Sustaining and Enhancing Life

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This chapter discusses the shariʿa as a means of societal governance with regard to the quality of life, an idea that is embedded in the word's etymology. The foundations of the shariʿa as an ethical and intellectual construct were laid in the centuries after the Prophet Muhammad. The shariʿa's orientation towards the public good allows for continual evolution to respond to the changing conditions in which Muslims find themselves. What has this meant for aspiration to a 'good life', as promulgated by the Qurʾan and the example of the Prophet? Historically, a dynamic, problem-solving methodology emerged in diverse Muslim locales. However, the limitations that were eventually placed on individual reasoning (*ijtihad*) generally gave rise to a view of the shariʿa as a rigid set of prohibitions and punishments.

Whereas there have been frequent calls over the last century for the restoration of *ijtihad* as a way to assist in the contemporary development of Muslim-majority societies, few governments demonstrate a sound understanding of the broad nature of the shariʿa. Nevertheless, there are some encouraging signs, as in the recent drafting of the Tunisian constitution, which does not explicitly mention the shariʿa but resonates with its ethos. Similarly, civil society organisations have also demonstrated ways in which the quality of life can be improved by working within Islamically inspired frameworks. I draw on several examples in this chapter – both local and transnational – to illustrate features of the 'purposive' landscape of the ethical shariʿa today.

Material and Spiritual Enhancement

The word 'shariʿa' has come to be associated primarily with Islamic law. However, the Arabic term existed before Islam; its incorporation into Islamic vocabulary derives from the Qurʾanic verse 'We have set thee on a clear path (shariʿa) of commandment' (45:18). The word's original meaning as the path (route, way) to a watering place holds considerable significance

in understanding its relation to social governance, particularly with respect to bettering quality of life. There is in this meaning a much more elemental aspect of life, beyond law. Water's value in the arid landscape of Arabia, the site of the Islamic revelation, is obvious, but this resource is universally necessary for sustaining human existence. Examining the original sense of the word is important in understanding the larger objective of the shariʿa. Despite its identification with religious law, its underlying idea reflects a more fundamental purpose: to support and to enrich life. Viewed through the prism of the Qurʾanic verse, the word gains the meaning of travelling the path that leads to essential nourishment at the well of spiritual and material fulfilment. The symbolic significance of the Islamic shariʿa in relation to its original meaning as a path to the life-giving resource of water points to the indispensability of spirituality and the ethics that derive from it for the individual and community. In this sense, it is much more profound than merely a set of rules and regulations; it is the support for governing the development of both the person and society.

The shariʿa relates to spiritual well-being and to material life because matters of *din* (religion, faith, spirit) and *dunya* (world, life, matter) are intertwined in Islamic perspectives. Morality and ethics derived from spiritual sources enable the believer to pursue a life characterised by goodness. The shariʿa is not only important for sustaining a good life but also for its enhancement. Since human beings are dependent on each other and live in communities, the shariʿa has to relate to the endeavour of sustaining an entire society and improving the quality of life. It encompasses not only a system of law but also other aspects governing society. Moving beyond slaking an individual's immediate thirst, the principle behind the shariʿa as the metaphorical path to enhance the conditions of life was historically actualised in early Muslim history. An example was the fourth Rashidun caliph and first Shiʿi imam Ali ibn Abi Talib's (599–661) funding of a scheme that was voluntarily proposed by a group of people to improve an area's irrigation potential.[1] Muslim rulers of later centuries sponsored large watering networks to support the agricultural systems that fed substantial populations.[2] This

broad sense of the shariʿa underwrites the establishment of social organisation and its governance to meet the essentials of human sustenance and, in a larger way, the shaping of civilisation. In the 21st century it bears the potential to contribute substantially to developing the modes of governance that respond effectively to the large-scale poverty, rampant corruption, cultural disorientation, political instability and internecine and international conflict experienced by many Muslim-majority countries.

A caveat is in order here. Despite the significant place of the shariʿa in Islam, Abdullahi An-Naim, a leading scholar of the shariʿa, writes that, 'in keeping with the spirit of each individual seeking out the truth without compulsion ([Qurʾan,] 2:256), it is of the essence for Muslims to live by the ethics of the sharia as a matter of *voluntary* choice' [original emphasis].[3] This is a statement of particular significance in the context where many Muslim societies are debating the place of the shariʿa in the contemporary world. 'There is certainly more to Islam than the sharia, which is only part of the rich experience of being a Muslim,' An-Naim notes.[4] He appears to be saying that it is possible to be a Muslim without following the institution of the shariʿa. The latter is interlinked with, but remains distinct from, Islamic theology, matters of belief, creed and various forms of spiritual search. Among Sufis and other mystically oriented Muslim groups, the shariʿa is an important aspect of Islamic piety but it is only the first step in the seeker's spiritual ascent: it leads to, and may be superseded by, what they see as the higher levels of the *tariqa* (the way), the *haqiqa* (truth) and the *maʿrifa* (gnosis).[5] According to these views, there is more than one path to the watering place – that is, to attain spiritual enlightenment and apprehend truth. Adherence to the shariʿa as a historically and socio-culturally constructed institution, therefore, remains as a voluntary choice; whether or not one chooses to follow this path among other paths does not essentially affect one's status as a Muslim and as a participant in Islamic spirituality. Indeed, revered Muslims who lived before the shariʿa was historically formulated (e.g. the 8th-century sage Hasan al-Basri) did not necessarily abide by what came to be its formal prescriptions.

