KANZ PHILOSOPHIA

HUMAN AGENCY IN ISLAMIC MORAL REASONING

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ABSTRAK

Konsep "human agency" pada umumnya dikaitkan kemampuan otonom manusia untuk menentukan pilihan dan tindakannya sendiri, kemampuan manusia untuk memberikan perlawanan terhadap kemapanan, atau ketertundukan diri manusia terhadap suatu otoritas atau aturan tertentu. Dalam konteks tradisi pemikiran hukum Islam, human agency ternyata tidak hanya terdapat dalam bentuk ketertundukan diri terhadap otoritas teks al-Qur'an dan hadis tapi juga ada bentuk-bentuk yang lainnya. Tulisan saya ini berusaha untuk menunjukkan bahwa dalam tradisi *uṣūl fiqh* terdapat kaidah-kaidah hukum yang memberikan ruang bagi berkembangnya teori human agency tidak hanya berorientasi pada keniscayaan manusia untuk tunduk terhadap otoritas teks keagamaan, tapi juga, konsep human agency yang berbasis pada otonomi dan semangat anti-kamapanan dalam diri manusia . Dengan mengupas konsep-konsep dalam usul fiqih seperti *qiyās*, *istiḥsān*, *istiṣlāḥ*, dan *istiṣḥāb*, kita akan mengetahui bahwa tindakan etik seseorang dalam Islam tidak semata bersumber dari teks keagamaan tetapi juga berdasarkan pemikiran otonom manusia yang pada ujungnya melahirkan konsep-konsep human agency yang lebih kontekstual, bukan tekstual.

Kata-kata kunci: human agency, otonomi manusia, otoritas teks religius, uṣūl fiqh, nalar syari'at.

ABSTRACT

The notion of human agency is generally associated with human capability to be autonomous in making choices and action, the human ability to make acts of resistance toward certain hegemonic and established rules or authorities. In the context of the tradition of Islamic legal thought, human agency is not merely contained in the term of human submission to the transmitted authority of the Quran and hadith, but also in another forms. This paper tries to show that there are legal maxims in the tradition of *uṣūl fiqh* that enable for the development of the idea of human agency which does not merely have an orientation to the human necessity of submission to the religious scriptural authority, but also the concept of human agency which based on human nature to be autonomous and resistant. While elaborating some concepts in the *uṣūl fiqh* such as *qiyās, istiḥsān, istiṣlāḥ,* and *istiṣḥ*āb we would find out that one's ethical act in Islam does not merely proceed from religious scripture but it is also based on the human's autonomous thoughts which would culminate in the emerging of more contextual, not textual, concepts of human agency.

Keywords: human agency, human autonomous capability, religious scriptural authority, uṣūl fiqh, shariʿa reasoning

Introduction

The notion of human agency has been debated and contested by different school of thoughts. Immanuel Kant (1724-1804) and his school speak of human agency only in the sense that humans are self-governed and autonomous (Schneewind 1998, 483). Poststructuralist feminist scholars, like Lila Abu-Lughod, generally associate human agency with acts of resistance, subversion, or deconstruction over certain hegemonic social structures (Mahmood 2005, 8-14). Whereas, religious-piety movements, such as Christian women evangelist in Aglow Fellowship International and Women Mosque Movement in Egypt, are described as perceiving human agency in terms of human submission to an authority or rules (Griffith 1997, 179).[1] These three notions of human agency are widely discussed (by and) in a Western academia but rarely studied (by and) in Muslim scholarship.

Among few studies of the relationship between Muslim tradition and human agency cultivation are conducted by Lila Abu-Lughod and Saba Mahmood.[2] Their works are primarily based on an anthropological research. Although they are able to eloquently portray how Muslims exercise their agency in a daily life, their engagement with Muslims' action guides is unfortunately minimum.[3] In fact, the interaction between Muslims and their moral-religious action guides (i.e. the Qur'an and ḥadith) is important and influential in shaping their modes of agency.

