PRESERVING LOCAL CULTURES IN THE AGE OF GLOBALIZATION THE CONCEPT OF 'URF (LOCAL CULTURE) IN ISLAMIC LEGAL PHILOSOPHY

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ABSTRACT

Social harmony endows society with peace and tolerance. For this reason, it is essential, especially in our world today with global influences and the swift movement of people with different cultures. This paper attempts to elucidate the concept of "social harmony" and then see how this was achieved in Asian communities with an example chosen from the Islamic legal doctrine based on the idea of 'urf. I want to translate this concept as "local culture". I want to argue that because Islamic legal philosophy developed a concept of local culture as a source for legal pronouncements beyond the primary sources of Islamic legal doctrine, it could preserve local cultures through establishing social harmony. The concept of local culture provides legal and conceptual background for social harmony both culturally and philosophically. Through such a background, Islamic legal philosophy was able to develop a paradigm of social harmony for all Muslim communities, which may be a new model in the glocal world of ours today.

Keywords: *'Urf, fiqh*, Islamic legal theory, social harmony, local culture, globalization

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Globalization brings us today face to face with the fact that local cultures lose their significance and a global culture seems to assert itself above all cultures. We become aware of this fact by encountering many different cultures through a global movement which is brought into the very heart of our homes by the vehicles of mass communication such as the internet and satellite dishes with many TV channels.[1] Besides the rapid development of mass communication devices, the speed of mass transportation and the emergence of a global economic market, people also move around constantly in search of not only new jobs but also new markets for their goods. This also introduces new environments in which people of diverse cultures are forced to live as one society. In the past, this kind of social coexistence also took place through conquests. But in the past, the encountering of diverse cultures met with a certain kind of "social harmony" perhaps because of the historical circumstances and the slow pace of life at that time. The slow pace of the past globalization prepared people to digest new encounters and create a new environment of cultural harmony which allowed the existence of multicultural communities. The phenomenon of globalization today introduces a very fast pace of life through its rapid ways of encountering and means of mass communications and transportation. Therefore, it does not give sufficient time to digest other cultures in order to integrate different cultures into a way of social harmony which endows the society with peace and tolerance. For this reason, the understanding of social harmony has become very crucial in this global age with horrendous global influences and rapid movement of people across different cultures. Added to this problem is the rise of nationalism which perhaps brings today with itself a sort of cultural nationalism and religious patriotism.

There are some concerned intellectuals and sensitive people who try to avert the loss of local cultures and the detrimental consequences of globalization by stopping it. Undoubtedly, the purpose of these people is good and definitely desirable; but their approach is futile because globalization cannot be stopped in this way. In order to find out a more effective method to ward off the damaging effects of globalization, we may need a more insightful analysis of this phenomenon based on the being who desires it. For, it is human beings who cause globalization; it is not something that is brought in from without. This requires a double analysis: an analysis of human nature with regard to globalization and analysis of globalization based on the former one. After this brief analysis, we shall dwell upon our main topic concerning the concept of *'urf*, namely, common custom, or local culture, as I prefer to translate in order to show the relevance of this concept in Islamic legal philosophy to the

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contemporary phenomenon of globalization.

I. HUMAN NATURE AND ANALYSIS OF GLOBALIZATION

The definition of man as "rational animal" persisted throughout the history of philosophy. This definition brings to fore two main aspects of human beings: animality and rationality. However, it neglects another significant human aspect which can be represented by his emotions. This means that a "human being is an animal endowed with emotions and rationality." By this definition, we are claiming that human animality is different from the animality of animals, just as human emotionality and rationality are different from the emotionality and rationality of animals. It is because of this difference that humans can transcend their physical being and rise to the level of spirituality which is not possible for other species of the lower rank. As a result, we need to modify our definition by including a fourth aspect in the classical definitions of man; spirituality which is the characteristic of such spiritual beings as angels. The first three aspects, namely animality, emotionality and rationality, belong to man as his own nature; whereas the fourth one, namely the spirituality, is given to him as a potentiality which he may or may not develop. Each of these aspects is endowed with certain potentialities and capacities that are given to humans for certain purposes. When they are used outside the limits of these purposes then problems arise. In that case a meticulous analysis of these aspects of human beings must be carried out in order to avoid these problems some of which are manifested in the phenomenon of globalization.[2]

The human animal aspect has two basic functions: one is the preservation of life, such as nutrition, reproduction and defense; the other is to hold these activities within the humanly sphere, which is the link between animality and emotionality. This is the difference between human animality and animal animality, so to speak. The link is found in the fact that humans are weak animals; they do not have the physical power or other defensive mechanism found in other animals. Therefore, at the level of animality, they need "togetherness" in order to survive. Even if this characteristic is found in other animals still it is the main characteristic of human animality because it leads to emotionality. That is why we add an emotional aspect

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2   This section of my analysis of human nature is based on my paper "Difference is Beautiful: A Philosophical Evaluation", in *Non-Violent Path to Conflict Resolution and Peace Building*, ed. Kamran Mofid, Alparslan Açıkgenç, Kevin J. McGinley, Şammas Salur (İstanbul: Fatih University Press, 2008), 7-12.

to "being together" and thus raised to the level of emotions. The emotional aspect of human beings represents all human emotions as a whole. When we say that we add an emotional aspect to "being together" and thus raised to the level of emotions we do not mean that this aspect arises as a result of the animal aspect. All human aspects are already given and in this sense, they form a unity. Therefore, each aspect can be analyzed at its lower levels but cannot be distinguished at its higher levels because each level is absorbed at its higher level. The basic characteristic of the emotional aspect is to give *breath* to all human activities whether animal or rational or spiritual. If the animal aspect is able to perceive our biological and physical needs then the emotional aspect is able to perceive our non-physical needs. Since the spiritual aspect is expressive of the non-physical it is the closest to our spirituality. The rational aspect, on the other hand, includes the human characteristic which according to Aristotle defines man's real nature because this is the aspect of conceptual thinking that no other animal has. The rational aspect analyzes and evaluates all the data it receives from the lower aspects, namely the animal and emotional. It is as such the seat of scientific knowledge.

All of these aspects have their faculties to perform their functions; the faculties of animality are the five senses at the lower level and the concupiscence in general (which means it is not taken merely in the sexual connotation) at the higher level which represents the passage from animality to emotionality. The lower faculty of emotions is the heart as the seat of emotions and at the higher level, it is conscience which is the moral faculty that provides the first step into intellectual thinking. But since this thinking is supposed to be conceptual we need a faculty at the rational aspect that converts all these data into the raw material that is convenient for our mind to digest. The faculty that provides this conceptual conversion is imagination which is the lower faculty of our rational aspect and intuition is the higher faculty of our rational aspect which also provides the first step into spirituality. These are not the only faculties belonging to human nature. The ones mentioned here are important for our purpose to evaluate the ground of human differences. Although the nature with three biological aspects and a spiritual aspect are one and the same in all humans with varying degrees of intensity, the outcome of these aspects are many. Let us try to see how those differences arise.

