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Revisiting the Legacy of Islamic Legal Scholarship: The Influence of Sharia on Contemporary Legal Systems

Salman Faris TC

Busthanul Uloom Arabic College, Kannur, Kerala, India; salmanfarisklml@gmail.com



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Abstract. This paper explores the enduring legacy of Islamic legal scholarship and its profound impact on the development of legal systems, with a particular focus on Sharia. Beginning with an introduction, the study navigates through the historical roots of Islamic legal thought, unraveling its evolution in the early centuries of Islam. It examines the establishment of the four major Sunni schools of thought and the Shiite Ja'fari school, marking pivotal milestones in the codification of Islamic jurisprudence. A critical analysis of the key principles of Sharia forms a central part of the exploration. The study elucidates the dynamic nature of Sharia, which extends beyond a mere legal code to encompass a comprehensive ethical framework governing personal conduct, family matters, commerce, and criminal justice. The five maqasid al-Sharia, or objectives of Sharia, namely preservation of life, religion, intellect, progeny, and property, provide a robust ethical foundation for legal rulings. The paper also delves into the contributions of Islamic legal scholars to legal theory,

emphasizing concepts such as 'ijtihad,' 'qiyas,' and 'istislah.' These principles have facilitated the adaptability of Sharia, allowing for independent reasoning and analogical deduction in response to evolving societal needs. Furthermore, the influence of Islamic legal principles on legal systems globally is examined, highlighting the integration of Sharia into the Ottoman legal system and its impact on legal traditions in the Middle East and beyond. The study concludes by exploring the contemporary relevance of Islamic legal scholarship. It reveals that Islamic legal principles continue to inform legal debates and policymaking, particularly in Muslim-majority countries striving to reconcile traditional Sharia principles with modern legal norms. The principles of fairness, justice, and equity found in Sharia have transcended borders, contributing significantly to the global discourse on human rights and legal pluralism.

Keywords: Islamic legal scholarship, Sharia, legal systems, historical roots, contemporary relevance.

INTRODUCTION

Islamic legal scholarship stands as an enduring testament to the rich tapestry of intellectual and moral traditions that have shaped the legal landscapes of Muslim-majority countries and transcended geographical boundaries. Rooted in the sacred texts of Islam, the Quran and Hadith, this jurisprudential tradition has woven a complex and dynamic framework known as Sharia, which has left an indelible mark on the development of legal systems throughout history. As we delve into the multifaceted nature of Sharia, we unravel not just a set of legal doctrines but a profound synthesis of divine guidance and human reason, offering a unique blend of adaptability and relevance that spans diverse historical and cultural contexts.

The Quran, considered by Muslims as the literal word of God, and the Hadith, which encapsulates the sayings and actions of the Prophet Muhammad, form the foundational pillars upon which Islamic legal scholarship rests. From the early days of Islam, scholars engaged in the rigorous study of these primary sources, seeking to derive legal principles that would govern the lives of individuals and communities. This intellectual endeavor led to the emergence of the four major Sunni schools of thought - Hanafi, Maliki, Shafi'i, and Hanbali - each offering a nuanced interpretation of Islamic law and contributing to the rich mosaic of Islamic legal diversity. Concurrently, the Shiite Ja'fari school, with its own distinct jurisprudential approach, added further depth to the discourse.

What sets Islamic legal scholarship apart is its recognition of the dual nature of Sharia, encapsulating both divine revelation and human reasoning. The fusion of the immutable principles found in the Quran and Hadith with the dynamic process of ijtihad, or independent reasoning, has allowed for an adaptive and evolving legal framework. The maqasid al-Sharia, or objectives of Sharia, further exemplify this adaptability by providing overarching ethical goals—preservation of life, religion,

intellect, progeny, and property—that guide legal rulings while accommodating the evolving needs of society.

The evolution of Islamic legal thought, however, transcends mere doctrinal development; it extends to the practical application of these principles in diverse historical and cultural contexts. The expansive reach of the Islamic civilization, from the golden age of the Abbasid Caliphate to the Ottoman Empire, witnessed the integration of Sharia into legal codes governing matters as varied as family law, commerce, and criminal justice. This historical trajectory showcases not only the adaptability of Islamic legal principles but also their capacity to coexist with and influence a spectrum of legal traditions.

Islamic law, at its core, is fundamentally designed to safeguard the core values of the faith, with a primary emphasis on the worship of one God. However, it extends far beyond this spiritual dimension by focusing equally on establishing justice in the daily lives of individuals. This pursuit of justice encompasses key areas of human existence: the protection of life, religion, property, intellect, and family¹. Islamic legal theory, although recognized as an independent field of study, relies heavily on a diverse range of academic disciplines to provide its foundations. These disciplines include, but are not limited to, scholastic theology, Aristotelian logic, the classical sciences of the Quran and Sunnah, and a deep understanding of the Arabic language.²

In the contemporary era, the legacy of Islamic legal scholarship continues to reverberate globally. Muslim-majority countries grapple with the dual challenge of preserving cultural authenticity and meeting the demands of the modern world. Moreover, the principles embedded in Sharia—fairness, justice, and equity—have permeated the global discourse on human rights, legal pluralism, and ethical governance. The relevance of Islamic legal scholarship extends beyond the boundaries of faith, contributing valuable insights to the broader discussions surrounding the intersection of law, ethics, and societal norms.

