
Recovering the Ethical: Practices, Politics, Tradition

Ebrahim Moosa

‘I asked Shaykh Abd-Rabbih al-Ta’ih: “How will the ordeal we are suffering end?”

He answered: “If we come out safe, that’s a mercy: and if we come out doomed, that is justice.”

Naguib Mahfouz,

Echoes of an Autobiography (New York, 1997)

In this chapter I explore the relationship between religion and morality. Mindful that the idea of the shari’a is essential to Muslim tradition, and that this tradition is a guiding factor in Muslim life, I begin with an overview of how the shari’a has been thought about in innovative ways. A contemporary case study illustrates how interpreting the shari’a through a juridical lens can often belie the Qur’anic mandate to respect human dignity. I argue that the shari’a must be properly understood as an ethical paradigm, as it once was.

Muslim jurists in the past were aware of at least two aspects in the pursuit of the ethical. First, they coupled religion with morality. Second, they voiced the need to pursue intellectual creativity and innovation. Contemporary Muslim scholarship in ethics could profit from a deepened conversation around each aspect. Granted, ethics and morals are closely associated with the idea of religion (*din*) in the history of Muslim thought, but the debate about morality in Islam today demands finer distillation, elaboration and application of a comprehensive ethical approach. Explorations in ethical debates would profit from embracing an interdisciplinary stance, with a readiness for fresh thinking.

This approach is evident in the work of many classical philosophers. Contemporary experts in Islamic ethics, especially those who draw on the juristic tradition (*fiqh*), have been inattentive to subtle elements of the medieval canon and thus have also been negligent about innovation. Abu al-Hasan al-Mawardi (974–1058), the understudied Basra-born

jurist and judge (qadi), was a leading voice of the Shafi'i school and a part-time diplomat for the Shi'i Buyid dynasty. In his treatise *Ethics of the World and Religion* (*Adab al-dunya wa al-din*), he shows how morals are tied to the idea of salvation practices, known as *din*.¹ In contemporary times, *din* is often defined as religion, in line with the western understanding of the concept, with its bearing towards beliefs that operate in the private sphere. But *din* in al-Mawardi's understanding could mean a general way of life focusing on participation in the public sphere towards the common good.

Innovative Foundations

In the pre-modern Muslim lexicon, *din* referred to a normative order, the desire to conform to the principles of the community. Norms that inhabited the framework of *din* were derived from existing customs and conventions. Adherence to such principles signalled belonging to a norm-based community: performing these norms meant a commitment to that order. In its primary sense, *din* included those devotional and moral practices that were required for salvation. Similarly, it signified a public discourse of moral behaviour. Further, in 8th-century Arabia, *din* enabled one to think of salvation in a way that had both this-worldly effects and after-worldly consequences. Thus 'religion' here includes the performance of moral practices that serve salvation, and the performance of acts of good in this world.

In addition to al-Mawardi, many classical Muslim philosophers wrote mystical treatises and piety manuals framed as discussions about ethics. They found ways to link mysticism with the category of *din*. In much of the classical literature, the ethical and religious dimensions are viewed as almost inseparable. Many authors who studied Qur'anic and prophetic traditions felt that acting on an ethical and a moral imperative was equal to meeting the requirements of religion itself. Many scholars wrote about how the possession of character and moral habits, known as *khuluq* (pl. *akhlaq*), meant being fully engaged in performing the acts of religion. In other words, the ethical underpins the very idea of religion, and religion sees its primary role as a host for ethical proclamations. A popular aphorism used by Muslims throughout history states that one cannot claim to perform acts of salvation (*din*) if one does not possess ethics (*la din li man la akhlaq lahu*). The

¹ C. Brockelmann, 'al-Mawardi', *EI2*, vol. 6, p. 869.

renowned Hanbali authority Ibn Qayyim al-Jawziyya (1292–1350)² concluded: ‘All of *din* (salvation practices/religion) was about morals.’³