What I have outlined here provide a rich inner world for a human being. At the animal level, for example, a piece of land is perceived as mere "territory" which provides a livelihood for us. The land is defended only for this purpose and is seen as precious as long as it provides livelihood. But at the emotional level, a human being is passionately attached to the land. As

such he may write poems and sing love songs for the land where he lives. Yet at the rational level, a human being will try to conceptualize the land and call it his "country" or "homeland". Moreover, he may intellectually idealize the land where he is living. The same approach by the three human aspects can be applied to everything he encounters in this world: his belongings, his friends, his family, his relationships, his actions and so on. Everything human will have the same aspects, namely an animal aspect, an emotional and a rational aspect in so far as a human being looks at things. As a result, a human being will have a rich inner world. It is this inner world that is reflected outside. That reflection may have a variety of modalities: For example, as a mode of action, it is her/his behaviour; what s/he does to others and in fact to herself /himself. But as a mode of new being it is an achievement, which could be an artwork or a product. When it is in the conceptual mode it is knowledge, which is perhaps the highest achievement for a human being.

All these achievements are reflections and manifestations of the inner world of a human being. When these manifestations of the human inner world occur in a social context they are called "culture". With such a diversified nature, man turns in a sense inside out within a social context and turning its entire inner world into what we call "culture." Now, here the system in human nature that turns an inner world into a culture is one; but that which is turned inside out is not one but many. This is in a sense resembling a system of production that is one in its structure but diversified in its output. Let us consider only two systems that belong to our nature: the digestive system and the knowledge system, by which I mean the human epistemology. Our digestive system is the same, having a mouth, tongue, teeth, stomach and the rest of the organs. We know from anatomy the way they all work is the same and that is why when there is a problem a Turk does not have to go to a Turkish doctor but can go to any human doctor. On the other hand, quite contrary to the unity of our digestive system our culinary culture is immensely diversified. In the same way, our knowledge system also is one, having one logic and epistemology with all similar faculties. Yet the knowledge generated from that system is not one but multiple. This shows the great cultural diversity in human societies. We may ask here why only one human being but diversified output?

Let us pass from here to another human dimension which may enable us to evaluate what we referred to above as the spiritual aspect. As we have seen the need to be together with other fellow human beings is grounded in our animal aspect. It is therefore our inner nature to form groups to live together. But this *togetherness* is only a primitive collection of human beings. When the emotional aspect is added the togetherness gradually turns into

a community. In a community, bonds are established with strong feelings because they are evaluated emotionally and hence emotional stories of relationships are created. As a result of this, the community may be organized on the basis of a "feeling relationship". There may be an elderly group that is respected and obeyed. There will also be other groups that are defined on the basis of feelings which in turn also contribute to the organization of the community. But with the addition of the rational aspect, the organization is maintained with reason. Therefore, a political system is developed according to which the community is governed. Now the community is a society in the true sense and the rational organization of the community is given a name, such as a state or government. In such an organization man is able to exhibit and develop all his potentialities. He can find everything in society. By using his reason he is also able to find the reason for existence and the cause of the universe. But he is utterly unable to reach to an all comprehensive concept that can provide meaning to all the aspects he reflects. Moreover, he finds some potentialities in himself that he is not able to develop. At this juncture, he finds "Revelation" defined as a religion. Upon an investigation of religion, he finds that he is now able to develop some of his potentialities which he could not even imagine. This aspect, based upon the development of these potentialities with the help of religion, can be called the "spiritual aspect" of human beings.

Religion is in fact the Divine Guidance for humanity. Therefore, religion is God-given. There is no seat or ground in human nature to provide a foundation for the rise of religion. There are only, if my phrase is clear enough, "receptive points" which we ordinarily call "potentialities" in human nature that may receive religion but cannot make or unmake religion. Human beings may invent religion by imitating the true religion that has been revealed. But this is a different case. I believe that man is not given the authority to invent religion because those inventions will not find the receptive points in human nature and as a result will be dangerous to humanity. There are such instances in human history. Therefore, by definition human beings do not have an authority to establish religion. Although religion is a Divine Guidance for humanity, it is not the kind of guidance that gives us an exhaustive list of how we should behave in any given situation. If this were done by religion we would have had to act as robots according to that list, in which case there would be no room for human intellectual creativity in any field, including sciences. In that case, religion as a Divine Guidance bestows upon us two fundamental states of mind: one is the consciousness of the Divine Presence in all; the other is the moral sensitivity in our behaviors. Both states of mind are expressed in general principles by religion. We, therefore, feel the need to interpret these principles in order to apply them to certain situations in our life. This need for interpretation gradually gives rise to a systematic exposition of religion as a system of guidance. In that case, this second intellectual understanding is also defined as "religion". We thus need to distinguish between these two phenomena: Religion as Divine Guidance and Religion as the interpretation of this Divine Guidance; the former is Pure Religion and the latter is the religion within a certain cultural context. I believe that there is no harm in interpreting the Pure Religion in a certain cultural context. On the contrary, it is inevitable and indeed required by God; a requirement that is clear in the fact that He does not send His Guidance as a complete set of rules readily available to be applied to human life. It is as a result of this that we develop our spiritual potentialities. Moreover, as we shall see below Muslim jurists developed the concept of 'urf in Islamic legal philosophy to make the interpretation of religion within a certain cultural context and thus preserve cultural diversity.