One may ask, however, whether we can derive the notion of human agency from religious texts because the sacred texts are considered silent, incapable of speaking. This paper however argues that such religious texts are not really silent. They are speaking through reading and interpretations of religious adherents. In the Muslim tradition, in fact, Muslim scholars (ʿulamā') play an important role in speaking on behalf of religious texts. They even provide rules and procedures of reading, interpreting, and deducing laws from the Qur'an and hadith; although there are also groups of "lay" Muslims who have asserted their right and duty to read and interpret the two (Keslay 2007, 45). John Kelsay calls these attempts to justify actions on the basis of reasoning and interpretation of the sacred texts as "Shariʿa reasoning".[4]

In turn, if we may derive conceptions of human agency from Shariʿa reasoning activities, what kind of human agency it will be? Muslim's religious action guides may not derive a notion of human agency in the same way as moral action guides resulted from works of philosophy, anthropology and other social sciences. But, there might be an agency emerging from rea-

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1 Similarly, Saba Mahmood (2005) also perceives the possibility human agency through subordination of Islamic religious rules and reasoning (although Mahmood may not agree to call her notion of agency as submissive agency).

2 Abu Lughod writes several books such as *Veiled Sentiments: Honorand Poetry in Badouin Society* (1986) and *Writing Womens' World: Badouin Stories* (1993) while Saba Mahmood concerns herself with the piety movement in Egypt in *Politics of Piety* (2005)

3 David Little and Sumner B. Twiss (1978) explains the necessity of sacred-regarding in religious action-guide in two senses; first, sacred impinging acts are considered important in practical religious reasoning and; second, "sacred regarding refers to a set of reasons or appeals that consciously and explicitly invoke the sacred authority in support of given practices" (65).

4 Shariʿa reasoning in Kelsay's (2007) work is interpreted as "an open practice" to discern divine guidance which leads to salvation. See John Kelsay, *Arguing the Just War in Islam* (77).

soning which inclined to the idea of submission, agency growing from reasoning that advocates self-governance and autonomous will, or agency obtained through reasoning that endorses a resistance. There is a wide range of possibilities of human agency in Shariʿa reasoning (because it is now considered as "an open practice,") but some limitations are also applied (because the Qur'an and hadith are considered as primary sources of proof). In the end, this paper attempts to find what the most advocated human agency is by: first, clarifying and explaining further the concept of Shariʿa reasoning introduced by John Kelsay; second, looking for possibilities of human agency in such reasoning; third, evaluating and finding forms of human agency in this tradition of Islamic moral reasoning.

Shariʿa Reasoning

John Kelsay (2007) defines Shari'a reasoning as "attempts to legitimate or justify a course of action in the terms associated with Islamic jurisprudence" (3). It is interesting that Kelsay relates the term "Shariʿa reasoning" with "attempts of justification" because in reality the whole process of deducing law in Islamic legal is indeed an intellectual attempt (*ijtihād*) to find the most sound argument for action. However, the term "*al-ʿaql al-sharʿī* (Shariʿa reasoning)" is never used by Muslim jurists and scholars. Instead, they use the term "*uṣūl al-fiqh* (principles of Islamic jurisprudence)" to designate the intellectual attempts exerted not only to deduce rulings from the religious texts but also to justify action. Therefore, Shariʿa reasoning here is understood in the context of *uṣūl al-fiqh,* a form of Islamic moral-legal reasoning. Analogically speaking, Shariʿa reasoning as *uṣūl al-fiqh* which

provides rules and procedures of deducing law for Islamic jurisprudence (*fiqh*) resembles the role of grammatical rules for language and the rules of logic for philosophy (Kamali 1991, 2). *Uṣūl al-fiqh,* in short, provides rules and modes of reasoning, therefore, Kelsay's term "Shariʿa reasoning" to describe them is acceptable.