The shariʿa did not exist as an institution in the time of the Prophet Muhammad. He interpreted the Qurʾan as it related to the practice of everyday Muslim life in his own lifetime. It was the quest of later

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[1] The Institute of Ismaili Studies, 'Aga Khan Development Network (AKDN): An Ethical Framework': accessible at http://www.iis.ac.uk/aga-khan-development-network-akdn-ethical-framework.

[2] I.M. Lapidus, *A History of Islamic Societies*, 3rd edn (Cambridge, 2014), pp. 54–55. Lapidus notes that imperial considerations often drove such sponsorship, but that it was nevertheless in contrast to the neglect that Muslim rulers inherited in places such as Iraq.

[3] A. An-Naim, 'Modernity: Secular and Sacred,' in A. B. Sajoo, ed., *A Companion to Muslim Cultures* (London, 2012), p. 37.

[4] Ibid., p. 38.

[5] S.H. Nasr, *Ideals and Realities of Islam* (London, 1975), pp. 121–144.

generations to adhere to Islamic principles and values that led to the scholarly endeavour to develop 'an amalgam of law, ethics and methodology' that came to be known as the shari'a.[6] The shari'a although it is sometimes referred to as 'divine' or 'holy' law, is not divine in the sense that Muslims consider the Qur'an to be; it is a construct produced by the engagement of the human intellect with divine/holy revelation and other sources in specific temporal and sociocultural contexts. The methods of consensus (*ijma*), analogy (*qiyas*), individual reasoning (*ijtihad*), exceptional deviation from a rule (*istishsan*), unprecedented judgment motivated by public interest (*istislah*) and custom (*urf*) have produced a rich, dynamic and enabling resource that has provided Muslims with a socio-cultural and legal framework that has 'unchanging bearings as well as … major means of adjusting to change'.[7] Whereas the primary structure of the shari'a emerged in the centuries following the Prophet's death, its evolution is a process that continues to this day.

The British Muslim polymath Ziauddin Sardar remarks that, 'For a Muslim civilisation, the Shari'ah represents that infinite spiritual and worldly thirst that is never satisfied: a Muslim people always seeks better and better implementation of the Shari'ah on its present and future affairs.'[8] It is not a fixed entity but a fluid, organic, changing and pluralistic body of knowledge, being shaped by the ways in which Muslims seek to respond to shifting circumstances. Notwithstanding the widely held notion of the closing of the gates of *ijtihad* in the late medieval period, the shari'a develops over time in response to new conditions and growing human knowledge. Whereas precedence and consensus are important in its formulation, culture and custom play vital roles in keeping it relevant to the vast diversity of regions in which Muslims live. And as custom changes in a particular location, so do aspects of the shari'a which relate to it. The latter has also incorporated elements of other cultures that reflect values that are compatible with those of Islam. For example, the formulation of the system of *waqf* endowments, which has long been an integral part of Islamic charity and is used to fund institutions such as schools, hospitals, hostels and social welfare bodies, drew from Byzantine and Sasanian precedents.

The Qur'anic revelation and the practice of the Prophet (Sunna) are the primary sources for the shari'a. The Sunna reflects a clear attention to improving the well-being of society. Muhammad demonstrated deep concern for the elderly, the poor, the weak and the sick, as is apparent from his traditions (Hadith). He was not only charitable towards widows, orphans, slaves and others who were at a disadvantage, but actively worked to develop societal solutions to improve their respective positions. This was often manifested in the innovation of processes and institutions that came to characterise a more just society. Muhammad's reforms included the establishment of social systems and rights in society and within families (especially those of wives and children). Upon the Prophet's move to Medina with his followers, the 'Constitution of Medina' was instituted, specifying the duties and status of the Muslims of Mecca and Yathrib (Medina), as well as of the Jews of Yathrib.[9] Rights and protection were also accorded to Christians through the Treaty of Najran. Muhammad fostered the growth in social mobility supported by a primary Islamic tenet of egalitarianism. These reforms were supported by Qur'anic revelations regarding matters dealing with issues of inheritance, alimony, support for the poor and other means of social welfare. The systems he established were underpinned by a moral order that valued kindness, forgiveness and mercy. A communal ethos of mutual support came to characterise Muslim society. Whereas Muhammad's reforms did not eradicate social inequality and injustice, the Sunna became the ideal of Islamic life and civilisation, and the model for the development of the shari'a.

The Prophet's biography (*sira*) gave the examples of the modes in which he tackled problems. These ranged from issues of everyday life to those of governing the early Islamic state. Both the development of institutions and the processes by which they were produced became instructive for the formation of the shari'a. The Prophet's social, political and economic reforms were informed by an inherent spirituality. Given the symbiotic relationship between faith and the material world in Islamic perspectives, deeds in the physical world were seen as affecting one's spiritual existence. Therefore the shari'a's framework identifies two separate but linked categories of actions: '*ibadat* (acts of worship) and *mu'amalat* (which include acts within commercial and civil arenas). The distinction between them is not that between the religious and the secular in dominant western worldviews. Morality derived from the Islamic revelation has a strong bearing on the conduct of everyday life. This extends also to the work of governments and other institutions.

The shari'a includes a body of law (*fiqh*) that was developed through reasoned reflection on the Qur'an and the Sunna by a number of major scholars in the two centuries following the Prophet's death. Several Sunni

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6   Z. Sardar, 'The Shari'ah as a Problem-Solving Methodology', in S. Inayatullah and G. Boxwell, ed., *Islam, Postmodernism and Other Futures: A Ziauddin Sardar Reader* (London, 2003), p. 66.