When we consider these aspects of human nature we realize that humans have a very rich inner world. When this inner world, as we have seen, is projected within a social context then it gives rise to human culture. In this sense, the human being is depicted in Islamic thought as the *microcosm* because s/he includes in its being representations of all the worlds in the universe. In this sense, a human being can be called a "mini-universe". It is therefore natural for him to reflect all these diverse universes in the mirror of society. That is why we have so many diversified cultures and civilizations. It is this aspect of human beings that aspires to reach others and longs for differences. Here we find the roots and thus the foundation of globalization. What we claim is that globalization finds its root within human nature and it is thus unavoidable. It is, therefore, we who try to reach others and other communities and places. On the basis of this fact, we cannot explain the inescapable campaign of Alexander the Great by the mere idle quest for the conquest of the East; which equally applies to the campaign of Genghis Khan to the West. Moreover, it is this aspect of man that is taken as the locus of revelation by religion which means it is also a God-given right for humans to have diverse cultures, societies and communities. This diversified nature of man makes him a valuable creature as the Qur'an also points out:

> We have honored the children of Adam, provided them transport on land and sea and given them for sustenance good and pure food and conferred upon them special favor above many of our creation. (17/Al-Isra', 70)

Therefore, the abundance of different cultures makes life enjoyable and breaks the monotonous flow of events in history. But the beauty of diverse cultures has another aspect; it lays the burden of bearing differences. This is because each aspect of human nature is left free without any boundaries. Therefore, if they are not controlled there will emerge injustice and violations. That is why each aspect of human nature must be kept under control. I think this can be done by taming the lower aspect with the good use of its next higher aspect. In that case, the animal aspect is controlled by the good use of the emotional aspect and the emotional aspect is controlled by the good use of the rational aspect; and in turn, the rational aspect is controlled by the spiritual aspect which is nourished by divine revelation. If the final phase is the greatest good then religion as the divine revelation is the greatest good providing tolerance for differences. Therefore, if different cultures arise within a civilization of religion then we can tell that the religion is fulfilling its function as cared by divine will. But human beings must also perform accordingly to tolerate different cultures or rather differences in general. We may then briefly express our point: human nature is diversified giving him a rich inner world to be realized within a social context. When it is realized it leads to rich cultures which may eventually turn into a significant civilization. But since the realization of the inner world would be manifested at different planes in different communities there will be necessarily differences that open a challenge for humanity to face. Today the world is moving towards globalization which poses a greater challenge for the diversity of cultures. In the past, people knew of different cultures but today we face and live with different cultures. That presents a challenge every day at every place. This puts on us greater moral responsibility to tolerate cultures and differences within even the same culture. In order to solve problems concerning this moral responsibility, we need to channel the direction of globalization towards goodness and try to utilize it as such rather than trying to stop the huge flood of global weight which can destroy everything on its way.

Islam tried to solve the issue of preserving cultural and religious diversity with certain mechanism which it introduced to humanity in two ways: the first is moral and the second id legal. In other words, every human being may not have the same moral sensitivity for social issues and thus may violate principles developed as measures to protect human rights. That is why there is also a need to develop legal measures to protect the rights of humans and societies. In order to show this development we may present a brief history of the emergence and progress of Islamic legal philosophy which generated principles to protect individual rights as well as social and cultural diversity against the global movement.

II. THE DEVELOPMENT OF ISLAMIC LEGAL PHILOSOPHY

We would accept the fact that cultural diversity in a society is achieved through a kind of social harmony. In other words, diversity is maintained in a social unity which we may realize as social harmony. However, social harmony is possible only if self-harmony is achieved, which means to be in harmony with oneself means and this, in turn, means to be in tune with one's conflicting dispositions that may ensue from any part of human nature. If we follow this line of argument we may already reach a preliminary understanding of social harmony as "being in tune with others in any group or society". When we apply this understanding to communities with multicultural and multi-faith groups, we may assert that it is possible to trace the footprints of both self-harmony and social harmony at the level of cultural co-existence among the past Asian communities. The only problem remaining here is that the social harmony is not based on self-harmony; namely, it did not follow upon individual realization of harmony; and that is why even in the past there were cultural clashes between communities. Of course, today because of nationalistic feelings and the high dose of dispositions with respect to self-interestedness cultural conflicts are widened. That is why Islam offers a different approach here in a unique science which is called *fiqh* (more properly *al-fiqh*). This science does not exist in any other civilization, which makes it difficult to translate it into any other world language. Because of this, all Muslims of various ethnic backgrounds simply emulated this concept into their languages in its original usage. In English, however, it is translated as "law" which does not transfer all the meaning embedded in this concept. If we were to translate all its connotations into English then we would have to pay attention to all the topics discussed in this science, such as human nature, spirituality, society, order and divine will in organizing such phenomena manifested in all these spheres of life. In that case, *fiqh* means an all-embracing science that combines human phenomena as different branches under its gamut, namely the entire range of humanities and social sciences, including law. In order to understand correctly, therefore, the exact status of social harmony in Islam and the solutions offered by it for problems of the clash between different ethnic and/or faith groups, in order to achieve this good social state, we need to examine the nature of this science in its

historical process as it emerged in Islamic civilization.[3]

In order to trace the history and origins of science in Islam depends upon reviewing in a sense Islamic history from its very beginning. If we take the Meccan period in the first century of Islam, namely the seventh century of C.E. as a whole as the beginning of Islamic history, it is possible to demonstrate that with the advent of the Medinan period the foundation of many disciplines had already been established. For, more than half of the Qur'an was revealed and the foundational Islamic worldview had already been founded in Mecca. This worldview is what we call "fundamental metaphysics" of the Islamic conception of reality as a whole. In other words, the fundamental metaphysics of the Islamic worldview had already been constructed by the Qur'an while the Prophet Muhammad (a.s.w.) was in Mecca. Therefore, most of the terminology of the subsequent philosophical developments was contained in the Meccan *suras* (chapters), for these terms are mostly contained within the fundamental metaphysics of Islam. But most of the terminology in the fields of law and political philosophy was developed within the Medinan period. This is because the Islamic worldview is based on the idea of God, resurrection, prophethood and man's moral response to that scheme, which is, as its fundamental metaphysics, "revealed theology". Therefore, as legal, political and social institutions came to be established in Medina, the foundations for such disciplines investigating these spheres of life had been firmly and in connection with actual life established. It is this process of development that we shall endeavor to trace in order to see how *fiqh* came to emerge as an umbrella science covering humanities and social sciences. In this regard, in order to see how a body of knowledge comes to be established as a science, we shall first exhibit from the history of sciences the process that is involved in this phenomenon.

We must, first of all, realize that sciences are not discovered; they are established by us. Therefore, they are not like, the law of gravity, for example, or the fact that the earth revolves around the sun. For, these may be called scientific truths that are discovered by scientists. But sciences are established by scientists. However, in establishing a science usually there involves many scientists who first establish a [scientific] tradition by laying down certain principles which acquire a general acceptance by the subsequent followers. This way the scattered and discrete studies begin to acquire a unity. The body of collected knowledge thus acquires the status of a discipline. Then, in this process, a scientist or the community of scientists active in

those learning activities gives a name to that discipline, either according to its subject matter, or its method. A discipline is, therefore, a study with a certain method, but not necessarily a well-defined and clear-cut subject matter, although the purpose of the study does assign it a general subject matter. But science is a discipline with a well-defined subject matter, method, theories and accumulated knowledge.