Shariʿa reasoning in the context of *uṣūl al-fiqh* is however broader than Kelsay's conception. Kelsay (2007) relates "Shariʿa reasoning" with some salient features in Islamic legal tradition, such as: the appeals toward tradition in which a historical precedent is considered important (5); the use of *qiyās* (analogy) reasoning and *istiḥsān* (legal preference) (59); and the use of some popular legal maxims (*al-qawāʿid al-fiqhiyyah*) such as the necessity makes prohibited permissible (136). Although he does a good job in terms of trying to understand how the radicals justify their action within Shariʿa tradition, he does not explain in detail how the legal reasoning such as *qiyās* and *istiḥsān* operate and generate religious rulings; furthermore, he does not capture some very basic concepts, such as the hierarchical supremacy of Shariʿa sources, the complexity of the proofs of Shariʿa, and other important concepts like the consideration of public interest (*istiṣlāḥ*) and the use of presumption of continuity (*istiṣḥāb*).

This paper therefore needs first of all to clarify some basic concepts which are not elaborated or missed by John Kelsay before discussing the relationship between Shariʿa reasoning and human agency. The very basis of Shariʿa reasoning is actually relied upon the proofs of Shariʿa (*al-adillah al-sharʿiyyah*). They are divided into two categories: first, the transmitted proofs (*adillah naqliyyah*) and the rational proof (*adillah ʿaqliyyah*). The first one refers to the proofs which are obtained through a sound and

trusted transmission from the first generation of Muslim, namely the Qur'an, *sunnah* (the prophetic tradition), and *ijmā'* (consensus of Muslims). However, since the number of consensus within Islamic society is limited, the most frequently referred proofs are Qur'an and *sunnah*. They are furthermore regarded as independent proofs (*adillah mustaqīlah*), whose authority and binding force are "independent of any rational justification that might exist in their favor." The certainty of their status as proofs is considered definitive (*qaṭ'ī*). The certainty of rulings stipulated by the two is regarded as definitive (*qaṭ'ī*) too. The second one, the rational proofs, is founded on reason, and need to be rationally justified. They can only be accepted by virtue of their rationality. *Qiyās, istiḥsān, istiṣlāḥ,* and *istiṣḥāb* are basically derived from rationalist doctrines although they are in many ways dependent on the transmitted proofs (Kamali 1991, 10). Their authority is dependent (*muqayyad*), derived from the above independent sources. They cannot stand alone as a proof. They must be relied upon and derived from the above transmitted-independent proofs. Therefore, their certainty of being religious proofs is speculative, in the level of probability (*ẓannī*) and the rulings resulted from them are also probable (*ẓannī*). The term "speculative" or "probable" in this context is understood in the sense that those intellectual devices are sufficient enough to lead one to the truth as well as susceptible enough to fall into falsehood.

There is a debate about whether the transmitted proofs are superior over the rational proofs and vice versa. The traditionalists will generally say that the transmitted proofs must be superior. The rationalists will insist that the rational proofs are superior because the transmitted proofs must be read and interpreted through reason. However, the focus of the discussion here is not on this endless debate but on the proofs of Shari'a which function as Shari'a reasoning. From the above exposition, it seems to me clear that the heart of Shari'reasoning is actually relied on the rational proofs, not on the transmitted proofs. The rational proofs provide 'scientific tools' to derive rulings from the transmitted proofs (qua primary religious sources) whereas the transmitted proofs do not. Thus, Shari'a reasoning here is mainly understood as intellectual attempts to deal with Shari'a sources (the Qur'an and *sunnah*) and to justify human actions by means of which the gap between "the sacred text" and "the profane human action" can be bridged. Among the primary results of such intellectual attempts are those rational proofs of Shari'a. So, in the case when a judgment from the Qur'an and *sunnah* is metaphorical, ambiguous, or even absent, those rational proofs play a primary role in determining whether certain cases are considered obligatory, prohibited, recommended, reprehended, or permitted. Some salient features of these rational proofs of Shari'a are: *qiyās* (judicial analogy)*, istiḥsān* (legal preference in the aims of promoting common good)*, istiṣlāḥ* (legal discretion based on public interest), *istiṣḥāb* (presumption of continuity). In the following, we will focus the discussion on the relationship between these rational proofs within Shari'a reasoning with the notion of human agency.