In some ways, debates about religion and morals in medieval Islam are similar to the equally spirited debate in modern times. For Michael Oakeshott, a 20th-century British political theorist, the ‘connection between religion and the moral life’ is an obvious one, provided ‘we could discover it.’⁴ Drawing on the work of John Wood Oman, an early 20th-century philosopher and theologian, Oakeshott notes that religion may be viewed as identical with morality itself, or it may serve as a sanction for morality. He criticises both views as inadequate because they impede the development of moral personality in the ethical subject. Oakeshott sees religion as the completion of morality.⁵ I agree with him and others who argue that moral responsibility requires a relatively high degree of autonomy. Further, it is acquired through the cultivation of personal insight or moral personality. Oakeshott’s argument coincides with that of al-Mawardi, who also argued that religion served the role of completing morals. All of the preceding conversation can be summed up in the words of the famous prophetic tradition, where Muhammad described his mission thus: ‘I was sent to perfect [literally “to complete”, *li utammima*] excellence in morals.’⁶ Furthermore, the Prophet often declared that the best among Muslims were the ones with the purest character/morals.

Al-Mawardi’s creative ethical thinking has an abundance of wisdom for the modern person. In a bold insight, he described his method as one that will ‘weld the verities of the jurists to the subtleties of the litterateurs.’⁷ Certainly, he drew inspiration from the Qur’an and the Sunna, but he did not restrict his enquiry to these sources. He also drew on the parables found in the writings of philosophers and the literary insights found in the work of the rhetoricians and poets. This 11th-century scholar adopted a flamboyant approach as he felt confident addressing ethical concerns that affected salvation both in the present and in the afterlife.

² H. Laoust, ‘Ibn Qayyim al-Djawziyya’, *EI2*, vol. 3, pp. 821–822.

³ Muhammad ibn Abi Bakr Ibn Qayyim al-Jawziyya and Muhammad Hamid Faqii, *Madarij al-salikin* (Beirut, 1973), vol. 2, p. 307.

⁴ M.J. Oakeshott, *Religion, Politics, and the Moral Life*, ed. Timothy Fuller (New Haven, CT, 1993), p. 39.

⁵ *Ibid.*, 42.

⁶ *Al-Muwatta of Imam Malik Ibn Anas, The First Formulation of Islamic Law*, rev. and trans. Aisha Abdurrahman Bewley (Inverness, 2004), Book 47 ‘Good Character’, Hadith no. 8, p. 382.

⁷ ‘Ali ibn Muhammad al-Mawardi, *Adab al-dunya wa-al-din* (Beirut, 1987), p. 3.

But why and how did al-Mawardi forge such a unique, interdisciplinary approach to knowledge? Perhaps he felt that the existing methods and sources used by the jurists were limiting. And, in order to move beyond what he deemed unsatisfactory outcomes, he needed to risk proposing a change in the method of how ethics were conceptualised. Risk, it is said, is the price paid for progress. Restricting oneself to limited sources of learning was unproductive. In al-Mawardi's words, 'The hearts take comfort in multiple disciplines (*funun*), and become bored with a single discipline.'⁸ Literally, *funun* means art forms, but al-Mawardi used it to mean 'multiple disciplines [of art]'. Al-Mawardi extolled the benefits of finding solutions by drawing on multiple intellectual and disciplinary traditions. While others might have viewed the multiplicity of methods and insights as a stain on scholarship, al-Mawardi insisted that it was actually a blessing.

After all, words and their meanings (philology) shape and reveal our understanding of reality. In their multiplicity, words expose a complex pattern of existence. The polymath Ibn Arabi (1165–1240) wrote that spoken words and all other things that exist ('existents' or *mawjudat*) 'are the words of God (*kalimat Allah*)'.⁹ How do existents come to be the words of God? In Ibn Arabi's view, existents become words as a result of 'aural signification' (*al-dalala al-sam'iyya*). Commonly known words, he explains, are composed as a result of a coherent organisation of letters. An external being, God or Providence inspires the coherence of letters that in turn are articulated by a living being. These utterances denote and connote a range of meanings in the form of what we call 'words'.

