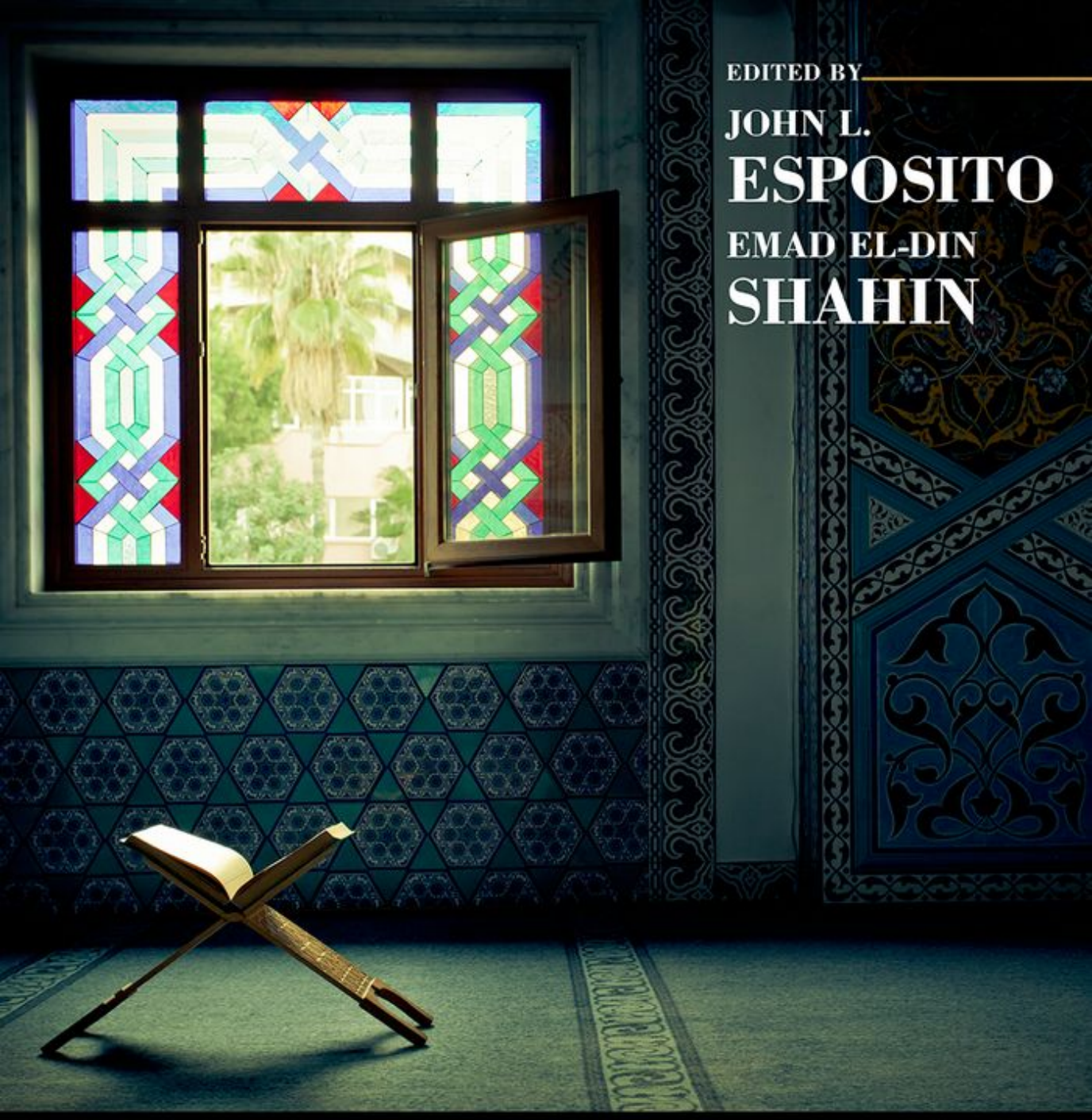

EDITED BY
JOHN L. ESPOSITO
EMAD EL-DIN SHAHIN

The Oxford Handbook *of* ISLAM AND POLITICS

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and

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THE OXFORD HANDBOOK OF

ISLAM AND POLITICS

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INTRODUCTION

JOHN L. ESPOSITO AND EMAD EL-DIN SHAHIN

The interaction of Islam and politics continues to draw the attention of scholars and the concern of policy makers. Under different contexts—the postindependence nation-state, changing ideological maps, globalization, the war against terrorism—Islam and Islamic activists play a visible role. Most recently, the Arab Spring has underlined the significant part Islamists are bound to play in emerging democratic arenas. Islamists have come to power through duly democratic processes and are already shaping the political contours of their respective countries and are eager to have a significant impact on world events. Evidently, the activities of Islamic movements reach beyond politics and cover the social, financial, economic, and educational spheres. Yet it is the relationship between Islam and politics that attracts the greatest attention and concern in both Muslim societies and the international community.

The forces of globalization, neoliberal economics, and democratization have accentuated, not lessened, the significance of religious values as an effective source for identity politics, ameliorating the crushing socioeconomic consequences of restructuring programs and contributing to the role of Islamic movements and Islamists as prominent actors in the political system. Islamists have appealed to Islam in shaping, legitimating, and mobilizing popular support for their diverse political responses and activities.

In recent years, political Islam has manifested itself in two diametrically opposed orientations: an increasing involvement in the democratization process by mainstream movements after the success of pro-democracy popular uprisings in toppling autocratic regimes and a growing inclination toward violence by fringe groups. Political Islam here refers to the attempts of Muslim individuals, groups and movements to reconstruct the political, economic, social and cultural basis of their society along Islamic lines. This process involves different views of the place of Shari`ah in society and the approach to bringing about change. While majorities of Islamic movements have engaged in the democratization process in their respective countries, some have embraced violence and terrorism as an ideological and strategic choice, with devastating consequences for the world and for Islam itself. What are the implications of these strategic choices on the political process in Muslim societies, the prospects of democratization, and regional and international security and stability? Which choice is likely to prevail in Muslim societies? Is political Islam the force of the future in the Muslim world? If so, what are the domestic, regional, and global implications?

Over the past three decades, scholars, government analysts, and terrorism experts have examined the relationship between Islam and politics, resulting in voluminous publications. However, due to the breadth and diversity of political Islam, specialists have tended to limit their analysis to a specific country or focus. Few works have provided a geographically comprehensive, in-depth analysis of the Islam and politics "phenomena." The attacks of September 11, 2001 further increased interest and concern and, as a result, generated a wave of literature on political Islam and global terrorism. Much of the post-9/11 analysis fails to capture the breadth and diversity of Islamic movements as well as their nuanced evolution. This situation underscores the need for a comprehensive, analytical, and in-depth examination of Islam and politics in the post-9/11 era, in an increasingly globalizing world, and in an Arab world transitioning from authoritarianism to democratization.

The Oxford Handbook of Islam and Politics seeks to meet this critical need. Oxford University Press has produced major reference works and books on Islam and the modern Islamic world as well as related books on Middle East politics and history. *The Oxford Handbook of Islam and Politics* makes an important addition, filling a niche in scholarship in an area that enjoys immense academic and policy interest. This handbook addresses several significant questions and issues: What is the current state of Islam and politics? How and why has political Islam been relevant in recent years? What are the repercussions and policy implications of the increased role of Islamic movements? And where is political Islam heading?

Written by prominent scholars and specialists in the field, *The Oxford Handbook of Islam and Politics* is a sourcebook that provides a comprehensive analysis of what we know and where we are in the study of political Islam. It will enable scholars, students, policy makers, and the educated public to appreciate the interaction of Islam and politics and the multiple and diverse roles of Islamic movements, as well as issues of authoritarianism and democratization, religious extremism and terrorism, regionally and globally.

The handbook is organized into four parts. The first part analyzes the contexts and intellectual responses of political Islam. Khaled Abou El Fadl focuses on the issue of the Shari`ah as a central theme and addresses the questions of why and how the Shari`ah is relevant to our present-day life. He also analyzes how Islamists are formulating their views regarding the implementation of divine laws in an increasingly secular society. Abdullah Saeed explores the quest for an Islamic reform and its different orientations (*salafi*, modernist, and revivalist); and Sherman A. Jackson provides a fresh look into the connection between Islamic reform and the nation-state by highlighting the distinction between the application of Islamic law and its application in a homogenizing nation-state. John O. Voll traces the changing ways that the key concepts of *dīn*, *dawla*, and *ummah* reflect the evolution of social and political ideals in the Muslim world and shape the way programs and political visions are articulated. Nader Hashemi assesses the debate on Islam and democracy and seeks to objectively frame an analysis of the relationship between Islam as a religion and democracy as a set of values and a system of government. Tarek Masoud addresses the "political economy" of political Islam and argues that much can be gained from making Islamic political parties the center of our political economy analyses of Islam and politics. Margot Badran examines the consequences political Islam has had for women and gender issues.

The second part focuses on the main ideologues of contemporary political Islam. These are intellectuals-activists whose Islamically informed orientations have given birth to an activist Islam that continues to impact new Islamic movements. They have succeeded in

turning faith into a vehicle of social and political change. Ahmad Moussalli, Joshua T. White, and Niloufer Siddiqui discuss the main intellectual frameworks of Hassan al-Banna and Abu al-A`la al-Mawdudi, respectively, as the founders of contemporary political Islam. These revolutionary ideologues strongly believed that Islam presented a viable alternative to capitalism and socialism and, hence, developed a strong critique of the West. They tried to achieve a total break with the existing order and focused on its delegitimization, based on a scathing criticism of authoritarian regimes and the religious establishment. Shahrough Akhavi critically examines the ideological frameworks of the Egyptian Sayyid Qutb and the Iranian Ali Shari`ati; and Mojtaba Mahdavi analyzes the ideas of Ayatollah Khomeini.

The "intellectuals" of political Islam could be credited for their efforts to steer Islamic movements away from the polarizing ideas of Mawdudi and Qutb. They see the West not as an enemy but as an ideological counterweight to Islam and focus on the renewal of religious thought and Islamic jurisprudence, writing prolifically on modernization and Islam, non-Muslims, and women. Peter Woodward focuses on Hassan al-Turabi, Azzam Tamimi on Rashid al-Ghannushi, Bettina Gräf on Yusuf al-Qaradawi, Mahmoud Sadri and Ahmad Sadri on Mohammad Khatami, Behrooz Ghamari-Tabrizi on Abdolkarim Soroush.

The third part provides critical overviews of the interaction of Islam and politics regionally, in North America, Europe, the Middle East, in Central, South, and Southeast Asia as well as North and sub-Saharan Africa. Abdullah A. Al-Arian, Sam Cherribi, Moataz Fattah, Shireen Hunter, Irfan Ahmad, Fred R. von der Mehden, Azzedine Layachi, and Leonardo A. Villalón address the nature, extent, and dynamics of political Islam in these regions across the world, exploring the diverse use of religion by various regimes as well as various reform and opposition movements.

Part four presents an in-depth analysis of the dynamics of political Islam in politics through a wide range of case studies that reveal the diverse manifestations of political Islam or Islamism today, both mainstream and extremist. These cases are divided along three foci: political Islam in power, Islamic movements and the democratization process, and jihadist political Islam. William O. Beeman presents an alternative portrait of the ruling Islamists in Iran by underlining the dynamics of political life that demonstrates the democratic nature of the electoral process and government institutions in the country. Natana J. Delong-Bas focuses on the trajectory of both religious thought and practice as intertwined with politics in Saudi Arabia and on the academic debates surrounding them. Ibrahim Kalin discusses the rise of the AK Party as a center-right political movement with Islamic and national roots and analyzes its political identity and reformist agenda in the context of the state-centered tradition of Turkish politics. Abdelwahab El-Affendi follows the progression of the "National Islamic Front" into power in Sudan as the first modern Islamist group to assume power there and surveys the lessons the military coup of 1989 has produced on the complexity of contemporary Muslim politics. M. Nazif Shahrani focuses on key moments when those in power, including state and substate actors inside Afghanistan as well as international actors, have shaped discourses about Islam and power in modern Afghanistan and the effect these narratives have had in shaping subsequent events. Tarek Masoud closely examines the role of the Muslim Brotherhood in Egypt, anticipating great changes in its structure and orientation toward either more liberalism or conservatism in the wake of the 2011 Egyptian Revolution.

While not in power, other Islamic movements have played key roles in the political process. Beverley Milton-Edwards focuses on Hamas, surveying its foundation and history and

ascent to power in the first democratic elections in the Arab world before the Arab Spring. Bassel F. Salloukh and Shoghig Mikaelian look into Hizbollah in Lebanon, tracing its doctrinal, political, and military metamorphoses. They also debate the themes on the party's nature, loyalties, and intentions, and its reconciliation of the domestic with the regional struggle. Michael J. Willis analyzes the Islamic movements in Morocco, Algeria, and Tunisia paying attention to national particularities but also acknowledging significant commonalities. Shadi Hamid examines the Islamic Action Front in Jordan and its interactions with the Hashemite Monarchy. Andrée Feillard examines Nahdlatul Ulama in Indonesia and the major shifts the movement has experienced in the past decade. Kamran Bokhari explores Pakistan's Jamaat-i-Islami's seventy-year pursuit to establish an Islamic state using democracy in a country ruled by the military. Fred R. von der Mehden studies the goals and policies of the United Malay National Organization and probes factors that have influenced the federal government's move toward policies of greater Islamization and control over Islamic affairs.

Jihadist political Islam has had a major impact on regional and global events. Nael Shama looks into the history and development of modern jihadist groups in Egypt and the ideological underpinnings of both the radicalization and the deradicalization phases of the movement. David Romano investigates the Jihadist movement in Iraq both before and after the 2003 American invasion, giving special attention to al-Qaeda in Iraq. Jason Burke explores the various "al-Qaidas" and shows how over time they have interacted, all the while continually evolving in response to both exogenous and endogenous factors.

As this volume demonstrates, since the last half of the twentieth century "political Islam" has increasingly played a significant role across the Muslim world. Understanding its nature, causes, and multiple and diverse manifestations—mainstream and extremist—requires an appreciation of national, regional, and international politics and economic and social conditions. Today, vibrant and effective Islamic political parties and movements across the Muslim Middle East and broader Muslim world play and will continue to play an increasingly important role in the region's democratizing politics.

PART ONE

MAJOR THEMES

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CHAPTER 1

THE SHARI'AH

KHALED ABOU EL FADL

Introduction

Part of the unavoidable challenge of providing an adequate account of the Islamic legal tradition is not just its sheer magnitude and expanse but also that the Islamic legal system continues to be the subject of profound political upheavals in the contemporary age and its legacy is highly contested and grossly understudied at the same time. The Islamic legal system consists of legal institutions, determinations, and practices that span a period of over fourteen hundred years arising from a wide variety of cultural and geographic contexts that are as diverse as Arabia, Egypt, Persia, Bukhara, Turkey, Nigeria, Mauritania, Mali, Indonesia, and India. Despite the contextual and historical contingencies that constitute the complex reality of Islamic law, rather paradoxically, the Islamic legal legacy has been the subject of widespread and stubbornly persistent stereotypes and oversimplifications. Whether espoused by Muslim or non-Muslim scholars, highly simplified assumptions about Islamic law, such as the belief that Islamic legal doctrine stopped developing in the fourth/tenth century, the presumed sacredness and immutability of the legal system, and the phenomenon of so-called Qadi justice, are, to a large extent, products of turbulent political histories that contested and transformed Islamic law (or what is commonly referred to as Shari`ah) into a cultural and ideological symbol.

As part of the legacies of colonialism and modernity, Islamic law was then transformed into a symbolic construct of highly contested issues such as legitimacy, authenticity, cultural autonomy, traditionalism, reactionism, and religious oppression. Intellectually, there is a continuing tendency to treat Shari'ah law as if it holds the keys to unlocking the mysteries of the Muslim heart and mind or, alternatively, as if it is entirely irrelevant to the formation and dynamics of Muslim societies. In all cases, however, because of the disproportionately politicized context of the field, Islamic legal studies remains largely undeveloped, and the discipline is plagued by inadequate scholarship, especially in the field of comparative legal studies. It is important to stress the point because, for all the generalizations one often encounters in the secondary literature on Islamic law, the reality is that considering the richness of the legal tradition, our knowledge of the institutions, mechanisms, microdynamics, discourses, and determinations of Islamic law in various places and times is very limited.

The Difference Between Islamic Law and Muslim Law

Much of the secondary literature tends to either lump Islamic law and Muslim law together, especially when dealing with the premodern era, or assume a dogmatic and artificial distinction that is fundamentalist in nature. Not all legal systems or rules followed by Muslims are part of the Islamic legal tradition, but at the same time, the boundaries of Islamic law are far more contested and negotiable than any fundamentalist or essentialist approach may be willing to admit. Part of what makes this issue particularly challenging is that, inescapably, it involves judgments as to the legitimacy and authenticity of what is Islamic and what is not necessarily so. But more critically, the differentiation cannot be intelligibly addressed unless one takes full account of the epistemology and philosophy of Islamic jurisprudence, or the rules of normativity, obligation, and authority, and the processes of inclusion and exclusion in Islamic legal practice and history.

Although Islamic law grew out of the normative teachings of the Prophet Muhammad and his disciples, the first generations of Muslim jurists borrowed and integrated legal practices from several sources, including Persia, Mesopotamia, Egypt and other Roman provinces, Yemen and Arabia, and Jewish law. But at the same time, many existing and actual customary or executive administrative practices prevalent in premodern Muslim societies and polities were not integrated or recognized as being part of, or even consistent with, Islamic law or Islamic normative values. Classical Muslim jurists often denounced a particular set of customary practices, such as the tribal laws disinheriting women, and executive administrative practices, such as tax-farming or excessive taxes known as *mukus*, as inconsistent with Islamic legal principles. Although such legal practices at times constituted part of the universe of rules actually implemented and followed in certain Muslim societies, these practices, even if begrudgingly tolerated as functional necessities, were never endowed with Islamic legitimacy and, thus, were not integrated normatively into the Islamic legal tradition.

Distinguishing Islamic from Muslim law has only become more elusive and challenging in postcolonial modern-day Muslim societies. Most contemporary Muslim countries adopted either the French-based civil law system or some version of the British common law system and limited the application of Islamic law to personal law matters, particularly in the fields of inheritance and family law. In addition, in response to domestic political pressure, several Muslim countries in the 1970s and 1980s attempted to Islamize their legal systems by amending commercial or criminal laws in order to make them more consistent with purported Islamic legal doctrine. The fact remains, however, that the nature of the connection or relationship of any of these purportedly Islamically based or Islamized laws to the Islamic legal tradition remains debatable.