Shari'a Reasoning and Human Agency

In Shari'a reasoning, *qiyās* is centered on the principle of analogy. In the case of matters in which the judicial judgment of text (revelation) is absent, Islamic jurists usually seek an analogous case, a precedent, in which revelation or the prophetic tradition has a clear verdict. This

analogical reasoning, according to Nabil She-haby (1982), has two forms. First, the analogy that is based on *ma'na* or *'illah* (reason) shared by two cases. God or the Prophet may prohibit or allow something for a *ma'na*, a reason. If we find the same *ma'na* in another case that is not treated in the legal sources, the judicial judgment covering the first can be extended and applied to the second. For example, there is no explicit legal judgment made by revelation regarding using marijuana. The text only says that *khamr* (a kind of wine) is prohibited because it renders intoxication. In other words, the reason (*ma'na*) for the prohibition is intoxication. The legal judgment of the *khamr* can be applied and extended to marijuana based on the *ma'na* (reason) that both have a similar effect, i.e. intoxication. Thus, if drinking a wine is prohibited, consuming marijuana is also forbidden because both of them cause intoxication. Second is the analogy that is based on resemblances (*ashbāh*). This is employed when the case that is not treated in the authoritative legal sources resembles other cases that are treated by either the Qur'an or hadith. In this situation, the case under examination acquires the judicial judgment of the case that is the most similar to it (33).

Then, what kind of human agency which can be derived from this reasoning? A self-governed and autonomous agency may can emerge from the fact that an individual agent should interpret and select the most accurate reason (*'illah*) or similitude (*ashbāh*) which unite the original case (*aṣl*) whose ruling is already fixed and the new case (*far'*) whose ruling is to be determined. The necessity of determining such reason and similarity requires the existence of a free thinking agent. As for subversive agency, there is a possibility of this agency to grow as an untended result from one's desire to be close to God by exercising *qiyās*. For example,

by using *qiyās* reasoning, one does not drink a beer because it is similar to *khamr* which causes intoxication. At the same time, this non-alcoholic way of life can also be interpreted as a resistance to the alcoholic-secular culture. Saba Mahmood reports that the desire of pity movement in Egypt to be close to God also means an attempt to resist Western's way of life. In this regard, she cites Hajja Samira's elucidation of the background of the necessity of the women mosque movement: "Look around in our society and ask yourself: who do we emulate? We emulate the westerners (*gharbiyyīn*), the secularists (*'almaniyyīn*), and the Christians...don't listen to them because you know that real civilization (*haḍara*) is closeness to God" (Mahmood 2005, 44-45).

However, the more likely agency generated from *qiyās* is agency which is obtained through submission, a submissive agency. *Qiyās* is basically no other than an extension of the necessity of obedience to religious texts (the Qur'an and *sunnah*). So, one is demanded to submit herself/himself to the authority of the religious texts by means of *qiyās*. For instance, as can be seen from Saba Mahmood's (2005) account, Hajja Samira interprets the Qur'anic verse concerning lowering one's gaze and donning the veil in a specific way. The original command is to lower the gaze (*ghadd al-baṣar*) and draw the head coverings over the bosoms. Hajja Samira interprets that the reason (*'illah*) for this command is to prevent the devils entering to a person and incite him/her to fornication (44-45). Since physically all of her women audiences are veiled, she extends the notion of lowering the gaze to the interaction between men and women. For her, segregation between men and women in a public space (including in a private conversation) should be imposed, except in the state of necessity. The reason for the

imposition of the segregation, for Hajja Samira and the like, is the same as the command for lowering the gaze, namely avoiding fornication. In other words, by making an analogy between lowering the gaze and a segregated interaction between male and female, Hajja Samira tries to extend the obligatory submission (through obedience) to the textual injunction; one needs not only to lower the gaze but also to communicate separately with another gender. Therefore, her opinion of the necessity of segregation is actually to render a submissive human agency, submitting oneself to an extended injunction of the sacred text.