In asserting the importance of an interdisciplinary stance, al-Mawardi cited the Prophet's cousin, Ali b. Abi Talib, who declared: 'One's feelings [lit. hearts] become wearied, just as bodies become tired. Therefore, enliven the hearts with the most exquisite of wisdom.'¹⁰ Ali's advice encouraged al-Mawardi to adopt a nomadic approach in the pursuit of knowledge. To bolster his approach, al-Mawardi recalled the habit of the Abbasid caliph al-Ma'mun (r. 813–833) who apparently paced about incessantly when thinking about a problem. When asked why he paced, al-Ma'mun was fond of reciting the noted poet Abu al-Atahiyya (748–ca. 825/6): 'One cannot make progress in planning, unless one constantly moves from one position to another.'¹¹

⁸ Ibid.

⁹ Abu Bakr Muhyi al-Din Ibn 'Arabi, in Ahmad Shams al-Din, ed., *al-Futuhat al-Makkiya* (Beirut, 1999), vol. 4, p. 30, Bab 198.

¹⁰ al-Mawardi, *Adab*, pp. 3–4.

¹¹ Ibid.

History, Tradition and Change

Given the authority of the canonical tradition in shaping *fiqh*, commonly translated as Islamic law or the *shari'a*, the very idea of change tends to be seen by 'traditionalists' as unwelcome. This is especially true in view of the power invested in Muslim clerics as the guardians of tradition. Yet the canonical tradition also provides sources in favour of change. Ibn Khaldun (1332–1406) noted that change is inherent to all societies. 'The condition of the world and of nations, their customs and sects, does not persist in the same form or in a constant manner,' he declared. 'There are differences ... and changes from one condition to another. "This is the custom of God already in effect among His servants or among mortals" [Qur'an, 40:85].'¹² Still, lamented Ibn Khaldun, 'Rarely do more than a few individuals become aware of it [change].'¹³

Other Muslim scholars viewed change less positively, fearing it would impinge on the ascetic ideals of Islam's origins. Piety-minded scholars often associated change with the end-times, when good and bad become inverted. The renowned polymath Abu Hamid al-Ghazali (1058–1111) used these tropes to show how degraded society had become in his time, citing remarks made by the Prophet's companions to support his claims. What was once approved or disapproved could, and frequently did, become reversed at other times, leaving society adrift.¹⁴

Ibn Khaldun, or any other sociologist, would agree that change may result in conventions and practices that were once deemed unfavourable becoming transmuted, and thus approved. For al-Ghazali, ethical shifts from the approved to the disapproved (and vice versa) were signs of the end-times. But a different hermeneutic can be applied to the apprehension voiced in this regard by some of the Prophet's companions. The litmus test for change rests on the vigilance of the learned in every era: as long as they were attentive to the truth (*haqq*) and the big picture of what was right, ethical change would not be catastrophic.

The examples which al-Ghazali provided make it clear that these were highly subjective matters, and his choices reflected his later ascetic

¹² 'Abd al-Rahman Ibn Khaldun, Darwish al-Juwaydi, ed., *Muqaddimat Ibn Khaldun* (Beirut, 2000), p. 35; Ibn Khaldun, *The Muqaddimah: An Introduction to History*, trans. Franz Rosenthal (New York and Princeton, 1980), vol. 1, pp. 56–57.

¹³ Ibn Khaldun, *The Muqaddimah*, pp. 56–57.

¹⁴ Abu Hamid Muhammad b. Muhammad al-Ghazali, *Ihya 'ulum al-din* (Beirut, 2001), vol. 1, p. 79.

orientation. Al-Ghazali objected to mosques being constructed of stone and marble, which he said were different from the construction of more modest mosques built during the Prophet's lifetime. Yet he could also have mentioned that, while in the early Muslim community taking a salary for teaching the Qur'an was frowned on, Muslim jurists nevertheless settled on the practice as permissible. Al-Ghazali guarded against introducing heretical beliefs and practices (*bid'a*). He allowed, however, for new and constructive ones: one perpetrated 'heresy (*bid'a*) only in defiance of a transmitted prophetic tradition'.¹⁵ Al-Ghazali argued for understanding the totality of the shari'a in a formula demarcated by the preservation of five things: religion, life, intellect, property and family.¹⁶ This formulaic presentation was new at the time; today it is widely accepted as articulating the ethical aims of Islam.

