God's Performative Speech: The Traditionalist Legal Hermeneutics of Abū Yaʿlā Ibn al-Farrāʾ
(d. 458/1065)

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In past meetings I have offered you my interpretations of the legal hermeneutics of al-Shāfiʿī, al-Bāqillānī, and – in another setting – ʿAbd al-Jabbār. Today I want to introduce you to the hermeneutical thought of Abū Yaʿlā Ibn al-Farrāʾ, a Ḥanbalī Qāḍī from a Ḥanafī Muʿtazilī background who died in 458 (or about 1065), and whose ʿUdda fī uṣūl al-fiqh is to the best of my knowledge the earliest comprehensive treatise on uṣūl al-fiqh that has come down to us from the Ḥanbalī school – though it was certainly not the first written in that school.[1]

As I enumerate a few of Abū Yaʿlā's rules for the interpretation of revealed language, notice how they tend to do two things: First, they maximize the power of revealed language; that is, they maximize the amount of definite legal meaning that revelation conveys. Second, they maximize flexibility; that is, they give the interpreter wide latitude to modify the apparent meaning of a text by appealing to some other evidence.

First, about commands. By default imperative verbs entail obligation, rather than merely recommendation or permission.[2] They require immediate obedience, rather than "obedience at some point before you die." They impose a duty of continual obedience, rather than a single act of obedience. A command tied to a condition calls for repetition of the act every time the condition occurs. In addition to entailing some requirement, a command also conveys that if one obeys the command one will in fact have fulfilled the requirement (something that not everyone agreed upon, believe it or not). A command also means that additional acts that one must do in order to perform the commanded act are also themselves obligatory. It also means that doing an

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[1] Abū Yaʿlā had access to masāʾil on uṣūl al-fiqh from Ghulām al-Khallāl (d. 363/974), Abū al-Ḥasan Ibn al-Ḥārith al-Tamīmī (d. 371/982) and Abū al-Ḥasan al-Jazarī [vowelling?] [fl. late 4th/10th cent.]. Ibn Ḥāmid (d. 403/1013) and Abū ʿAbd Allāh al-Warrāq (d. 403/1012) and Abū al-Faḍl al-Tamīmī (d. 410/1020) wrote books on uṣūl al-fiqh.

[2] Abū Yaʿlā, al-ʿUdda, 1:224.

opposite act is forbidden.[3] And a prohibition means that an act is forbidden and also legally invalid.[4] Abū Yaʿlā packs a lot of meaning into imperative verbs, and that meaning is known definitely from the command itself, without any need for interpretive effort. At the same time, he maintains considerable interpretive flexibility: a command can be interpreted to mean something less than obligation or immediate or continual obedience, if one can find some other evidence to justify that interpretation. Such reinterpretation does not constitute *taʾwīl;* it does not make the command *majāz;* it is just a legitimate substitution of part of the literal meaning for the entire literal meaning.[5] Such substitutions are justified by a classification of different degrees of ambiguity *(mutashābih, mujmal, ẓāhir, naṣṣ, mufassar, muḥkam).* This classification legitimates the existence of a range of possible literal meanings for many Arabic expressions, and it allows interpreters to claim ambiguity whenever they find they need to depart from the default meaning so as to bring a text into line with other texts, or with the law itself.[6]

Second, about general expressions. They have a clear default meaning, which is that they apply generally to their entire range of linguistic denotation – their definite meaning is maximized. But just about any type of evidence can particularize a general text, including rational evidence,[7] reasoning by analogy, individually-transmitted *ḥadīth,* or even negative implication *(dalīl al-khiṭāb).* That evidence can be revealed before or after the general text, because Abū Yaʿlā accepts the possibility of delayed clarification *(taʾkhīr al-bayān).* And a

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[3] A command is a prohibition against opposite acts *"min ṭarīq al-maʿnā."* Abū Yaʿlā, *al-ʿUdda,* 1:247, 2:368, 373.

[4] Abū Yaʿlā, *al-ʿUdda,* 2:438, 441.

[5] See e.g. Abū Yaʿlā, *al-ʿUdda,* 1:244, 248, and especially 2:374-376 and 441.

[6] See Abū Yaʿlā, *al-ʿUdda,* 1:137-152. Abū Yaʿlā considers even *naṣṣ* to be a category of ambiguity; it does not have to have only a single possible meaning, but merely has to correspond plainly to some point of law (Abū Yaʿlā, *al-ʿUdda,* 1:138). This illustrates that these terms for clarity and ambiguity describe not texts themselves, but texts' relationships to existing law.

[7] Abū Yaʿlā, *al-ʿUdda,* 2:531-532.

general text that has been particularized remains a literal and probative source of law.[8] So the interpreter has wide latitude to use one text to modify the default meaning of another, while the modified text retains its legal force.

Third, who is addressed by revelation? Not just free Muslim males, but also unbelievers, slaves, and women; not just those specifically named in revelation, or the Prophet's own generation, but also future persons. The Muʿtazila had to reason by analogy to establish that laws imposed on the Prophet's original audience also apply to future generations, but for Abū Yaʿlā the language of revelation imposes obligations on the largest conceivable audience.[9] Of course, other evidence can be used if needed to show that some texts are addressed to a more limited audience.