It is thus clear that there are primarily four stages in the process of a body of knowledge to be established as a science:

1. The Stage of Worldview, which represents the process in the initial period when a worldview suitable for cultivating learning activities emerge in the minds of the individuals in that society;

2. The Stage of Problems, where scattered and discrete studies of various problems are carried out for a period of time;

3. The Disciplinary Stage, which is the period when a tradition arises as a result of conventional consensus among the scholars; general subject matter and method is determined on the basis of classification of the accumulated knowledge;

4. The Stage of Naming which represents the period when scholars become conscious of each class of knowledge constituting a subject of study representing a science; in this manner, the name used for the classification becomes the name of the science.

It is possible to defend an epistemological position on behalf of this process in the coming into existence of sciences; a position which claims that these four stages in the establishment of sciences are not only the logically but also naturally successive stages. But the way they take place in each civilization may vary. For example, the emergence of physics in Greece may be the same as the emergence of kalâm, for instance, in the Islamic civilization. But in one of them study of nature emerged as a science, in the other study of religion. It is possible that physics would never have emerged as a science in Islam; and instead a branch of kalâm may have developed and emerged on independent science to replace the Greek physics. In fact, considering, the atomic theory of kalâm together with other earlier cosmological theories, if there had not been the Greek influences, that might have been the case.

In is within such an epistemological background that *fiqh* as a comprehensive science emerged in Islamic civilization. At the earlier stages of Islam the term *fiqh* is used literally to mean 'understanding', for example, *la yafqahu wa la yanqah* (neither understands, nor

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[3] This discussion is based on my book *Islamic Scientific Tradition in History* (Kuala Lumpur: IKIM, 2012), Chapter IV.

comprehends). This usage is maintained in the fundamental sources of Islam the Qur'an and the *hadîth* namely usages of the Prophet, as we may see in the following cases:

> An intellectual *(faqîh)* is more vehement to the Satan than one thousand devout persons *('abid).* (Ibn Majah, "Muqaddimah", 222)
>
> If God wants to do good to a person, He makes him an intellectual *(faqîh)* in religion. (Al-Bukharî, "Kitab al-'Ilm", chapter 14)

It seems that in this connection, two terms go together in early Islam: *'ilm* which simply means "knowledge" and *fiqh* which literally means "understanding". However, in knowledge activities of early Islam, both terms refer to knowledge, although the former expresses exact, precise and definite knowledge, while the latter signifies *scientific*, and hence knowledge of the rational kind. That is why *'ilm* is used by both the Qur'an and *hadîth* to refer to revealed knowledge that is definite and absolute.[4] The Prophet's prayer for Ibn 'Abbas uses both terms in exactly the same signification indicated respectively here: "O God, give him the rational understanding of religion, i.e. *fiqh*; and make him proficient in knowledge (*'ilm*)".[5] *'Ilm*, in this respect, is used to refer to knowledge which is either revealed or related to that which is revealed. But *'ilm* also has its literal connotation in both the Qur'an and certain *ahadîth* (sayings of the Prophet) referring to knowledge in general:

> We have given them a book (i. e., Revelation) and explained it with knowledge as a guidance and mercy for people who believe. (7/al-A'raf, 52; also see 4/al-Nisa', 157; 6/al-An'âm, 119; 27/al-Naml, 15-6; 31/Luqman, 20)
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> If anyone acquires knowledge of things by which God's own pleasure is sought, yet acquires it only to get some worldly advantage, he will not reach the smell of Paradise. (Abû Dawûd, *Sunan*, "Bab al-'Ilm", 3656)

When *'ilm* is revealed it is absolute and thus is identical with the Revelation; but when it is attained by man, it cannot be identical with Revelation. Therefore, the general usage of

'ilm by both the Qur'an and *hadîth* refers to the knowledge attained by man.[6] This general meaning of *'ilm* is intimately linked in the knowledge structure of the Islamic worldview with its usage in the sense of Revelation.[7] The Qur'an is developing a moral dimension here as the knowledge-structure of the Islamic worldview. However, if this moral dimension is divested of knowledge, it may lead to disastrous results, as indicated in the following verses:

> Those who have stupidly killed their own children *without having any knowledge* and forbidden something God has provided them with, have lost out through inventing things about God; they have gone astray and not been guided...Who can be more harmful than the one who invents a lie about God to mislead people *without having any knowledge*? (6/al-An'am, 140, 144)

Therefore, the Qur'anic approach qualifies knowledge with a moral dimension which is provided again by the revelation; the attitude of indifference is thereby excluded from the Islamic worldview and its knowledge structure. This aspect of knowledge can be observed in the verse stating that "they learn what is harmful and not useful to them." (2/al-Baqarah, 102). The knowledge that is useful is understood as either Revelation itself, as we have seen in the verses mentioned or quoted, or as knowledge derived directly from Revelation, or as knowledge in the general sense, namely as acquired by man, but which can be reconciled with Revelation and thus be based upon it. Therefore, the Qur'an definitely wishes to qualify knowledge; in fact, its aim is to guide knowledge in general; that is why revelational knowledge is collated with it at this point. Knowledge, in general, is no longer left aloof, but it is suggested to be invested with revelational values. Once general knowledge is thus invested, it becomes *illuminated knowledge*, which is no longer knowledge that is harmful. There is no doubt that all these values are delicately infused into the knowledge-conception of the Islamic worldview by the Qur'an.[8] **It is through this approach that the Qur'an utilizes human nature in order**

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4 For this usage, see the following verses: 2/al-Baqarah, 120; 3/Âli 'Imran, 61; 6/al-An'am, 119, 140, 143; 11/Hud, 14, 49; 13/al-Ra'd, 37, 43; 19/Maryam, 43.

5 Isma'îl ibn Muhammad al-'Ajlunî. *Kashf al-Khafa' wa Muzîl al-Ilbas* (Beyrut: Mu'assasat al-Risalah, 1985), 1: 220-1. The exact Arabic statement is: *Allahumma faqqihhu fî al-dîn wa 'allimhu al-ta'wîl.*

6 See, for example, the usage *bi ghayri 'ilm* (without having any knowledge) 6/al-An'âm, 119; 31/*Luqman*, 20, and so on.

7 See, for instance, this verse: "The ones who do wrong follow their own whims *without having any knowledge*. Who will guide someone whom God has let go astray? They will have no supporters. So keep your face set straight to the true religion, God's natural handiwork along which He has patterned mankind. There is no way to alter God's creation. That is the correct religion, though most men do not *know*." (30/*al-Rum*, 29-30).