7   Ibid., p. 64.

8   Ibid.

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9   W. Montgomery Watt, *Muhammad at Medina* (Oxford, 1956), pp. 221–260.

schools of law (*madhahib*), including the Shafi'i, Hanafi, Maliki, Hanbali and Zahiri, flourished in this early period. The latter, which was popular in al-Andalus, eventually lost prominence. The Jafari *madhhab* is the major Shi'i school of law. It gives greater significance than Sunni schools to the traditions and teachings of Shi'i imams. This also applies to the shari'a as a whole, as understood and applied by adherents of Shi'i Islam. Religious law has an important but circumspect role in Muslim societies. All the aspects of fiqh are not adjudicated by courts, and mediation is strongly encouraged. This is not a rigid system: judgments are not singular but are modulated by counter-judgments. Another important characteristic is the even more fluid and localised operation of religious law in rural areas of Muslim-majority countries, where a vast majority of the adherents of Islam live but where law courts are scarce. Here, the larger context of the shari'a, of which law is only a part, comes to the fore. In any case, the place of custom, culture and the local community's understanding of the Sunna are all relevant in the general practice of justice in Muslim milieus.

Whereas the processes of colonialism, westernisation and secularisation weakened the relationship between Islamic mores and governance, several Muslim-majority countries are now increasingly exploring how to re-establish the link between a culturally resonant body of ethics embedded in the shari'a and the work of governing. However, the shari'a is often cast by many politicians as a strict legal code, and is sometimes reduced to the harshest of criminal laws, the *hudud*, a term that refers to injunctions touching on the extreme limits of the law. In the context of governance, the shari'a is much broader than merely the means to preserve public order. It seeks to gives integrity to the person and society, and to enable broad-based improvement in quality of life. Unfortunately, often acting under pressure from religious extremists and without proper consideration of the broader nature and overall objectives of the shari'a, the tendency of some governments has been to institute extreme punishments in order to proclaim that Islam has been re-established. Apart from causing substantial social instability, this approach has been morally and ethically errant in relation to the framework of the shari'a, whose long-established methodology requires significant intellectual effort and wide consultation, as well as consideration of the cultural and religious pluralism of populations.

It is not uncommon for societies to lose sense of the original purpose of institutions that were established hundreds of years ago. The shari'a is a human construct whose fundamental aim is to foster spiritual and material existence in an ethical manner. However, it is often reduced in popular discourse to the formulaic binarism of what is permissible (*halal*) and what is not (*haram*), rather than being a sophisticated means of engaging with one's intellect and spirituality

to address issues as a religious aspirant and as a citizen of a society. Instead of viewing the shari'a as a resource that enables improvement of the quality of life, it has often become a means of control that stunts social development. Such tendencies fail to see that the shari'a is in itself a means of implementing change to carry out corrective processes to conditions that cause disorder – that is, it is a 'problem-solving methodology'.[10]

Governance and the Public Good

Contemporary Muslim-majority societies are facing significant difficulties in matters of governance. The latter is not viewed here as dealing only with the functioning of the state but as also including the leadership and management of a range of institutions, such as those in the private sector and civil society. Constitutions, policy frameworks, legislative structures, rules and regulations, codes of conduct, and custom and tradition support governance processes in various sectors of life. Direct engagement with the concept of governance has emerged as a relatively new endeavour in Muslim-majority societies: the term *hukm*[11] and the derivative neologism *hakama*[12] (both from the same Arabic root) are used to refer to 'governance'.

The shari'a has been a basis for Islamic governance. It promotes the kind of moral economy that provides for policies, structures and rules designed to enable favourable conditions for human sustenance, dignity, peace, order, health, education, economic success and spiritual well-being. The objectives of the juridical aspects of the shari'a, including the laws that address criminality, also pertain to the overall goal of promoting individual and societal welfare. Whereas the juridical shari'a has a set of general principles, most of its prescriptions respond to local conditions. Over the last few decades, the focus of many scholars has been primarily on criminal punishments and 'Islamic finance'. These matters are part of the concerns of the shari'a but they are not central to it. Their prominence in contemporary Muslim discourse has tended to narrow the understanding of the shari'a among both Muslims and

10   Sardar, 'The Shari'ah', p. 74.

11   M.S. Ellis et al., *Islamic Law and International Human Rights Law* (Oxford, 2012), pp. 109–110.

12   The World Bank, 'Putting the Citizen at the Heart of "Hakama"': accessible at http://www.worldbank.org/en/news/feature/2013/10/30/putting-the-citizen-at-the-heart-of-hakama.

non-Muslims, leading to the reduction of its much broader purpose that enables the believer to pursue the path to salvation, promote the public good, live in a just society, enjoy personal and communal security, and improve quality of life.

Individual conscience and obligation are linked with the public good in the shari'a. Whereas the concept of the public good has become a key aspect of secular systems of governance, it originally arose in the contexts of faith and natural justice. Most religions promote ideas of communal welfare. The Islamic concept of *fard al-'ayn* ('everyone's obligation') encourages selfless individual service in the interests of the larger society. Faith-driven, ethical underpinnings of law and governance can revitalise modes of thought and behaviour that serve common purposes in a time when the individual's freedom of choice contends with communal values. These ideas relate to the concept of *maslaha*, used by various scholars of Islamic jurisprudence to refer to the principles of the common good and public welfare.