Another kind of Shari'a reasoning is *istiḥsān.* This reasoning is actually a kind of *qiyās*, but in broader sense. This reasoning allows use to formulate a decision that sidesteps a precedent judgment established by *qiyās* in order to meet "the objectives of the revelation", which are primarily to protect people's integrity and belongings while making their lives easier (Ramadan 2009, 56). It is plausible due to the fact that this methodology is actually founded upon an important principle derived from the directive of "circumventing hardship" stated in the Qur'an: "God intends facility for you, and He does not want to put you in hardship" (2: 185). This directive is also further reinforced by the tradition (*hadīth*) that states: "The best of your law is that which brings ease to the people" (Sachedina 2006, 257). Practically speaking, when scriptural sources say nothing about a particular issue, *istiḥsān* takes into account the social and human context without denying the necessary relation to the scriptural text. Customary practices (*al-'urf*), avoiding hardship, and necessity (*ḍarūrah*), and even public interest (*maṣlaḥah*) are in turn regarded as sources of legal judgment besides the necessary adherence to the teachings of the established reli-

gious texts (Kamali 1991, 253). Islamic jurists can choose one of those legal considerations based on their preference in issuing certain religious rulings. In a sense this method is much more inductive compared to *qiyās* by virtue of considering human customs and habits among sources of the Islamic law.

The same question posed to the notion of *qiyās* is also applied here, what human agency can emerge from the *istiḥsān*? The most preferable human agency resulted from the *istiḥsān* seems to be the autonomous agency, because, it recognizes different school of thoughts and opens the possibility of human agency to have independent reasoning, to choose the most suited rulings, and to act base on one's discretion. The availability of optional rulings and the necessity of human to use an autonomous discretion are apparent in the following example. Based on Saba Mahmood's (2005) account, when Hajja Faiza is asked about the legal status of female circumcision, instead of condemning, commanding, or recommending the circumcision, she chooses to leave it as "an optional practice" (84). She only examines the reliability of the source of the arguments which is a weak prophetic tradition (*ḥadīth ḍaʿīf*). Because of the reliability of the source (*ḥadīth*) is weak (*ḍaʿīf*), its legal status can be based on public interest (*maṣlahah*), customary practices (*al-'urf*) or personal conscience ('*istifta' al-qalb*) which may result in prohibition, reprehension, or permission depends on specific circumstances. Hajja Faiza in this case is abstain and letting people to make their own moral decision through *istiḥsān* (legal preference). In this light, to me, there is a room for liberal agency (although limited) to grow because the autonomous decision and discretion is an important aspect in determining what moral position will be taken.

In addition, another form of human agency may also emerge, especially agency gained through resistance against a dominant practice and belief. For example, Saba Mahmood mentions Hajja Faiza's opinion which differs from the conventional belief and practice in Cairo with regard to the issue of women leading the prayer. Hajja Faiza's reply to her adversaries provides optional rulings based on which one can show his/her legal preference (*istiḥsān*). There are two optional rulings in this issue: prohibition (Maliki's view) and permission (Shafi'i, Hanafi, and Hanbali's opinion). In contrast to her adversaries who choose the first option, Hajja Faiza opts to take and to practice the second ruling. Her preference to the second is a kind of resistance towards the mainstream belief which is generally represented by male Muslim imams/scholars in Egypt. As for the possibility of submissive agency, however, *istiḥsān* is apparently having less ground compared its support to other forms of agency since the basic assumption of *istiḥsān* is avoiding hardship, the availability of more than one rulings, and no single injunction requiring one's act of submission.