As discussed further below, even in the field of personal law, where the supremacy of Shari'ah law was supposedly never seriously challenged, leave alone the various highly politicized efforts at legal Islamization, Islamic legal doctrine was grafted onto what structurally and institutionally, as well as epistemologically, were legal systems borrowed and transplanted from the West. Practically in every Muslim country, the complex institutional structures and processes of the Islamic legal system, especially in the nineteenth century, were systematically dismantled and replaced not just by Western legal systems but, more

importantly, also by the legal cultures of a number of Western colonial powers. Assertions of disembodied Islamic determinations or rules in the modern age, without the contextual legal processes, institutions, and epistemology, and in the absence of the legal cultures that generated these determinations in the first place, meant that the relationship between contemporary manifestations of Islamic law and the classical legal tradition remained, to say the least, debatable.

The Sources of Islamic Law

It is important to distinguish the formal sources of law in the Islamic legal tradition from what are often called the practical sources of law. Formal sources of law are an ideological construct—they are the ultimate foundations invoked by jurists and judges as the basis of legal legitimacy and authority. The practical sources, however, are the actual premises and processes utilized in legal practice in the process of producing positive rules and commandments. In theory, the foundations of all law in Islamic jurisprudence are the following: the Qur'an, the Sunna (the tradition of the Prophet Muhammad and his companions), *qiyas* (analogical or deductive reasoning), and *ijmaʿ* (consensus or the overall agreement of Muslim jurists).

In contrast to mainstream Sunni Islam, Shiʿi jurisprudence, as well as a minority of Sunni jurists, recognizes reason (*ʿaql*) instead of *qiyas* as a foundational source of law. These four are legitimating sources, but the practical sources of law include an array of conceptual tools that greatly expand the venues of the legal determination. For instance, practical sources include presumptions of continuity (*istishab*) and the imperative of following precedents (*taqlid*), legal rationalizations for breaking with precedent and de novo determinations (*ijtihad*), application of customary practices (*ʿurf* and *ʿadah*), judgments in equity, equitable relief, and necessity (*istislah*, *hajah*, *darurah*, etc.), and in some cases, the pursuit or the protection of public interests or public policies (*masalih mursalah* and *sadd al-thara'iʿ wa al-mafasid*). These and other practical jurisprudential sources were not employed as legal tropes in a lawless application of so-called Qadi justice. In fact, sophisticated conceptual frameworks were developed to regulate the application of the various jurisprudential tools employed in the process of legal determination. Not only were these conceptual frameworks intended to distinguish legitimate and authoritative uses of legal tools, but, collectively, they also were designed to bolster accountability, predictability, and the principle of rule of law.

Being the ultimate sources of legitimacy, the formal sources of law do not play a solely symbolic role in Islamic jurisprudence. Many legal debates and determinations originated or were derived directly from the textual narrative of the Qur'an and Sunnah. Nevertheless, it would be erroneous to assume, as many fundamentalists tend to do, that Islamic law is a literalist explication or enunciation of the text of the Qur'an and Sunnah. Only very limited portions of the Qur'an can be said to contain specific positive legal commandments or prohibitions. Much of the Qur'anic discourse, however, does have compelling normative connotations that were extensively explored and debated in the classical juristic tradition. Muslim scholars developed an extensive literature on Qur'anic exegesis and legal hermeneutics as well as a body of work (known as *ahkam al-Qur'an*) exploring the ethical and legal implications of the Qur'anic discourse. Moreover, there is a classical tradition of disputations and

debates on what is known as the "occasions of revelation" (*asbab al-nuzul*), which deals with the context or circumstances that surrounded the revelation of particular Qur'anic verses or chapters, and on the critical issue of abrogation (*naskh*), or which Qur'anic prescriptions and commandments, if any, were nullified or voided during the time of the Prophet.

Similar issues relating to historical context, abrogation, and hermeneutics are dealt with in the juristic treatment of the legacy of the Prophet and his companions and disciples. However, in contrast to the juristic discourses on the Qur'an, there are extensive classical debates on historicity or authenticity of the hadith (oral traditions attributed to the Prophet) and the Sunnah (historical narratives typically about the Prophet but also his companions). While Muslim jurists agreed that the authenticity of the Qur'an as God's revealed word is beyond any doubt, classical jurists recognized that many of the traditions attributed to the Prophet were apocryphal. In this context, however, Muslim jurists did not just focus on whether a particular report was authentic or a fabrication, but also on the extent or degree of reliability and the attendant legal consequences.

Importantly, Muslim jurists distinguished between the reliability and normativity of traditions. Even if a tradition proved to be authentic, this did not necessarily mean that it was normatively binding because most jurists differentiated between the Prophet's sacred and temporal roles. The Prophet was understood as having performed a variety of roles in his lifetime, including that of the bearer and conveyer of the divine message, a moral and ethical sage and instructor, a political leader, a military commander and soldier, an arbitrator and judge, a husband and a father, and a regular human being and member of society. Not everything the Prophet said or did in these various capacities and roles created normative obligations upon Muslims. The Prophet did not always act as a lawmaker or legislator, and part of the challenge for Muslim jurists was to ascertain when his statements and actions were intended to create a legal obligation or duty (*taklif*), and when they were not meant to have any normative weight. In some cases, Muslims are affirmatively prohibited from imitating the Prophet's conduct because it is believed that in certain situations the Prophet acted in his capacity as God's messenger, a status that cannot be claimed by other human beings.

Other than the normative implications of the Prophet's sacred and temporal roles, a great deal of juristic disputations focused on the practices and opinions of the Prophet's family (*ahl al-bayt*), including his wives and his companions and disciples (*sahabah*). But while Sunni jurists tended to emphasize and exhibit deference to the four caliphs who governed the nascent Islamic state after the death of the Prophet (known in the Sunni tradition as al-Rashidun or the rightly guided), Shi'i jurists heavily relied on the teachings of the infallible imams, all of whom were the descendants of 'Ali, the fourth caliph and the Prophet's cousin, and his wife Fatima, the Prophet's daughter.

It is fair to say that the Qur'an and Sunnah are the two primary and formal sources of legitimacy in Islamic law. Quite aside from the question of whether most of Islamic law is derived from these two sources, the Qur'an and Sunnah play the foundational role in the processes of constructing legal legitimacy. This, however, begs the question as to why instrumentalities of jurisprudence such as analogy or reason and consensus are typically listed among the four formal sources of Islamic law. The response, in part, is that the utilization of the concepts of *qiyas* (or '*aql*) and *ijma'* not just as instrumentalities of law but also as legitimating and foundational origins of law was a necessary legal fiction. The emergence of this legal fiction in the first couple of centuries after the death of the Prophet took place after contentious and, at times, tumultuous jurisprudential debates. Ultimately, these concepts

were intended to steer a middle course between unfettered and unrestrained borrowing of local customary laws and practices into Islamic law and, on the other extreme, the tendency toward literalism and overreliance on textualism as the basis of legitimacy in the process of legal development.

The Nature and Purpose of Shariʿah

As an essential point of departure, it is important to underscore that in jurisprudential theory, the ultimate point of Shariʿah is to serve the well-being or achieve the welfare of people (*tahqiq masalih al-ʿibad*).[1] The word *Shariʿah*, which many very often erroneously equate with Islamic law, means the Way of God and the pathway of goodness, and the objective of Shari`ah is not necessarily the compliance with the commands of God for their own sake. Such compliance is a means to an end—the serving of the physical and spiritual welfare and well-being of people. Significantly, in Islamic legal theory, God communicates God's Way (the Shariʿah) through what is known as the *dalil* (pl. *adillah*). The *dalil* means the indicator, mark, guide, or evidence, and in Islamic legal theory, it is the fundamental building block of the search for the Divine Will and guidance. The most obvious type of indicator is an authoritative text (sing. *nass Sharʿi* or pl. *al-nusus al-Sharʿiyyah*),[2] such as the Qur'an, but Muslim jurists also recognized that God's wisdom is manifested through a vast matrix of indicators found in God's physical and metaphysical creation. Hence, other than texts, God's signs or indicators could manifest themselves through reason and rationality (*ʿaql* and *ra'y*), intuitions (*fitrah*), and human custom and practice (*ʿurf* and *ʿadah*). Especially in early Islam, which of these could legitimately be counted as avenues to God's Will and to what extent, were hotly debated issues. Especially with the increasing consolidation of the legal system after the tenth century, both Sunni and Shiʿi jurists argued that most indicators are divided into rational proofs (*dalil ʿaqli*) and textual proofs (*dalil nassi*). As to rational proofs, jurisprudential theory further differentiated between pure reason and practical or applied reason. Foundational legal principles and legal presumptions, such as the presumption of innocence or the presumption of permissibility (*al-bara'ah al-asliyyah*) and the presumption of continuity (*istishab al-hal*), are derived from pure reason. Interpretive tools, such as *qiyas* and *istihsan*, and hermeneutic categories are all instances of applied or practical reason.

Some Western scholars, such as Joseph Schacht, claimed that the first generations of Muslim jurists initially were not very interested in the text (*nass*) and were much more prone to use custom and reason (*ra'y*).[3] Nevertheless, this view has been adequately refuted, and there remains little doubt about centrality of the text from the very inception of Islamic legal history.[4] It is true that in the first two centuries of Islam, one clearly observes a much greater reliance on custom, practice, and unsystematic reasoning and that both the juristic schools of Medina and Kufah incorporated what they perceived to be the established practice of local Muslims, but both schools also struggled with the role of the text, its authenticity, and its meaning. The critical issue in early Islamic jurisprudence was not the struggle over what role the text ought to play, but, more substantially, it was over the methodologies by which the legal system could differentiate between determinations based on whim or a

state of lawlessness (*hukm al-hawa*) and determinations based on legitimate indicators of the Divine Will (*hukm al-Shar'*).

In Islamic jurisprudence, the diversity and complexity of the divine indicators are considered part of the functionality and suitability of Islamic law for all times and places. The fact that the indicators are not typically precise, deterministic, or unidimensional allows jurists to read the indicators in light of the demands of time and place. So, for example, it is often noted that one of the founding fathers of Islamic jurisprudence, al-Shafi'i (d. 204/820) had one set of legal opinions that he thought properly applied in Iraq but changed his positions and rulings when he moved to Egypt to account for the changed circumstances and social differences between the two regions.[5] The same idea is embodied by the Islamic legal maxim "It may not be denied that laws will change with the change of circumstances" (*la yunkar taghayyur al-ahkam bi taghayyur al-zaman wa al-ahwal*).[6]

One of the most important aspects of the epistemological paradigm upon which Islamic jurisprudence was built was the presumption that on most matters, the Divine Will is unattainable, and even if attainable, no person or institution has the authority to claim certitude in realizing this Will. This is why the classical jurists rarely spoke in terms of legal certainties (*yaqin* and *qat'*). Rather, as is apparent in the linguistic practices of the classical juristic culture, Muslim jurists for the most part spoke in terms of probabilities or in terms of the preponderance of evidence and belief (*ghalabat al-zann*). Muslim jurists emphasized that only God possesses perfect knowledge—human knowledge in legal matters is tentative or even speculative; it must rely on the weighing of competing factors and the assertion of judgment based on an assessment of the balance of evidence on any given matter. So, for example, Muslim jurists developed a rigorous field of analytical jurisprudence known as *tarjih*,[7] which dealt with the methodological principles according to which jurists would investigate, assign relative weight, and balance conflicting evidence in order to reach a preponderance of belief about potentially correct determinations.[8]

Contemporary fundamentalist and essentialist orientations imagine Islamic law to be highly deterministic and casuistic, but this is in sharp contrast to the epistemology and institutions of the Islamic legal tradition that supported the existence of multiple equally orthodox and authoritative legal schools of thought, all of which are valid representations of the Divine Will. Indeed, the Islamic legal tradition was founded on a markedly pluralistic, discursive, and exploratory ethos that became the very heart of its distinctive character. According to classical legal reasoning, no one jurist, institution, or juristic tradition may have an exclusive claim over the divine truth, and hence, the state does not have the authority to recognize the orthodoxy of one school of thought to the exclusion of all others.[9] While Shari'ah is divine, *fiqh* (the human understanding of Shari'ah) was recognized to be only potentially so, and it is the distinction between Shari'ah and *fiqh* that fueled and legitimated the practice of legal pluralism in Islamic history.

The Difference Between Shari'ah and *Fiqh*

The conceptual distinction between Shari'ah and *fiqh* was the result of recognizing the limitations of human agency and also a reflection of the Islamic dogma that perfection belongs only to God. While Shari'ah was seen as an abstract ideal, every human effort at

understanding or implementing this ideal was considered necessarily imperfect. In theory, Muslim jurists agreed that even if a jurist's determination is ultimately wrong, God will not hold such a jurist liable as long as he exerted due diligence in searching for the right answer.

According to one group of legal theorists, those who are ultimately proven to be wrong will still be rewarded for their due diligence, but those who prove to be right will receive a greater reward. The alternative point of view, however, argued that on all matters of *fiqh* there is no single truth to be revealed by God in the hereafter. All positions held sincerely and reached after due diligence are in God's eyes correct. God rewards people in direct proportion to the exhaustiveness, diligence, and sincerity of their search for the Divine Will—sincerity of conviction, the search, and the process are in themselves the ultimate moral values. It is not that there is no objective truth—rather, according to this view, the truth adheres to the search.

This classical debate had an impact upon the development of various doctrines and institutions in Islamic jurisprudence, the most important of which was negotiating the dynamics between Shariʿah and *fiqh*. In the Islamic legal tradition, there is only one Shariʿah (*Shariʿat Allah*) but there are a number of competing schools of thought of *fiqh* (*madhahib fiqhiyyah*). Although all jurists embraced the theological dogma that God's perfection cannot be reproduced or attained by human beings, this did not mean that they considered every aspect of Shariʿah to be entirely unattainable or inaccessible until the hereafter. Some have suggested that Shariʿah contains the foundational or constitutional principles and norms of the legal system. So for instance, Shariʿah imposes a duty (*taklif*) upon Muslims to enjoin goodness and resist wrongfulness. There is little doubt that this duty is a part of Shariʿah, but what it actually means and how or who should implement it are part of *fiqh*. Nevertheless, the exact boundaries between Shariʿah and *fiqh* were often contested and negotiable, and whether there is overlap between the two categories turned out to be challenging and at times ambiguous.

Behind most of the jurisprudential conceptions of Shariʿah was the basic idea that what cumulative generations of Muslims reasonably identified as fundamental to the Islamic religion (for instance, the five pillars of the Islamic faith) ought to be part of the unassailable Shariʿah. As some have contended, this approach might have been important to the field of theology, but in law, Shariʿah could not be limited to inherited or popular ideas. Rather, Shariʿah is comprised of the foundational or constitutional normative values that constitute the grundnorms of the Islamic legal system. For instance, the notion that the Divine Will cannot be represented by a single system of *fiqh* and the celebration of diversity is itself one of those foundational grundnorms. For example, it is firmly established in the Islamic legal tradition that Shari`ah seeks to protect and promote five fundamental values: (1) life, (2) intellect, (3) reputation or dignity, (4) lineage or family, and (5) property. Furthermore, Muslim jurists overwhelmingly held that there are three basic levels of attainment or fulfillment of such values: the necessities, needs, and luxuries.

Under Shariʿah law, legal imperatives increase in proportion to the level demand for the attainment of each value. Thus, when it comes to life, for example, the legal duty to secure a person's survival is a priori to the obligation of guaranteeing human beings any basic needs that are above and beyond what is necessary for survival. Nevertheless, alongside these broad fundamental principles, historically, Muslim jurists developed specific positive commandments that were said to be necessary for the protection of the values mentioned above, such as the laws punishing slander, which were said to be necessary for the protection of

reputation or dignity, or the laws punishing fornication, which were said to be necessary for the protection of lineage and family.

I will discuss the *hudud* penalties further below, but for now it is important to emphasize that many of the positive legal determinations purportedly serving the five values were often declared to be a part of Shariʿah, and not just *fiqh*, or were left in a rather ambiguous and contested status between Shariʿah and *fiqh*. Claiming that a positive legal commandment is not a by-product of *fiqh*, but is essentially part of Shariʿah effectively endowed such a commandment with immunity and immutability. The boundaries between Shariʿah and *fiqh* were negotiated in a variety of highly contextually contingent ways in the course of Islamic history, but the dynamics and processes of this history remain grossly understudied.

Purportedly, by the end of tenth century, no fewer than one hundred schools of *fiqh* had emerged, but for a wide variety of reasons most of these schools ultimately failed to survive. Fortunately, however, many of the diverse positions and competing views expounded by extinct schools of thought were documented in huge legal encyclopedias often written by competitors, and in some cases, the actual texts of extinct schools have reached us. The most striking characteristic about the legal schools that dominated the practice of law for more than three centuries after the death of the Prophet is their remarkable diversity, and in fact, one would be hard pressed to find any significant legal issue about which juristic disputations and discourses have not generated a large number of divergent opinions and conflicting determinations. During the age of proliferation, one does notice the incredibly broad expanse of space that came under the legitimate jurisdiction of *fiqh*. Put differently, there did not seem to be many issues in Shariʿah that were off limits for the inquiries of *fiqh*.

Rather, the grand abstract type of questions that were raised when attempting to expound a systematic demarcation of Shariʿah and *fiqh* were handled within the classical *madhahib* through the microtechnicalities of the practice of law. Rather than struggle with the larger abstract conceptual questions, the Shariʿah/*fiqh* balance was negotiated through the microdynamics of legal practice. The broad philosophical issue of theorizing an analytically sound differentiation between the respective provinces of each seems to be a particularly pressing question for Muslim constitutional lawyers in the contemporary age, especially with the challenge of authoritarian religious movements trying to rule in God's name.

Initially, what differentiated one school of law (*madhhab*) from another were methodological disagreements and not necessarily the actual determinations. With the increasing consolidation and institutionalization of schools of thought, each school developed its own distinctive cumulative interpretive culture, structural precedents, and even particular linguistic practices. Importantly, the founders of the schools of *fiqh*, and the early jurists in general, did not intend to generate binding legal precepts. Rather, acting more like law professors and legal scholars, they produced legal opinions and analysis, which became part of the available common law to be adopted by state appointed judges in light of regional customary practices. Legal scholars from the different schools of thought were often far more interested in hypotheticals that illustrated their analytical models and methodologies than in passing judgments on actual disputes. This is why *fiqh* studies did not speak in terms of positive legal duties or prohibitions but analyzed legal issues in terms of five values: (1) neutral or permissible (*mubah*/*halal*), (2) obligatory (*fard*/*wajib*), (3) forbidden (*muharram*), (4) recommended (*mandub*/*mustahab*), and (5) reprehensible or disfavored (*makruh*).