Maslaha is integrally interrelated with the shari'a's methodology, as discussed elsewhere in this volume, particularly with respect to the method of *istislah* (the two words are derived from the same Arabic root). The latter permits scholars to use their intellect to take into consideration conditions that did not exist in the Prophet's time in order to address the contemporary welfare of individuals and communities. This makes the shari'a a dynamic and living resource that is able to address the constantly evolving circumstances in which Muslims live. When faced with situations to which the Qur'an and the Sunna refer neither directly nor indirectly, *istislah* enables the development of judgments based on matters of public interest. Scholars have produced a range of *maslaha* categories on the basis of this form of reasoning. Abu Ishaq al-Shatibi, a prominent 14th-century CE Andalusian jurist, viewed *maslaha* as concerning, among other things, 'the subsistence of human life ... [and] the completion of man's livelihood'.[13] This speaks to the original meaning of the word *shari'a*, which relates to the sustenance and enhancement of life. The end purposes of the Islamic shari'a are therefore pursued by valorising the common good of society.

However, the widespread notion of the closing of the gate of *ijtihad* limited the use of *istislah* along with other means of scholarly reasoning. This caused a narrowing of the understanding of the shari'a and the decline of Muslim civilisation, as well as quality of life. Reform

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[13]   M.K. Masud, *Islamic Legal Philosophy: A Study of Abu Ishaq al-Shatibi's Life and Thought* (Islamabad, 1984), p. 173.

movements have been seeking to turn back centuries of neglect caused by this limitation on the use of reason. *Maslaha* has gained renewed attention among scholars since the second half of the 19th century, when the scholar and jurist Muhammad Abduh stressed its use in the reforms of the court systems of Egypt and Sudan. It has become a vital consideration in developing approaches in the shari'a that address those matters of public good that have not been encountered before in the domain of governance. This is particularly pertinent under the circumstances of modernity. It is the nation-state, shaped by western political ideas, that has become the primary locus of governance in Muslim-majority countries over the last two centuries. The nation-state is also the primary frame within which issues of societal development are conceptualised and operationalised.

The Shari'a and Development

What relation does the shari'a have to development as understood today? The two overlap in several ways. At its emergence in the mid-20th century, the concept of development was thought of primarily in terms of building the economic structures of non-industrialised countries, including Muslim-majority states. Over time, the idea has incorporated social and cultural dimensions within its ambit. Programmes to deal with issues such as communications, cultural revival, education, employment, the environment, food cultures, health, human rights, security, social welfare and sport have been placed under the rubric of development. Even though dominant discourses apply the concept mostly to non-industrialised societies, all countries – even those in the western world – are in the process of developing or 'modernising' as new technologies and increasingly sophisticated ways of organising society emerge. Additionally, not all parts of a country are at the same level of advancement: some sections of a poor country may be comparable to rich ones in terms of their level of industrialisation and social organisation. On the other hand, many highly industrialised states have people, especially in the countryside who are deprived of some of the basic necessities of life, such as clean water.

Development and modernisation are frequently thought to be the same as westernisation, which means that an Asian or African society would have to imitate western ways of organising itself in order to become developed. Those who promote this outlook view the idea of 'progress' moving in a way that does not allow for non-western cultures to be modern. They see the coexistence of modernity with a non-western society's traditions as contradictory. This view has been challenged by the

ideas of 'alternative modernities' and 'multiple modernities', which hold that there can be different ways to develop a society that are just as valid as western models. Therefore, in addition to western modernities, there are Muslim modernities, Asian modernities, African modernities and so forth.

In dominant discourses, development operates primarily as a secular concept that rarely touches on matters of the spirit.[14] From Muslim standpoints, development is understood as relating not only to economic betterment but also as a means to assist in the endeavour to improve all aspects of the human condition. The Qur'an encourages believers to have a strong social conscience, to uphold the dignity of human beings and to show compassion for all creatures. Islamic ethics are therefore a vital element in indigenous approaches to development in Muslim-majority societies. From Islamic perspectives, actions in the material world (*dunya*) cannot be separated from the context of faith (*din*), and therefore building a world that is spiritually empty leads to the lack of fulfilment for its inhabitants. This view sees as imperative the fostering of societies where people are able to engage with complex challenges of material life and also to explore the profound mysteries of the spiritual world. The goal is to promote harmony and balance in all aspects of people's existence, striving to ensure that the diversity of human aspirations is respected and the dignity of all individuals is upheld.

The endeavour of developing a society is often beset with problems of corruption, cronyism and other social ills. In Muslim-majority societies, religious exhortations are used in the endeavour to prevent these misdemeanours. Remaining ethical in an effort to make a better life for everyone is central to the shariʿa. Individuals in a society have a duty to prevent corruption in order to ensure justice and fairness. Religious obligations behove Muslims to work towards building an ethical society in which trust, accountability and equity are upheld. Sharing one's time, knowledge, skill and material resources with others is also part of Islamic values. Service to humanity and the voluntary actions for the betterment of the weak and marginalised were common characteristics among Muhammad and his Companions (*Sahaba*). They strongly believed in the importance of promoting social justice in order to ensure that people were not treated unfairly. Charity (*sadaqa*) is a key part of Islamic practice, reflecting the social responsibility promoted by the Qur'an. But whereas Muslims are expected to share some of their

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[14]   See Amartya Sen, *Development as Freedom* (New York, 1999); Charles Taylor, *The Malaise of Modernity* (Toronto, 1991).

wealth, the Prophet also emphasised that, where possible, the needy should work to become self-reliant and others should assist them in achieving this.