The journey into the heart of Islamic legal scholarship is an expedition through time and space, traversing the corridors of medieval Islamic courts, engaging with the intellectual prowess of renowned jurists, and delving into the philosophical underpinnings that have shaped legal thought. Through this odyssey, we seek to unravel the intricate interplay between divine revelation and human reason that has given rise to a legal system with enduring relevance and global resonance.

This paper, therefore, endeavors to scrutinize the historical roots of Islamic legal scholarship, unravel the key principles embedded in Sharia, and assess its contemporary relevance. By delving into the historical evolution and theoretical

¹ MOHAMMAD HASHIM KAMALI, *SHARI'AH LAW* 2-3 (Oneworld Publications 2008)

² FURHAN ZUBAIRI, *INTRODUCTION TO USUL AL-FIQH* 4-5 (Institute of Knowledge 2019).

foundations of Sharia, we aim to illuminate the pathways through which this rich legal tradition has left an indelible mark on legal systems worldwide. The multifaceted nature of Sharia, rooted in the Quran and Hadith, emerges as a beacon guiding our exploration into the legacy of Islamic legal scholarship, inviting us to navigate the intricate interplay of divine and human elements that have shaped legal frameworks and continue to resonate in the ongoing evolution of global jurisprudence.

Unveiling the Historical Roots of Islamic Legal Thought

The rich tapestry of Islamic legal thought, woven with threads of divine revelation and human intellect, finds its origins in the earliest centuries of Islam. A journey through the annals of history unveils the profound efforts of jurists who, in their quest for legal wisdom, meticulously gleaned principles from the sacred texts—the Quran and the Hadith, the sayings and actions of the Prophet Muhammad. This exploration of historical roots takes us back to a transformative era where the foundations of Islamic jurisprudence were laid, culminating in the establishment of the four major Sunni schools of thought—Hanafi, Maliki, Shafi'i, and Hanbali—alongside the Shiite Ja'fari school. These institutions marked a significant milestone, not only in the codification of Islamic jurisprudence but in the very essence of how Islamic law would come to shape societies over centuries.

The genesis of Islamic legal thought finds its roots in the vibrant atmosphere of early Islamic civilization. In the aftermath of the Prophet Muhammad's demise in 632 CE, the nascent Muslim community faced the pressing need to establish a system of governance and justice that would reflect the teachings of Islam. It was during this critical juncture that jurists, known as 'fuqaha,' emerged as guardians of the nascent legal tradition, grappling with the task of interpreting and applying the divine guidance encapsulated in the Quran and Hadith.

The seminal contribution of these early jurists lies in their dedication to extracting legal principles from the sacred texts while considering the specific circumstances and contexts in which the Prophet's words and actions were revealed. This interpretative process, known as 'fiqh,' became a dynamic intellectual pursuit aimed at deriving legal rulings that were both rooted in the divine revelation and responsive to the evolving needs of the Muslim community.

Scholastic theology deals with the philosophical inquiry into the origins of moral principles, particularly the differentiation between right and wrong, which is vital for ethical reasoning within the legal framework. Aristotelian logic, another critical element, provides a systematic method of reasoning, facilitating the interpretation and clarification of complex legal texts by examining the precise

meanings of words³. The classical sciences of the Quran and Sunnah form the bedrock of Islamic jurisprudence, ensuring the authenticity of legal traditions through the rigorous examination of the 'chain of narration'⁴, which traces legal and religious teachings back to their divine origin. Additionally, proficiency in the Arabic language, the medium through which these primary texts were revealed, is indispensable, as it allows for accurate comprehension and interpretation of the sacred sources⁵.

In essence, Islamic law operates at the intersection of religion, ethics, philosophy, and linguistics, drawing on a rich intellectual tradition to guide its legal and moral judgments.

In the early years of Islam, as the nascent Muslim community grappled with matters of governance, justice, and ethical conduct, a cadre of jurists emerged. These scholars, imbued with a profound sense of responsibility, sought to unravel the complexities of legal reasoning embedded within the divine revelations. The Quran, believed by Muslims to be the literal word of God, provided the primary source, while the Hadith illuminated the Prophet's actions and sayings, serving as a living embodiment of the Quranic teachings. Jurists engaged in 'fiqh,' the understanding and interpretation of Islamic law, as they endeavored to derive legal rulings that could guide the burgeoning Muslim community.