Frequently, jurists wrote in probabilistic terms such as saying "what is more correct in our opinion," referring to the prevailing view within the jurist's school of thought (*al-murajjah ʿindana*). The critical point is that the masters of *fiqh* understood that they were not making binding law but issuing opinions of persuasive authority. The difference between *fiqh* and positive law was akin to the distinction between *fatwa* and *hukm*. A *hukm* is a binding and enforceable legal determination, but a *fatwa* (responsa) is a legal opinion on a particular dispute, problem, or novel issue, which by definition, enjoys only persuasive authority. Both *fiqh* and *fatawa* (sing. *fatwa*) become binding law only if adopted as such by a person as a matter of conscience or if adopted as enforceable law by a legitimate authority such as a judge. In other words, *fiqh* and *fatawa* are normative legal proposals that are contingent on essential enabling acts or triggers: the conscientious acceptance of its mandatory authority by a Muslim practitioner or by an official adoption by a proper authority. Failure to appreciate this fundamental point about the construction and structure of the legal views expressed in *fiqh* works has led to a great deal of ill-informed and misguided scholarship about Islamic law.

One of the most entrenched myths about Islamic law is that the legal system ceased to develop or change from the tenth or eleventh centuries because, fearing diversity and fragmentation, the so-called doors of *ijtihad* were declared to be forever closed. According to this claim, Muslim jurists were expected to imitate their predecessors (practice of *taqlid*) without undertaking legal innovations (*ijtihad*). This myth seems to have emerged in the nineteenth century as a simplistic explanation of the purported stagnation of the Islamic legal system and as justification for the legal reforms of the time, which in reality amounted to little more than the importation of European legal systems.[10] More importantly, this myth persisted among contemporary scholars because of the paucity of studies on the microdynamics of Islamic law and because of the failure to properly understand some of the basic historical realities about the development of the Islamic legal system. For example, *taqlid* was not the instrument of legal stagnation; it was an important functional instrument of the rule of law. In general, *taqlid* stabilized the law by requiring continuity in legal application and by creating a legal presumption in favor of precedents unless a heightened burden of evidence is met justifying legal change. Indeed, many of the most important developments in Islamic law were accomplished by jurists centuries after the supposed doors of *ijtihad* were closed.

The essential point about the Islamic legal tradition, and especially the role of *fiqh*, is that the juristic method and the linguistic practices of cumulative communities of legal interpretation became not only the mechanism for legitimacy and authority but also the actual source of law. As a community of guilded specialists with an elaborate system of insignia and rituals, in most cases structured around a system resembling the Inns of Court in England, the jurists played a critical role in upholding the rule of law and in mediating between the masses and rulers.[11] However, the primacy of the juristic method and the organized guilds representing the various schools of law, contrary to some stereotypical claims, did not mean that the application of Islamic law became completely streamlined or simply mechanical and formulaic. Within a single *madhhab*, it was common for various juristic temperaments and philosophical orientations to exist because the established schools of law became the common platforms where conservative or activist jurists had to pursue their legal agendas or objectives. Within a single established school of thought, there could be conservative, traditionalist, rationalist, or equity-oriented trends, but each of these orientations had to

negotiate its particular approach within the demands of the juristic method of the *madhhab*. Fundamentally, whether a particular legal orientation emphasized the use of the text, reason, custom, equity, or public interest, these tools had to be justified, channeled, negotiated, and limited by the juristic method.[12] The point is not just that the juristic method became the prevalent mechanism for negotiating the tools and instruments of legal analysis but, even more, that the juristic method became Islamic law itself; it became the mechanism for negotiating the relationship not just between Shariʿah and *fiqh* but also between the realm of God and that of humans, and ultimately, between the sacred and the profane.

The Sacred and Profane in Islamic Law

The relationship between the sacred and profane was negotiated in Islamic law through the ongoing historical dynamics demarcating the boundaries between Shariʿah and *fiqh*. But beyond this, there were several other conceptual categories and functional mechanisms through which sacred and temporal spaces were negotiated in Islamic law. Among these categories was the conceptual differentiation between *ʿibadat* (laws dealing with matters of ritual) and *muʿamalat* (laws pertaining to human dealings and intercourses). In theory, all Islamic laws are divided into one of these two categories: *ʿibadat* are laws that regulate the relationship between God and humans, and *muʿamalat* are laws that regulate the relationship of humans with one another. As to issues falling under the category of *ʿibadat*, there is a legal presumption in favor of literalism and for the rejection of any innovations or novel practices. However, in the case of *muʿamalat* the opposite presumption applies; innovations or creative determinations are favored (*al-asl fi al-ʿibadat al-ittibaʿ wa al-asl fi al-muʿamalat al-ibtidaʿ*).

The rationale behind this categorical division is that when it comes to space occupied exclusively by how people worship the Divine, there is a presumption against deference to human reason, material interests, and discretion. Conversely, in space occupied by what the jurists used to describe as the pragmatics of social interaction, there is a presumption in favor of the rational faculties and practical experiences of human beings. Underscoring the difference between *ʿibadat* and *muʿamalat* was the fact not only that the two were identified as distinct and separate fields and specialties of law but also that it was quite possible to specialize and become an authority in one field but not the other (*fiqh al-ʿibadat* or *fiqh al-muʿamalat*).

Beyond this clean categorical division, negotiating the extent to which a particular human act or conduct, whether it be public or private, primarily involved *ʿibadat* or *muʿamalat* was not a simple and unequivocal issue. For instance, there were lengthy debates as to whether the prohibition of *zina* (fornication or adultery) or consumption of alcoholic substances falls under the category of *ʿibadat* or *muʿamalat*, or alternatively, some mixture of both categories. Nevertheless, as in the case of the debates regarding the parameters of Shariʿah and *fiqh*, although in principle there was a philosophical recognition that the spaces occupied by the sacred and profane require different treatments, in reality, it is the juristic method that played the defining role in determining the function of text, precedent, and rational innovation in the treatment of legal questions. Ultimately, it was not the legal presumptions attaching to either category but the institutional and methodological processes of each legal school of thought that most influenced the way issues were analyzed and determined.

Perhaps as a practical result of the epistemology of plural orthodoxy, in Islamic jurisprudence a court's judgment or finding was not equated with or considered the same as God's judgment. At a normative level, a court's judgment could not right a wrong or wrong a right and it could not negate or replace the duties and responsibilities imposed by an individual's conscience. Jurists argued that individuals do have an obligation to obey court decisions as a matter of law and order, but judicial determinations do not reflect or mirror God's judgment. A classic example would be of a litigant who, for instance, follows the Hanafi school of thought and who is forced to submit to the jurisdiction of a Shafiʿi court. The Hanafi litigant would have to obey the judgment of the court not because it is correct but because a duly constituted court possesses legitimate positive authority (*sultat al-ilzam*). Not surprisingly, the proper balance between the duty of obedience to the public order and the duty to follow one's conscience, or school of thought, has been the subject of considerable jurisprudential debates.

Because of the reality of pluralist legal orthodoxy, in Islamic jurisprudence it is entirely conceivable even where Shariʿah is the law of the land that an individual legitimately would feel torn between his duties toward the public order and God. The legitimacy of the state and even the law were not absolute—both state and law performed a functional but necessary role. Beyond the fact that the state could not act as a proxy for God, legal determinations could not void the necessary role of personal beliefs or individual conscience because they did not replace the sovereignty of divine judgments.

An out product of the institutions of legal pluralism was the rather fascinating, but little understood, practice of multiple territorially overlapping legal jurisdictions. There were many historical examples of governments establishing as many as four court judicial jurisdictions, each following a different *madhhab*, with a challengingly complex set of conflict of laws rules regulating subject matter and *in personam* jurisdiction. Normally, however, the predominant *madhhab* affiliation of the population of a region would play a determinative role on the *madhhab* followed by a court. Furthermore, frequently there was a senior or chief judge settling issues of adjudicatory law within each *madhhab*. In addition, a common practice was to appoint a supreme chief judge who enjoyed ultimate appellate authority, as far as the positive law was concerned, over all the judicial jurisdictions. Although the research in this field is poorly developed, there is considerable evidence that the supreme chief judge, although personally belonging to a particular *madhhab*, in his official function, sought to resolve conflict among the jurisdictions through synchronistic or conciliatory methodology known as *al-tawfiq bayn al-madhahib* (resolving and balancing between the differences among the schools of legal thought), which was a well-developed jurisprudential field and specialty.

The Rights of God and the Rights of Humans

Perhaps the clearest articulation in Islamic jurisprudence of the distinctive spaces occupied by the sacred and profane is the categorical differentiation between the rights of God (*huquq Allah*) and the rights of humans (*huquq al-ʿibad*). Muslim jurists agreed that humans cannot benefit or harm God, and so unlike the rights owed to human beings, the rights of God do not involve any actual interests of God. Depending on the context, the word *huquq* (sing. *haqq*) referred to the province, jurisdiction, boundaries, or limits of God (*hudud Allah*).

Interestingly, *huquq al-'ibad* did not refer to public or common rights but to the material interests and benefits belonging to each human being as an individual. The rights of God do not need a protector or vindicator because God is fully capable of redressing any transgressions committed against God's boundaries or commands. But unlike God, human beings do need an agent empowered to defend them and redress any transgressions committed against their person or properties. Therefore, the state is not simply empowered but obligated to enforce the rights and obligations owed to people and may not legitimately ignore or waive them away. The state was precluded from enforcing the rights of God because the state was not God's representative and God had reserved these rights to God's exclusive jurisdiction and province.

Muslim jurists clearly recognized the exceptionality and exclusivity of the sacred space and even jealously guarded it from the encroachments of the profane. Ironically, however, it is in dealing with the issue of God's clear boundaries and limits that the jurists most famously collapsed the sacred and profane into a single space, at least in theory if not in application. In what is known as the *hudud* penalties, Muslim jurists asserted that there is a category of divinely ordained punishments that apply to violations committed against a class of mixed rights (*huquq mukhtalitah*), which are shared by God and human beings. As a category, mixed rights involve issues where the material interests or well-being of people is involved, but at the same time, there is a discernible Divine Will staking a specific claim for the Divine over these issues. In the case of the divinely ordained *hudud* penalties, for reasons not necessarily known to human beings, God purportedly explicitly determined not only the punishable act and the exact penalty but also the exact process by which the crime is proven and the penalty is carried out.

Although not all the *hudud* crimes were mentioned in the text of Qur'an, a general juristic consensus was said to exist as to the divine origin of the penalties. In the classical tradition, fornication or adultery (*zina*), robbery (*sariqah*), consumption of alcohol, defamation (*qadhf*), and apostasy (*riddah*) were the violations most commonly included within the *hudud*. The real paradox of the *hudud* is that while in contemporary Islam they are often imagined to be the harbinger and flagship of Islamic law, in the classical tradition, the *hudud* penalties were rarely applied precisely because of the space occupied by the Divine in defining and redressing the crime. On the one hand, by categorizing a crime under the *hudud*, the definition of the crime and the appropriate penalty became sanctified and immutable. But, on the other hand, by placing it within the category of *hudud*, the jurists effectively endowed the penalty with a largely symbolic role because the technical requirements and administrative costs of enforcing these sacred penalties were largely prohibitive.

As with all matters involving the rights of God, as far as the state is concerned, it is imperative to tread cautiously lest in trying to uphold the bounds of God, whether through ignorance, arrogance, or incompetence, the state itself ends up committing an infraction against the Divine. Prophet Muhammad's injunction, which was adapted into a legal maxim, commanded that any doubt must serve to suspend the application of the *hudud*. In addition to the presumption of innocence in application to all criminal accusations, Muslim jurists often cited the injunction above in greatly circumscribing the application of the *hudud* penalties through a variety of doctrinal and procedural hurdles. In general, repentance, forgiveness, and doubt acted to prevent the application of the *hudud*. In dealing with the rights of God, it was always better to forgive than to punish; repentance of the defendant acted to suspend the *hudud*, and all doubt had to be construed in favor of vindicating the accused.

As far as the classical jurists were concerned, the *hudud*, like all matters implicating the rights of God, were better left to divine vindication in the hereafter. In most cases, instead of pursuing a *hudud* penalty, the state proved a lesser included crime under a less demanding burden of proof and applied lesser penalties, normally involving imprisonment, some form of corporal punishment, banishment, or a fine. Lesser penalties for non-*hudud* crimes, or lesser included crimes, fell into two categories: *qisas* (*talion*, or punishment in kind to the offense, e.g., eye for an eye) or *taʿzir* (penalties prescribed by the state for offenses against public interest). *Qisas* was treated as a private recourse and right, where pardon or forgiveness was always preferable, but *taʿzir* were thoroughly profane punitive measures left to the authority and jurisdiction of the state applied to protect the public through deterrence. Classical Muslim jurists enunciated various principles regulating and restricting the powers of the state over *taʿzir* punishments. Fundamentally, however, while *hudud* punishments were greatly circumscribed throughout Islamic history, what and how *taʿzir* punishments were applied greatly varied from one time and place to another.

By circumscribing the enforcement of the rights of the Divine, the classical jurists of Islam constrained the power of the state to act as God's avenger. However, doctrinally the rights of God, as a concept, played an important normative and ethical role in the Shariʿah dynamics taking place within Muslim societies. The rights of God symbolically represented the moral boundaries of appropriate social mores and values in the public space. This does not mean, as some contemporary reformists have claimed, that the rights of God are equivalent to, or substantially the same as, public interests or space. Normatively, the Shariʿah is expected to pervade the private and public spaces by appealing to the private consciences of individuals and to societies as collectivities. But there is one way this could happen and that is through voluntary compliance. For the most part, Islamic jurisprudence invoked the compulsory powers of the state in order to enforce obligations or rights owed to people—not to God. Functionally, Islamic law was thought of not as a means for empowering the state to act on God's behalf, but as setting limits to the powers of the state through the imposition of the rule of law. Therefore, the greater legacy of the Islamic tradition deals with questions involving *muʿamalat* or social intercourses and dealings or the resolution of conflicts arising from competing claims and interests. Questions of social etiquette or proper public manners were not treated in books of jurisprudence, but were relegated to the status of moralistic pamphlets (*kutub al-raqaʾiq*) written often by religious preachers or sometimes by qualified jurists for the consumption of the laity.

Modernity and the Deterioration of Islamic Law

With the advent of the age of colonialism, the Islamic legal system was consistently replaced by legal systems imported from Western colonial states. The factors contributing to the deterioration and replacement of Islamic law are numerous, but primary among those factors was the pressure exerted by foreign powers for a system of concessions and special jurisdictions that served the economic and political interests of the colonizers and a parasitical native elite that derived and maintained its privileged status from the financial, military, and cultural institutions of colonial powers. Frequently, colonial powers and their dependent

native elites found that their economic and commercial interests were not well served by the pluralism and localized indeterminacy of the Islamic legal system. In response, some colonial powers such as Great Britain created hybrid legal institutions such as the Mixed Courts of Egypt and the Anglo-Muhammadan courts of India. Of greater significance, however, was the fact that colonial powers and their native ruling elites found that the organized legal guilds, and the system of religious endowments (*awqaf*) that supported these guilds, leveraged a considerable amount of power that was often used to resist the hegemonic powers of the modern state. Throughout the Muslim world, this led to a protracted process by which colonial powers or, in the postcolonial age, local nationalistic governments consistently undermined the autonomy, and eventually completely controlled, the traditional legal guilds and the network of religious endowments, not only depriving them of any meaningful political role but also deconstructing their very legitimacy in Muslim societies.

Perhaps more destructive to the Islamic legal system was the fact that the institutional replacement of Islamic law was accompanied by a process of cultural transformation that led to the deconstruction of the very epistemological foundations of Islamic jurisprudence. Colonial powers exerted considerable pressures toward greater legal uniformity and determinism, and, in what has been described as a process of cultural invasion, both the ruling elites and intelligentsia of various Muslim societies turned mostly to western and to a much lesser extent to eastern Europe for inspiration and guidance in all fields of the arts and sciences. Increasingly, educational institutions and systems in the Muslim world were fashioned or remodeled along the lines of the educational systems of the major colonial powers. From the beginning of the nineteenth century to this very day, an academic degree from Western schools became a cultural symbol of prestige and privilege. In the legal field, a Western education became a powerful venue for upward professional mobility and social status, and this led to a marked deterioration in the position and authority of classical Muslim jurists as well as in the role of the centuries-old schools of Shari'ah law all over the Muslim world.

The cultural impact of colonialism upon Muslim societies was and continues to be immeasurable. In the nineteenth century, the Western educated intelligentsia played a critical role in the birth of the reform movement that sought to modernize Islamic law. In response to the transplantation of European codes of law into the Muslim world, especially in the 1850s and 1860s, Muslim legal experts, most often trained in Western institutions, sought to reform Islamic law by making it more deterministic, uniform, and predictable. In most cases, this amounted to a process of codification, the most famous of which was the Mejelle (also known as *Majallat al-Ahkam al-'Adliyyah*) completed in 1877. But these efforts at reform meant challenging the epistemological foundations of the Islamic legal system and a radical reinvention of Islamic law from a common law-like system to a system tailored after the civil law, especially the Napoleonic Code of 1804. Very frequently legal reformers unwittingly transformed Islamic law from a system of common laws united by shared communities of legal sources, methodological and analytical tools, technical linguistic practices, and a coherent system of authoritativeness and legitimacy to something that, other than being a compilation of deterministic commands, held little coherence and was strangely at odds with the system of law that had existed for well over a thousand years.

Perhaps among the cultural and intellectual transformations that contributed a great deal to the retreat of Islamic law in the contemporary age was the birth of the myth of the closing of *ijtihad* in the nineteenth century. It appears that this myth was invented by orientalist

scholars, many of whom were enlisted in the service of imperial colonial powers and who as part of carrying the "white man's burden" of civilizing backward native cultures sought to convince the native intelligentsia that Islamic law had ceased developing around a thousand years ago. According to the myth of closing the doors of *ijtihad* in the fourth/tenth century, Muslim jurists decided that all the questions of the divine law have been now and forever answered, and therefore, legal innovations or original determinations are not necessary and are no longer permitted. According to the myth, ever since the doors were closed Muslim lawyers have practiced blind imitation or *taqlid*. This unsupported historical claim was frequently exploited in the context of justifying the replacement of Islamic law with transplanted Western law and also in restricting the jurisdiction of Shariʿah courts to the fields of family and personal law. Although orientalist scholars might have invented and exploited this myth, the fact remains that Muslim intellectuals from all over the Muslim world accepted this fiction as a settled historical fact and constructed reform agendas and stratagems on the assumption that the reopening of the proverbial doors of *ijtihad* is a talismanic solution to all the challenges and woes of Islamic law in the modern age.