The Sunna provided a body of exemplary behaviours and policies that were upheld by Muslim authorities in the centuries after the Prophet. Notwithstanding some serious lapses in judgment and abuses by some rulers, a general ethos promoting the common good was fostered in societies under Muslim rule. The shariʿa was a guide to a form of governance that nurtured the material as well as the spiritual enhancement of the lives of individuals and communities. It led to the growth of the most advanced social systems and economies of their time, as well as a good quality of life. A pluralistic culture of intellectual engagement among elites of Muslim and other backgrounds produced an erudite body of philosophy, scientific discoveries, technical innovations, and artistic, architectural and literary creativity. Agriculture, craftsmanship and commerce flourished. Governments developed the means to engage with other states in diplomatic and military manners to ensure the security of domains and trade routes. It was a period during which the classic works of theological debate and writings describing profound forms of spiritual engagement were composed. Muslims of the time confidently interacted with other cultures and religions, learning from and contributing to them. Movements such as the Renaissance and the Enlightenment in Europe were beneficiaries of such interactions. The shariʿa was treated as an organic, enabling and dynamic resource rather than a rigid set of restrictions and punishments as it generally came to be viewed later. This was the apogee of medieval Muslim civilisation. It was enabled by a mode of governance supported by the shariʿa as a problem-solving methodology.

In the 13th and 14th centuries there began to emerge a discourse on the closing of the gate of *ijtihad* (reasoning). This was rationalised by the belief that the Qur'an and the Sunna had been sufficiently interpreted for all time and there was no need for further intellectual examination of these sources using the methods that had been applied to formulate the shariʿa. This discourse had widely taken hold by the 16th century, and the signs of decline were becoming clear in various Muslim-majority societies, particularly in Arab lands. Other regions such as the Safawid, Mughal and Ottoman empires maintained their vibrancy for a longer period, but they too began to wane by the 18th century. The evidence of decline was visible in the narrowing of scholarship, the drop in the sophistication of architecture and other arts, the decay in diplomatic and military prowess, and a deteriorating quality of life. Muslim-majority societies turned inwards and became reluctant to engage with other cultures. They were largely unaware

of the growth of science, technology and culture in Europe, and Napoleon Bonaparte's routing of Egyptian and Syrian forces in 1798–1801 came as a shock. The crushing defeat of the Mughal army by the British East India Company and the characterisation of the Ottoman Empire as the 'sick man of Europe' in the mid-19th century finally brought home the realisation that the golden age of the Muslim civilisation was long over.

The Ottomans engaged in a reform period, the Tanzimat, lasting from 1839 to 1876. They sought to ward off internal challenges as well as external pressures on the empire as a result of increasing nationalism in its various provinces. Certain features of European law and practices were adopted in the process. Westernisation increased after the collapse of the Ottoman Empire in the aftermath of World War I. The Balkan provinces became independent states (with mostly Christian majorities), and Muslim-majority regions in the Levant and North Africa came under colonial control. Muslims in Africa, Central Asia, South Asia and Southeast Asia found themselves under the rule of various European powers, but (Saudi) Arabia, Iran and Afghanistan were among the few that escaped colonisation. However, westernisation began to take hold in almost all Muslim-majority countries. Turkey, the sole remnant of the Ottoman Empire, itself embarked on a vigorous process of Europeanisation under the leadership of Ataturk; Iran adopted a similar policy under Reza Shah. These developments in both countries were strongly tinged with secularisation. Some European powers sought to incorporate Islamic laws into the legal systems of some of their Muslim-majority colonies. 'Droit Musulman' operated in Algeria under the French, and the British in India formulated 'Anglo-Mohammedan law', which was an amalgam of English and Islamic laws, concepts, institutions and jurisprudence used to administer a range of legal matters pertaining to Muslims. However, these hybrid legal systems did not reflect the broader purposes of the shariʿa as a means to enhance life. The education, social welfare and general quality of life of Indian Muslims under British rule declined in relation to those of Hindus. This had a lasting impact that continues to affect the overall socio-economic status of Muslims in contemporary India.[15]

There have been many calls over the last century to reinstitute *ijtihad* and to bring about reforms responding to the circumstances of the modern age. Jamal al-Din al-Afghani, Muhammad Abduh,

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[15] Government of India, *Social, Economic and Educational Status of the Muslim Community of India* (New Delhi, 2006).

Rashid Rida and Muhammad Iqbal were among the reformists in the late 19th and early 20th centuries. They influenced Islamic thought in the later decades. However, as Muslim-majority states began to gain independence, they were led largely by secular-minded governments, which sought to modernise their countries according to western ideas of socialism or capitalism. Religious opposition movements have grown steadily over many decades. Many of them have demanded the re-institution of the shariʿa as 'the law of the land'. Whereas some of them have asked for a process of *ijtihad*, many have a poor understanding of the broad nature of the shariʿa. Muslim-majority countries such as Morocco, Iran and Indonesia have engaged in forms of *ijtihad* to formulate legislation on matters such as human rights and family.[16] However, few states have promulgated a comprehensive approach to development that aligns with indigenous Muslim perspectives.