The crystallization of Islamic legal thought was not a linear process but a dynamic interplay of scholarly debate, intellectual discourse, and contextual adaptation. It was within this crucible of thought that the four Sunni schools of thought emerged, each offering a distinctive interpretation of Islamic law. The Hanafi school, known for its emphasis on reason and analogy, found its stronghold in the vast Muslim lands of the East. Meanwhile, the Maliki school, deeply rooted in the traditions of the people of Medina, flourished in North Africa and parts of the Arabian Peninsula. The Shafi'i school, named after its founder Al-Shafi'i, championed the integration of reasoning and tradition, becoming influential in Egypt and Southeast Asia. The Hanbali school, associated with the teachings of Ahmad ibn Hanbal, advocated for a strict adherence to the literal text of the Quran and Hadith, gaining prominence in parts of Arabia.

Parallel to these Sunni traditions, the Shiite Ja'fari school carved its own niche, deriving its name from the sixth Shiite Imam, Ja'far al-Sadiq. While sharing foundational principles with Sunni jurisprudence, the Ja'fari school adopted a distinctive approach, reflecting the theological and doctrinal differences inherent in Shiite Islam.

³ Id. at 5.

⁴ See *infra* 8

⁵ ZUBAIRI, *supra* note 3, at 5.

The codification of these schools represented not only a triumph of intellectual achievement but also a testament to the diversity of thought within Islam. The jurisprudential landscape thus became a vibrant mosaic, with each school contributing to the broader understanding of Islamic law while accommodating the cultural and regional nuances of the diverse Muslim world.

Key Principles of Sharia

The term "fiqh" in Arabic, commonly translated as "Islamic law," carries a broader meaning. In its literal sense, fiqh refers to "understanding" or "comprehension." However, its more precise and technical definition is "the knowledge of practical legal rulings derived from detailed evidences⁶." While the term "shari'ah" is frequently used to refer to Islamic law, this usage can be misleading. Shari'ah encompasses a much broader scope, including both spiritual beliefs and actions as revealed by God through the Quran and Sunnah. Fiqh, on the other hand, specifically refers to the interpretation and derivation of these legal rulings by scholars and legal experts⁷. Usul al-fiqh, meaning "the foundations of jurisprudence," is the science that establishes the principles and methodologies upon which fiqh is based⁸. In essence, shari'ah represents the comprehensive framework of religious principles as revealed by God, fiqh is the body of legal rules understood and applied by scholars, and usul al-fiqh is the theoretical foundation underpinning the legal system.

Sharia, the Islamic legal framework, is a subject that has sparked a myriad of debates and misconceptions, often stemming from a lack of nuanced understanding. Often portrayed as an austere and archaic system, it is, in fact, a dynamic and comprehensive ethical framework that extends far beyond the realms of mere legal doctrines. To truly appreciate the richness and depth of Sharia, it is imperative to dispel the myths and delve into the key principles that underpin this multifaceted system.

At its core, Sharia is not a static or monolithic legal code but rather an evolving and adaptable framework that addresses the complex interplay between divine guidance and human affairs. It goes far beyond the narrow confines of legal regulations, permeating various aspects of individual and collective life, including personal conduct, familial relations, economic transactions, and the administration of justice.

Contrary to popular belief, Sharia is not a one-size-fits-all legal system; rather, it exhibits a remarkable flexibility that accommodates diverse cultural contexts and

⁶ Id. at 2.

⁷ Id. at 3.

⁸ Id.

historical epochs. This dynamism is rooted in the Islamic jurisprudential tradition, which recognizes the evolving needs of society and provides mechanisms for interpretation and adaptation.

Central to the ethical foundation of Sharia is the profound and meticulously articulated framework known as the *maqasid al-Sharia*, a set of objectives that have been the subject of scholarly discourse and refinement over centuries within the Islamic legal tradition. These objectives, serving as the cornerstone of Islamic jurisprudence, encapsulate the essence of Sharia by providing a comprehensive guide for understanding its overarching purposes and ethical imperatives.

Islamic law is rooted in two primary sources: the Quran and the Sunnah. The Quran is regarded as the divine speech of Allah, revealed to the Prophet Muhammad (peace and blessings be upon him)⁹. The Sunnah refers to the sayings, actions, and tacit approvals of the Prophet Muhammad (pbuh), serving as a crucial source of guidance alongside the Quran. Allah, the term for God in Islamic monotheism, signifies the one and only deity, while Muhammad (pbuh)¹⁰ is considered the final prophet and messenger sent by Allah to guide humanity. This connection between divine revelation and the Prophet's role is illustrated in the Quran¹¹, where Allah commands, "O Messenger, convey everything revealed to you from your Lord. If you do not, then you have not delivered His message¹²." This verse underscores the Prophet's role as the ultimate conveyor of divine guidance.

The first and foremost objective within the *maqasid al-Sharia* is the preservation of life. This principle underscores the inherent sanctity of human existence, emphasizing the imperative to protect and uphold the well-being of individuals. Beyond the immediate prohibition of violence, this objective extends to safeguarding broader societal welfare, urging a legal system to actively contribute to the safety, health, and security of its citizens. In the pursuit of this objective, Sharia fosters an environment that values and cherishes life, promoting the idea that every individual has an intrinsic right to live free from harm.