8 See, for instance, "the true knowledge is with God alone" (46/*al-Ahkaf*, 23); "above all those who possess knowledge is an All-knowing" (12/*Yusuf*, 76); "God knows you do not know" (2/*al-Baqarah*, 216; see also 3/*Âli 'Imran*, 65-6).

to achieve self-harmony based on knowledge not on ignorance.

In this way, a morality of knowledge is also developed as a part of the knowledge structure of the Islamic worldview. Knowledge unqualified is considered as though it is not knowledge at all; hence, the phrase "without having any knowledge" which simply means "ignorance". For when the Qur'an accuses those people with this allegation, it cannot obviously mean that those people had no knowledge at all; in fact, "they knew only the external look of the worldly life very well, but they were totally unaware of the life to come (*al-âkhirah*)" (30/*al-Rum*, 7). That is why their knowledge is as if *non-existent*. Therefore, *unilluminated* knowledge is superficial in itself and as such, it can be equated with *ignorance*.

As all these conceptions concerning *'ilm*, *fiqh* and other knowledge-related terms were developed, a doctrinal understanding gradually began to emerge within the Islamic worldview; it is this comprehensive doctrinal understanding that we call the 'knowledge-structure' of the Islamic worldview. This conception emphasizes knowledge with an utmost care, without even leaving it with a mere emphasis, for it also states that "seeking knowledge is an obligation for every Muslim".[9] Moreover, besides this emphasis, a framework is also given together with the doctrinal understanding of knowledge. Considering also the Qur'anic encouragement to examine and understand the universe and the nature of certain related problems, it becomes inevitable that as a result of all these comprehensive knowledge-seeking activities, a network of concepts emerges; it is this network which we call "*scientific conceptual scheme*". Since this scheme emerged as a result of and within the Islamic worldview, we identify it as the *Islamic scientific conceptual scheme*. On the other hand, if such a scheme emerges within a given society or civilization, it is called "scientific tradition."

There is a twin term of *fiqh* derived from the earlier usages of the Prophet, *ra'y* and *ijtihad*. These terms bring the early *fiqh* into its conception as a comprehensive human science. Two cite only a few usages we may mention al-Zuhrî's (d. 846) usage of the term *ra'y*, who maintains that a sound theory (*al-ra'y al-hasan*) is a good piece of knowledge.[10] Also if we examine the Prophetic traditions in which this term is used we shall see that in this early usage it means "opinion".[11] It may not always be possible to find an equivalent translation of a scientific term of a scientific conceptual scheme, coined for a specific meaning within a certain worldview in another scientific conceptual scheme. This is the case with the concept

of *ra'y*, which does not have an exact corresponding term in the Western scientific vocabulary; except that today the term 'theory' is used very much in a meaning close to the term *ra'y*.[12] This means that *'ilm* is understood as a definite piece of knowledge which is either directly taken from a revealed source, or derived from it on the basis of a precedent practice of the Prophet. But *ra'y* cannot be *'ilm* in this sense because it is the view of an individual on a certain problem. Therefore, later, the term *ra'y* actually came to mean 'theory' which is a term also used in Western scientific terminology. Not only does a theory, i. e., *ra'y*, mean 'provisional opinion', it also expresses a rational argumentation because a scientific theory is based on reasoning.[13] Moreover, since reason is not authoritative in the absolute transcendent realm, the Prophet says that "if one interprets the Qur'an on the basis of his theory (*ra'y*), he has committed an error even if he is correct in his interpretation"[14] since no knowledge can be based on theory. It is also reported that "sometimes Ibn 'Abbas held a theory which later he abandoned."[15]

The knowledge, based on rational argumentation is reached as a result of *ra'y* can be qualified as "scientific", and such scientific knowledge was actually defined as *fiqh* in the early scientific terminology. Since such knowledge is in fact *science per se*, in certain early usages it was used exactly in the same manner, such as the title of a book written by al-Tha'alibî (d. 1038), *Fiqhu'l-Lughah*, i.e., the science of lexicography. Later developments, however, diverted this usage, and perhaps as an influence of the Greek scientific tradition, this usage was dropped and thus replaced by the term *'ilm*. Moreover, according to Abu Hanîfah (d. 767), *fiqh* meant "speculative thinking".[16] Al-Dhahabî (d. 1348) says of 'Abdullah ibn al-Mubarak (d. 797) that he "recorded knowledge, i.e., *hadîth*, in chapters and concerning *fiqh*" (*dawwana'l-'ilm fi'l-abwab wa'l-fiqh*).[17] Of course, this usage of the term has a basis in the Qur'an (e.g., 9/al-Tawbah, 122; *li yatafaqqahu fî al-dîn)*, as well as in the *hadîth* (see the *hadîth* quoted above in relation to the Prophet's prayer for Ibn 'Abbas). That is why *'ilm* was taken by the Traditionists to mean *hadîth*.

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9   *Ibn Majah*, "Muqaddimah", 17, 224.

10 See Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence* (Islamabad: Islamic Research Institute, 1986), 8.

11 See, for example, Ahmad ibn Hanbal, op. cit., 1 (21): 330.

12 This is attested also in the report of Ibn Sa'd who states that when 'Ata' ibn Abî Rabah was asked concerning his judgment whether it was 'ilm or ra'y, he replied that it was 'ilm, if his judgment is derived from a precedent, i.e., *athar*; otherwise, it was implied that the judgment in question was grounded upon ra'y. See *Kitab Tabaqat al-Kubra*, ed. by Ihsan 'Abbas (Beyrut: Dar Sadir, 1968), 5: 469.

13 This understanding of *ra'y* is also clear from the following usage; "*ni'ma wazîr al-'ilm al-ra'y al-hasan*" (what a good minister of knowledge is the correct theory). See Al-Darimî, *Sunan*, "Muqaddimah", 30.

14 *Sunan Abu Dawud*, op. cit., 1036.

15 Al-Darimî, op. cit., "Muqaddimah", 52.

16 L. Gardet, "'Ilm al-Kalam", *EI²*.

17 *Tadhkirat al-Huffaz* (Hyderabad: The Dairatu'l-Ma'arif-il-Osmania, 1955), 1: 275.

Ijtihad, on the other hand, means the *effort to search for knowledge through ra'y*. Hence, *ijtihad* is also a scientific effort that is theoretical. For this reason, it is not definite knowledge, but it must, of course, be based on revealed knowledge. It must be for this reason that the Prophet says: "the scholar who bases himself on true knowledge is a hundred times higher in rank than the theoretical scholar.[18] In this context, a scholar is the one who utilizes *ijtihad*. If we want to show the relation of *ra'y* to *ijtihad*, we can say that *ra'y* is the theory that is produced in *ijtihad*. This is clear in Mu'adh ibn Jabal's (d. 638) interesting usage of *ijtihad* and *ra'y* together in the famous *hadîth* of ijtihad: *ajtahidu ra'yî la alu*; i. e., I shall make my best effort to come up with a theory.[19] But *ijtihad* is necessarily based on the Qur'an and *hadîth*, as understood from this *hadîth* as well.