State Constitutions

The drafting of the 2014 constitution of Tunisia was a Muslim interaction with modernity in an apparent spirit of integrity. There is a tradition of constitutionalism in this state going back to the mid-19th century. Its constitution of 1860, the first to be written in an Arab country, incorporated *maslaha* as a key principle. It listed three of its primary components as 'liberty, security and equality'.[17] There was a clear intent in the document to engage with modernity from Islamic approaches. However, later developments made the Tunisian state's outlook, even after independence in 1957, more secular. The Ennahda Movement arose in the 1980s as a Muslim opposition group. Yet, unlike similar organisations in neighbouring countries, it has tended to support a democratic approach to governance.

The uprisings that came to be known as the Arab Spring began in Tunisia and resulted in the overthrow of the government of Zine El Abidine Ben Ali in 2011. Elections were held to form the Tunisian Constituent Assembly, and Ennahda won the largest number of seats under the leadership of its founder, Rached Ghannouchi. However, the party stepped down in the run-up to the final drafting of the 2014 constitution, which was conducted by a neutral interim

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[16] Anicée Van-Engeland, 'Bridging Civilisations: The New Hermeneutics of Islamic Law', in K.H. Karim and M. Eid, ed., *Engaging the Other: Public Policy and Western-Muslim Intersections* (New York, 2014), pp. 111–132.

[17] Masud, *Islamic Legal Philosophy*, p. 70.

government. The result was a constitution that does not mention the shariʿa formally but is resonant with its ethos. This was in marked contrast to the constitutional process in Egypt, where the Muslim Brotherhood-related Freedom and Justice Party, led by Mohamed Morsi, came to power in 2012 and drafted a constitution that officially gave the 'principles of the shariʿa' a place of primacy as a source of legislation. The document stated that these principles 'include general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community'.[18] This indicated a focus mainly on the rule-based and jurisprudential aspects of the shariʿa rather than reflecting its core concept of sustaining and enhancing life. Whereas it has some progressive provisions, it was heavily biased towards Muslims whom it gave a hegemonic status. Morsi was overthrown in a military coup in 2013 and his government's constitution was abrogated.

The present Tunisian constitution upholds the 'Arab-Islamic identity' of the country but balances it with an acceptance of other cultures and religions.[19] It grants a broad-based freedom of conscience and belief. Unlike the Freedom and Justice Party's document in Egypt, it does not mention the shariʿa. However, the Tunisian constitution is consonant with the values of the latter regarding the endeavour to enable people to sustain and enhance their spiritual and material lives. Beyond guaranteeing the freedom of conscience and belief, as well as the free exercise of religious practice, this basic law explicitly mentions the state's duty to protect places of worship from 'partisan instrumentalisation', to disseminate the values of moderation, tolerance and the protection of the sacred, and the prohibition of all violations thereof. It undertakes equally to prohibit and fight against calls for *takfir* (accusing a person of apostasy) and the incitement of violence and hatred. The constitution's intent is to value the sacred while at the same time countering religious extremism and political exploitation; it upholds the shariʿa view of Islam as 'a middle way' that eschews extremes.[20]

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[18] Government of Egypt, *The New Constitution of the Arab Republic of Egypt*, trans. by International IDEA: accessible at http://constitutionaltransitions.org/wp-content/uploads/2013/05/Egypt-Constitution-26-December-2012.pdf.

[19] Government of Tunisia, *Tunisia's Constitution of 2014*, trans. by United Nations Development Programme: accessible at https://www.constituteproject.org/constitution/Tunisia_2014.pdf?lang=en.

[20] Ennhada has formally distanced itself from 'political Islam'. See K. Piser, 'Why Ennahda, Tunisia's Islamist Party, Shed Its "Political Islam" Label', *World Politics Review*, 20 May 20 2016: accessible at http://www.worldpoliticsreview.com/trend-lines/18850/why-ennahda-tunisia-s-islamist-party-shed-its-political-islam-label.

There are firm statements in the constitution about supporting good governance and development. The Good Governance and Anti-Corruption Commission has been established and is made responsible for 'the consolidation of principles of transparency, integrity and accountability'. This provides for the values of truth and ethics in administering the country's affairs, which are core to the spirit of the shariʿa. The constitution lays out principles for enabling a better quality of life for Tunisians. It speaks of social justice and sustainable development, thus drawing on contemporary concepts that fit well with the shariʿa's primary objectives. The enhancement of the lives of people is to be carried out by ensuring their rights to participate in various aspects of the country's development. Also in consonance with the Prophet's Sunna, the state promises to enable various classes of vulnerable group to participate in national life. The integrity of the 2014 Tunisian constitution will depend on the way in which the government, civil society and citizens implement and protect it.

Civil Society

There is a long tradition in Muslim societies of non-state organisations carrying out activities to sustain and enhance the lives of individuals and the community.[21] Historically, Muslim societies have had several major institutions that were distinct from the state and served to provide for a balance of power, such as the office of the *muhtasib*, the public inspector. There have been numerous sociopolitical Muslim organisations since the early 20th century that have strived to uphold and enhance Islamic values. They have formed organisations that provide social, economic and medical services. This has proved to be of significant value in many Muslim-majority countries where certain public services are unavailable, especially in rural areas, or are of very poor quality. The institutions include hospitals, housing associations, legal clinics and welfare organisations. A major example is that of the Edhi Foundation, a national social welfare organisation in Pakistan. It primarily provides medical care and public health services and, in a country whose government is struggling to meet the needs of a rapidly expanding population, the network of Edhi Centres in urban and rural areas offers support to the generally neglected parts of society.