Both the reform movements emphasizing codification or the practice of *ijtihad* were symptomatic of a more ingrained and obstinate cultural problem. Islamic schools that used to provide training for the judges, lawyers, and law professors no longer attracted the best and brightest students because job opportunities, higher levels of pay, and professional respect and prestige had all migrated to the non-Shariʿah European-styled schools of law. Throughout the second half of the nineteenth century and the first half of the twentieth century, Islamic courts and law were abolished and replaced by transplanted Western legal systems. The lasting impact of these developments was that successive generations of Muslim lawyers were very poorly trained in Islamic law and thus became increasingly alienated and distant from their own native legal tradition. In most parts of the Muslim world, lawyers by virtue of their training gained technical competence in the legal systems of their former colonizers as they grew more disassociated and distant from their own Islamic legal heritage. In short, the process that unfolded all over the Muslim world meant that the most gifted and competent legal minds found Islamic law to be marginal to their professional activity, and those who did attend the few Islamic law schools that remained in the Muslim world, in most cases, were not gifted or talented legal minds. But even worse, having become state-owned and, very often, state-controlled institutions, the surviving Islamic schools of law no longer offered legal curriculums that provided adequate training for lawyers. Therefore, in most Muslim countries training in Shariʿah does not qualify the student to join the lawyers' guild or bar, appear in court, or undertake any of the functions typically reserved for professional lawyers.

The 1970s and 1980s witnessed a highly politicized attempt at reasserting and reviving the role of Islamic law in Muslim societies. The reasons for this revival were many, but they included a long list of economic, political, and cultural grievances, all of which were made more acute by mass frustrations with the authoritarianism, ineffectiveness, and corruption of many of the governments ruling Muslim societies in the postcolonial age. Much of the populist revivalism was met with severe state repression, which usually followed short-lived periods of governmental accommodation or begrudging tolerance. The impact of the confrontations and political violence between dictatorial governments and Islamic movements was the further radicalization of those who offered the ire of the state and survived. Such radicalization led to the articulation of visions of Islamic law that were severely distorted by siege mentalities that, inspired by their own sufferings, challenged the legitimacy of ethical

principles and the practicality of insisting on lawful means. Not surprisingly, radicalized movements had no patience, use, or even opportunity to engage the layered discourses of the Islamic jurisprudential tradition.

Alongside the repression, a number of governments in the Muslim world attempted to bolster their legitimacy by engaging in highly symbolic gestures of perceived Islamicity, such as amending state constitutions to add a provision declaring that Shari'ah is the source of all legislation, or by purportedly Islamizing particular provisions in their criminal and commercial codes. Substantively, however, the state-led Islamization initiatives were of very little consequence because they were readily understood to be publicity ploys pursued for their symbolic value and not for any normative commitment in favor of the regeneration of the Islamic legal system. These so-called Islamization campaigns were undertaken to mitigate the political effects of repressing Islamic movements and to persuade the masses that the state is no less committed to Islamic law than its foes. But even in rare cases where governments were genuinely committed to Islamization, or when Islamists did in fact succeed to one extent or another in to coming to power, the results were still pitiful.

The problem remained to be a product of the dual impediments: on the one hand, those who were skilled and gifted lawyers were not rooted in or in command of the Islamic jurisprudential system and, on the other hand, those who qualified as *fuqaha*' in the modern age no longer received the training that would qualify them as lawyers. The irony is that the mythology of closing the doors of *ijtihad* and the popularized belief that reform requires a reopening of the gates was used to make Islamic law more accessible to activists who enjoyed no specialized competence either in Islamic law or in legal reasoning and practice, in general. Reopening the proverbial doors became the means for licensing a chaotic condition where numerous participants under the slogan of practicing *ijtihad* claimed to be authoritative experts of Islamic law. So for instance, many of the leaders of Islamic movements were trained as engineers or computer scientists and many of the most popular and influential voices of reform were never trained in law, let alone Islamic law. Predictably, as the twentieth century came to a close and the twenty-first century began, the field of Islamic law suffered a crippling crisis of authority as Muslims struggled to rediscover the rules and criteria for defining the authoritative in modern Islamic law.

Shari'ah and the Arab Spring

The Islamization campaigns of the 1970s and 1980s in countries such as Pakistan, Sudan, and Nigeria manifested with a heavy emphasis on the application of technical positive rules of law, such as the *hudud* punishments, as symbolic affirmations of identity. The revolutions or protests that swept through the Arab world in 2011–2012 displayed a very different set of dynamics in relation to Shari'ah law. The mass protests in Tunisia, Libya, Egypt, Yemen, Bahrain, and Syria did not call for the imposition of Shari'ah law or ideological Islamic states. The protests placed a far greater emphasis on issues of political liberty and rights of citizenship, such as civil societies, civic rights, rule of law, limited and accountable government, and social and political justice. Nevertheless, Shari'ah played an active normative role through the course of the protests and also in the postrevolution elections held in Libya, Tunisia, and Egypt. Shari'ah norms permeated the revolutions as witnessed in the cries of

"Allahu akbar" ("God is greatest"), the idea of jihad as revolt against despotism, and the reverence afforded to those killed as *shuhada' lillah* (martyrs in the way of God).

Especially with the start of the Egyptian revolution, a considerable number of notable Muslim scholars and jurists asserted that the Shariʿah of Islam not only supports but also mandates rebelling against the corrupt and despotic governments in power. Significantly, a number of Saudi jurists and Wahhabi activists tried to counter the revolutionary zeal by issuing legal proclamations appealing, albeit unsuccessfully, to God-fearing and pious Muslims to refrain from supporting or joining the revolutions. The proclamation claimed that Shariʿah law prohibits demonstrations and also prohibits rebelling against rulers even if such rulers are unjust or despotic.[13]

Partly in response to the Wahhabi position, the prominent Egyptian jurist Yusuf al-Qaradawi spoke out in clear support of the revolutions.[14] Qaradawi appealed to the principles of Shariʿah in arguing that there was a religious and moral obligation upon Muslims to support revolutions against despotism, degradation, and injustice. Importantly, Qaradawi reasserted a position articulated years earlier in which he argued that a proper understanding of Shariʿah would give precedence to a democratic system of governance over any system of government that would implement the technical positive commandments of the Islamic legal tradition regardless of the outcome. According to Qaradawi, democracy or a political system that honors and upholds human dignity is more fundamental to the fulfillment of Shariʿah than the enforcement of a set of positive legal commandments that ultimately might or might not lead to the realization of justice.

One of the most important Shariʿah-related developments since the beginning of the Arab Spring was a proclamation issued by Shaykh al-Azhar Ahmad al-Tayyib on February 16, 2011. The proclamation (known as *Wathiqat al-Azhar*) was issued after extensive meetings and discussions with Egyptian scholars and intellectuals, but it was ultimately adopted as a normative position on the role of Shari`ah in modern democratic Muslim states.[15] *Wathiqat al-Azhar* set forth the following. First, it stated that Shariʿah endorses the principle of majoritarian rule; therefore, whatever legal system is desired by the majority, as long as it upholds the principles of Shariʿah, is also the Islamically mandated and required legal system. Second, it set forth the objectives and principles of Shariʿah, which according to *Wathiqat al-Azhar* are (1) to promote knowledge and *'ilm* (science), (2) to establish justice and equity, and (3) to protect liberty and human dignity. Third, *Wathiqat al-Azhar* asserted that any political system capable of upholding the basic moral values and natural principles of justice, known to and shared by all religions, is as if mandated by Islam. Fourth, the *Wathiqah* affirmed that democracy is a fundamental and basic objective of any Shariʿah-based system because it is the political system most capable of leading to (1) upholding the dignity of all citizens, (2) prohibiting cruel and degrading treatment and torture, and (3) bringing an end to political and economic corruption and despotism.

The proclamation went on to state that the protection of human dignity, the prohibition of cruelty and torture, the elimination of corruption, and the end of despotism are, in turn, basic and fundamental Shariʿah values. Finally, the proclamation affirmed that as an institution, al-Azhar calls for a system of governance that respects the rights of all citizens and that despotism is inherently and fundamentally a breach of Shariʿah. According to the *Wathiqah*, among other things, despotism creates social ills such as cowardice, hypocrisy, social alienation, and a lack of a collective or communal ethos, all of which are fundamentally at odds with Shariʿah.

At the most basic level, *Wathiqat al-Azhar* underscores the reality that the Shari'ah, its role, and its function continue to be dynamically renegotiated by those who consider the Shari'ah to be authoritative and influential in their lives. *Wathiqat al-Azhar* will reverberate through Islamic history, but in what ways and to what end is impossible to say. Since the democratic elections in Egypt, Tunisia, and Libya, in each of these countries, there has been an ongoing active process of negotiations about the role and nature of Shari'ah in relation to constitutional and democratic systems of government. Perhaps these political developments, not just in countries directly impacted by the Arab Spring but also in Malaysia and Indonesia, indicate that although the twentieth century ended with a real crisis in the structures of Shari'ah authority, the twenty-first century might witness the birth of equally dynamic and energetic structures of legitimacy and authoritativeness.

Conclusion

The legal tradition of Islamic law continues to carry considerable normative weight for millions of Muslims around the world and also continues to influence, to one degree or another, the legal systems of a number of countries. The crisis of authority plaguing Islamic law today does not affect its relevance or importance. It does mean that Islamic law is going through a period in which Shari'ah has lost the effective means for regulating the reasonableness of the determinations generated on its behalf or attributed to it. In the contemporary age, many voices speak in the name of Shari'ah and some of these voices are quite unreasonable. However, there are many indications that, as attested by its dynamic historical record, Shari'ah as a normative set of values will reinvent the epistemological instrumentalities for its continued legitimacy and authoritativeness and will in due time find its new reasonable equilibrium in Muslim societies.

Notes

1. Subhi Mahmasani, *Falsafat al-Tashri' fi al-Islam: The Philosophy of Jurisprudence in Islam* (Leiden, the Netherlands: E.J. Brill, 1961), 172–175; Muhammad Abu Zahrah, *Usul al-Fiqh* (Cairo: Dar al-Fikr al-'Arabi, n.d.), 291; Mustafa Zayd, *al-Maslahah fi al-Tashri' al-Islami wa Najm al-Din al-Tufi*, 2nd ed. (Cairo: Dar al-Fikr al-'Arabi, 1964), 22; Yusuf Hamid al-'Alim, *al-Maqasid al-'Ammah li al-Shari'ah al-Islamiyyah* (Herndon, VA: International Institute of Islamic Thought, 1991), 80; Muhammad b. 'Ali b. Muhammad al-Shawkani, *Talab al-'Ilm wa Tabaqat al-Muta'allimin: Adab al-Talab wa Muntaha al-'Arab* (Cairo: Dar al-Arqam, 1981), 145–151.
2. A more historical translation for text would be *matn* or *khitab*.
3. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1983), 37–48. See also, Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986), 43–57; Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1993), 198–222.
4. Schacht, *Introduction*, 45–48. See also, Noel J. Coulson, *A History of Islamic Law* (Edinburgh, UK: Edinburgh University Press, 1995), 53–61, who considers al-Shafi'i to have

been the "master architect" of Islamic jurisprudence. For a refutation of this view, see Wael B. Hallaq, *Shariʿa: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), 30–35; idem, "Was al-Shafiʿi the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies* 25 (1993): 587–605; Yasin Dutton, *The Origins of Islamic Law: The Qur'an, the Muwatta, and Madinan ʿAmal* (Surrey, UK: Curzon Press, 1999), 4–5.

5. Mahmasani, *Falsafat al-Tashriʿ fi al-Islam*, 59; Badran Abu al-ʿAynayn Badran, *Usul al-Fiqh* (Cairo: Dar al-Maʿarif, 1965), 322; Subhi al-Salih, *Maʿalim al-Shariʿah al-Islamiyyah* (Beirut: Dar al-`Ilm li al-Malayin, 1975), 46; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, rev. ed. (Cambridge: Islamic Texts Society, 1991), 285.
6. Mahmasani, *Falsafat al-Tashriʿ fi al-Islam*, 200–202; Ahmad b. Muhammad al-Zarqa, *Sharh al-Qawa'id al-Fiqhiyyah*, ed. Mustafa Ahmad al-Zarqa, 4th ed. (Damascus: Dar al-Qalam, 1996), 227–229; C. R. Tyser, trans., *The Mejelle: Being an English Translation of Majallah-el-Ahkam-Adliya and a Complete Code on Islamic Civil Law* (Lahore, India: Punjab Educational Press, 1967), 8.
7. In jurisprudential sources this field is known as *ʿilm al-tarjih* or *ʿilm al-taʿarud wa al-tarjih* or *ʿilm al-taʿdil wa al-tarjih*—the field of conflict and preponderance or the field of balance and preponderance.
8. Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi* (Salt Lake City: University of Utah Press, 1992), 734–738.
9. Jalal al-Din ʿAbd al-Rahman b. Abi Bakr al-Suyuti, *Ikhtilaf al-Madhahib*, ed. ʿAbd al-Qayyum Muhammad Shafi al-Bastawi (Cairo: Dar al-I'tisam, 1404 A.H.), 22–23; Dutton, *The Origins of Islamic Law*, 29; Crone and Hinds, *God's Caliph*, 86.
10. *See* Hallaq, *Shariʿa: Theory, Practice, Transformations*.
11. John Makdisi, "The Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court," *Cleveland State Law Review* 34 (1985–1986): 3–18.
12. Muhammad Said al-Buti, *Dawabit al-Maslahah fi al-Shariʿah al-Islamiyyah* (Mua'ssasat al-Risalah, n.d.) 178–189; Muhammad Khalid Masud, *Islamic Legal Philosophy: A Study of Abu Ishaq al-Shatibi's Life and Thought* (New Delhi, India: International Islamic Publishers, 1989), 165, 174–175; Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997), 208.
13. The Saudi Grand Mufti, Sheikh Abdul-Aziz al-Sheikh, spoke out against the protests, claiming that they were orchestrated by the "enemies of Islam." *See*, "Saudi Top Cleric Blasts Arab, Egypt Protests-Paper," *Reuters Africa*, February 5, 2011, http://af.reuters.com/article/egyptNews/idAFLDE71403F20110205. Shaykh al-Rajhi, a Saudi jurist, issued a fatwa condemning the protests. *See*, Shaykh Abd al-Aziz Abd Allah al-Rajhi, *Fatwa on the Egyptian Revolution*, February 8, 2011, http://www.dd-sunnah.net/forum/showthread.php?t=98063. *See also*, "Saudi Scholars Forbid Protest Calls," *Al Jazeera*, March 6, 2011, http://english.aljazeera.net/news/middleeast/2011/03/201136154752122275.html.
14. For a brief account of his address, see David D. Kirkpatrick, "After Long Exile, Sunni Cleric Takes Role in Egypt," *New York Times*, February 18, 2011, http://www.nytimes.com/2011/02/19/world/middleeast/19egypt.html.
15. For brief accounts of his speech in English, see "Al-Tayeb: Al-Azhar Supported Revolution," *News Pusher*, February 16, 2011, http://www.newspusher.com/EN/post/1298400531–2/EN-/al-tayeb-al-azhar-supported-revolution.html; "Al Azhar Sheikh Calls for a Speedy Transition to Democracy," *Islamopedia*, February 16, 2011, http://www.islamopediaonline.org/news/al-azhar-grand-sheikh-calls-speedy-transition-democracy.

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CHAPTER 2

SALAFIYA, MODERNISM, AND REVIVAL

ABDULLAH SAEED

This essay[1] explores aspects of the project of "reform" associated with the Modernist-Salafiya movement (or Modernist-Salafism), the movement's precursors, the context of its emergence and key figures associated with it, including Jamal al-Din al-Afghani (d. 1897), Muhammad `Abduh (d. 1905), and Muhammad Rashid Rida (d. 1935), and aspects of their thought. As its focus is on Modernist-Salafiya in the context of mid-nineteenth- to twentieth-century Islamic modernism, it does not explore other movements that have been described as "Salafi" in contemporary Islamic literature, for instance the Islamist-Salafism of the Muslim Brotherhood (Egypt); the Puritanical-Salafism of the followers of Muhammad b. Abd al-Wahhab (d. 1792); or the Militant-Salafism of Usama Bin Laden (d. 2011), Ayman al-Zawahiri, and their followers. The Modernist-Salafiya movement with which this article is concerned has little to do with these other forms of Salafism and can be distinguished from these trends in terms of their basic outlook, approaches to text and interpretation, and priorities, strategies, and arguments for reform. In fact, it could be argued that using the term "Salafiya" itself is problematic as far as the Modernist-Salafiya movement is concerned. Given these concerns, in this essay, in order to keep a clear distinction between this modernist movement labeled "Salafiya" and other conservative movements labeled "Salafi," I will use the term "Modernist-Salafiya" throughout the essay to refer to the reformist movement, championed by figures such as Afghani, `Abduh, and Rida.

Some of the key concerns of the Modernist-Salafiya included the urgent need to reform Islamic thought so that Muslims could meet and respond to modern challenges; the need to give up blind imitation of early scholars, particularly in the legal sphere; flexible interpretation of Islam's primary sources (the Qur'an and Sunnah) so that institutions commensurate with modern conditions could be developed; emphasizing scientific knowledge as a way to catch up with the West; the proposition that revelation does not clash with reason; the need to reform Islamic education by introducing modern disciplines and reforming curricula and methods of teaching; an emphasis on more rights for women; and, more importantly, the return to a simpler Islam,[2] such as that originally practiced by the earliest generations of Muslims (*salaf*).[3] It is from this last emphasis that these otherwise "modernists" came to be labeled "Salafi."

Renewal, Reform, and Ijtihad

The terms *tajdid* (renewal) and *islah* (reform) often arise in modern debates on reform in Islamic thought. Historically, the term *mujaddid* (from *tajdid*) referred to a renewer and was often associated with a scholar who "renovated" belief in and practice of the Sunnah (Traditions) of the Prophet.[4] Opposing *bid`ah* (innovation in religious matters), a renewer supposedly scraped away "innovations" that had accrued with the passing of time, taking Islam back to its first sources: the Qur'an and the Sunnah. In the modern period the term *islah* appears to be more frequently used to refer to renewal and reform.

The idea of renewal and reform has always been part of Islamic tradition. Although Islamic theology does not recognize the rise of prophetic figures after Prophet Muhammad, Muslims accept that at different times and in different parts of the Islamic world renewers and reformers have emerged, challenging the status quo and arguing for change.[5] The issues they dealt with, however, naturally varied according to time, place, and circumstances.