The other widely used Shari'a reasoning is *istiṣlāḥ*. Literally, it means seeking a common good or public interest (*maṣlahah*). Compared the above legal reasoning, *istiṣlāḥ* is much more linked with the context rather than the text. Therefore, when the text does not provide an explicit legal opinion on certain cases, the main consideration for issuing religious legal opinions is "what is the good for the public". However, what are the things that are called as "the good for the public"? Imam al-Ghazali (d. 1111) (n.d.) writes in *Mustaṣfa min 'Ilm al-Usūl*,:

In essential significance, *al-maṣlaḥah* is a term that seeking something useful (*man-fa'ah*) or warding off something harmful (*maḍarrah*). But this is not what we mean, because seeking what is useful and preventing harm are objectives sought by creation, and the good in the creation of mankind consists in achieving those objectives (*maqāṣid*). What we mean by *maṣlaḥah* is preserving the objective of the divine law (*shar'*) that consists in five order things: preserving religion (*dīn*), life (*nafs*), reason ('*aql*), progeny (*nasl*), and property (*amwāl*). What ensures the preservation of those five principles is *maṣlaḥah* (translated as: common good, public interest); what goes against their preservation is *mafsadah* (harm), and preventing it is *maṣlaḥah.* (Quoted in Ramadan 2009, 62)

In other words, what is considered "public interest" or "the good for the people" (*maṣlahah*) here is the preservation of the objectives of the divine law (*maqāṣid as-sharī'ah*) which are: preserving religion (*dīn*), life (*nafs*), reason ('*aql*), progeny (*nasl*), and property (*amwāl*). The other Islamic scholars[5], however, add the necessary protection of human dignity ('*ird*) into those objectives of *sharī'ah*. These objectives are in fact extracted by Islamic jurists through process of reflective discretion on all sayings stated by the Lawgiver and the dynamics of human experiences in certain socio-cultural contexts. For Islamic legal scholars, the intent of the Lawgiver in commands and prohibitions is clear, that is: "to promote good and to benefit human beings and to protect them from evil, from harm, and from subsequent suffering" (Ramadan 2009, 67).

What human agency will be generated

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5   Among them are Shihab al-Din al-Qarafi (d. 1285), Najm al-Din al-Tufi (d. 1386), Taj-al-Din ibn al-Subki (d. 1369), and sometimes Abu Ishaq al-Shatibi (d. 1388).

from *istiṣlāḥ*? The source of deducing law in *istiṣlāḥ* is slightly shifted from the sacred text and prophetic precedent-oriented into public interest-orientated. Self-governed and autonomous agency may arise from the fact that it is an independent judgment that determines what the best interest for the public is. Among the exemplary practices based on the reasons of public interest are Caliph Abu Bakr's initiative to wage war on those who refuse to pay *zakāh* (religious alms), Caliph Umar b. Khattab's policy to suspend the execution of punishment for the theft in the year of famine, and Caliph Utsman's validation of the right to inheritance of a woman whose husband had divorced her in order to be disinherited (Kamali 1991, 270). Those caliphs were using their own judgment and common sense to determine what the *maṣlaḥah* is and what the best policy will be because there is no specific injunction in the Qur'an and *sunnah* with regard to the problems that they face. However, it seems that the legitimacy of using the public interest reasoning (*istiṣlāḥ*) can only be used by those who are in power or those who have religious authority. Therefore, to have subversive human agency using "public good" reasoning is not easy. Radical groups who often claim defending the religion of Islam (i.e. a kind of public interest reasoning), as reported by John Kelsay (2007), are questioned and opposed by authoritative religious scholars like Sheikh al-Azhar on the basis of *istiṣlāḥ* reasoning: "Will the actions taken in the service of justice yield more harm than good? If each and every Muslim is authorized to take up arms in the context of an emergency, who will determine when the emergency is over?..." (165). In addition, individuals are required to comply with rulings issued by the legitimate authority on the basis of promoting public good. In this way, a form of submissive agency is obtained, not through submission to the religious texts but to either religious or political authority.