The second objective revolves around the preservation of religion. At its core, Sharia recognizes the significance of religious identity and expression, advocating for the protection of individual freedoms in matters of faith. By ensuring the freedom to practice one's religion without fear of persecution, this objective fosters an atmosphere of religious tolerance and diversity within Muslim-majority societies. It reflects the broader Islamic ethos that acknowledges the diversity of belief systems

⁹ FURHAN ZUBAIRI, INTRODUCTION TO THE SCIENCES OF THE QURAN XVII (Institute of Knowledge 2017).

¹⁰ ZUBAIRI, *supra* note 3, at 53.

¹¹ Quran 5:67.

¹² MUSTAFA KHATTAB, THE CLEAR QURAN: A THEMATIC ENGLISH TRANSLATION 64 (Abu-Eesa Webb, Aaron Wannamaker & Hisham Sharif eds., Book of Signs Foundation 2016).

and seeks to establish a social order that respects the individual's right to choose and adhere to their faith.

Intellect, as the third objective, underscores the importance of nurturing intellectual pursuits and preserving rational faculties. In promoting education and intellectual development, Sharia encourages societies to strive for knowledge and wisdom. This objective acknowledges the pivotal role that an enlightened citizenry plays in the progress and well-being of a community. By valuing intellectual endeavors, Sharia promotes a culture of critical thinking and continuous learning, aligning with the broader Islamic tradition that emphasizes the pursuit of knowledge as a means to attain spiritual and societal advancement.

The fourth objective centers on the preservation of progeny, highlighting the pivotal role of family structures in societal well-being. Sharia recognizes the family as the fundamental unit of society, and its principles aim to safeguard the rights and well-being of individuals within the family unit. This includes protections for marriage, parenting, and inheritance, all of which contribute to the stability and cohesion of the broader social fabric. By prioritizing the welfare of the family, Sharia seeks to establish a resilient and interconnected community that values the bonds between its members.

The final objective, the preservation of property, acknowledges the economic dimension of human existence. This principle governs commerce and finance within the framework of Sharia, aiming to establish an equitable and just economic system. By discouraging exploitation and ensuring fair distribution of wealth, Sharia seeks to alleviate economic disparities and foster an environment of economic justice. This objective aligns with the broader Islamic principles of social responsibility and economic ethics, emphasizing the ethical conduct of individuals and institutions in financial matters.

Collectively, these five objectives form an interwoven tapestry that constitutes the bedrock upon which Sharia principles are constructed. The *maqasid al-Sharia* offer a holistic vision, guiding the development and application of Islamic law by providing a framework that considers the multifaceted aspects of human life. This interconnected vision reflects the adaptability and relevance of Sharia across diverse cultures and historical contexts, illustrating its capacity to address contemporary challenges while upholding its ethical foundations. As Islamic scholars continue to engage with and interpret the *maqasid al-Sharia*, this enduring framework serves as a source of inspiration and guidance for those seeking to understand the ethical imperatives that underlie Islamic jurisprudence.

Contributions to Legal Theory

Islamic legal scholars have left an indelible mark on the realm of legal theory, ushering in a wealth of innovative concepts that have not only defined the contours of Sharia but have also shaped legal thought across diverse societies. Among the myriad contributions, three pillars stand out prominently: 'ijtihad' (independent reasoning), 'qiyas' (analogical reasoning), and 'istislah' (public interest). These principles collectively represent a dynamic approach to legal interpretation, fostering adaptability and responsiveness to the evolving needs of society.

'Ijtihad,' a term rooted in the Arabic verb 'jahada,' reflecting the idea of striving or exerting effort, stands as a cornerstone within Islamic legal theory. This concept encapsulates the intricate process of independent legal reasoning, a nuanced intellectual endeavor undertaken by qualified jurists to deduce legal rulings when explicit guidance is absent in the Quran or Hadith. The historical trajectory of 'ijtihad' is woven into the fabric of Islamic jurisprudence, serving as a testament to its adaptability and the intellectual depth it has brought to the interpretation and application of Islamic law.

The advent of 'ijtihad' can be traced back to the early centuries of Islam when the Muslim community encountered novel socio-political challenges that necessitated legal responses. During this formative period, the foundational Sunni schools of thought, including the Hanafi school led by Imam Abu Hanifa and the Maliki school founded by Imam Malik, emerged as bastions of legal scholarship. These eminent scholars recognized the imperative to navigate uncharted legal terrain and, in response, championed the concept of 'ijtihad.'

Imam Abu Hanifa, a towering figure in Islamic legal history, was a staunch advocate for the application of reason in legal interpretation. His approach to 'ijtihad' emphasized the idea that reason, when guided by a deep understanding of the Quran and Hadith, could unveil the underlying principles of Islamic law. This philosophical stance laid the groundwork for the Hanafi school, which became synonymous with a more liberal interpretation of Islamic legal texts.