What about the theoretical knowledge which is primarily derived from discursive thinking? The early Islamic scientific conceptual scheme used the term *kalam* to refer to this kind of knowledge. As such *kalam* meant 'speculative knowledge'. The earliest reference in this regard can be taken from Hasan al-Basrî's (d. 728) letter in which he states that "we initiated the speculative study of *qadar*; just as people initiated the denial of it" *(ahdathna al-kalam fîhi)*.[20] It is also reported that once our Prophet's wife, 'Â'ishah, heard Hasan al-Basrî speaking, and asked: "who is this discoursing with the word of the veracious" *(man hadha alladhî yatakallam bi kalam al-siddiqîn)*.[21] In this sense, *kalam* comes very close to the term 'philosophy' as it is used today; i.e., speculative thinking. It is clear why Muslims chose the word *'kalam'* for this kind of knowledge, for *kalam* means 'language' or 'speech' but not in the ordinary sense. It rather refers to the kind of human language which is discursive. In this sense, it comes close to the term 'logos' in the Greek scientific conceptual scheme. It may be translated into English as 'discourse', but in the technical sense of today's Western scientific terminology, it means precisely 'philosophy'.

It is clear that all these usages determined the scientific vocabulary of the early Muslims. Not only is the meaning of each term clarified, but so is its relation to other terms and the way, viz., method, they ought to be used is also given. For instance, it is possible to think that since *fiqh* is a rational understanding, it may be a kind of knowledge that is to be avoided

by Muslims, as indicated in the above *hadîth* that the scholar who bases himself on true knowledge is a hundred times higher in rank than the theoretical scholar, i. e., the rationalist. But another *hadîth* clarifies that rational understanding may be decisive in certain cases (e.g., *faqîh wahid ashadd 'ala al-shaytan min alf 'abid)*.[22] Of course, the Islamic worldview also clarifies in which cases is to be preferred.

To the concept of knowledge in the scientific conceptual scheme of Islamic science, the term *hikmah* also proved indispensable. Mujahid (d. 721), for example, explains the term *hikmah* in the verse *wa man yu'ta al-hikmah fa qad utiya khayran kathîra* (2/al-Baqarah, 269) as comprising three things: 1. al-Qur'an, 2. *al-'ilm*, 3. *al-fiqh*.[23] Here *'ilm* refers to the knowledge of Islamic tradition and the Sunnah, *fiqh* was held as a rational understanding on the basis of the revealed sources. *Hikmah*, on the other hand, was understood as knowledge derived rationally from a revealed source, as such it is both *'ilm* and *fiqh* at once, but different from independent speculation, which can be understood as *kalam*. That is why al-Tabarî reports that *hikmah* was defined by his predecessors as the Qur'an and its (rational) understanding *(al-hikmah hiya al-Qur'an wa'l-fiqh bihi)*.[24]

When the Muslim community was established in Medina, with the arrival of the Prophet in 622, some kind of political authority was established and thereby the foundation of an organized judicial system was also erected. The Prophet was the central authority. But some companions of the Prophet were drawing conclusions from the Qur'an and the *sunnah* of the Prophet by independent reasoning. Their conclusions were approved by the other Companions and thereby they became binding on the community. It seems that from the earliest times two characteristics were exhibited in every legal decision to be admitted universally by all Muslims and to acquire the status of law:

1. Independent reasoning based on the Qur'an and the *Sunnah*,
2. Recognition of an authoritative community, in this case of those who have the *'ilm* namely knowing the conditions from the time of the Prophet.

The first came to be identified as "*qiyâs*" (analogical reasoning) and the second "*ijma*'" (consensus). It is clear, then, that at the time of the Prophet these two terms were not used in the sense that it was used after the science of jurisprudence came into existence. But the

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18 Al-Darimî, op. cit., "Muqaddimah", 32.

19 Ahmad ibn Hanbal, *Musnad*, 5: 230.

20 Julian Obermann, "Political Theology in Early Islam", *Journal of the American Oriental Society*, 55 (1935), 145; Arabic text, Helmut Ritter, "Studien zur Islamischen Fromigkeit I: Hasan al-Basri", *Der Islam*, 21 (1933), 68, lines 10-11.

21 Ibn al-Jawzî, *al-Hasan al-Basrî*, 8-9; quoted by Muhammad 'Abd al-Rahîm, *Tafsîr al-Hasan al-Basrî* (Al-Qahirah: Dar al-Haramayn li't-Tiba'ah, 1992), 1: 21.

22 Al-Tirmidhî, "'Ilm", 13; Ibn Majah, "Muqaddimah".

23 Al-Tabarî, *Jami' al-Bayan fî Tafsîr al-Qur'an* (Beyrut: Dar al-Ma'rifah, 1980), 3: 60.

24 Ibid.

term *fiqh* was being used very commonly; indeed its usage was so common that soon after the Prophet's death it already begin to acquire a technical meaning. These and many other such usages, as cited above, show that the word which was later chosen to be the name of legal scientific activities has only Islamic origins. Within this background, the legal system in Islam began to enrich itself by using the terminology already developed within the Islamic worldview which was already established in Mecca. Some concepts of this worldview were directly related to the legal understanding such as the last judgment, the concept of *al-wa'd wa'l-wa'îd*, the idea of justice, the doctrine of "community" (*ummah*), the concept of right action, good deeds; *'amal* and so on.