The task of renewal has been generally attributed to those with the skills to perform *ijtihad:* those who could independently derive legal opinions from the Qur'an and the corpus of Traditions of the Prophet. A *mujtahid*—a person able to perform *ijtihad*—can either be an "absolute" *mujtahid*, a title usually reserved for the "founders" of the schools of law (for example, Abu Hanifa, Malik, Shafi'i, and Ahmad b. Hanbal) or an "affiliated" *mujtahid*, a scholar with the ability to derive rulings using the principles and guidance given by an absolute *mujtahid.* [6]

Ijtihad, and who had the ability or authority to undertake it, was a key issue in Muslim reformist thought during the eighteenth and nineteenth centuries. Some scholars argued for absolute *ijtihad*, while others permitted affiliated *ijtihad.* Shah Wali Allah (d. 1762)[7] and Muhammad b. Ali al-Sanusi (d. 1859)[8] belonged to the category of affiliated *mujtahid*s. Shah Wali Allah was primarily concerned about the pervasive Hanafi fanaticism that he observed in his community. Instead of condoning this he was more inclusive and argued for a synthesis of all of the schools of law.[9] Al-Sanusi believed that he had the right to exercise *ijtihad* within the Maliki school of law, to which he belonged, with freedom to accommodate the other schools of law. In contrast, Muhammad b. Ali al-Shawkani (d. 1834), the Yemeni Zaydi scholar, felt that he had the right and the knowledge to exercise absolute *ijtihad.* He opposed *taqlid* (blind acceptance of or submission to legal methodology), where a Muslim simply followed the legal rulings of a scholar and/or legal school, rather than personally attempting to understand God's will.[10] For al-Shawkani, believers were equal—through assiduous study any member of the Muslim community could be elevated to the rank of *mujtahid.* [11] In line with this approach, Muhammad Ahmad al-Mahdi (d. 1885) also argued that *taqlid* should be replaced by *ijtihad* and that the Qur'an and Sunnah should be the basis of legal rulings.

Precursors of the Modernist-salafiya Movement

Although the Modernist-Salafiya movement that emerged during the nineteenth century was a response to the modern context of the time, it relied heavily on some of the key ideas of renewers from the previous two centuries. While responding to very different contexts the

movement's forerunners, from places as diverse as India, Arabia, and North Africa, argued against blind imitation (*taqlid*) as well as the fanatical following of the earlier schools of law (*madhhabs*).[12] Among those who had an impact on nineteenth-century Modernist-Salafiya thought, albeit in varying degrees, were Shah Wali Allah, Muhammad b. Abd Al-Wahhab and Muhammad b. Ali al-Sanusi.

In India, the legacy of Ahmad Sirhindi (d. 1624), founder of the Sufi order of Mujaddidi Naqshbandiya, was carried on by Shah Wali Allah. Like Abu Hamid al-Ghazali (d. 1111) before him, Shah Wali Allah was able to draw on vast scholarship and apply key Islamic intellectual and spiritual disciplines, including Sufism, philosophy, law, and *hadith,* to the issues that concerned him.

In legal thought Shah Wali Allah developed a form of critical (and some would say "liberal") thinking that was almost unequalled in his time. He argued that divine laws were often connected to the context of the prophets and their communities to whom those laws were given:

> You should know that the divine laws of the prophets, may peace be upon them, differ due to reasons and beneficial purposes. This is because the religious rituals of God were rituals for intended purposes and the quantities in their legislation take into account the situation and the customs of those on whom they were imposed. [13]

His substantial intellect, which left its mark on figures such as Sayyid Ahmad Khan (d. 1898) and Muhammad Iqbal (d. 1938), can be seen in the *Hujjat Allah al-Balighah (God's Conclusive Argument*), one of his most widely known works. For many prominent reformers of the modern period Shah Wali Allah was a "modernizer" who responded to the crisis of his time with moderation and a search for the spirit behind the specific injunctions of Islamic traditions.[14] Many important reformers of the modern era, particularly on the Indian subcontinent, were almost direct inheritors of his intellectual legacy.

In Arabia, Muhammad b. Abd al-Wahhab (d. 1792) believed that Islam in much of Arabia had descended into a superstitious folk religion that was very similar to the religion that existed in pre-Islamic times in Hijaz. He felt that this compromised the unity of God (*tawhid*) and therefore sought to purify Islam by focusing on polytheism (*shirk*) and the unity of God and rejecting all forms of innovation (*bid'ah*). In law he followed the Hanbali school and was influenced by key figures such as Ibn Taymiya (d. 1328) and Ibn al-Qayyim (d. 1350). His followers came to be referred to by the pejorative term "Wahhabi," although they themselves used terms such as *muwahhidun* ("unitarians") or followers of the way of the *al-salaf al-salih* (righteous ancestors).[15]

Muhammad b. Abd al-Wahhab's writings, though few, addressed some of the issues that concerned key reformers of the eighteenth century: return to the pristine purity of the Islam of the Qur'an and the Sunnah; rejection of the blind following of earlier scholars; and an emphasis on some form of *ijtihad.* [16] He particularly argued for a return to the methodology of the *salaf* and a literal reading of the Qur'an, as far as the theological question of the names and attributes of God were concerned. Unlike many other reformers, he vehemently rejected popular Sufi practices, such as venerating saints and revering their tombs as shrines, describing such practices as heretical and against Islam.[17]

His main work, the booklet *Kitab al-Tawhid* (Book of the Unity of God), focused on notions of *tawhid* and *shirk*. Based on a literal reading of the Qur'an and those hadith texts he chose to focus on, Ibn Abd al-Wahhab associated *shirk* with matters such as seeking help and intercession from anyone other than God[18] ; what he referred to as "saint worship";

celebrating the birthday of Prophet Muhammad; and sacrificing an animal to any being other than God or on any occasion not clearly spelled out in the hadith. Although he argued for strict adherence to the teachings of *tawhid* and observance of the *Shari`ah,* he did not hesitate to bypass the formulations of the four *madhhabs* when necessary.[19] However, unlike Shah Wali Allah, Ibn Abd al-Wahhab was not keen to consider the impact of time, space, and cultural specifics on the formation of law. Skeptical of philosophy and rational intellectualism, Ibn `Abd al-Wahhab was prone to stand by the "letter" of the scripture rather than by its "spirit."[20] Thus for him Islamic reform meant a movement back in time, away from the present situation toward the more glorious past, in order to re-experience Islam anew.[21]

The Sanusiya movement, founded by Muhammad b. Ali al-Sanusi (d. 1859), also emerged in the context of concern to regenerate the moral and social fiber of Muslim society, particularly in North Africa.[22] As al-Sanusi looked at Muslim societies around him he realized their degraded state from a religion moral and a sociopolitical point of view. The more he contemplated this state of affairs, the more he realized how important it was for Muslims to return to the pristine purity of the Islam of the Prophet and the *salaf*.[23]

However, al-Sanusi's awareness of the Ottoman administration in North Africa and what he believed to be its unjust rule led to conflict with the authorities. He had to move frequently, not only in search of knowledge but also because of his political views. This led him from Fez to Algeria, Tunisia, Libya, Egypt, and Hijaz. During his travels he came under the influence of various Sufis (mystics) from the Tijaniya, Shadhliya, and Qadiriya orders.[24]

His difficulties with religious and political authorities, however, followed him. In Egypt his teachings aroused the ire of the *ulama* (scholars) of the Azhar seminary and made the political authorities suspicious, given his criticism of their atrocities and injustices. Despite these difficulties he established a series of *zawiyas* (hostels for accommodating members of Sufi orders and their visitors) and attracted numerous disciples.[25] By the time he died in 1859, Muhammad b. Ali al-Sanusi had become so influential that the Ottoman authorities had to give his institutions some form of recognition. His work was continued by his son Muhammad, who eventually became the leader of the Sufi order established by al-Sanusi.[26]

Among the important teachings of the Sanusiya movement was a focus on returning to the Islam of the early Muslims; purification of Islam from various heresies and innovations; and a simpler and purer form of religion and practice.[27] Although they maintained a strong emphasis on the spiritual dimension of Islam (hence Sufism), they rejected Sufi practices such as music, dance, and singing, which some Sufis use to facilitate their spiritual journey toward God. The Sanusiya were also keen to combine Sufism with a following of the law that avoided blind imitation and legalism. Thus, they emphasized a moderate, less fanatical version of Islam and a more liberated understanding of the faith. Their flexibility was demonstrated by the fact that they did not adhere to one particular school of law, just as they did not follow one particular Sufi order. They were eclectic, bringing together a range of approaches and schools.[28]

The Context of the Modernist-salafiya Movement's Emergence

With the coming of the modern era (from the mid-nineteenth century), the tradition of religious renewal and reform continued in a more intensive way than ever before. The era

ushered in the military and political confrontation of Western powers with Muslim states where Muslims were defeated militarily, politically, economically, and intellectually. For many Muslim reformers, the West had developed superior intellectual skills to which it owed not only its power but also its economic ascendancy. As the confrontation between the West and the Muslim world was sudden and comprehensive, and as the Muslims faced modernity not gradually and piecemeal but in a highly developed form, they had little time to adjust. The impact of the West (and Western modernity) required a response commensurate with the enormity of this challenge.[29] Thus, modernist movements and thinkers emerged across the Muslim world—from Egypt (where Muhammad `Abduh became prominent) to India (where Sayyid Ahmad Khan and Muhammad Iqbal were based) and Ottoman Turkey where Namik Kemal (d. 1888) and Mehmet Akif (d. 1936) lived.

For modernists, reform was a key theme. Figures such as Jamal al-Din al-Afghani (d. 1897) argued that Muslims should have a reform movement to renew Islamic heritage, like those that had arisen in Christian Europe under Martin Luther and others. For many modernists, the advent of modernity demanded a reappraisal of Islamic intellectual traditions, which required giving up the blind imitation of early scholars.[30] They argued for a flexible reinterpretation of Islam and its sources that would help Muslims to develop institutions commensurate with modern conditions. A return to Islam as it was originally practiced would inject into Muslim societies the intellectual dynamism required to catch up with the West. Islam would then gain its proper place in the world. To achieve this, political, legal, and educational institutions had to be reformed.

For many modernists of the nineteenth century the supremacy of Europe/the West had occurred as a result of the West's advances in the fields of modern science and technology. Although they had to be discerning in what they borrowed from the West, Muslims were encouraged to embrace these developments. Reform of Islamic education was another key issue. To modernize "Islam," Ahmad Khan, for example, wanted Indian Muslims to adopt modern ways of learning and knowledge, moving away from the antiquated ways of the *madrasahs* (traditional seminaries). In his view this education system was outmoded and in dire need of change. Modern science was crucial to his educational vision, and much of what he termed his "new *kalam*" (dialectical theology) sought to harmonize the tenets of modern natural sciences and philosophy with the doctrines of Islam.[31]

For some modernists, a study of the new sciences was necessary even to preserve the legacy of medieval Islamic learning.[32] Ahmad Khan was convinced that Indian Muslims would never find a place in the civilized world unless they acquired Western knowledge and developed their society along the lines of Europe:

> I state it unambiguously: if people do not break with *taqlid* and do not seek that light which is gained from the Qur'an and *hadith* and if they are going to prove unable to confront religion with present-day scholarship and science, then Islam will disappear from India.[33]

Modernists also argued that revelation does not necessarily clash with reason. In this respect an effort was made to revive Islam's rationalist philosophical tradition. Even those theses held by the long-discarded rationalist Mu`tazilis came into vogue among some modern scholars. Based on the views of the eighteenth- and nineteenth-century reformers about the *salaf,* modernists also condemned what they saw as deviations and accretions unworthy of the *al-salaf al-salih.*

Jamal al-Din al-Afghani was among a small but influential number of thinkers who defended rationalism and critical thinking while insisting that religion (especially Islam) had an important social function.[34] Afghani emphasized the compatibility of Islam and modernity,[35] stressing that Muslims could benefit from European successes without undermining Islamic values or culture.[36] Indeed, instead of subscribing to the view that rationalism and sciences were Western imports, he argued they were traditional elements of Islamic culture.[37] Afghani defended both empiricism (Western science) and rationalism because he felt that both were necessary to advance Islamic civilization. In his view Western science was needed to bring about the military and material advances that would make the Muslims (particularly in the heartlands of Islam) competitive with Europe. He also believed that wealth and technology were important, in and of themselves, as means to improve oneself and the world. God had also given humankind the gift of reason for this purpose, in his view.[38] However Afghani did not go as far as to accept that civilizational advance required the uncritical assimilation of European models.

Afghani also believed that religion would be the "cause" of material and moral progress in the world because it inculcated and encouraged morals, fostered intellectual development, and (especially in Islam) provided a uniform legal code.[39] Afghani felt that prophetic religion in general and Islam in particular civilized "barbarous" people by teaching them skills such as self-restraint and abstract thought. This not only improved their individual character but also established the conditions necessary for higher capabilities such as justice and wisdom, precursors necessary for society as a whole to advance.[40] In this regard Prophet Mohammed not only introduced a set of eternal truths but also gave birth to a new, progressive Islamic civilization.[41]

Like earlier reformers, Afghani preached a return to the pious ancestors (the *salaf*) but mainly with the broader aim of reviving Muslims' political and military successes from the time of the Prophet and his first successors.[42] According to Weismann, the appeal of Afghani and later Muhammad `Abduh lay in their political and rationalist bent rather than in their call for religious reform.[43]

Muhammad `Abduh as the Key Figure of the Modernist-Salafiya Movement

Muhammad `Abduh (d. 1905) remains perhaps one of the most studied Muslim modernists. He began his career in Egypt, one of the most important intellectual hubs for Muslims at that time.

Despite political difficulties, Egypt encountered Europe earlier than did many other Muslim lands. The modernization program of Muhammad Ali Pasha (Egyptian ruler from 1805 to 1848), with its heavy focus on military and technological know-how, led to Egypt's awareness of the major developments that were taking place in Europe and the degree to which Muslims were being left behind.[44] Without consulting Egypt's religious authorities Muhammad Ali quickly introduced political, economic, and educational institutions into Egypt that soon became an accepted feature of Egyptian life. Spurred on by the incentives of reformist Rifa'ah Rafi' al-Tahtawi (d. 1873), Egypt was tempted to borrow indiscriminately from the West, hoping that this would restore to Islam its past glory. At the same time many

students were sent to European universities, exposing a small but significant section of the society to the ideals of European thought. These developments led to a duality in Egypt's cultural landscape, between a younger generation who eagerly espoused the ideas of Europe and conservatives who resisted all change.[45] Bridging the gap between these intellectual trends became part of Muhammad `Abduh's vision. As "Westernism" antedated `Abduh's reform (*islah*) project, he was left with little choice but to opt for an inclusive and "pragmatic" approach, open to modern science, among other developments.

Like other reformers of his time `Abduh argued for a return to the "simple" and "pristine" Islam of the Salaf, using *ijtihad* to deal with contemporary problems while referring directly to Islam's primary sources (the Qur'an and Sunnah).[46] According to `Abduh, Islam could be simplified by going back to the time of the Prophet and the earliest Muslims (*salaf*) and purified from the obstacles that had marred its history, allowing a place for reason and modern knowledge. By restoring the simple and pure Islam of the Salaf, `Abduh hoped, in part, to reduce the sectarian differences that had emerged in Egypt. In his view this simplicity of faith was the only way to reduce divisions among Muslims and create a foundation for reform. To promote unity, `Abduh espoused the idea that different schools of thought among Muslims were equally true and acceptable. Addressing debates among Muslims about the attributes of God, `Abduh argued for the recognition of the limitations of human reason and the importance of being humble in our claims to truth.[47]

`Abduh also shunned the theological disputes of earlier generations as irrelevant. In works such as *al-Islam wa al-Nasraniya*, he stressed that religion should be perceived not only as theology but also as civilization. `Abduh did not reject modernity. Instead, he argued that there was no conflict between Islam and modern civilization. In `Abduh's view modernity was not problematic because it was based upon reason. As Islam, too, was based on this notion he could see no conflict. Islam was the religion of *fitrah* (nature), which meant that Islam could not and would not go against nature, natural laws, or the sciences that were emerging based on the study of nature. Any apparent opposition between the two, in `Abduh's mind, was simply because of erroneous interpretations of Islam's primary sources.[48]

One of the most striking aspects of `Abduh's legal thought was in the area of moral law, around which most of his legal deliberations revolved. `Abduh was interested in debates about good and evil and the ability of reason to discern between the two and sought to give reason a higher status in law making than it had been assigned previously among Muslims. One of the questions that earlier Muslim scholars had devoted time to was whether actions in themselves can be judged virtuous or evil and whether, as the Mu'tazilis argued, reason is capable of discovering this difference unaided, for example by revelation. In his attempt to solve this longstanding theological dispute, `Abduh treated the problem of moral law as part of the general question of value, using the term "beautiful" to mean good and the term "ugly" to mean evil.[49] He found that human beings had the essential ability to make this distinction:

> We find essentially, within ourselves the faculty of distinction between what is beautiful and what is ugly. . . . Tastes may differ—but things *are* either beautiful or ugly.[50]

In `Abduh's view, actions, too, were to be judged according to their consequences. Every action that warded off pain or caused pleasure was, generally speaking, beautiful, while the opposite was ugly. In other words, actions were to be judged by the principle of utility: they were

beautiful if beneficial, and ugly if harmful. In this way, as the Mu'tazilis did in the past, `Abduh maintained that people could use reason to decide whether an action was moral or immoral.