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[21] See A.B. Sajoo, ed., *Civil Society in the Muslim World: Contemporary Perspectives* (London, 2002); K.H. Karim, 'Muslim Civil Society in Eastern and Western Contexts', in K.H. Karim and M. Eid, ed., *Engaging the Other* (New York, 2014), pp. 153–173.

The privately funded and managed foundation's work has come to be well known among Pakistanis, especially as a result of its large fleet of ambulances.

There is also significant Muslim participation in voluntary associations in western societies that are motivated by Islamic values of service. Several organisations have worked to counter Islamophobia and improve the ways in which Muslims are treated by mainstream institutions and the public. Among the most prominent of these bodies in North America is the Washington, DC-based Council for American-Islamic Relations, whose Canadian counterpart is the National Canadian Council of Muslims. Whereas most major Muslim organisations in western societies tend to be fairly conservative in their religious outlook, there are several that have 'progressive' orientations. The Canadian Council of Muslim Women (CCMW) has a good record of working productively with wider society. Its principles and objectives reflect a desire to interact with other Canadian associations and individuals from Muslim perspectives while upholding the ideals of pluralism, social justice, human rights, the rule of law and inclusion.[22]

The Aga Khans, Imams of the Shiʿi Ismaili Muslims, who trace their lineage to the Prophet Muhammad through his daughter Fatima and Ali b. Ali Talib, have been engaged in civil society work since the 19th century. The current Aga Khan, Shah Karim al-Husseini, has established the Aga Khan Development Network (AKDN), which operates as a transnational civil society institution and operates in social, economic and cultural sectors. The AKDN employs some 80,000 people, the majority of whom are based in various developing countries where Muslims are both in majority and minority. It operates in more than 30 countries grouped into eight regions: Eastern Africa, Central and Western Africa, South Asia, the Middle East, Central Asia, the Far East and Southeast Asia, Europe and North America. The Aga Khan Foundation is the lead agency engaged in the AKDN's social development activities, such as education, health and social welfare. Agencies of the Aga Khan Fund for Economic Development are concerned with industrial promotion, tourism, finance, aviation and media. The Aga Khan Trust for Culture runs a historic cities programme, an award for architecture, a music initiative, museum projects, architectural research programmes and a digital archive in various parts of the world.

The AKDN's literature does not mention the shariʿa but describes the network's aim as being to 'realise the social conscience of Islam

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22 CCMW (Canadian Council of Muslim Women, Le conseil Canadien des femmes musulmanes): http://ccmw.com/.

through institutional action'.[23] The Aga Khan frequently states that improving the quality of life of people is the general goal of the AKDN's agencies. He explains his role in development by referring to Islamic perspectives in which *din* and *dunya* are intertwined. The Imam has coined the term 'the enabling environment' to refer to the fostering of voluntary service to improve social conditions. In all this, he appears to invoke the shariʿa's end purposes of sustaining and enhancing human existence.

At an international conference on the Prophet's life held in Karachi, Pakistan, in 1976, the Aga Khan addressed the difficulty of devising ways to ensure that contemporary Muslims could live in peace and prosperity within an Islamic ethos and suggested that the Sunna offers the answer:

> The Holy Prophet's life gives us every fundamental guideline that we require to resolve the problem as successfully as our human minds and intellects can visualize. His example of integrity, loyalty, honesty, generosity both of means and of time, his solicitude for the poor, the weak and the sick, his steadfastness in friendship, his humility in success, his magnanimity in victory, his simplicity, his wisdom in conceiving new solutions for problems which could not be solved by traditional methods, without affecting the fundamental concepts of Islam, surely all these are foundations which, correctly understood and sincerely interpreted, must enable us to conceive what should be a truly modern and dynamic Islamic Society in the years ahead.[24]

The Ismaili Imam finds in the Prophet's life the model for Islamic society in the present and the future. Muhammad developed the institutions of the Muslim state by, in the words of the Aga Khan, 'conceiving new solutions for problems which could not be solved by traditional methods, without affecting the fundamental concepts of Islam'. This approach underlies the problem-solving nature of the shariʿa. Whereas the AKDN does not make explicit mention of the shariʿa in its ideas about development, the Aga Khan has initiated a research project at the Institute for the Study of Islam of the Aga

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23 Aga Khan Development Network: http://www.akdn.org/about-us/akdns-approach-development.

24 Aga Khan, 'Presidential Address', in Prince Karim Aga Khan, *The Muslim World: Yesterday, Today & Tomorrow* (Karachi, n.d.), p. 28.

Khan University to examine its role in issues of governance that lead to improving the quality of life.

Another major civil society association that is also transnational in nature and inspired by Islam is Hizmet, also known as the Gülen Movement. It focuses on the spiritual and intellectual consciousness of the individual, promoting an inner self that will enable the person to effect change in society. Emerging in Turkey in the 1960s, it has spread to various other parts of the world, where it is supported mainly by members of the Turkish diaspora. It does not have a formalised institutional structure and is loosely organised. The movement has around 8 million participants who have built schools, hospitals, media, relief organisations and interfaith dialogue centres in some 180 countries on five continents. Its media organs include television stations (Turkish: Samanyolu TV, Mehtap TV; English: Ebru TV), newspapers (Turkish: *Zaman*; English: *Today's Zaman*), magazines and journals (Turkish: *Aksiyon, Sızıntı, Yeni Ümit*; English: *The Fountain Magazine*; Arabic: *Hira*), the International Cihan News Agency and the radio station Burç FM. More than 120 charter schools in the United States in 25 states, serving mostly underprivileged students, are operated by participants in the Gülen Movement.[25]