The Shari'a as Ethical Truth

Since al-Ghazali, other scholars have provided ethical definitions of the essentials of the shari'a. 'The Shari'a is designed in order to internalise the most exemplary character,' wrote Jamal al-Din al-Qasimi, an influential early 20th-century orthodox Muslim thinker.¹⁷ Al-Qasimi's claim resonates with the words of al-Raghib al-Isfahani, a leading 11th-century scholar who wrote: 'The attractions of the shari'a are wisdom, upholding justice among people, self-control, beauty, virtue and to adopt these excellences until you reach paradise in proximity to God the powerful and high.'¹⁸

In the 14th century, scholars in Baghdad debated the place of policy or politics in shari'a governance. In *Paths of Governance*, Ibn Qayyim al-Jawziyya responded to this debate with a nod towards earlier scholars:

The foundation of the shari'a is wisdom and the safeguarding of people's interests in this world and the next. In its entirety it is justice, mercy and wisdom. Every rule that transcends from

¹⁵ Ibid., vol. 2. p. 272.

¹⁶ Abu Hamid Muhammad b. Muhammad al-Ghazali, Muhammad Sulayman al-Ashqar, ed., *al-Mustasfa min 'ilm al-usul*, 2 vols (Beirut, 1997).

¹⁷ Jamal al-Din al-Qasimi, *Tafsir al-Qasimi al-musamma mahasin al-ta'wil*, 20 vols (Cairo, 1957).

¹⁸ Abu al-Qasim al-Husayn ibn Muhammad al-Raghib al-Isfahani, *Kitab al-dhari'a ila makarim al-Shari'a*, ed. Abu al-Yazid Abu Zayd al-'Ajami (Cairo, n.d.), p. 83.

justice to tyranny, mercy to its opposite, the good to evil, and wisdom to triviality does not belong to the shari'a, although it might have been introduced into it by implication. The shari'a is God's justice and mercy amongst His people. Life, nutrition, medicine, light, recuperation and virtue are made possible by it. Every good that exists is derived from it [the shari'a], and every deficiency in being results from its loss and dissipation. For the shari'a, which God entrusted His prophet to transmit, is the pillar of the world and the key to success and happiness in this world and the next.¹⁹

Similarly, Ibn al-Qayyim wrote in *I'lam*:

God sent His Prophets and revealed His books so that people could establish justice ... When the indices of truth are established, when the proofs of reason are decided and become clear by whatever means, then surely that is the Law of God, His religion, His consent and His command. And God the sublime has not restricted the path [methods and sources] of justice and its indices, its signposts in one genus [of methods] to one thing, only to invalidate it in other methods, which are more clear, more explicit and self-evident. In fact, God clarified in terms of the paths that he had ordained that His purpose was to establish truth and justice and to ground people in equity. So by whatever means truth is established and justice is discovered then governance has to follow its obligation and demands. And paths [methods] are causes and means that are not intended on their own, rather the goal are the ends, namely the purposes...²⁰

In this statement, Ibn al-Qayyim demonstrates his solidarity with fellow Hanbali scholar Abu al-Wafa Ibn Aqil (1040–1119), while being aware that it could be a treacherous path, filled with risks. Ibn Aqil equated shari'a governance with justice and equity in matters of public policy and politics. He was interested in what made a government's authority legitimate. He questioned whether political authority must always be grounded in the Qur'an and Sunna. Ibn Aqil was a cosmopolitan Hanbali, and a deeply learned man. In making

¹⁹ Ibn Qayyim al-Jawziyya, *al-Turuq al-hukmiyya* (Beirut, 1995).