Similarly, Imam Malik, the founder of the Maliki school, contributed significantly to the development of 'ijtihad.' His emphasis on local customs and practices as valid sources of legal reasoning showcased the pragmatic nature of 'ijtihad,' allowing for a more contextually relevant application of Islamic law. This regional adaptability resonated strongly with the diverse cultural landscapes within the Muslim world. As the Islamic civilization expanded, so did the discourse on 'ijtihad.' Scholars from various schools of thought continued to refine and elaborate on the principles governing independent reasoning. The rationalist tradition within Islamic legal scholarship, exemplified by luminaries like Ibn Rushd (Averroes), further underscored the compatibility of reason and revelation.

The historical significance of 'ijtihad' also found expression during the Abbasid Caliphate, particularly under the reign of Caliph Harun al-Rashid and his successors. The House of Wisdom in Baghdad became a center of intellectual inquiry, fostering an environment where scholars engaged in 'ijtihad' to address emerging socio-political challenges. This era witnessed a flourishing of legal literature, with scholars contributing treatises and commentaries that further enriched the concept of independent reasoning. The legacy of 'ijtihad' persisted through subsequent centuries, witnessing its ebb and flow in response to political and intellectual shifts within the Islamic world. However, with the decline of the Ottoman Empire and the advent of colonialism, 'ijtihad' experienced a relative decline in practice, giving way to more conservative approaches to Islamic law.

'Qiyas,' or analogical reasoning, is another cornerstone of Islamic legal theory. This concept permits jurists to extend legal principles from known cases to address novel situations not explicitly covered by primary sources. As a logical extension of established legal norms, 'qiyas' ensures consistency in legal rulings and provides a mechanism for addressing contemporary challenges. The application of 'qiyas' requires a deep understanding of the underlying principles of Sharia, emphasizing the balance between adherence to tradition and responsiveness to evolving societal contexts.

As Hallaq points out, in situations where Islam did not confront established practices, the Prophet often recognized and incorporated pre-Islamic customs. His acceptance of these customs indicates a connection to the accepted 'urf. Although custom wasn't formally recognized as a source of law, it was still informally utilized. As previously mentioned, the Malīkīs viewed the customs of Medina as reflective of a consensus in a society where un-Islamic behaviors would not have been tolerated or passed down through generations. Similarly, 'Abū Yūsuf (d. 182/798), an early leader of the Ḥanafī school, was inclined to see custom ('urf) not as a formal source but as part of the sunna, which he believed was grounded in both custom and the practices of the Prophet¹³.

'Istislah,' often translated as public interest or welfare, reflects the ethical dimension of Islamic legal thought. This principle acknowledges that the objectives of Sharia include the well-being of society, and jurists may consider the broader context and public welfare when formulating legal judgments. 'Istislah' acts as a guiding principle, allowing for the prioritization of the greater good, societal harmony, and the preservation of public welfare. This concept injects a sense of

¹³ Libson, G.; Stewart, F.H. "'Urf." *Encyclopaedia of Islam*. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 06 August 2008 http://www.brillonline.nl/subscriber/entry?entry=islam_COM-1298

pragmatism into legal reasoning, enabling jurists to navigate complex situations with a view to maximizing societal benefit.

The historical evolution of these principles is intertwined with the intellectual ferment that characterized Islamic civilization. During the golden age of Islam, the House of Wisdom in Baghdad became a focal point for scholars engaged in 'ijtihad,' 'qiyas,' and 'istislah.' The vibrant exchange of ideas during this period laid the groundwork for legal treatises and commentaries that enriched these concepts, contributing to the intellectual legacy of Islamic legal thought.

The preference for one legal ruling over another sparked considerable debate among jurists. For instance, Al-Shāfi'ī dedicated a chapter in his treatise, *al-Risāla*, to challenging this method of legal reasoning, viewing it as merely a reflection of personal preference. In contrast, other jurists concurred that istiḥsān represents a "preferred form of legal argument grounded in qiyās," where a specific piece of textual evidence leads to a conclusion that diverges from what would have been derived through qiyās alone¹⁴.

Istishāb is defined as "the principle by which a judicial situation that previously existed is deemed to continue until there is evidence proving that it has ended or changed¹⁵." While it may not be regarded strictly as a tool of legal reasoning¹⁶, grasping the concept is crucial due to its frequent application by jurists in particular cases. This principle enables jurists to assume that a missing person is still alive despite their disappearance, thereby preventing the spouse from remarrying and denying beneficiaries their inheritance rights¹⁷.

In the contemporary context, the principles of 'ijtihad,' 'qiyas,' and 'istislah' continue to be relevant. Muslim-majority countries grapple with the challenge of harmonizing tradition with modernity, and these principles offer a theoretical framework for addressing complex legal issues. Moreover, as societies become more interconnected, the ethical considerations embedded in these principles contribute to the global discourse on human rights and legal pluralism. The contributions of Islamic legal scholars to legal theory through 'ijtihad,' 'qiyas,' and 'istislah' have been transformative. These principles not only allowed for the flexibility of Sharia but also emphasized the intellectual depth and ethical considerations within Islamic legal thought. As the world navigates an ever-changing legal landscape, the legacy of these concepts provides a resilient framework for addressing contemporary

¹⁴ Hallaq, Wael, A History of Islamic Legal Theories, p. 108.

