engaged in sexual intercourse. For more details, see Qal'ajî, *Mu'jam Lughat al-Fuqahâ*, p. 410.

prohibited, not to its essence.

However, they have differed with regard to this third category. The example of the first two categories is evident.

An example of the third [category] would be obliging circumambulation but prohibiting its occurrence together with *ḥadath*, or commanding fasting yet prohibiting its occurrence on the Day of Sacrifice. So it is said that fasting, insofar as being lawful, is bade, and insofar as occurring in this particular day, it is unlawful. Also, circumambulation is lawful on the basis of His statement, *لَا تَجِدُ*, "*Let them . . . go about the Ancient House,*"¹⁵ but its occurrence in the state of *ḥadath* is prohibited. Or trafficking, /1:80/ insofar as being a sales transaction, is lawful. But insofar as its occurrence in association with an invalid condition or additional compensation with regard to usurious deals, it is prohibited. Divorce, insofar as being divorce, is lawful. But with respect to its occurrence during menstruation, it is prohibited. Conceiving a baby is lawful, insofar as being of lawful intercourse. But with respect to its occurrence with other than the lawful wife, it is prohibited. A journey, insofar as being travel, is lawful. But the fleeing of a slave from his master is unlawful.

Therefore, Abû Ḥanîfa made this a third category, claiming that this necessitates the invalidation [*fasâd*] of the attribute, not the denial of the principle, for [prohibition] reverts to the attribution, not to the principle. But al-Shâfi'î, *رَجَمَهُ* *إِس*, joined this with the prohibition of the principle and did not make it a third

¹⁵Qur'ân, 22:29.

category. So if [for example] divorce is carried out in the menstrual period, he applies prohibition, not to the principle and its attributes, but to the extension of the 'idda period, or [his] following regret upon doubting [the conception of] a baby.

Abû Hanîfa, voiding the prayer of the *muhdith*, but not his circumambulation, claims that the *Sharî'a* proof has indicated that ritual purity [*tahâra*] is conditional concerning prayer. For he has said, رُجُمًا، "There is no [valid] prayer without ritual purity."

Therefore, it is invalidation of the prayer, not a prohibition [against it].

But there are two considerations regarding this question. The first of which is related to what the unqualified prohibition necessitates with respect to the expression. This is an examination in the requirement of the mood, which is a linguistic topic. We will mention it in the chapter of *al-Awâmir wa al-Nawâhî*.¹⁶

The second consideration examines the contradiction between these attributes, and whether their composition is conceivable or inconceivable in the case of being explicitly determined by a proponent. Namely, is it conceivable for a master to say to his slave, "I command you to sew, and I forbid you from it"? There is no doubt that this is inconceivable for him because one and the same thing is bade and prohibited. But it is conceivable on his part to say, "I bid you to sew, and I forbid you from entering this home and being in it," without his mentioning *sewing* in [his] prohibition. This is conceivable. Yet if he [the slave]

¹⁶See Ghazâlî's treatment in *al-Mustasfâ*, 1:411 and 2:34.

sewed in that home, he would be both doing his [master's] bidding and [violating] his prohibition.

Moreover, is it possible for [the master] to say, "I bid you to sew, and I forbid you from doing it at noon time." Then if he sews at noon time, is he joining that which is forbidden with what is bade? Or did he not fulfill what has been bade? These are open questions.

What is the more appropriate [opinion] is that he did not fulfill what has been bade. What has been prohibited is this sewing which took place at noon time, not just its mere occurrence at noon time, despite the continuance of sewing being bade, since occurring in time is not something separate from that which is occurring.

If it is said: Why then does prayer become valid during the reprehensible times? Furthermore, why are prayers occurring in the [previous] seven places, such as the bottom of a valley, the rest area for camels, and so on, valid? Moreover, what is the difference between these and the prohibition of fasting on the Day of Sacrifice?

We shall say: Whosoever validates these prayers is obliged to divert the prohibition from the principle of prayer and its characters to something else. But they [the *fuqahá'*] have disputed concerning the constitution of prayer during the prohibited times because of their indecisiveness concerning prohibition. That is, whether it prohibits from performing the prayer /1:81/ insofar as it occurs as a prayer, or on the basis of something else associated

with it.

As for fasting on the day of sacrifice, al-Shâfi'î, رَحِمَهُ اللهُ، decisively holds its invalidity because diverting prohibition from its essence and characteristics is not evident [to him]. Nor does he accept their statement that it is prohibited because it has therein abandonment of answering the call to eat, for eating is contrary to fasting. Therefore, how could it be said to one, "Eat!" meaning, "Answer the call!" and then again, "Do not eat!" meaning "Fast!"

Now, elaborate exposition of these questions is not incumbent upon the [*uṣūlî*] jurist. Rather, it is left to the *mujtahid's* inquiry concerning the details of *fiqh*. An *uṣūlî* is only [expected] to exhaustively list these three categories and explain their position concerning mutual opposition or its absence.

As for considering the individual questions, and to which category they belong, this is for the *mujtahid*. He may know this through a decisive proof or he may know it by conjecture. But none of this is incumbent upon an *uṣūlî*.

The completion of the inquiry with respect to this [issue] is [acquirable] through elucidating to which of these categories the unqualified prohibition belongs, [whether] the [act] is prohibited in itself, for things other than itself, or for its characteristics. This will follow.