Hizmet stresses the role that technology and new global networks can play in articulating a Muslim consciousness. Inspired by the teachings of Fethullah Gülen, the movement is characterised by a localised set of institutions run by groups of supporters in various places. They are guided by the Hizmet's media, which carry Gülen's sermons and commentaries. Influenced by Sufi teachings, he does not advocate Islamist politics but, nevertheless, holds that religion should not be marginalised in the public sphere. Since the 1970s, Gülen has preached a particular Islamic approach to Turkish nationalism, the free market, contemporary education, democracy and peaceful coexistence.[26]

In the uneasy politics of Turkey where the interests of religious and secularist groups have clashed over the last few decades, Gülen was accused in 2016 of inciting an attempted coup against the government and previously, in 2000, of wanting to establish an

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[25] Stephanie Saul, 'Charter Schools Tied to Turkey Grow in Texas', *New York Times*, 6 June 2011: accessible at http://www.nytimes.com/2011/06/07/education/07charter.html?_r=0.

[26] M. Hermansen, 'Who is Fethullah Gülen? An Overview of His Life', in M.E. Marty, ed., *Hizmet Means Service: Perspective on an Alternative Path within Islam* (Los Angeles, 2015).

Islamic state. Charges were brought against him following a sermon in which he spoke about the shari'a. Explaining his position, he stated

> I talked about ash-shari'a al-Fitriya. God has two collections of laws: one, issuing from His Attribute of Speech, is the principles of religion, also called the shari'a. However, in the narrow sense they mean the political laws of Islam. The other, issuing from His Attribute of Will and Power, is the principles to govern the universe and life, 'the natures of law' that are the subject-matter of sciences. In Islamic terminology, this is called shari'a al-Fitriya. Respecting these two collections of laws will make us prosperous in this world and the next, while opposing them will lead us to ruin. The Muslim world remained behind the West because it opposed shari'a al-Fitriya.[27]

According to Gülen, spiritual and material prosperity comes from adhering to the religious and scientific aspects of the shari'a. He indicates that whereas many Muslims have been striving to follow religious rules and regulations, they have neglected the shari'a al-Fitriya that would enable them to enhance their worldly and spiritual existence. Hizmet is seeking to demonstrate the importance of this aspect of Islam through the success of its development projects, which have improved quality of life in many communities.

Conclusion

Adherence to the notion that the gate of reasoning had closed led to the shrinking of the sources of knowledge among Muslims. Even though this idea was not accepted by all, it affected social growth. Shari'a in the minds of many, the shari'a was reduced from a rich and vibrant resource that provided the tools to deal with ever-changing circumstances to being an ossified body of permissions and prohibitions. As a human construct, it could not be the only path to living a good Islamic life. However, it gained this paramount status over time, even as the perception of its scope narrowed.

The Qur'an's first chapter, Surat al-Fatiha, ends with a prayer beseeching God to guide believers to *al-sirat al-mustaqim*, the straight (i.e. right) path. Here, the *sirat* (path) is not completely synonymous

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[27] Ibid., p. 33.

with the *shariʿa* (path, way), nor with *tariqa* (way). Nevertheless, all three relate to each other. *Sirat* as the straight or right path and the *shariʿa* as the path to water appear metaphorically to refer to similar results: material and spiritual fulfilment. *Tariqa* in Sufi parlance also points in the same direction. However, the ideas that constituted the shariʿa and *tariqa* were formed through the intellectual effort that occurred long after the revelation. They are not as basic to Islamic spirituality as *al-sirat al-mustaqim* by virtue of its clear presentation in the Qurʾan. However, this concept has not been developed to the extent of the other two. The shariʿa has largely stood in for elaborating what is the right path for believers to follow.

Its etymology is indicative of a deep significance that goes far beyond law. The shariʿa is a guide to the entirety of life. Spiritual and material matters interlace within it in accordance with Islamic views about the symbiotic relationship between them. However, the shariʿa has been misperceived for centuries as a means to preserve practices from earlier times – times that are seen as being more authentically and more pristinely Islamic. This has produced a conservative attitude to the shariʿa and has tended to freeze it. Its vast potential for informing the processes of improving human life has been lost for many. In a cruel misuse of its legal elements, unscrupulous authorities have exploited its regime of extreme punishments for political purposes. Such abuses have completely excised the vital aspect of the shariʿa that highlights mercy and forgiveness, which are replete in the Qurʾan and the Sunna.

The sincere endeavour by some actors to engage with Islamic sources to produce integral forms of contemporary Muslim governance gives cause for optimism. In a thoughtful reorientation from the aggressive positions held by several religious parties, the new Tunisian constitution has carved out a circumspect place between modernity and tradition. The constituent assembly evoked the spirit of the shariʿa but did not inscribe it overtly into the document. Even in a country which is more than 99 per cent Muslim and where the leading political party has been described as being 'Islamist', the constitution is distinct from the formal shariʿa. Nevertheless, it fosters the sustenance and enhancement of life in a manner that echoes the primary objectives of the latter. The Edhi Foundation, the CCMW, the AKDN and Hizmet, among various other organisations founded by Muslims, are also cognisant of the ethos of the shariʿa with respect to enabling the improvement of quality of life. They each have long records of success in applying Islamic principles to the work of societal development. These civil society organisations have demonstrated that insightful readings of the Prophet's Sunna can yield some of the most constructive outcomes in realising the purposes of the shariʿa in our time.

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