²⁰ Al-Jawziyya, *I'lam al-muwaqqi'in 'an rabb al-'alamin* (Beirut, 1998), vol. 4, p. 349.

his case, he had to correct jurists who argued that his opinions were directed at the famous al-Shafi'i (767–820).²¹ Al-Shafi'i was alleged to have claimed: 'There are no rules of governance (*siyasa*) except those which correspond or comply with the revelation (*shar'*).'²² Ibn Aqil's response to this was: 'Look, governance is what actions people do in order to bring them closer to the good (*salah*), and to put themselves at a distance from corruption and harm (*fasad*). Even if it means those ways [of governance] are ones that the Prophet did not prescribe nor did revelation provide directives.'²³ Then, speaking rhetorically, he addressed al-Shafi'i and his other detractors: 'If you mean by "there is no governance except that which corresponds to the revelation" that governance is that which does not oppose what the revelation had uttered, then you are indeed right. But if you mean governance has to comply with what the revelation had uttered, then you are wrong.'²⁴

In other words, Ibn Aqil said that he agreed with those jurists who concurred that there was broad agreement between the purposes of revelation and the practice of governance. He disagreed with their claim if they meant that every action of governance had to line up with a specific instruction from revelation. Ibn Aqil did not believe that revelation gave tutorials in advance of every future human contingency. In his view, it certainly did not apply in the realm of governance. By pushing against what sounded like rhetorical excess on the part of some jurists, he provided an interpretative resolution.

Like al-Mawardi, Ibn Aqil thought in terms of the big picture view of the shari'a. He did not allow practices developed in the cultural milieu of 7th-century Arabia, strikingly different from his own Iraq in the 11th century, to undo the big picture. Jurists such as Ibn Aqil and Ibn al-Qayyim were attentive to what scholars today call the anthropology and sociology of Islamic law – the social construction of shari'a practices. They attended to the logic of values and purposes behind the rules rather than being bogged down by the specifics of the law. Hence they did not support a divine command theory of the law.

The Shari'a as Ethical Norms

There is a conundrum in framing Muslim norms in the language of law, and in describing the shari'a as a legal system. The very idea of 'Islamic

²¹ Al-Jawziyya, *al-Turuq al-hukmiyya* (Beirut, 1995), pp.10–11.

²² Al-Jawziyya, *I'lam*, vol. 4, pp. 348–349.

²³ *Ibid.*, vol. 4, p. 349.

²⁴ *Ibid.* Emphasis added by this author.

law' is, in many ways, a misnomer. While classical jurists (*fuqaha*) adjudicated everything from prayers and fasting to war and trade, it is uncertain whether they were engaged in law-making as we understand law today. It would be more accurate to say they were engaged in identifying norms derived from teachings inspired by revelation as well as the experiences of the early Muslim communities, and in describing how these practices translated into the realities of their own societies. What is called 'Islamic law' could effectively be described as a vibrant tradition of translating norms into lived societies. Classical jurists linked revelation with lived reality. It is the absence of this sensibility that results in deeply troubling interpretations and applications of norms today.

One way forward in Muslim norm-making today is to think of Islamic law as an enterprise in ethics. In ethical thinking there are values that can be harnessed from the legal tradition which are often framed in a utilitarian idiom of interests (*masalih*). However, the legal and moral, as well as spiritual and philosophical, traditions of Islam also deliberate about the ethical as the essential imperatives that underpin the good life. Ultimately, this is about human flourishing and living a virtuous life.

The jurist and philosopher Ibn Rushd (1126–1198), also known as Averroes, wrote a well-known book called *The Jurist's Primer*. He explained that his writing on the shari'a might sound like duties and rules (*ahkam*) but, in reality, they were ethical and moral values. This might surprise those who think that the shari'a or Islamic law is a compendium of rigorous and uncompromising rules. Ibn Rushd asserted that the purpose of the shari'a, especially those tenets that are unenforceable via judicial authority, is to cultivate the virtues of the soul (*al-fada'il al-nafsaniyya*). Rituals and devotions (*'ibadat*), as well as the virtues that arise from observing these rituals, stem from what he called 'the norms of dignity (*al-sunan al-karamiyya*)'.²⁵

Ibn Rushd also explained how the shari'a reinforces virtues such as decency, justice, courage and generosity. Practices regulating marriage and food cultivate decency, while those regulating war, criminal offences, torts and personal dignity all seek to cultivate justice. Similarly, practices regulating wealth and charity seek to cultivate generosity, while practices regulating governance and leadership enforce social equity. He pushed us to contemplate what he called the norms of dignity and brought the conversation about Islamic law back to ethics and morality.