XV. DISCUSSION: They have disputed about whether commanding something is prohibiting its opposite. This question has two aspects:

One of them is related to the [linguistic] mood [*ṣîgha*]. But

this is not acceptable to those who do not consider command as having a mood. As for those who do accept this, there is no doubt, then, that one's statement "Stand!" is different than his statement "Do not sit!" For they are two different forms. Therefore, they must refer to the meaning, namely that his statement, "Stand!" has two meanings. One of them is *bidding standing*, and the other is *abandoning sitting*. Therefore, it indicates the two meanings. Yet the two implied meanings are either united or one of them is different than the other. So one must refer to what is intended.

The second aspect is inquiring about the meaning inherent in the mind, namely whether bidding standing is identical to bidding abandoning sitting. But this cannot be assumed with respect to Allâh, ﷻ, because His speech is one, namely command, prohibition, promise, or warning. Nor is it liable to *otherness*. Nevertheless, it is conceivable with a creature, namely in his bidding of action. [But] is it in itself prohibiting idleness and bidding its abandonment?

The Mu'tazilites have stated that commanding something is not prohibiting its opposite. Al-Qâdî Abû Bakr, رَجْمَةُ اَبِه, has argued against them by saying that one who commands something is prohibiting its opposite. Therefore, if there is no proof establishing the attachment of something else with his command, it indicates that he is prohibiting [the opposite] by that which he is commanding.

He says that based on this we know that idleness is identical to abandoning action, and bidding idleness is identical to bidding the abandonment of action. Also, the occupation of a substance in a

sphere to which it was transferred is identical to its evacuation from the sphere from where it was translocated. Again, nearness to the West is identical to remoteness from the East. It is, therefore, one action. But in relation to the East, it is remoteness and, in relation to the West, nearness. Also, it is one existence. But in relation to a sphere, it is occupancy and, in relation to the other, vacancy. Similarly, there is one bidding here. But in relation to idleness, it is a command and, in relation to action, a prohibition.

He [further] said that the proof that [bidding] does not have other things with it is that the other would be either opposite of it, similar to it, or different. Its being opposite is impossible because they cannot be joined. Yet they have come together. Still, it is impossible for them to be similar because of their mutual contrast. But it is impossible /1:82/ for them to be different, for were it so, it would be possible for one of them to exist without the other—either *this* to the exclusion of *that* or *that* to the exclusion of *this*, such as willing something while knowing it because of the difference concerning the conceivability of the existence of knowledge [*'ilm*] to the exclusion of will [*irâda*] even though the existence of will without knowledge is inconceivable. Rather, it is possible to conceive of its existence together with the opposite of the other. The opposite of prohibiting an act is commanding it. Therefore, we should consider it possible that one may command both idleness and action. So he may say, "Act and remain still!" or "Stand and sit!"

Now, what [al-Qâdî] has mentioned is a proof against the Mu'tazilites because they have denied obliging the impossible.

Otherwise, whosoever considers it possible permits saying
 "Combine standing and sitting!"

Moreover, we do not concede that everyone commanding something is necessarily prohibiting its opposite. Rather, it is possible that one may be commanding its opposite, let alone being neither commanding or prohibiting.

In sum, what has been proven correct according to us based on theological investigation stemming from the establishment of the speech inherent in the mind is that commanding something is not a prohibition from its opposite, not in the sense that they are identically the same, nor in the sense that it includes it, nor in the sense that it necessarily follows it. Rather, it is conceivable that one may command something while being heedless of its opposite. So, how could a statement relating to what he is heedless of be inherently established in him?

Similarly, one may forbid something while its opposite does not occur in his mind until he commands *one* of its opposites [in general], not a particular one. Therefore, if he commands without being heedless of the opposites of the command, then self-reproving does not intentionally prevent a person from the opposites [of the command], except insofar as he knows that it is not possible to fulfill the command without abandoning its opposites. Therefore, abandoning the opposites of a command becomes a means [of fulfilling it] due to the necessity of existence, not because of its correlation with bidding. Even if one imagines the joining of standing and sitting, despite the impossibility, so that when it is said to him, "Stand!" he combines [the two], he then

would be complying because he was ordered only to perform standing, which he did. But whosoever holds this position, necessarily bears the scandals of the Mu'tazilite al-Ka'bî, since he denied the permissible [*al-mubâh*], saying that there is not a permissible [act] except that it is an abandonment of a prohibition. Hence, it is an obligation. Yet then he is forced to characterize [performing] prayer as being prohibited when because of it one abandons the immediate obligatory *zakât*.

If one were to distinguish [them] by saying that prohibiting *is not* commanding the opposite while commanding *is* prohibiting the opposite, then he would have no way [to prove it] except through sheer arbitrariness.

If it is said: You have stated that that without which an obligation cannot be achieved is therefore an obligation and that one cannot achieve the performance of something except by abandoning its opposite. So it must therefore be necessary.

We shall say: Similarly, it is necessary. But the dispute is only in regard to its obligatoriness, as to whether it is identical to obliging what is commanded or something else. So when it is said, "Wash the face!" the essence of this is not obliging the washing of part of the head. Likewise, His statement, "*Fast during the day . . .*" is not in itself obliging abstention [from food, etc.] during part of the night. Therefore, one is obliged to have intention only to fast during the day. But this becomes mandatory on the basis of the indication of the rational proof insofar as it is a means to what is commanded, not for its being identical with this obligation.

Therefore, there is no contradiction between the two statements.