With regards to lawmaking, `Abduh emphasized not only the indispensability of reason but also the importance of *maslahah* (consideration of public interest). He was also critical of some aspects of Islam's juristic tradition. According to `Abduh, it was the failure of traditional jurists to appreciate humankind's ability to discern and the practical and liberating qualities of reason that had caused the rigidity of Islamic law. `Abduh also referred to the difficult language of the classical legal texts and the diversity of opinions that made understanding and applying their rulings a daunting task. In his view law should come from Islam's primary sources, not necessarily from the schools of law. Thus `Abduh argued that the rulings of the *madhhabs* and their founders were not binding on Muslims as such.[51]

Muhammad Rashid Rida: Taking the Modernist-Salafiya Movement Toward Conservatism

Muhammad Rashid Rida (d. 1935) has been called the mouthpiece of `Abduh. While this description shows his reverence for Muhammad `Abduh and their close relationship, Rida's views were not limited to a reiteration of `Abduh's. Indeed Rida developed his own distinctive position and legacy during the thirty-year period after `Abduh's death (1905). Under Rida Islamic reformism took a more conservative turn.[52]

Rida became a devoted disciple of `Abduh in 1894 and remained as such until his death in 1905. In 1887 he joined `Abduh in Cairo and in 1898 they published the first edition of their journal, *al-Manar*. This publication remained the primary vehicle for Modernist-Salafiya thought in Egypt, and its contents reflected the broad range of their concerns for Islamic reform: from doctrine and spirituality to the Qur'an and *tafsir* (commentary) and political and legal modernization.[53]

Rida considered the *ulama* one of the major obstacles to the reform of Islamic thought and, by extension, the Muslim world. In the third and fourth volumes of *al-Manar* (1900 to 1902), he cleverly reveals this in a series of articles entitled *Muhawarat al-muslih wa al-muqallid* (literally, "Conversations between the Reformer and the Imitator"). In this work a young Modernist-Salafi intellectually debates with a traditional scholar (*shaykh*) and, buttressing his arguments with a mixture of erudition and earnestness, gradually earns the older man's respect and convinces him of the soundness of his position.[54] Throughout his life Rida criticized the *'ulama*'s aversion to adapting Islam to the new times.[55]

Rida argued that the original conception of legislation in Islam had been obscured by a disease, which he sometimes referred to as congealment (*jumud*) or blind imitation (*taqlid*). In the sphere of law this took the form of slavish obedience to one or another of the four recognized legal schools.[56] Rida recognized the challenge of the modern world and wanted Islam to accept the new civilization so far, and only so far, as it was essential for a recovery of strength.[57] In accepting European civilization, Muslims were only accepting what had once been theirs, for Europe had only progressed because of what they had learned from the Muslims.[58]

Following `Abduh, Rida believed that the return of Islam to a central position in public life required the restoration and reform of Islamic law. The starting point for him was to

develop a modern Islamic legal system. He rejected the authority of medieval law but drew a distinction between different kinds of legal matters when it came to reform. Ritual and worship, on the one hand, were to be regarded as fixed matters, while those related to social laws could be subject to change or adaption by successive generations of Muslims, especially when public welfare required reform.[59] Rida's view of legal reform did not advocate the complete abandonment of the four traditional schools but rather a gradual approximation and amalgamation of them. Like `Abduh he appealed to the principle of *talfiq* (derivation of rules from material of various schools of Islamic law) but wanted it to be applied more systematically than it had been previously. *Talfiq*, when used in a rational way, was a kind of *ijtihad* and as such legitimate in itself.[60]

Rida also believed that Islamic legal reform required an Islamic government—namely the restoration of the caliphate.[61] He became an ardent defender of the caliphate as the only legitimate form of government for Muslims and wrote a series of articles in *al-Manar* (1922–1923) that would be collected later under the title "The Caliphate or the Supreme Imamate."[62] He contended that the caliphate was superior to Western parliamentary democracy, arguing that *ahl al-hall wa al-'aqd* (those qualified to elect or depose a ruler on behalf of the Muslim community) were like members of parliament but "wiser and more virtuous." Whatever levels of justice Western legislators had arrived at, the Shari`ah had established this first and in a better way.[63]

Rida saw that the process of restoring the caliphate had two stages: first, the establishment of a "caliphate of necessity" to coordinate the efforts of Muslim countries against foreign danger and then, when the time was ripe, the restoration of a genuine caliphate of *ijtihad*.[64] For Rida the dilemma was finding those people who could work together actively to restore the caliphate. He could not find them among the Muslim nations that had been subject to European powers or among the great institutions of learning such as the Azhar in Cairo, Zaytuna in Tunis, or the Deoband seminary in India, nor among the "Westernizers."[65] Rida identified, however, a middle group: the "Islamic progressive party," which in his view had the independence of mind necessary to understand the laws of Islam and the essence of modern civilization at the same time.[66] They would be able to accept the changes that were necessary but relate them to valid principles; in other words, to reconcile change with the preservation of the moral basis of the community.[67] However the realities of the post-WWI period eventually forced Rida to accept political compromises and to shift his reformation to a more assertive conservative position.[68] In this regard his longstanding support for a universal caliphate eventually gave way to a grudging acceptance of an Arab nationalism informed by Islam.[69]

Despite Rida's commitment to Islamic reform and the important role of *al-Manar*, his modernism gave way to an increasing conservatism after WWI. Reacting to the growing influence of Western liberal nationalism and culture in Egyptian life, Rida became more critical of the West. Unlike `Abduh, Rida had only limited contact with Europeans. Alarmed at what he perceived to be the growing danger of Westernization, he drifted toward a more conservative position.[70] As a supporter of Abd al-Aziz b. al-Saud's revival of the Wahhabi movement in Arabia, Rida emphasized the comprehensiveness and self-sufficiency of normative Islam. In Rida's view the fundamental sources of Islam provided a complete code of life. Thus Muslim reformers need not look to the West for answers but single-mindedly return to the sources of Islam—the Qur'an, Sunnah of the Prophet, and the consensus of the Companions. His increasing conservatism was reflected in his restricted understanding of the term *salaf*. For `Abduh it was a general reference to the early Islamic centuries, but for

Rida *salaf* was restricted solely to the practice of Prophet Muhammad and the first generation of Muslims.[71]

As the forces of secular modernism became more firmly entrenched among Egyptian political elites Rida became increasingly literalist in his understanding of the driving force behind the Salafiya movement. While `Abduh had advocated a general spirit of intellectual rejuvenation inspired by the model of the Prophet's early companions, Rida later tended toward a constrained normativity based exclusively on the Qur'an and the Traditions of the Prophet and his companions. In this regard his later orientation was closer to the approach of contemporary groups that go under the banner of Salafism[72] than to that of `Abduh.

In recent times the view that a movement called "Salafiya" should be attributed to the ideas of `Abduh and Rida has come under challenge. According to Lauzière, one scholar who challenges this notion:

> Apart from the weight of scholarly tradition, there is little reason to consider al-Afghani and `Abduh as self-proclaimed Salafis or proponents of a broad *Salafiya* movement. The fact that both men invoked the pious ancestors, as did many other Muslims before them, does not constitute a sufficient explanation and must not become a red herring. The danger here is to vindicate a problematic narrative of Salafism through *post facto* rationalization, that is, by attributing our own conceptual rationale to past Muslims.[73]

On the other hand Lauzière also acknowledges that:

> One may posit that they were Salafis because they took the *salaf* as role models for religious, social, and political reform, but such a conceptual declaration has yet to be found in the writings of the reformers. That said, there were individuals within the Islamic modernist network of Muhammad `Abduh and Rashid Rida (especially in the urban centers of Iraq and Syria, where Hanbali theology had deeper historical roots) who used the Salafi epithets that had existed since the medieval period.[74]

In his view, Afghani, `Abduh, and Rida were a generation and movement of scholars who sought to continue the tradition developed by Ibn Taymiya. They also sought to counter the hegemony of the Ottoman empire and that of the traditional *ulama* whom the empire had fostered. According to Lauzière, `Abduh and others were more "tolerant" of theological diversity than their forebears but still followed the "*madhhab al-salaf*."[75] For him, the belief that Afghani and `Abduh spearheaded a movement of Islamic modernism called Salafiya in the late nineteenth century relies more on assumptions than evidence. He argues that contrary to conventional wisdom "and despite numerous attempts to portray these two men as 'Salafis' after the fact, there is still no proof that they ever promoted Salafi epithets, used the substantive Salafiya, or conceptualized a religious orientation of that name."[76]

The Modernist-Salafiya Movement in Other Parts of the Middle East

Despite recent debates about its origins, the Modernist-Salafiya movement with its reformist ideas continued to have influence in various parts of the Middle East and North Africa. In the 1930s, for instance, it concerned itself with criticizing Western ideologies such as

secularism and feminism and practices such as the consumption of alcohol and prostitution. The movement spread its influence in wider society through the establishment of free schools,[77] alternatives to the educational institutions provided by the colonial powers, which stressed Arabic language and culture.[78]

In Algeria, Abd al-Hamid b. Badis (d. 1940), a reformer greatly influenced by the ideas of `Abduh, became a key figure in the movement. Through his journal *Shihab*, somewhat equivalent to Rida's *al-Manar*, which was published between 1925 and 1939, he had a significant influence on Algerian society. In 1931 he established the Association of Algerian Muslim `Ulama' (AUMA) to promote his views; however, tensions grew between the worldview of the Modernist-Salafiya and the non-Salafi *`ulama',* with the latter accusing the Modernist-Salafiya of Wahhabism. In any case, throughout much of the twentieth century the influence of the Modernist-Salafiya remained strong in Algerian society,[79] and its teachings of reform and return to the pristine purity of early Islam were spread through its schools, press, and mosques. Even in postindependence Algeria its ideas still held sway, largely due to the high level of organization surrounding its activities and the institutions it had established.

In Morocco, while the Salafiya did not enjoy the same sophisticated level of organization of Algeria, the movement still had influence, particularly among society's elite, such as the sultans, *`ulama',* and sections of the middle class.[80] It was particularly concerned with eradicating the practice of saint worship from Moroccan Islam and reforming the education system in line with the ideas of `Abduh. Among the leading figures of the Modernist-Salafiya in Morocco was Abu Shu'ayb b. Abd al-Rahman al-Dukkali (d. 1937), a friend of Rida known as the Moroccan `Abduh, whose eloquence and charisma earned him a wide following.[81]

Concluding Remarks

In the twentieth century two trends of Salafism have emerged: Islamist-Salafism (sometimes referred to as "neo-Salafiya"), represented by the thought of the Muslim Brotherhood of Egypt and Puritanical-Salafism of Wahhabism. While Islamist-Salafism is often discussed in relation to Political Islamism and can be seen, at least to some extent, as an extension of Rida's conservative bent, it should not be confused with the Modernist-Salafiya movement of Afghani, `Abduh, and Rida. Movements such as the Muslim Brotherhood, which fall under the banner of Islamist-Salafism, are generally preoccupied with bringing the goals of the Modernist-Salafiya down from an intellectual level to one that can be disseminated among the people by way of *da'wah.*[82] In many countries the ideas of the Islamist-Salafism have been taken up and converted into political action, resulting in their suppression, to various degrees, and in some cases persecution.

On the other hand Puritanical-Salafis focus on matters that seem to contradict the "oneness of God," such as pilgrimage to the tombs of saints and the appearance of Muslims, including insisting on beards and the veil. They reject any perceived "innovation" in religious matters; are obsessed with "deviant" groups among Muslims who do not follow their way; and have a particular distaste for the *kuffar* (the "infidels"), including interactions with them, their values, and cultural practices as well as traveling to their countries. This usually extends to hatred of the West and its ideologies and trends of thought, such as secularism,

modernism, nationalism, and the like. Puritanical-Salafis are also particularly sensitive about people of the opposite sex and encourage segregation, separation, covering, and protection of the "honor" of men. More recently another trend in Salafism has also emerged, known as Miltiant-Salafism (or Jihadi-Salafism).

Salafism, in its varying guises, has been an important trend in Islamic thought for more than a century. It began and developed largely in the context of efforts to revive and renew Islam and Islamic thought during the late nineteenth and twentieth centuries. Faced with the intellectual and economic ascendancy of the West and the onslaught of modernity, the Salafism sought to regenerate Islam by returning to the tradition represented by the "pious forefathers" of the faith. For some reformers, this meant breaking with the tradition of blind imitation and returning anew to Islam's primary sources. For others it meant ridding Islam of the religious innovations that had crept in, returning the religion to its past pristine state. For still others, it meant the total reform and Islamization of the political, legal, and educational institutions of Muslim states.

Salafism has evolved under a number of key reformers, each of whom has brought his own unique insights and vision to the movement in response to the challenges of his national context. Although today the term "Salafi" is at times used synonymously with ultra-conservatism, radicalism, or even militancy, it is only recently that certain Salafi trends (particularly Militant-Salafism) have begun to embrace violence as a means of Islamic revival.

Notes

1. I thank my research assistants Patricia Prentice and Andy Fuller for their generous contributions to research and polishing up of this paper.
2. "Simple" or "simpler" Islam is used in the essay to refer to the Islam as practiced in the first generation of Muslims without the added weight of the intellectual traditions developed from the second century of Islam around areas such as Islamic law, theology, and philosophy.
3. Abdullah Saeed, *Islamic Thought: An Introduction* (Oxon, UK: Routledge, 2006), 134. There are several ideas and points in this essay that rely on the author's *Islamic Thought: An Introduction*, pp. 129–141. See also the references provided there for specific ideas referred to in this essay.
4. Saeed, *Islamic Thought,* 129.
5. Ibid.
6. Ibid.
7. Marcia K. Hermansen, "Translator's Introduction," *The Conclusive Argument from God: Shāh Walī Allāh of Delhi's Hujjat Allāh al-Bāligha*, trans. Marcia K. Hermansen. Islamic Philosophy, Theology, and Science 25 (Leiden: Brill, 1996), xxxi–xxxiii.
8. Knut S. Vikor, *Sufi and Scholar on the Desert Edge: Muhammad b. 'Ali al-Sanusi and His Brotherhood*, Series in Islam and Society in Africa (London: Hurst, 1995), 221–227.
9. Hermansen, "Introduction," xxxi–xxxiii.
10. Bernard Haykel, *Revival and Reform in Islam: The Legacy of Muhammad al-Shawkānī* (Cambridge: Cambridge University Press, 2003), 96, 102.
11. Rudolph Peters, "*Idjtihād* and *Taqlīd* in 18th and 19th Century Islam," *Die Welt Des Islams* 20, nos. 3–4 (1980): 133.
12. Rudolph, "*Idjtihād,*" 132–145.

13. Hermansen, *Conclusive Argument,* 263–264.
14. Fazlur Rahman, "Shah Waliyullah and Iqbal: The Philosophers of the Modern Age," *Islamic Studies* 13 (1974): 225–234.
15. Saeed, *Islamic Thought,* 131.
16. Ibid.
17. Ibid.
18. Ibid.
19. Ibid., 132.
20. Ibid.
21. Ibid.
22. Ibid.
23. Ibid.
24. Ibid.
25. Ibid., 133.
26. Ibid., 132.
27. Ibid., 133.
28. Ibid.
29. Ibid., 134.
30. Ibid.
31. Ibid., 136.
32. C. W. Troll, *Sayyid Ahmad Khan: A Reinterpretation of Muslim Theology* (New Delhi: Vikas Publishing House, 1978), 310.
33. Ibid., 128.
34. Margaret Kohn, "Afghani on Empire, Islam, and Civilization," *Political Theory* 37, no. 3 (2009): 398, 401.
35. Ibid., 398, 399.
36. Azzam S. Tamimi, "The Renaissance of Islam," *Daedalus: On Secularism & Religion* 132, no. 3 (2003): 51, 54.
37. Kohn, "Afghani on Empire, Islam, and Civilization," 398, 400.
38. Ibid., 398, 409.
39. Ibid., 398, 410 (citing Afghani, "The Truth about the Neicheri Sect," 169).
40. Ibid., 398, 402.
41. Ibid., 398, 403.
42. I. Weismann, "Between Sufi Reformism and Modernist Rationalism: A Reappraisal of the Origins of the Salafiya from the Damascene Angle," *Die Welt des Islams* 41, no. 2 (2001): 232.
43. Ibid., 232.
44. Saeed, *Islamic Thought,* 137.
45. Albert Hourani, *Arabic Thought in the Liberal Age, 1789–1939* (London: Oxford University Press, 1962), 138.
46. Saeed, *Islamic Thought,* 138.
47. M. Abduh, *Risalat al-tawhid* [*The Theology of Unity*] (Cairo, 1897); trans. I. Musa'ad and K. Cragg, *The Theology of Unity* (London: George Allen & Unwin, 1966), 39.
48. Saeed, *Islamic Thought,* 139.
49. Abduh, *The Theology of Unity,* 66.
50. Ibid., 67.
51. Saeed, *Islamic Thought,* 137–139.

52. John L. Esposito, *Islam and Politics: Contemporary Issues in the Middle East*. 4th ed. (Syracuse: Syracuse University Press, 1998), 64.
53. Ibid., 64.
54. Ana Belen Soage, "Rashid Rida's Legacy," *The Muslim World* 98 (2008): 1, 5. For a study of these Conversations, see Jakob Skovgaard-Petersen, "Portrait of the Intellectual as a Young Man: Rashid Rida's *Muhawarat al-muslih wa-al-muqallid*. (1906)," *Islam and Christian-Muslim Relations* 12, no. 1 (2001): 93–104.
55. Soage, "Rashid Rida's Legacy," 1, 5.
56. Hourani, *Arabic Thought in the Liberal Age,* 235.
57. Ibid., 236 (citing Rida, *al-Khilafa*, 29–30).
58. Ibid., 236.
59. Esposito, *Islam and Politics,* 65.
60. Hourani, *Arabic Thought in the Liberal Age,* 237.
61. Esposito, *Islam and Politics,* 65.
62. Soage, "Rashid Rida's Legacy," 1, 9.
63. Ibid., 1, 10 (citing *al-Manar*, 59, 272).
64. Hourani, *Arabic Thought in the Liberal Age,* 241.
65. Ibid., 242.
66. Ibid., 243 (citing Rida, *al-Khilafa*, 62 p. 104]).
67. Ibid., 243.
68. Esposito, *Islam and Politics*, 65.
69. Ibid., 66.
70. Ibid., 67.
71. Ibid., 67–68.
72. Peter Mandaville, *Global Political Islam* (London: Routledge, 2007), 52.
73. H. Lauzière, "The Construction of Salafiya: Reconsidering Salafism from the Perspective of Conceptual History," *International Journal of Middle East Studies* 42 (2010): 374–375.
74. Ibid., 375.
75. Ibid.
76. Ibid., 384.
77. P. Shinar and W. Ende, "Salafiyya." *Encyclopaedia of Islam*,*Second Edition*. Edited by P. Bearman, Th. Bianquis, C. E. Bosworth, E. van Donzel, and W. P. Heinrichs (Leiden: Brill, 2010). Brill Online. University of Melbourne. November 8, 2010 http://www.brillonline.nl.ezp.lib.unimelb.edu.au/subscriber/entry?entry=islam_COM-0982.
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CHAPTER 3

ISLAMIC REFORM BETWEEN ISLAMIC LAW AND THE NATION-STATE

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In his celebrated 1992 book, *The End of History and the Last Man*, Francis Fukuyama announced that the twentieth century marked the decisive triumph of liberal democracy (along with capitalism) as the incontrovertibly optimal political (and economic) arrangement. Whereas previous ideologies contained fundamental flaws and shortcomings that rendered them temporary modi vivendi, the modern West had at long last arrived at the ultimate form of human government. This terminus ad quem signaled the "end of history" in that it terminated, once and for all, the debate over how human societies should arrange themselves politically. The nation-state, and most optimally liberal democracy, had emerged as the final solution (Fukuyama 1992).