¹⁵ Linant de Bellefonds, Y. "Istiḥāb." Encyclopaedia of Islam. Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs. Brill, 2008. Brill Online. S.O.A.S (soas). 07 August 2008 http://www.brillonline.nl/subscriber/entry?entry=islam_SIM-3692.

¹⁶ Hallaq, Wael, A History of Islamic Legal Theories, p. 113.

¹⁷ Linant de Bellefonds, Y. "Istiḥāb."

challenges while staying true to the foundational principles of justice, equity, and societal welfare.

Influence on Legal Systems

The profound impact of Islamic legal scholarship on legal systems transcends the geographical boundaries of the Muslim world, charting a historical journey that weaves through the annals of time. This influence, marked by a tapestry of key events and compelling examples, underscores the enduring legacy of Islamic legal principles in shaping legal traditions across the globe. The intersection of faith and jurisprudence, manifest in the intricate doctrines of Sharia, has not only been a guiding force within Muslim-majority countries but has also left an indelible mark on legal landscapes far beyond the confines of the Islamic world.

The historical journey of this influence is a testament to the dynamism and adaptability of Islamic legal scholarship. From the early centuries of Islam, when jurists sought to derive legal rulings from the Quran and the traditions of the Prophet Muhammad, to the present day, where the echoes of Islamic legal principles resonate in diverse legal systems, the trajectory of this impact is both intricate and far-reaching.

During the reign of the Ottoman Empire (1299-1922), a period spanning over six centuries, the Ottoman legal system underwent a significant transformation under the guidance of Islamic legal principles. The Ottomans, recognizing the efficacy and ethical foundations of Sharia, sought to integrate it into their civil and criminal codes. This integration was not merely a symbolic gesture; it represented a fundamental incorporation of Islamic jurisprudence into the legal fabric of one of the most influential empires in history.

The Ottoman legal system drew inspiration from the four major Sunni schools of thought—Hanafi, Maliki, Shafi'i, and Hanbali—resulting in a synthesis that harmonized the principles of Sharia with the administrative and governance needs of a vast and diverse empire. This integration of Islamic legal thought into the Ottoman legal codes laid the groundwork for a legal system that blended divine guidance with pragmatic governance.

Qanun can be loosely translated as "code of law." It includes statutes that outline crimes and punishments, generally independent of the substantive, procedural, and evidentiary rules of fiqh. Although qanuns were issued by rulers during Mamluk, Abbasid, and even Umayyad periods, scholars like Schacht and Coulson note that the Ottomans were particularly prolific in producing this type of law¹⁸. Their research only briefly addresses Ottoman qanuns, as qanuns are primarily considered part of *siyasa* rather than *shari'a*.

¹⁸ See generally SCHACHT, *supra* note 5, at 84, 87, 90-91; COULSON, *supra* note 6, at 173

A closer examination of certain characteristics of qanun reveals its compatibility with shari'a. For instance, a qanun was only valid during the reign of the Sultan who enacted it. In practice, however, each new sultan typically reaffirmed the qanuns established by their predecessors, as these laws often served to formalize existing customs¹⁹. Heyd argues that qanuns were essentially intended to codify customary law, or 'urf, deriving their legitimacy from the fact that 'urf is binding under fiqh. Many qanuns began with a preamble that highlights this connection through maxims such as "Custom is legal text, Custom is one of the shar'ia proofs in matters where there is no written authority, What the believers consider right is right with God" and notably, "What is proper according to common usage is like what is legal according to holy law²⁰."

Furthermore, the Ottoman legal system showcased a commitment to justice and fairness, principles deeply rooted in Sharia. Legal decisions were often guided by ethical considerations and a sense of equity, reflecting the broader Islamic legal ethos. The Qadis, or Islamic judges, played a crucial role in implementing and interpreting the law, ensuring that justice was administered in accordance with both divine and human principles.

The influence of Islamic legal principles transcended the Ottoman Empire's borders, permeating into legal traditions across the Middle East and beyond. The spread of Islamic legal thought was not confined to Muslim-majority regions; rather, it traversed cultural and linguistic boundaries, leaving an indelible mark on diverse legal systems.

In the annals of South Asian history, the Mughal Empire stands as a testament to the rich tapestry of Islamic legal thought that permeated the formulation of its legal codes. This empire, which spanned the Indian subcontinent from the early 16th to the mid-19th century, drew upon the profound reservoirs of Islamic jurisprudence to construct a legal framework that would govern its vast and diverse population. Among the enduring legacies of this integration is the Fatawa-e-Alamgiri, a compilation of legal opinions and judgments commissioned by the sixth Mughal Emperor, Aurangzeb. This monumental work reflects the synthesis of Islamic legal principles into the very fabric of governance, underscoring the depth to which Sharia influenced the legal landscape of the Mughal Empire.