²⁵ Abu al-Walid Ibn Rushd, *Bidayat al-mujtahid wa nihayat al-muqtasid* (Beirut, 1998), p. 389.

Negotiating the Ethical in Contemporary Muslim Ethics

Is the application of the shari'a a matter of complying with rules, or is it about purposes? The rule-based approach has a long history, one that lays claim to being the epitome of Muslim tradition. In Muslim-majority countries today, community groups, legislators and governments fervently seek to adopt the shari'a or Islamic laws. Often, these are attempts to burnish the credentials of politicians and legislators, making them out to be shari'a-compliant, pious Muslims. Although many Muslims do not agree with the application of harsh shari'a rules, they succumb to an orthodoxy that tells them to abide by 'God's laws' or face rebuke. An absence of literacy in matters of religion only complicates matters for ordinary people.

The shari'a, norms provided by God for humans to follow on the path to water/to live the ethical, is meant to provide Muslims with the tools for judging between right and wrong. But how do we know what is right? This question has engaged humanity for millennia. While we have found reasonable answers to what is moral and ethical, we are challenged on a daily basis to improve our ethical thinking and practice. For some, this is about an acquired sensibility derived from philosophy, religion or some other authority. Others claim we have an intuitive sense of right and wrong. Is it conceivable or even desirable to make an absolute distinction between what is right and wrong? If we are unable to do so, some would argue, then we lose all sight of the ethical. I provide here a case study that explores how tradition and ethics are, and can be, understood.

Rape and Nullification of Marriage: The Imrana Case

In 2005, Imrana, a mother of five living near the city of Muzaffarnagar in the state of Uttar Pradesh in India, claimed to have been raped. She alleged that the rapist was her father-in-law. He was tried and convicted for the crime under Indian criminal law. A *mufti* (jurist-consult) affiliated with the Darul Uloom Deoband, a leading Islamic seminary near Delhi, issued a fatwa (juridical opinion) on the case. He declared that Imrana, as the victim of rape by her father-in-law, was no longer married to her lawful husband. Why?

For the prevailing Hanafi school of fiqh (or version of shari'a reasoning), intercourse with relatives automatically created certain permanent prohibitions. A son cannot marry a woman with whom his biological father has had intercourse, just as a daughter cannot marry

a man with whom her biological mother had intercourse. This stance is not shared by the other Sunni schools, which hold that a licit marriage creates a permanent boundary; sex outside wedlock cannot create such barriers. But the Hanafi law school holds that such boundaries are also created by sex out of wedlock, including rape. By raping Imrana, her father-in-law rendered her permanently forbidden to her husband, the rapist's son.²⁶

The reasoning behind this Hanafi position stems from a verse in the Qur'an, which states: 'Do not marry (*tankihu*) those whom your fathers [by implication parents] have married (*ma nakaha*) [Qur'an, 4:22].' Most commentators believe this verse was intended to stop the repugnant marriages (*ziwaj al-maqt*) of the pre-Islamic period, where a son would marry his father's previous wives, except for his biological mother. But the more general rendering of the verse could also mean: 'Do not contract marriages with those whom your parents have married by acts of consummation' (emphasis added by this author).

The disagreement turns on the meaning of the verb *nakaha*. *Nakaha* can mean contracting or consummating a marriage. While most schools of interpretation understand that contracting valid marriages constructs the barriers of consanguinity, the Hanafi school takes the implied meaning to say that any sexual act, even those conducted outside wedlock, serves as a trigger for this commandment. And rape can be viewed as adultery by coercion.²⁷

This debate generated a counter-argument from the strict scripturalist Ahl-i Hadith school, an Indian incarnation of salafism. This school holds that the commandment applied only to sex *within* a marriage. Barriers of consanguinity, they argued, were not created by an unlawful act such as rape or adultery.²⁸ Much to the chagrin of the Deoband school, in the Ahl-i Hadith school's view, Imrana was perfectly lawful to her husband and the marriage was not voided.