Fourth, revealed language carries a great deal of implicit meaning, including both positive implication *(mafhūm al-muwāfaqa* – do not say to your parents *uff* means do not beat them) and negative implication *(mafhūm al-mukhālafa* or *dalīl al-khiṭāb* – tax is due on free-grazing animals means it is not due on stable-fed animals). Unless, of course, some other evidence indicates otherwise.

This set of rules will sound very commonplace, and mostly quite unexceptional, to those of you who have spent any time reading the opening chapters of legal theory manuals; but it only seems commonplace now because, between the mid 4th or 10th century and the mid 5th or 11th century, many legal theorists of all Sunni legal and theological schools moved toward something of a consensus on many of these traditionalist interpretive rules that I have just listed. In the 4th or 10th century, there had been important alternatives to that emerging consensus. al-Bāqillānī had argued that rather than assume strong default meanings, one should suspend judgment on the interpretation of many expressions. This legitimated interpretive flexibility, but Abū Yaʿlā – and apparently some of the Ashʿariyya as well – felt that it left meaning too indeterminate. It was certainly not practical as an interpretive method; and the desire to turn legal theory into a more practicable interpretive method may well have been one important reason for this traditionalist turn in *uṣūl al-fiqh*. At the other end of the spectrum, the Ẓāhiriyya and the Muʿtazila had

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[8] Abū Yaʿlā, *al-ʿUdda,* 1:244-245, 2:375, 533-544.

[9] Abū Yaʿlā, *al-ʿUdda,* 2:386-392; Ibn Taymiyya, et al., *al-Musawwada,* 1:157.

defended hermeneutical systems that assigned default meanings to revealed expressions, but did not allow the kind of interpretive flexibility that jurists desired. The traditionalist hermeneutics epitomized by Abū Yaʿlā offered both the power of maximal default meanings, which support to claim that all of the law is implicitly contained in revelation, and the flexibility to correlate revelation with a consistent system of law. This power and flexibility were demanded by the hermeneutical project that al-Shāfiʿī had launched in the 2d or 8th century, when he defined a canon of revelation and then claimed that the entire canon of existing law could be shown to correlate with that canon of revelation. For those committed to the Shāfiʿī project, the theories of the theologians were not powerful or not flexible enough. This, I think, is the principal reason why we see a marked shift toward a traditionalist hermeneutics between the mid-4th and mid-5th centuries, not only among traditionalist jurists such as the Mālikī Ibn al-Qaṣṣār, but also among Ḥanafī jurists associated with the Muʿtazila such as al-Karkhī, al-Jaṣṣāṣ, and al-Ṣaymarī, and even among important theologians such as the Ashʿarī Ibn Fūrak and the Muʿtazilī Abū al-Ḥusayn al-Baṣrī, and even, I think, in the legal theory of Ibn Ḥazm al-Ẓāhirī. Perhaps we may think of this movement as an attempt to catch up, in *uṣūl al-fiqh*, with the earlier traditionalization of *fiqh* itself that Christopher Melchert traced among Ḥanafī jurists in his book on *The Formation of the Sunni Schools of Law*.[10]

As legal theorists of all schools moved in the general direction of a traditionalist hermeneutic, they seem to have left behind them those differing theological views about the nature of God's speech that had led al-Bāqillānī and ʿAbd al-Jabbār to formulate such distinctive hermeneutical theories. To what extent each theorist managed to reconcile the traditionalist hermeneutic with his own views about God's speech I cannot say; they did not spell out their theories of speech as explicitly as did al-Bāqillānī and ʿAbd al-Jabbār. But I think that by looking just beneath the surface of the writings of the Ḥanbalī Abū Yaʿlā Ibn al-Farrāʾ, we can discover a fairly consistent way of looking at God's speech. I think that what is most significant about that implicit theory is that it eliminates the process of rational inference that the Ashʿarī and Muʿtazilī theologians had said was needed to derive law from the words of revelation.

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[10] Melchert describes a 9th- and early 10th-century process whereby Ḥanafī *fiqh* was brought into line with *ḥadīth* in *Formation,* chapters 3 and 6.

al-Bāqillānī exploited the Ashʿarī distinction between God's attribute of speech and the created words that express it to gain interpretive flexibility. An imperative verb, for example, is not itself a command, but just a verbal expression that may express a command or some other meaning; so one must reason from other evidence to establish that a given imperative expresses a command, and then one must find further evidence to establish whether this command entails an obligation or a recommendation. Only then do we know the law. This creates a lot of room for interpretive reasoning.

ʿAbd al-Jabbār held the Muʿtazilī view that God's speech is the created words of the Qurʾān, and that their meaning is determined by their verbal form in conjunction with the speaker's intent or will. Given an imperative verb, one may reason that since God is just and wise, the imperative must make his will clear; so unless God has already provided some evidence to the contrary, one may infer that the imperative is a command and that God wills that the commanded act be performed. From this one may infer that the act is at least recommended. So ʿAbd al-Jabbār too requires a process of interpretive reasoning by which the law must be inferred from the words of revelation, though that process is less open-ended than al-Bāqillānī's.