The Fatawa-e-Alamgiri, completed in 17th-century India, stands as a testament to the comprehensive nature of Islamic legal scholarship that was woven into the administrative fabric of the Mughal state. Commissioned by Emperor Aurangzeb, this compilation of legal opinions was aimed at consolidating and codifying the diverse legal traditions prevalent in the empire. The Fatawa-e-Alamgiri

¹⁹ HEYD, *supra* note 59, at 172.

²⁰ *Id.*

encompasses a wide range of topics, including criminal law, family law, and administrative law, showcasing the adaptability of Islamic jurisprudence to the intricacies of governing a multicultural and multireligious society.

Even in regions where Islam was a minority religion, the influence of Islamic legal principles persisted, leaving an indelible mark on local legal traditions. In the sprawling archipelago of Southeast Asia, where Islam coexisted with a mosaic of indigenous legal systems, the principles of justice, equity, and legal reasoning derived from Islamic jurisprudence became integral to the broader legal discourse. The maritime trade routes facilitated not only the exchange of goods but also the transmission of legal ideas, leading to a convergence of Islamic legal thought with local customary laws in places like Indonesia and Malaysia. This synthesis shaped the legal systems of the region, providing a unique blend that reflected the pluralistic nature of Southeast Asian societies.

As the wheel of time turned and ushered in the modern era, the echoes of historical Islamic legal influence continue to resonate across the globe. Nations with significant Muslim populations find themselves at the crossroads of tradition and modernity, grappling with the intricate challenge of harmonizing traditional Islamic legal principles with the imperatives of contemporary legal norms. The ongoing debates surrounding family law, personal status, and ethical considerations in legal systems across the world bear witness to the enduring legacy of Islamic legal scholarship. Whether in the courts of Cairo or the legislative chambers of Islamabad, the principles enshrined in Islamic jurisprudence remain relevant and guide discussions on matters of profound societal importance.

Contemporary Relevance

Islamic legal principles stand as an enduring thread, weaving through legal debates and policymaking in numerous Muslim-majority countries. The challenge of reconciling traditional Sharia principles with the exigencies of modern legal norms has become a focal point, reflecting the dynamic tension between cultural authenticity and the evolving demands of a globalized world.

In many Muslim-majority countries, the process of harmonizing Sharia with modern legal norms is a nuanced endeavor. This intricate dance between tradition and modernity is evident in attempts to integrate Islamic legal principles into constitutional frameworks and national legal systems. Nations such as Indonesia, Turkey, and Malaysia, among others, have grappled with the task of balancing their rich Islamic heritage with the need for legal structures that resonate with the complexities of contemporary governance.

The principles of fairness, justice, and equity inherent in Sharia have transcended national boundaries to contribute significantly to the global discourse

on human rights and legal pluralism. The universality of these principles has led to their incorporation in international legal frameworks and discussions. Concepts such as social justice, due process, and protection of human dignity, deeply rooted in Sharia, have become touchstones in the broader conversation on fundamental human rights.

In the realm of human rights, the principles of Sharia have offered valuable insights and perspectives. Critics argue that some interpretations of Islamic law are inconsistent with modern human rights standards. However, proponents contend that within the broader framework of Sharia, there exists a foundation for fostering human rights, ensuring dignity, and promoting social justice. This ongoing dialogue seeks to reconcile divergent viewpoints and find common ground, fostering a more inclusive and culturally sensitive approach to human rights. Legal pluralism, another facet of contemporary relevance, acknowledges the coexistence of different legal systems within a society. In many cases, Islamic legal principles coexist with secular legal systems, contributing to a rich legal tapestry that reflects the diverse cultural and religious backgrounds of communities. This coexistence allows for the accommodation of various legal traditions within a single jurisdiction, fostering a more inclusive and tolerant legal environment.

The "traditional" nature of "Islamic law," adapting its doctrines to the needs of a "modern" society proved impossible. Shari'a, by its very definition, was often at odds with what Coulson referred to as "modern ideas of government" (interpreted as liberal legality). In light of the urgent need to reform the legal system and address the challenges facing the Ottoman Empire, rulers opted to abolish "Islamic law" entirely, replacing it with Western legal frameworks and judicial systems.

The initial reform efforts began under Sultan Mahmud II (1808-1839), which Schacht noted inevitably led to conflicts with shari'a²¹. These reforms intensified under Mahmud's successor, Sultan Abdul-Mejid (1839-1861), who issued the Gailhane Edict in 1839. This marked the first use of the term "citizens" to uniformly refer to both Muslim and non-Muslim subjects of the empire, merging liberal concepts of governance with a burgeoning sense of nationalist identity. This was followed by a series of codes that paved the way for the large-scale adoption of various European laws during the Tanzimat reforms of 1839-1876. The numerous differences between an immutable shari'a, which is ill-suited for modern needs, and the Western legal systems introduced to Egypt (and the Ottoman Empire more broadly) from the early nineteenth century onward can be summarized through the binary of tradition versus modernity:

²¹ SCHACHT, *supra* note 5, at 92.