On the basis of this, first the law prescribed in the Qur'an was practiced on the authority of the Prophet; the Companions also observed how the Prophet exercised his own opinion in interpreting the legal verses of the Qur'an. In this way most of the legal terminology developed by the Prophet himself either as taken directly from the Qur'an or through the opinion of the Prophet. This can be clearly seen in the hadith collected in al-Shafi`i's *Risalah*.[25] After the death of the Prophet, the Companions continued his tradition and thus as legal cases increased; proportionate to that legal thought also began to acquire more sophistication. Thus legal problems began to form a body of legal knowledge during the first half of the Islamic century. But about two decades later, i.e. 660's, we encounter the first specialists in law whose activity can be regarded as putting all these scattered and discrete discussions under one discipline. This means that the legal activity pass into its second stage when a legal disciplinary tradition was established on the basis of *fiqh* as a comprehensive science (700-750). Now the subjects under discussion were broadly recognized, a sufficiently well-formulated method was invented and as a result, *fiqh* came to have a more definite meaning; for the scholars specialized in the subject, the body of knowledge included in all legal discussions constituted a discipline, which still mostly included *fatwas* (legal judgments) or independent decisions of the legal scholars. Thus, these scholars came to realize that their subject actually constitutes a discipline. In later developments, such scholars as Abu Yusuf (d. 798) and al-Shafi'i (d. 820) perhaps played the role of passing from the previous stage to the stage of the emergence of *fiqh* as a comprehensive science. As the understanding of *fiqh* as a legal discipline gained more ground in Islam, its scope to include ethical issues naturally widened. This is because

Islam as a religion includes not only legal principles but as the applied structure of principles for guidance in life, it includes moral principles and a code of ethics. As a result, most philosophical issues in ethics are discussed in it. This development was more in the later centuries but its understanding is grounded within the Islamic worldview, and as such from the earlier times it was still in the domain of *fiqh*.

It is possible to classify Islamic legal philosophy developed by this time into three main elements: 1. Foundation of law, in this case only the Qur'an and *hadîth* are recognized as the legitimate foundation of law in Islam; 2. Sources of law, as we already referred to above, legal analogy (*qiyâs*) by the lawyers, personal opinion (*ra'y*), legal reasoning (*ijtihâd*), juristic preference (*istihsân*), public good (*masâlih mursalah*), local culture (*'urf*); 3. Principles of law (*maqâsid al-shari'ah*) which are "to promote the well-being of all mankind, which lies in safeguarding their faith (*din*), their human self (*nafs*), their intellect (*'aql*), their posterity (*nasl*) and their wealth (*mâl*). Whatever ensures the safeguard of these five serves the public interest and is desirable."[26] The classical approach does not make a distinction between the sources and the foundation. This may cause some problems because foundation means the solid metaphysical ground upon which law is based but not necessarily all law is derived from it. Since foundation provides a ground for the law it is possible to take it as a source with regard to especially the moral law, such as faith, murder, theft and some basic human rights. But the sources of law may be more as we listed above. The foundation and sources must have certain principles as objectives of the law in order to safeguard justice and to prevent misuse of the law. It is these principles and sources which led to harmony in Islamic civilization providing a unity in which diversity is preserved. Let us then try to elucidate this point now and try to show how Islamic law achieved this.

III. *'URF* AS LOCAL CULTURE PROTECTING DIVERSITY IN UNITY

By the time *fiqh* acquired the status of a comprehensive science including humanities and other social disciplines of the time, there was a parallel sociopolitical development taking place in the Muslim world. Islam as a religion spread among many ethnic groups and societies with different cultural backgrounds.[27] As we have seen in the above brief summary

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25 We may give following terms as example: *'adl, 'afw, ahl al-kitab, ajal, ajir, ajr, 'aqd, 'aqil, 'amal, aman, 'amd, bay`, hadd, haqq, halal, haram, fiqh, fida, dhimmi, istihsan, ikhtiyar, ijtihad, mujtahid, ra'y, makruh, qâdî, shibh, shâhid, shakk (shukuk)* written document, *wâjib, 'uqubah, wali,* (legal guardian), *zâhir, bâtin,* etc.

26 Al-Ghazali's statement quoted by M. Umer Chapra, *The Future of Economics: An Islamic Perspective* (Leicester: The Islamic Foundation, 2000), 118.

27 This section is based on my paper entitled "A Classical Paradigm of Social Harmony in Asia: The Case of *'Urf* (Local Culture) in Islamic Legal Philosophy" presented in the Sixth International Conference of Asian

of the scientific process of *fiqh* in the earlier periods the main source of this comprehensive science was only the Qur'an and the practice of the early Muslim community based on the Prophetic tradition. But as we have seen, this approach to human and social sciences gradually integrated new methodologies such as using personal opinion as a theory, *ra'y*, utilized in the approach called *ijtihad*. This approach naturally brought with itself human reasoning which is already included in the original meaning of the term *fiqh*. The reasoning that fits into this scheme well is analogical reasoning and that is why in early Islamic human and social sciences demonstration, namely discursive reasoning was not used. This kind of reasoning was left for other sciences, such as physics, mathematics and other similar subjects which are called "sciences of *kawn*" or *kawniyyât* sciences, which can be translated into today's Western scheme as "natural sciences". If *fiqh* utilizes the same methodology in its restricted sense the multiplicity of cultures now existing in Islamic civilization may be annihilated. Therefore, *fiqh* needs another source in order to preserve different Muslim cultures. On the other hand, the main source of legal philosophy, the Qur'an, had already enunciated a divine principle:

> If God willed He could have made you one single nation but He willed to test you in what He bestowed upon you. Compete with one another in good works because you shall all return ultimately to God. Then, He will inform you of what you have disagreed about. (5/*al-Mâ'idah*, 48)
>
> Mankind was once a single community [but they fell into conflict] and thus God sent His messengers to give them the good news and warn them [concerning human pitfalls]; with them, He sent down the Sacred Book accompanying the truth that it might judge the dispute among them. (2/*al-Baqarah*, 213; see also 10/ *Yûnus*, 19; 11/*Hûd*, 118; 16/*al-Nahl*, 93; 42/*al-Shûrâ*, 8; 43/*al-Zukhruf*, 33)

In these verses, the Qur'an defends a unity among mankind which appears as if the plurality of cultures is lost. Indeed this is essential for the Qur'anic outlook in order to defend "one God and one humanity". This idea is set in defence of humanitarianism and to reject racism. Moreover, it also clearly indicates that "God did not make you one nation so that you may compete in goodness" (5/*al-Mâ'idah*, 48). In that case, unity is in good morals and human values; but the difference in cultures and ethnicity is essential because all these are set

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as "divine signs":

> The creation of heaven and of the earth; and the diversity of your languages and colors are God's signs. Surely in this are signs for those who know. (30/*al-Rûm*, 22; see also 35/*Fâtir*, 28)

In that case, it becomes at once an issue for the legal theoreticians to formulate another principle as a source of *fiqh* which will provide a foundation for humanities and all other social sciences in order to preserve different local cultures. This new source came to be identified in Islamic legal philosophy as *'urf* which can be translated as "local culture". The Qur'anic basis of this principle is the following verse: "Hold forgiveness and enjoin *kindness* (*'urf*)" (7/ *al-A'râf*, 199). This verse may also be kept in view: "By those sent forth one after another" (77/ *al-Mursalât*, 1).