Abū Yaʿlā shares the Muʿtazilī view that God's speech is the words of the Qurʾān, though of course he considers these to be eternal. Thus for him too an imperative is itself ordinarily a command; but it is a command not by virtue of the speaker's will, but rather by virtue of its being used as an act of requiring someone to do something.[11] Neither the act of requiring nor the imperative by which that requiring is accomplished serves as evidence from which to infer the law; they do not indicate anything, rather they bring about an obligation, just as a human master brings about an obligation by commanding his servant to bring him a drink.[12]

This might be usefully compared to the discussion of "speech acts" in modern linguistics and pragmatics, which emphasizes that human speech does not just describe states of affairs using indicative statements, it can also bring about states of affairs performatively, as when a minister brings about a new state of affairs by saying "I declare you man and wife," or when a person brings an obligation upon herself by saying "I promise to pay you tomorrow." Now Abū

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[11] Abū Yaʿlā, *al-ʿUdda,* 1:157, 214.

[12] See Abū Yaʿlā, *al-ʿUdda,* 1:221, 2:401-402.

Yaʿlā would certainly be uncomfortable talking about divine speech acts, since he regards God's speech as eternal, and in his theological writings denies that it is an act.[13] But he does consider human speech to be an act,[14] and in his discussion of hermeneutics he in fact treats God's speech – anthropomorphically – as an act.

It appears to me that this performative model of speech supports Abū Yaʿlā's tendency to ascribe maximum definite meaning to revealed language. Since God's speech act is or brings about the law, there is no need to deduce the law through a rational process of interpretation. Furthermore, Abū Yaʿlā could ascribe more legal meaning to a speech act than to a verbal form. Whereas for the Muʿtazila a command cannot possibly be a prohibition of opposite acts because the verbal form of command is different from the verbal form of prohibition, for Abū Yaʿlā the act of requiring one action is by its very nature an act of prohibiting other incompatible actions. And whereas some Muʿtazila had to reason by analogy to conclude that an obligation imposed on one generation applied to subsequent generations as well,[15] for Abū Yaʿlā God's eternal speech act has the same performative effect of bringing about obligations today as it had during the Prophet's lifetime.

At the same time, this implicit "speech act" theory supports the flexibility of Abū Yaʿlā's hermeneutic. An imperative is not by its nature a command; it is such only if it serves as an act of requiring and obligating. Hence other meanings, such as recommending, can also be literal interpretations of the imperative form. To depart from the default of obligation, one has only to claim ambiguity (which is simply to claim that a text does not plainly correlate with the law) and then appeal to other evidence to bring an imperative into line with the law. Since other revealed evidence (including both the Qurʾān and the Prophet's Sunna[16]) are part of the same eternal speech act, they can be considered part of the verbal context and even the verbal form *(ṣīgha)* of the problematic text, which means that the verbal form is still being interpreted literally when it

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[13] Abū Yaʿlā, *al-Muʿtamad,* 86.

[14] Abū Yaʿlā, *al-ʿUdda,* 1:157.15.

[15] Ibn Taymiyya, et al., *al-Musawwada,* 1:157

[16] See Abū Yaʿlā, *al-ʿUdda,* 1:345-347.

is modified by other texts.[17] Abū Yaʿlā is thus able to make room for a great deal of interpretive maneuvering, while maintaining that he is just taking the verbal form of revelation literally without any need for *taʾwīl*.

It appears to me, then, that Abū Yaʿlā has moved toward an "intuitivist" hermeneutic: one that claims that the correlation it sees between revelation and a given legal system is immediately obvious rather than arrived at by interpretive reasoning and argument. This raises the question of whether some of those modern interpretations that we usually call "literalist" might be in any sense genealogically related to Abū Yaʿlā's legal hermeneutics. I am not yet sure; such a genealogy would be difficult to trace through the Ḥanbalī *madhhab*. Abū Yaʿlā did not immediately win over his school to his understanding of how God's speech functions; Ibn ʿAqīl appears to have retreated from his model, perhaps because it was so difficult to reconcile the idea of a speech act with the doctrine of God's eternal speech. But Ibn Taymiyya seems to have picked up on some important aspects of Abū Yaʿlā's model: he formalized Abū Yaʿlā's *de facto* elimination of *majāz* and of the need for interpretive reasoning, and he did so in a similar way – by claiming that the total context of God's speech makes its meaning intuitively clear. (Ibn Taymiyya's theory of speech has been discussed by Mohamed Yunis Ali in chapter four of his book on *Medieval Islamic Pragmatics*.) If Ibn Taymiyya's hermeneutics has influenced modern "literalist" interpreters, then it may be that the claims of obvious and uncontestable interpretation that we hear today may be credited in part to the legal hermeneutics of the Ḥanbalī Abū Yaʿlā Ibn al-Farrāʾ, who eliminated the need for a rational process of interpretive inference with his anthropomorphic understanding of God's speech.

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[17] See Abū Yaʿlā, *al-ʿUdda,* 2:507, 509, 543.

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