Tradition	Modernity
Shari'a	Western Law
Islamic	Secular
Influential	Evolving
Societic approach	Nation State
Qadi Courts	Local Courts
Four Mazhabs	Single Code
Systematized Law	Calculable Private Law

Furthermore, the role of Islamic legal principles in shaping alternative dispute resolution mechanisms cannot be overlooked. Many Muslim-majority countries incorporate Sharia-compliant arbitration and mediation processes, providing a space for individuals to resolve disputes in accordance with their religious beliefs. This not only enhances access to justice but also underscores the adaptability of Islamic legal principles to contemporary legal challenges. The contemporary relevance of Islamic legal principles is a testament to the enduring nature of Sharia's impact on legal thought and practice. As the world navigates an era of increased interconnectivity, the insights gleaned from the harmonization efforts in Muslim-majority countries and the contributions to global human rights and legal pluralism underscore the richness and adaptability of Islamic legal scholarship. The ongoing dialogue between tradition and modernity serves as a beacon, guiding legal systems towards a more inclusive and culturally sensitive future.

Decolonization and the rise of "Development" as an academic discipline, rooted in "Modernization Theory" during the 1950s, positioned traditional "Islamic law" as a historical obstacle that Islamic societies, particularly Egypt, needed to overcome to modernize in a Western context²². This perspective is evident in foundational works such as Daniel Lerner's influential study on modernizing the Middle East²³, Farhat Ziadeh's exploration of Egyptian lawyers advocating for liberal legal reforms²⁴, and Donald Reid's analysis of the role of lawyers in Arab politics as

²² For an excellent summary of modernization theory, its Weberian origins and its view of a one-size fits-all Western ideal for development, see Chantal Thomas, Max Weber, Talcott Parsons and the Sociology of legal Reform: A Reassessment with Implications for law and Development, 15 MINN. J. INT'L L. 383 (2006); for a discussion of the impact of modernization theory on Middle East area studies in U.S. academia, see ZACHARY LOCKMAN, CONTENDING VISIONS OF THE MIDDLE EAST 133-40 (2004).

²³ DANIEL LERNER, THE PASSING OF TRADITIONAL SOCIETY: MODERNIZING THE MIDDLE EAST (1958).

²⁴ FARHAT J. ZIADEH, LAWYERS, THE RULE OF LAW, AND LIBERALISM AND THE RULE OF LAW IN MODERN EGYPT (1968).

they sought to promote secularism as essential for material progress²⁵. In these texts and others²⁶, the reform or replacement of Islamic law with Western liberal legal frameworks is viewed as a crucial prerequisite for successful economic and social development initiatives.

In today's post-9/11 world, understanding "Islamic law" is deeply intertwined with various forms of political power and civil governance. This connection is evident in the Bush administration's efforts to win the hearts and minds of Muslims, as well as the ongoing concerns within Western human rights discourse about violations of universal international law by governments in Nigeria, Saudi Arabia, and Iran that enforce "Islamic law"²⁷.

CONCLUSION

In tracing the Legacy of Islamic legal scholarship, our journey has unveiled the intricate tapestry woven by Sharia in the development of legal systems. Beginning with an Introduction, we explored the profound Historical Roots of Islamic Legal Thought, where early jurists sought wisdom from the Quran and Hadith. The Key Principles of Sharia provided a foundation, embracing ethical ideals and objectives that transcended time and place.

Contributions to Legal Theory showcased the brilliance of Islamic scholars, introducing concepts such as 'ijtihad' and 'qiyas' that exemplified the adaptability of Sharia. As the Influence on Legal Systems spread beyond the Muslim world, with the Ottoman legal system being a notable example, the legacy of Islamic legal thought became a global phenomenon. In our exploration of Contemporary Relevance, we witnessed the ongoing struggle in Muslim-majority countries to harmonize traditional Sharia principles with modern legal norms. Additionally, the principles of fairness, justice, and equity found in Sharia have reverberated globally, contributing to the discourse on human rights and legal pluralism. The Legacy of Islamic legal scholarship remains a dynamic force, shaping legal thought and practice with enduring principles. As we navigate the intersection of tradition and modernity, the rich history, key principles, and contemporary relevance of Sharia offer valuable insights for the ongoing evolution of legal systems worldwide.

²⁵ DONALD M. REID, *LA WYERS AND POLITICS IN THE ARAB WORLD, 1880-1960* (1981)

²⁶ See, e.g., *BEGINNINGS OF MODERNIZATION IN THE MIDDLE EAST* (William R. Polk & Richard L. Chambers eds., 1968).

²⁷ For the latest eris de coeur on this issue discussed in lucid terms, see Naz K. Modirzadeh, *Taking Islamic law Seriously, INGOs and the Battle for Muslim Hearts and Minds*, 191 *HARV. HUM. RTS. J.* 192 (2006).

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