Lastly, the mode of Shari'a reasoning that will be discussed here is *istiṣḥāb* (presumption of continuity). This term literally means "companionship." But, *istiṣḥāb* technically denotes a rational proof which may be employed in the absence of other indications; specifically, those facts, or rules of law and reason, whose existence or non-existence had been proven in the past, and which are presumed to remain so for lack of evidence to establish any change (Kamali 1991, 297). The well-known legal maxim originated from *istiṣḥāb* reasoning says that "the original legal value of things is permissible unless there is an argument/evidence that proves the contrary, and the original legal state of ritual-worshipping is prohibition unless there is an argument/evidence that says otherwise." For example, the legal norm concerning foods, drinks, and clothes is permissibility (*ibāḥah*). When question arises as to the legality of a particular kind of beverage or food, and there is no other evidence to determine its value, recourse may be had to *istiṣḥāb,* which will presume that it is permissible (298-99). In the same vein, acts of worshipping such as fasting and prayers are prohibited except if the sacred text or the prophetic tradition indicates that they are commanded, recommended, permitted, or reprehended. In this situation, autonomous agency may grow from the first presumption which regards permissibility as original state of things. One can exercises his/her own reasoning and judgment, for example to choose a wide range brands of clothes, to elect one's favorite political party or president, or to go to which school he/she prefers, and to do anything that religious rulings say nothing.

However, in the case of ritual, worshipping, and any other things that a legal ruling is

already issued and enacted to regulate those affairs, such ruling continues to prevail until there is evidence which nullifies it. For instance, fasting in the month of Ramadan is obligatory for every adult Muslim, but, if somebody is ill or having other acceptable reason, he is waived from this obligation. Sexual relationship is originally prohibited unless there is legal evident which allows it, namely through marriage. Wine is also prohibited because it causes intoxication, but when the wine turns into vinegar which has no intoxicating effect, it becomes permissible. In this regard, the possible agency which may emerge is submissive agency because one is demanded to comply with the existing rulings. As for expecting a kind of subversive agency derived from the *istiṣḥāb* is hard because the original legal value provided by *istishḥāb* is either permissibility (*ḥalāl*), prohibition (*ḥarām*), or obligation (*wujūb*). Opposing the existing rulings without recourse to stronger evidence from the Qur'an, *sunnah*, or other authoritative legal sources is impossible. A resistance towards existing rulings can only be done by means of surrendering oneself to the authority of the holy book, the prophetic tradition, or the stronger precedence provided by early Islamic legal scholars.

Conclusion

Finding the most advocated form of agency in the Shariʿa reasoning tradition is not an easy task. However, after analyzing some basic concepts of *uṣūl al-fiqh* (principles of Islamic Jurisprudence) as the basis for Shariʿa reasoning, some important points with regard to the notion of human agency in Shariʿa reasoning can be drawn. First, the transmitted proofs of Shariʿa (the Qur'an, *sunnah*, and *ijmāʿ*/consensus of *ʿulamā*) are not objects of the discussion here because they not only assume that they are right in themselves, no need of rational justification, but also they do not provide a logic of legal reasoning. The most probable agency generated from these transmitted proofs of Shariʿa is submissive agency because their expectation to Muslims is to be submissive, obeying injunctions and rulings provided either by the Qur'an, *sunnah*, or *ijmāʿ*. The main focus here is the rational proofs of Shariʿa that are introduced and employed by Muslim scholars to derive rulings and legal stipulations. It is true that there is a kind of Shariʿa reasoning, namely *qiyās*, which is actually a mere extension of rulings provided by the Qur'an or *sunnah*, which accordingly demands a submissive agent. There is also a possibility to exercise human agency as acts of resistance such as in the case of *istiḥsān*. But, the notion of human agency that is shared by all rational proofs of Shariʿa is an autonomous, self-mastery, and self-governed agency. In the context of *qiyās* reasoning, one should use his/her independent judgment to determine what the most suitable ʿ*illah/maʿna* (reason) or *shubhah* (similarity) between the old case and the new one is. In the light of *istiḥsān,* the opportunity of someone to use their autonomous mind and judgment is widely open because he/she can choose certain rulings which are suitable for his/her own context. In the *istiṣlāḥ* reasoning, furthermore, a legitimate authority or an authoritative scholar is also demanded to use the best judgment to act according to a common good. This can not be achieved without human capacity to think and to act independently. In the end, *istiṣḥāb* reasoning also gives us a wide range of permissible things in which the autonomy of agent can be cultivated and grow.

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