In considering the legacy of twentieth-century Muslim political thought, one wonders if Muslim thinkers and activists, especially in the central lands of Islam, might have effectively preceded Fukuyama to this conclusion and in so doing institutionalized a mode of thinking about, imagining, and analyzing political reality that informs as much as it limits the meaning of Islamic reform as well as the range of its possibilities. To be sure, Muslims continue in significant numbers to contest liberal democracy; and even the notion of democracy itself has produced its share of doubters and naysayers. Still, liberal or illiberal, pro- or anti-democratic, the basic *structure* of the nation-state has emerged as a veritable grundnorm of modern Muslim politics. The basic question now exercising Muslim thinkers and activists is not the propriety of the nation-state as an institution but more simply—and urgently—whether and how the nation-state can or should be made Islamic.[1] This invariably implicates Islamic law, either as the sine qua non of any authentically "Islamic" state or as a flawed, deleterious contagion that threatens to undermine any true, Muslim democracy. On these understandings, the bulk of reformist energy goes either into rendering Shari`ah[2] more adaptable to the norms and dictates of the nation-state, along with its putatively inextricable trappings (viz., democracy, human rights, monopoly over law) or to pointing out its utter incompatibility with the latter. Meanwhile, *no* attention goes to examining the basic structure of the nation-state itself and the extent to which *it* might promote its own

set of problems for an Islamic politics, independent of and perhaps only compounded by any commitment to Shari`ah per se. Indeed, the *Western* story of the rise, necessity, and panacean effectiveness of the secular, liberal state appears to have gained acceptance, even among the majority of Muslims, as the *only* relevant story of successful modern political evolution, as a result of which little effort is devoted to exploring ways in which the presumed structural necessities and accoutrements of the modern nation-state might be questioned, modified, and possibly brought into greater conformity with the needs, interests, and aspirations of majority Muslim lands.

In this essay I hope to add another perspective on the question of Islamic reform by highlighting the distinction between the application of Islamic law in general and its application as the basis of a legally monistic, homogenizing nation-state. I shall begin by looking at a fundamental feature of the nation-state that is often overlooked in analyses of and proposals for Islamic reform. From here I will compare this particular feature of the modern nation-state with the basic thrust of the premodern Muslim state, in part to highlight the extent to which the tendency toward legal homogenization among modern Muslims is more indebted to modern than premodern history. I will then look at one of the major problems associated with this tendency to homogenize the law and look at a particular instance of it in modern Egypt. I will end with a comment on secularism as a mode of modern Muslim reform and suggest that, rather than addressing, as it purports to, the problem of religious domination, secularism merely relocates the problem and in so doing fails to solve it.

The Rise, Nature, and Ubiquity of the Modern Nation-State

While precise and universally agreed-upon definitions of the nation-state remain elusive, general accounts of its nature and evolution in sixteenth- to nineteenth-century Europe point to a number of distinctive, if not essential, features (Pierson 1996, 5–34).[3] For our purposes, the most important of these is a particular characteristic that accompanies the nation-state as it comes to full maturity in the twentieth century, when Muslim-majority countries were wresting, incidentally, their independence from their European colonizers and establishing (or inheriting) their own independent modern nation-states.[4] I am speaking here of what anthropologists and sociologists of law commonly refer to as "legal centralism" or "legal monism," according to which all law is and should be state-sponsored law, which is *uniform* and *equally applied* to all citizens across the board, being emphatically *superior* to, if not exclusive of, all other reglementary regimes (Jackson 2006, 158–176, 158–163). At bottom, legal monism might be seen as the cumulative result of the dialectical interaction between the modern state's concern for its territoriality, legitimacy, sovereignty, and monopoly over the legitimate use of violence, as these concerns unfolded in the context of early modern European history.

In response to the so-called Wars of Religion, when the Protestant Reformation divided Europe into endemically warring religious factions, the modern state emerged to marginalize religious prejudice (and loyalty) and secure societal peace and order by monopolizing the means of violence. In effect, this constituted a transfer of ultimate authority and loyalty (and according to some a sense of the holy) from the Church to the state (Cavanaugh 2009,

10). No longer would it be legitimate to kill in the name of religion, only in the name of the state (Cavanaugh 2009, 123–180).[5] But since the state now professed to be neutral and equally the patron of all, all citizens could rest assured that they were equally protected. At the same time, while an infinite plurality of "purely religious" concerns (i.e., deeply held theistic beliefs and ritual practices) might be recognized as falling within the domain of personal or religious freedom, in all matters of a "civil nature" the state would both monopolize and standardize a uniform legal régime and brook no challenge to the absolute and exclusive primacy thereof. Thus, for example, in order to be integrated into the French state in the late eighteenth century, Jews were called upon to give up not their theological "beliefs" but their separate religious laws and judges. For, as stated in the French National Assembly in 1789, to grant Jews citizenship without requiring them to relinquish and renounce their distinctive laws on marriage, divorce, heritage, tutelage, majority, etc. would be like "granting French citizenship to Englishmen and Danes without asking them to cease being Englishmen and Danes" (Szajkowski 1970, 578–579).[6]

By the twentieth century, legal monism would be widely accepted as the sine qua non of almost every nation-state's effective operation.[7] At the same time, bolstered by more fully developed (especially American) notions of equality,[8] legal monism would come to be seen as the most effective means of averting discrimination and effectively relegating some members of society to second-class citizenship. This is clearly reflected, inter alia, in the rise of the hallowed principle of "equality before the law." Yet, despite its theoretical neatness and functional utility, legal monism, along with certain modern constructions of equality and individualism, effectively rules out the possibility of legal pluralism as an acceptable arrangement for accommodating mutually divergent groups within society. Indeed, it seems increasingly difficult to suppress the fact that the modern notion of the "citizen" as an autonomously instantiated individual entails a rather facile ideological pasting over of the reality that modern humans, much like their premodern predecessors, are consciously storied collectives attached to much larger and deeply running narratives that often include sustained commitments to quite particular reglementary regimes and traditions. In sum, the basic theory and presumptions underlying the modern nation-state continue to call upon modern citizens to forfeit substantive aspects of deeply valued regimes and commitments as part of the simple and inevitable price of citizenship. And in this regard, it makes little difference whether the nation-state in question is Islamic, secular, or an attempted hybrid. Nor does it matter whether the regime or commitment to be forfeited was an actual party to the struggle that led to the putative need for the modern state to begin with. This type of forfeiture is simply part and parcel of the basic, fundamental structure of the modern nation-state.[9]

Forfeiture and the Premodern Muslim State

By contrast, the basic structure of premodern "Muslim states" did not require anything near this type or level of forfeiture. In fact, in contradistinction to the "strong state" structure of the modern "Islamic State," which, in its most popular iteration, is essentially a modern nation-state governed by a sociopolitically homogenizing Islamic law, the "weak state"[10] structure of premodern Muslim polities not only assumed legal pluralism, within

and without the Muslim community, but openly embraced the reality that the arena for state-sponsored homogenization would be necessarily, if not ideally, limited. Rather than assume or insist, in other words, that Jews, Christians, and other non-Muslims, indeed, even all Muslims, be inducted or assimilated into a single, all-encompassing Muslim sociopolitical identity cum substantive legal order, the Muslim state acquiesced to the opposite reality. Even in the area of criminal law (i.e., outside the sanctum of family law where non-Muslim idiosyncrasy was most manifestly uncontested) Muslim jurists reveal themselves to be not only reconciled with a pluralized public space but also equally at home in a certain antihomogenizing predisposition. For them, neither uncontested Muslim sovereignty nor the full or ideal application of Shari`ah implied the absolute necessity of subjecting all non-Muslims to every aspect of the applied Islamic legal order. Nor did Muslim "political theory" or state sovereignty connote the necessity of non-Muslim forfeiture of any and all commitment to non-Islamic practices and reglementary regimes.

For example, premodern Mâlikî jurists are explicit in their insistence that Islam, that is, one's status as a Muslim, is a formal legal prerequisite (*shart*) for being subject to the Shari`ah-based rules governing adultery/fornication (*zinā*; `Abd al-Wahhâb 2008, 197–198). In other words, non-Muslims were not subject to this rule. The going opinion among Hanifis (with the exception of Abû Yûsuf) was basically identical, while the numerically smaller Shâfi'îs and Hanbalî's dissented. Even the latter schools, however, held opinions on related subjects that underscore the fact that non-Muslims could be exempted from Shari`ah-based rules without this being perceived as either violating any would-be theory of Muslim statecraft or the zealously guarded sovereignty of the Muslim state. For example, the Hanbalî, Ibn Qayyim al-Jawzîyah (d. 751/1350), star pupil of the allegedly puritanical Ibn Taymîya (d. 728/1328) defended the Zoroastrian right to engage in "self-marriage," according to which a man could marry his mother, sister, or daughter, despite what Ibn Qayyim identifies as the morally repugnant nature of this institution.[11] The Shâfi'îs, meanwhile, while extending the rule on *zinā* to non-Muslim "citizens" (*ahl al-dhimmah*), exempt non-Muslim "temporary or permanent residents" (*al-mustāmin*) from its application.[12] Of course, the Shâfi'îs, like all the other schools, exempted non-Muslims from such prescribed punishments (*hadd*/pl. *hudûd*) as those imposed on Muslims for drinking wine.[13]

These views were all proffered and debated in a historical and political context that held out the practical possibility of alternative approaches. Muslims, in other words, at least in practical terms, *could* have opted to pursue much more palpably homogenizing arrangements. In purely theoretical terms, however, beyond the material constraints and allowances of their largely inherited political structure, including the logistical difficulties of extending the effective application of the law over vast geographical areas, it seems that the premodern understanding of Islamic law itself naturally militated against legal monism. Of course, even the resulting legal pluralism could result in any number of "rights," "freedoms," and "exemptions" that modern (and perhaps many premodern) non-Muslims could only experience as discrimination (e.g., "exemption" from military service might be experienced as "exclusion" from such). But even here we should be careful about conclusions that are based solely on modern biases and the largely normalized sociopolitical sensibilities and expectations that evolve out of the normalization of the nation-state. And we should be equally careful about equating modern communities' acquiescence in the face of the many forfeitures they are called upon to make with the total absence of feelings of being discriminated against.

The Wages of Legal Monism in a Majority Muslim Polity: the Case of Copts in Modern Egypt

The point of the foregoing has been simply to underscore the fact that legal pluralism was to the premodern Muslim state what legal monism has become to the modern nation-state. To this we must now add the truism that, in basic structural terms, the modern so-called "Islamic State," at least in its most popular iteration, is far more indebted to the modern nation-state than it is to any premodern Muslim antecedent. This becomes easy to appreciate when we consider that the mere application of Islamic law (*tatbîq al-* Shari`ah), as *the* recognized regime of a modern Muslim nation-state is commonly deemed to be enough to render a state Islamic. On this filiation, I would like to suggest that some of the anxieties and problems associated with the anticipated rise of so-called Islamic States, most especially (though not exclusively) the treatment of religious minorities, which so exercises Western observers, are at least as much, if not more, a function of the grafted underlying structure of the so-called Islamic State as they are of the substantive content of Islamic law. This is clearly manifested in the fact that modern Muslim states that do *not* apply Islamic law as the exclusive law of the land (and are therefore routinely the target of efforts at Islamization) confront similar if not identical problems. While the tendency has been to assume a causal relationship between these problems and the inalterable nature of Shari`ah as a system divinely legislated rules, a more recent iteration of the problem of religious minorities casts the matter in a palpably different light.

On May 29, 2010, facing a rising tide of petitions from divorced Coptic Christians seeking to contract new marriages, the High Administrative Court in Egypt (*al-Mahkamah al-Idârîyah al-'Ulyâ*) issued orders to the Coptic Church to issue marriage licenses to Coptic divorcees authorizing the latter to remarry. The Court insisted that it was on solid procedural grounds, based on legal provisions unanimously adopted, with Coptic approval, back in 1938. In response to this 2010 order, however, the Coptic Church objected that it was a violation of the principle of religious freedom and of the sovereignty of the Church as the final religious authority for Coptic Christians. The problem, according to Church authorities, was that the Bible (*al-Injîl*) had explicitly stipulated that divorce was on option *only* for aggrieved parties in instances of adultery (*zinâ*).[14] Where there was no adultery or the where the party who had actually committed adultery sought to remarry, the position of the Coptic Church was that this was flatly forbidden.

The decree by the High Administrative Court set off a firestorm. Pope Shanoudah III, leader of the Orthodox Egyptian Coptic Church, protested that the Church would not—indeed, could not—comply with this order. Facing possible charges of contempt, Pope Shanoudah insisted that the 1938 law had been propounded on the basis of teachings that ran counter to the Bible, as a result of which previous Coptic Popes, for example, Pope Macarius III and Pope Kerlos IV, had objected to it.[15] He went on to affirm that marriage (or at least Coptic marriage) was a holy ritual and a fundamentally religious institution in the regulation of which the Coptic Church should and could not be asked to recognize any higher authority.[16] The Coptic laity roundly supported the Pope's position and organized public demonstrations to protest the High Administrative Court's decree.[17] This was joined by highly publicized emergency meetings of the Coptic establishment and

even a full quarter page add in the official government daily newspaper, *al-Ahrâm*, part of which read:

> The full membership of the General Confessional Council (*al-Majlis al-Millî al-'Âmm*) fully supports His Holiness Pope Shanoudah III in his recent declarations regarding the obligation to abide by the texts of the Holy Book on the matter of Christian marriage, in accordance with Christian law (*al-* Shari`ah *al-masîhîyah*). Indeed, the Council deems it entirely unthinkable that any individual would be so bold as to take it upon himself to change the texts of the Holy Book on the basis of any other pretext. Similarly, the General Confessional Council reiterates that no marriage can be considered a Christian marriage unless it is consistent with all the teachings and professions of the Master Messiah, be he glorified. Thus, the Council affirms that the Church considers any marriage that contradicts these teachings to be a civil marriage and not a religious, Christian marriage.[18]

The last line of this declaration entails a critical clarification. Pope Shanoudah III was not denying Coptic Christians the right to seek or obtain subsequent *civil* marriages; in fact, he stated explicitly that those wish to seek and obtain such marriages or divorces are free to do so. This they should do, however, "far away from the Church" and on the understanding that they would not be readmitted to the Church. For the Church, he insisted, "does not recognize civil marriages, and anyone who does not want to be a member of the Church is free not to be (*nahnu lâ na'tarif bi al-zawâj al-madanî wa illî mish 'ayyiz yakun min abnâ' al-kanîsah huwa hurr*)."[19] In sum, Pope Shanoudah was insisting that Coptic Christians were fundamentally defined by their commitment to a religiously based reglementary regime governing marriage and divorce and that they should not be called upon, by dint of their status as citizens of the modern Egyptian state, to forfeit this commitment. By forcing the Church, however, to issue the said marriage licenses, the state was both undermining its religious authority and violating the integrity of the Coptic community as a whole.

But the real significance of all of this, for our purposes at least, emerges when we consider a basic strand of argument adduced by Pope Shanoudah and other Coptic officials in defense of their right to withhold marriage licenses. While certain secular advocates, Muslim and Christian, voiced concerns over what they deemed to be the Church's unwarranted mixing of religion with politics, its threatening the unity and challenging the sovereignty of the Egyptian state and its denying Coptic divorcees the fundamental human right to marry, Pope Shanoudah and Church officials turned to Islam and Shari`ah as their counter. They noted that Islam guaranteed religious minorities the right to preserve their commitment to their own religious law. Indeed, in several pieces published in Egyptian newspapers, Coptic officials went on record invoking what they presented to be a hallowed principle of Islamic law: "When confronted with People of the Book, adjudicate among them on the basis of their own religion (*idhâ atâka ahl al-kitâb fa'hkum baynahum bimâ yadînûn*)."[20] In fact, in one of his weekly sermons, Pope Shanoudah even quoted directly from the Qur'an: "Let the People of the Bible adjudicate according to what God revealed therein. And whoever does not adjudicate in accordance to what God reveals, they are among the corrupt" (5: 47); "Ask the People of Remembrance, if you do not know" (16: 43).[21] Cleary, for the Coptic Church, it was neither Islam nor Shari`ah that were calling upon them to forfeit their commitment to their sacred texts and tradition but the basic, homogenizing structure of the modern Egyptian state. This distinction between the status of the Church under Shari`ah and its status before the decree and authority of the High Administrative Court was thrown into bold

relief by a statement by Pope Shanoudah published in the official *al-Ahrâm* newspaper: "We simply ask the judges, if they want to reconcile with the Church, to apply the Islamic Shari`ah (*fa nahnu natlub min al-qudâh an yunaffidhû al-sharî`ah al-islâmîyah idhâ arâdû al-tasâluh ma'a al-kanîsah*)."[22]

It would be wrong, of course, if not disingenuous, to conclude from this clearly tactical approach that Pope Shanoudah III and the Coptic Church were advocating the application of Shari`ah in any general, across-the-board sense, that is, on a par with the Muslim Brotherhood or other such Islamists groups. At the same time, however, it seems abundantly clear that both the Coptic pontiff and the Church recognized an important distinction between the mere application of Shari`ah and applying Shari`ah in the service of the homogenizing, monistic tendencies of a modern nation-state. Applying Shari`ah in the context of the weak state, premodern Muslim model would pose no threat to the Church's authority in general or to the Coptic community's ability to regulate marriage and divorce as it saw fit. Applying Shari`ah, however, as the uniform and supreme law of the land implemented in an undifferentiated, across-the-board fashion would almost invariably call on non-Muslim communities to forfeit numerous and deeply valued aspects of their own, religion-based reglementary régimes.[23] Ultimately, the question in the present case came down not to how the Egyptian state could reconcile Shari`ah with the interests of the Coptic Church and community but to how it could reconcile its own sense of sovereignty and the hegemonic tendencies of its embedded legal monism with Coptic claims to the right to be governed by their own reglementary regime and religious authority regarding marriage and divorce.

Having said all of this, one could ask if the Muslim Brotherhood, for example, or other modern Islamist advocates of an Islamic State would have been any less discomfited by this Coptic claim to judicial exemption than was the secular Egyptian state. After all, an Islamic State is, to all intents and purposes, a nation-state governed by Islamic law. Should the legal monism implied by the nation-state be sublimated into the meaning of "applying Islamic law," this would clearly raise similar difficulties for non-Muslim (and even a number of Muslim) minorities. Here, however, I think it is important to avoid the tendency to compress all calls for an Islamic State into a single, undifferentiated articulation. For rather than a single position on the status and treatment of religious minorities, proponents of the Islamic State demonstrate a range of attitudes and positions. On matters of personal status or family law, they appear more or less accepting of claims of exemption by non-Muslims, especially People of the Book (*Ahl al-Kitāb*). Beyond that, however, attitudes appear to become more nuanced and in some instances even vague.