The concept of local culture therefore provides a legal and conceptual background for social harmony both culturally and philosophically. It is through such a background that Islamic legal philosophy was able to develop a paradigm of social harmony for all Muslim communities which may be a new model in the glocal world of ours today. In this sense, Islamic legal theory bases itself on the fundamental metaphysics of Islamic worldview which then provides the necessary psychological and spiritual ground for self-harmony so that the individual tunes himself/herself with his/her own conflicting dispositions. Only then is it possible to establish a healthy social harmony which means, in this sense, peaceful interaction of human dynamics among members of social groups. For, as we have pointed out, social harmony begins at the level of "self-harmony". In order to realize self-harmony Islam has also introduced the ethics of rights which begins at the level of divine consciousness and then continues from the ethics of the individual based on self-cleansing from the impurity of bodily pleasures such as selfishness, arrogance, greed, self-indulgence, lust, resentment and anger.

This paper has attempted to elucidate how the concept of *'urf* in Islamic legal philosophy achieved "social harmony". We argued that because Islamic legal philosophy developed a concept of *'urf* to refer to local cultures as a source for legal pronouncements beyond the primary sources of Islamic legal doctrine, it was able to preserve local cultures through establishing a social harmony which became the basis of the multi-ethnic and multi-faith community leading to peaceful co-existence. The principles integrated into this concept led

to an atmosphere of peace and tolerance to preserve local cultures maintaining at the same time social unity. We may observe this tolerance in Islamic law also because the same attitude of religious freedom was preserved with the law which was taken as a fundamental human right. For, Islamic law declares that there are five fundamental principles of law to be followed universally by all Muslims: **the right to live**, which protects the life of any person living under the rule of Muslims; **the right to belief, the right to think**, which is expressed as the obligation of the state to preserve all people's faculty of thinking (*al-'aql*); **the right to have property**, and finally **the right for dignity**. Muslim jurists argue that these fundamental rights are based on the Qur'anic injunctions and therefore, inviolable. It is clear therefore that Islam is even historically prepared to live in peace and tolerance with the followers of other religions.

I think it would be sufficient to quote Roderic H. Davison, a prominent Western historian of the Ottoman Empire. On the issue of tolerance towards the minorities, Davison writes:

> It might in fact have been argued that the Turks were less oppressive of their subject people than were Prussians of the Poles, the English of the Irish, or the Americans of the Negroes. There is evidence to show that in this period {late 19th century}, there was emigration from independent Greece into the Ottoman Empire, since some Greeks found the Ottoman government more indulgent master than their own Greek government.[28]

One more example may suffice to show religious tolerance of Muslims in history. I would like to present below the result of Haim Gerber's research as he summarizes in his own words:

> As raw material I have used the collection of court cases by Dabbagzade Numan. On inspection, the collection was found to contain 140 cases of real litigation - that is, cases that had one plaintiff and one defendant and that were resolved judicially. I have analyzed all these cases in terms of the status of the litigants within Ottoman society, which means that a person would be classified according to one of the following categories: (1) as an *askeri* - that is, a member of the official class; (2) as an *alim* - that is, a religious functionary of some sort; (3) as a commoner - that is, an ordinary Muslim; (4) as a woman; and (5) as a non-Muslim. Mary Baumgartner's conclusion was emphatic that in New Haven it was

mainly aristocrats who initiated lawsuits. But in the society under study, in all but a few cases, it was the social underdog who initiated the case - women versus men, non-Muslims versus Muslims, commoners versus members of the elite. The court is seen mainly as a tool of the common people to defend a modicum of legal rights. Of course, the most important question to be considered here is the outcome of such lawsuits in terms of social class. Whereas in colonial New Haven the upper class had a clear advantage, this is distinctly not so here. Women won seventeen of twenty-two cases against men; non-Muslims won seven of eight cases against Muslims; commoners won six of eight cases against *askeris*. Only in the category of commoners against religious doctors do we find a tie of ten cases each. Thus the *shari'a* court in the area under study cannot be said to have been a tool of the upper class. On the contrary, it seems more proper to view it as a means for people of the lower classes to defend themselves against possible encroachments by the elite.[29]

It is I believe clear that Islamic law may also be viewed as a means for non-Muslims to defend themselves against possible encroachments by the Muslims. In fact, one of the most significant factors of Islamic law, as we stated above, is expressed as the "protection of religion" which is taken as the "intention of Islamic law". It was because of this basic religious principle that when some of the small communities of Christians were persecuted they applied the Ottoman Sultan for protection. The Sultan asked the religious opinion of the Chief Judge (*Shaykh al-Islam*) who then issued a ruling (*fatwâ*) that as the guardian of the right to belief he can declare war to protect the rights of Christians because this is a fundamental human right. Therefore, Muslims tried to protect religious tolerance in the past. We must on the other hand accept the fact that there were undoubtedly isolated cases of misuse by both some Muslim rulers in the past and present on the one hand; and by individual Muslims on the other hand. Since malpractices by Muslims are not a justification for denying the principles developed in Islamic legal philosophy we may conclude that we need these principles in order to preserve world peace today.

In concluding we may say that what we have tried to defend here is not a theory that remained in the pages of history. It was actually practiced by Muslims and for this reason, all

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28 Roderic H. Davison: *Reform of the Ottoman Empire 1856-1876, New* Jersey, Princeton University Press, 1963, 116.

29 Haim Gerber. *State, Society and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), 55-57.

ethnic groups that accepted Islam even for more than a millennium lived in Islamic civilization without losing their ethnic identity; their language and culture. That is why we have today Arab culture, Turkish culture, Persian culture, Kurdish culture, Malay culture, Chechen culture, etc. But those who are not familiar with *fiqh* as a comprehensive science and who take it simply as Islamic law, think that these Islamic cultures are different understanding of Islam. For this reason instead of calling them as such they identify these various Islamic cultures as "Turkish Islam", "Arab Islam", "Indonesian Islam" and so on. This is like observing the differences between architectural designs of mosques in different parts of the Muslim world and judging that the prayers performed in these mosques are also different. The architectural design of a mosque is culture but what is performed in it is Islam. This kind of identity in difference and unity in diversity is preserved in Islam through the principle of '*urf* as developed in Islamic legal philosophy which was the basis of all human and social sciences in Islamic civilization. It is through this principle that social harmony was also maintained. We need this principle today more than at any other time of past history because the global pressure on local cultures will eventually annihilate many local cultures. Feeling this undesirable historical destiny, members of these cultures will feel uneasy and disturbed. In order to preserve their culture, they may resort to undesirable solutions including the notorious theory formulated as "clash of civilizations". I am sure that other societies can benefit from this principle if we can develop it sufficiently so that it could be adopted universally. I hope that this study will provide a basis for such a venture.