For example, in his short treatise *Rights of Non-Muslims in Islamic State*, Abu al-A`la Mawdudi, by all accounts one of the major architects and proponents of the modern Islamic State, is unequivocal in granting non-Muslim "citizens" full autonomy in the area of family law:

> All personal matters of the Zimmis are to be decided in accordance with their own Personal Law. The corresponding laws of *Shari`ah* are not to be enforced on them. If anything is prohibited for the Muslims in their personal law but the same is not forbidden to the Zimmis by their religion, they will have the right to use that thing and the courts of the country will decide their cases in the light of *their* Personal Law. (Mawdudi 1961, 15)

Yet, when it comes to criminal sanctions beyond the realm of family law, Mawdudi insisted, with one exception, that "the Penal Laws are the same for the Zimmis and the

Muslims, and both are to be treated alike in this regard. The Zimmis are subject to the same punishment as are the Muslims. . . . The punishment for adultery is also the same in both cases. In the matter of drinking wine, however, the Zimmis are exempt from punishment" (Mawdudi 1961, 13).

In another articulation, the redoubtable Sayyid Qutb appears a bit more diffident. On the one hand, he cites the standard principle to the effect that the People of the Book "are not to be compelled to follow any rules that do not appear in their religious law (*sharî`atuhum*) and/or are not connected with the public order (*al-niẓām al-`âmm*)."[24] This includes the right to eat pork and drink wine but not to deal in "interest" (*ribā*). It also subjects them to the punishments on theft or adultery.[25] This is all muddled, on the other hand, by what appears to be his limiting these provisions to the early stages of the Prophet's career only to be later superseded by the law of Islam. Thus he writes,

> The binding rule (*qâ`idah*) is to adjudicate in accordance with what God has revealed and nothing else. And they (i.e., Christians) like the Jews will not stand upon anything until they implement the Torah and the Gospels—before Islam—and what has been revealed to them from their Lord—after Islam. All of this is a single Shari`ah by which they are bound. God's final Shari`ah is the operative Shari`ah.[26]

In yet a third articulation, the traditionally trained cleric Shaykh Yûsuf al-Qaradâwî echoes the view of Mawdudi on family matters but partially dissents on the matter of criminal law. He writes:

> As for family relations regarding matters connected to marriage, divorce and the like, they have the choice of applying their own religious laws or seeking adjudication on the basis of our religious law. But they are not to be forced to comply with the religious law of Islam on the grounds that this represents [the state's] standard "Personal Status Regime," as it is called. . . . As for other matters concerning civil, commercial, administrative and other forms of legislation, their status here is as that regarding any other legislation that may be appropriated from the East or the West based on the consent of the majority. Regarding criminal sanctions, the jurists have established that the prescribed punishments (*al-hudûd*) are not applicable to them except regarding matters that they themselves believe to be illicit, such as theft or adultery/fornication (*zinâ*), not regarding matters that they believe to be licit, such as wine-drinking.[27]

Again, all of these advocates of an Islamic State, with the *possible* exception of Qutb, would recognize non-Muslim claims to exemption in the area of family law. In fact, one gets the sense that this particular feature of the premodern Muslim state is recognized as having been so definitive of a normative Islamic order that no modern arrangement could be deemed truly "Islamic" without it. Beyond the realm of family law, of course, advocates of the modern Islamic State are clearly more homogenizing in orientation. But the antihomogenizing predisposition of the premodern Muslim state suggests that this impetus is more a discontinuation than a continuation of the Muslim past. Indeed, it appears to be far more indebted to the perceived need to accommodate modernity's seemingly seamless introduction of the nation-state structure as the sine qua non of modern politics than it is to any attempt to recapture some presumably normative aspect of classical Islamic statecraft or sovereignty or theory that was somehow tragically lost in the Muslims' early encounter with the hegemonic, modernizing West.

Islamic Reform Between Shari`ah and the Modern State: Secularization or Dehomogenization?

All of this brings us to a consideration of secularization (i.e., removal of Shari`ah from the state apparatus) as a mode of modern Islamic reform. For, while Shari`ah is clearly a central concern for Muslim (as well as non-Muslim, Western) secularists, the modern, not the traditional Muslim, state structure is clearly their point of departure, even if this is not always recognized or openly acknowledged. Unlike any premodern Muslim state, the state that is assumed and contemplated by Muslim secularists has a complete and unassailable monopoly on law and the use of violence; its law is absolutely superior to all other reglementary regimes and is absolutely binding and normative; moreover, its very sovereignty is underwritten by an explicit commitment to legal monism (i.e., there can be only one legal regime uniformly applied across the board). At bottom, the secularization thesis is grounded in the belief that Shari`ah and/or the religious establishment that determines its substance and implementation cannot be effectively reformed to the point that Islamic law could consistently find positive acceptance across the many variegated segments of modern society. As a solution, religious law should simply be separated from the state apparatus, and whatever legal regime ultimately comes to govern society should come as a result of the entire community (i.e., all citizens, Muslim and non-Muslim alike) negotiating its substance via the medium of "civic reason" (an-Na`îm 2008, 7, 29, 97–101).

This is essentially the thesis of Abdullahi an-Na`îm in his latest book, *Islam and the Secular State: Negotiating the Future of Shari`ah*.[28] To be clear, an-Na`îm is not an advocate of European secularism or *laïcité*, wherein the aim is to remove or minimize the influence of religion upon society. He is more an advocate of American-style secularism, where the point is simply to free the state apparatus from the influence of formal religious authority and institutions, leaving society at large free to indulge religious beliefs and sensibilities. And yet, again, his point of departure is clearly the modern legally monistic nation-state. Thus, he allows that, to the extent that individual citizens invoke them in the course and context of their own civic engagement, Shari`ah principles may and should be allowed to serve as a source of public policy and legislation. This, however, should all be "subject to the fundamental constitutional and human rights of all citizens, men and women, Muslims and non-Muslims, *equally and without discrimination*" (an-Na`îm 2008, 28–29).[29] Indeed, he insists, even if the vast majority should hold Shari`ah principles to be binding as a matter of religious conscience, "that cannot be accepted as sufficient reason for their enforcement by the state, because they would then apply to citizens who may not share that belief" (an-Na`îm 2008, 29). In sum, legal monism and the absolute authority of the state's singularly deduced and uniformly applied legal regime is simply an unassailable grundnorm. Shari`ah, for its part, is either incapable of treating all citizens equally or is constituted by substantive laws that would simply result in all citizens being treated equally bad. Secularism, in this context (i.e., separating Shari`ah from the state apparatus) becomes the only viable option because,

> Any and all proposed possibilities of change or development must…begin with the reality that European colonialism and its aftermath have drastically transformed the basis and nature

> of political and social organization within and among the territorial states where all Muslims live today. A return to precolonial ideas and systems is simply not an option, and any change and adaptation of the present system can be realized *only* through this local and global post-colonial reality. (an-Na`îm 2008, 31–32)[30]

In other words, the nation-state, including its basic legal monism, is here to stay, and any attempt to improve the political reality of modern humans will have to proceed on the recognition that there are no alternatives to this basic arrangement. Indeed, according to an-Na`îm, it is precisely their inability or unwillingness to recognize or accept this fact that leaves many Muslims laboring under the delusion that there could actually exist in modern times "an Islamic state that can enforce Shari`ah principles as positive law" (an-Na`îm 2008, 32).

Leaving aside the many issues on which one might want to cross-examine Professor an-Na`îm, I would like to return to Pope Shanoudah III and the High Administrative Court of Egypt. Professor an-Na`îm seems to think that the problem of meting out fair treatment to religious minorities is largely solved by secularizing the political order. But Egypt is a secular state,[31] in many ways consistent with Professor an-Na`îm's own normative description thereof: the religious establishment neither dictates the substance nor oversees the implementation of the law, but Shari`ah principles ultimately influence the legal order by way of a certain upward pressure from society at large. And yet, none of this would seem to be of much use to the Coptic Church or community in their quest to preserve the right to restrict marriage licenses as deemed proper. The reason for this, however, has nothing to do with any romantic refusal or inability to recognize or accept the modern state, nor is it in any way connected with Shari`ah per se forming the legal basis of that state.[32] It is, rather, the legal monism that defines Egypt as a *secular* state and the resulting tendency to dictate that Copts be bound by the same rights and restrictions as everyone else in society. Thus, secularization alone would seem to fall short of the needs of the Copts as a religious minority.

We might say the same when it comes to Muslims as a majority. While they all subscribe to the same religious sources (Qur'an, Sunnah, and perhaps precedents upheld in the traditional schools of law), they also subscribe to mutually competing modern and premodern interpretations of these. Ultimately, however, as long as the state is defined by a commitment to legal monism, sizeable groups of Muslims will be called upon to make significant forfeitures of their attachments to these legal regimes and traditions. Secularization, for its part, again, while presumably protecting society from the imposition of any *particular* interpretation of law promulgated by a religious establishment, does nothing to undo the fact that, as long as legal monism remains the norm, *some* single regime will be ultimately—and uniformly—imposed upon the entire populace.

This raises the question, to my mind at least, of whether much of modern Muslim reform has been simply barking up the wrong tree. For neither altering the substance of Islamic law nor separating Shari`ah from the state would seem to solve the fundamental problem of religion-based domination or massive forfeiture. In this context, rather than secularization, Islamic reform might begin with the goal of dehomogenizing modern Muslim states and finding effective ways of reducing the types and degrees of forfeiture imposed upon large and historically constituted groups in society, even as Muslim reformers pay adequate attention to such modern realities as the fact that only highly centralized states can accommodate such massive undertakings as regulating airspace, food and drug integrity, education, highway safety, and a host of others. Indeed, it seems to me, on purely political (i.e.,

not necessarily religious) grounds, that the secularization thesis is simply inadequate. For no amount of secularization will reduce the type and magnitude of forfeiture demanded by legal monism. And in this context, beyond whatever adjustments Muslims might see fit to make to the actual substance of Islamic law, finding ways to sustain the modern state's capacity to fulfill its many nonlegal functions while reducing the need for legal forfeiture to what is absolutely necessary should be recognized as being among the most pressing goals of any meaningful Islamic reform. This will require, of course, a more critical look at and engagement with the nation-state and its underlying structure. Ultimately, however, if and when Muslim reformers arrive at the point where they can realistically contemplate and effectively pursue the dehomogenization of the nation-state in ways that do not otherwise compromise or undermine its overall efficacy, we might witness not only the end of one history but also perhaps the auspicious beginning of another.[33]

Notes

1. This is actually a reiteration of a point I made back in 1996 in my *Islamic Law and the State: The Constitutional Jurisprudence of Shihâb al-Dîn al-Qarâfî* (Leiden: E. J. Brill, 1996), xiii ff.
2. In this article, I shall limit "Islamic law," or "Shari`ah" to *fiqh*, i.e., the principled deductions of Muslim jurists from the sources of the law and/or established precedents upheld in the schools or madrasahs, ignoring for the moment the equally important and equally legitimate instrument of *siyāsah*, i.e., essentially a "state-owned *maṣlaḥah al-mursalah* (public interest) and *istiḥsān* ('equity')." (See, e.g., F. Vogel, *Islamic Law and Legal System* (Leiden: E. J. Brill, 2000.) While this constitutes an underinclusive (mis)representation of Shari`ah, it is justified in the present context on two considerations: (1) the overwhelming majority of advocates and critics of Shari`ah limit their advocacy and critique to *fiqh*; and (2) even the admission *siyāsah* to the present discussion will change little as long as the state remains committed to legal monism and homogenized regelementary régimes applied uniformly across the board.
3. These include (1) monopoly (or control) of the means of violence; (2) territoriality; (3) sovereignty (i.e., ultimate authority); (4) constitutionality; (5) impersonal power; (6) public bureaucracy; (7) legitimacy; and (8) citizenship.
4. One might note in this context the dates of independence of emerging majority Muslim Middle Eastern and North African states: Syria, 1946; Pakistan, 1947; Libya, 1951; Egypt, 1952; Algeria, 1962; Morocco, 1955; Tunisia, 1956; Sudan, 1956; Iraq, 1958.
5. The alleged role of the "Wars of Religion" in prompting the move to the modern state has been severely challenged by Cavanaugh, where he devotes an entire chapter to "The Creation Myth of the Wars of Religion." Here Cavanaugh speaks of the manipulation of history carried out by proponents of the modern state to serve the crucially felt need to legitimate the secular turn of the modern West and underwrite the absolute necessity and goodness of the modern secular state as a protection from chaos, bigotry, and mortal peril.
6. Of course, the conclusion that this constituted a violation of religious freedom could be averted by the fact that "religion" had now come to be understood as simply "private beliefs." In fact, according to Cavanaugh, this was the whole point of inventing this essentially new understanding of "religion" (i.e., in order to be able to deny public recognition to

religion without this being seen as a violation of religious freedom). As he put it, on this new definition, "Religion is 'inward'; it is essentially about beliefs that cannot be settled publicly to the satisfaction of all by any rational method" (Cavanaugh 2009, 126).

7. Notable exceptions might include, in certain respects at least, Canada, Belgium, South Africa, Singapore, and India.
8. By more fully developed, I am alluding to the fact that while the French, e.g., extolled the value of *equalité*, this did not fully contradict anti-Semitic sentiments. The American delegitimizing of anti-Black racism, on the other hand, seems to have placed the concept of equality on a more absolute footing, no longer susceptible to being surreptitiously deployed and manipulated as a synecdochic "'*âmm yurâdu bihi al-khusûs*," i.e., a general expression intended to have only restricted or qualified application.
9. Indeed, according to Cavanaugh, it was the view of Hobbes that the Behemoth, i.e., civic division and civil unrest grounded in religious differences sponsored and stoked by popes and other religious figures, could only be defeated by obliterating any distinction between temporal and spiritual rule and transferring both coercive power and spiritual authority (i.e., patriotism) to the Leviathan, i.e., "Hobbes's 'mortal god,' the state" (Cavanaugh 2009, 126).
10. By "weak state" I am referring to neither military power nor the ability to exercise requisite control over a populace. Rather, as S. P. Huntington described it, the weak state model is a less centralized model that operates much like a "U," with family and tribe at the upper left extremity and religious, professional, or other public confessions functioning at the upper right, as the highest repositories of commitment, dependence, and sense of belongingness. The state, meanwhile, stands in the valley of the "U" as the very lowest point of commitment, dependence, and sense of belongingness. The modern nation-state by contrast, operates in reverse, i.e., as an inverted "U," where the state functions at the summit as the highest point of commitment, dependence, and sense of belongingness, with family, religious affiliation, etc. operating at the lower extremities (Huntington 2004, 16–17).
11. See his *Ahkâm ahl al-dhimmah*, 3 vols., ed. Y. al-Bakrî and A. A. al-'Arûrî (Beirut: Dâr Ibn Hazm, 1418/1997), 2: 764–769.
12. See, e.g., Shams al-Dîn Muhammad b. Ahmad al-Sharbînî, *al-Iqnâ' fî hall alfâz abî shujâ'*, 2 vols. (Cairo: Matba'at Mustafâ al-Bâbî al-Halabî wa awlâduh, 1359/1940), 2: 179: "*fa kharaja bihi al-musta'man fa innâ lâ nuqîmu 'alayhi al-hadd 'alâ al-mashhûr* (this implies the exemption of temporary and permanent residents; for, according to the going opinion, we do not apply the prescribed punishment (for adultery/fornication) to them)."
13. al-Sharbînî, *al-Iqnâ'*, 2:187.
14. The Church also allowed widowers (*al-Ahrâm*, June 9, 2010, p. 14) to remarry as well as spouses of those who have left the Coptic Church for another religion (*al-Anbâ' al-Dawlîyah*, June 8, 2010, p. 6).
15. *al-Ahrâm*, June 1, 2010, p. 3.
16. *al-Shurûq al-Jadîd*, June 9, 2010, p. 1.
17. *al-Shurûq al-Jadîd*, June 10, 2010, p. 1, p. 3.
18. *al-Ahrâm*, June 8, 2010, p. 9.
19. *al-Shurûq al-Jadîd*, June 9, 2010, p. 1.
20. *al-Dustûr*, June 8, 2010, p. 5; *al-Ahrâm*, June 10, 2010, p. 3 (substituting non-Muslim "citizens" [*ahl al-dhimmah*] for People of the Book [*ahl al-kitāb*]).
21. *al-Anbâ' al-Dawlîyah*, June 8, 2010, p. 6 (where "People of Remembrance" are identified as Christians).

22. *al-Ahrâm*, June 10, 2010, p. 3.
23. In this case, for example, Coptic Christians would essentially be granted the right to no-fault divorce on grounds other than *zinâ*, along with the parallel right to remarry, as is the case in Islamic law.
24. Sayyid Qutb, *Fî zilâl al-qur'ân*, 6 vols. (Cairo: Dâr al-Shurûq, 1417/1996), 2: 894.
25. *Zilâl*, 2: 894.
26. *Zilâl*, 2: 901. But see also the discussion at 2: 893–894, where he appears to limit the aforementioned exemptions to the early stages of the Prophet's career.
27. *al-Aqallîyât al-dînîyah wa al-hall al-islâmî*, 2nd ed. (Cairo: Maktabat Wahbah, 1420/1999), 15–16. In a footnote following his statement on the punishment for adultery/fornication, al-Qaradâwî notes, "Abû Hanîfa held that non-Muslim 'citizens' were only subject to lashes as a punishment for adultery and that they could not be stoned, as Islam (one's status as a Muslim) constituted a legal prerequisite to being rendered eligible for the most exacting sanctions. This is despite the fact that there is much discussion and wide disagreement among the (pre-modern) jurists over the whole question of applying prescribed punishments to non-Muslim 'citizens.'"
28. "This book is an attempt to clarify and support the necessary but difficult mediation of the paradox of institutional separation of Islam and the state, despite the unavoidable connection between Islam and politics in present Islamic societies" (an-Na'îm 2008, 6).
29. Emphasis added.
30. Emphasis added.
31. At least it was at the time this article was written, i.e., before the January 25, 2011, revolution. Whether Egypt will remain a secular state over the coming years remains to be seen.
32. While Shari`ah's forming the basis of a nation-state could lead to problems of forfeiture, my point here is that it is not so much the substance of Shari`ah that raises this problem but the actual dictates of legal monism. In other words, *any* legal regime applied uniformly across the board will raise such problems. In fact, given its explicit allowances to non-Muslims on various issues, Shari`ah would actually seem to raise the least problems.
33. It is interesting that, while an almost preconscious reaction to the notion of legal pluralism in many circles is simply to scoff at it as wildly untenable, just a century ago this is exactly what the West was demanding of and imposing on Muslims in the form of the Ottoman capitulations.

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