Deobandi ulama fiercely defended their position. They drew on classical authorities to demonstrate that their argument was supported by tradition and backed by authorities of the Hanafi school.²⁹ Her unfortunate status as a rape victim was ignored by both sides of the

²⁶ See H. Azam, *Sexual Violation in Islamic Law: Substance, Evidence, and Procedure* (New York, 2015).

²⁷ *Ibid.*, p. 177.

²⁸ Personal communication, Abu 'Abd al-Haqq 'Abd al-Salam bin Abi Aslam al-Madani, 2006.

²⁹ Habib al-Rahman 'Azami, *Tahqiq-i mas'ala-i hurmat-i mu aharat* (Deoband, 2005); Mufti Muhammad Yusuf Taaulvi, *Hurmat-i musaharat Qur'an o hadith kiroshni main* (Deoband, 2005).

debate but especially by the traditional authorities at Deoband, for whom rape was just another form of adultery by coercion.

The Deobandis upbraided the critics of their ruling, dismissing them as *faux* reformers, unqualified to opine on religious matters. They also lambasted critics for possessing the temerity to challenge the authority of the ulama. Muslim critics who challenged their ruling, they claimed, were driven by malice and ignorance, and the goal of earning cheap publicity.³⁰ However, a small minority of Deobandis conceded that some classical Hanafi authorities had, in fact, questioned whether unlawful sex could create the barriers of consanguinity as a moral offence. But in public the majority dutifully skulked behind the façade of centuries-old legal prose and interpretations, with a solemnity that their critics alleged bordered on idolatry.

Making Sense of Norms

To dissent from the rules on blasphemy, or to ignore the complicated rules of sexual violation involving relatives, means going against established religious tradition. Scholars who question the ulama are interpreted as also challenging the consecrated paradigm of Muslim knowledge. Those who dissent from a legal school, such as the Hanafi, risk their reputation and livelihood. One could even be accused of disrespecting the Prophet if one did not demonstrate zeal for the retention of Pakistan's controversial blasphemy laws. The power to interpret is part of a complicated network of authorisation adopted by the ulama that runs deep into the knowledge and power configurations of Muslim orthodoxy's political-theological DNA.

It appears from the Imrana case that the ethical and legal paradigms used by each contender attempted to secure specific interests that are not neutral or value free. The Deobandis felt accountable to a moral tradition that viewed sexual relations with relatives to be morally offensive; their loyalty was to their moral tradition. For the Deobandis, their perceived moral responsibility to revoke Imrana's legal marriage was more important than reporting the rape as a crime to public authorities.

The Ahl-i Hadith critics, in turn, valorised the authority of scripture and a plain reading of it. But their argument with the Deobandis was also part of a centuries-long theological dispute. The Hanafis, as protagonists of a canonical law school, view their authority to be that of an uninterrupted hierarchy of a tradition that requires mandatory adherence. Their Ahl-i Hadith rivals view such loyalty to human

³⁰ A'zami, *Tahqiq-i mas'ala*, pp. 52–56.

authority to be a mortal sin. For the secular critics of the Deoband fatwa, the violation of Imrana as a crime enjoyed priority, and they petitioned for the writ of the secular state to be enforced. They were outraged by the double jeopardy that Imrana suffered: a violation of her dignity and the end of her marriage.

There is another aspect of this controversy that has received little attention. The various understandings of the shari'a represent different moral anthropologies of the self, especially in relation to sexual mores. This might be what Bernard Williams calls 'cultural relativism at a distance'. He also cautions against projecting an ethical fantasy onto societies we do not understand.³¹ So it is not surprising that these notions of self are highly contested categories in modern times. A modern, secular ethos valorises an autonomous self; however, the Hanafi Deobandis advocate a notion of the self that is in some instances interdependent, not independent. Certain acts committed by the self, or acts committed to the self, have consequences on both the person and others. So for Imrana the violation means that her relationship with her husband is also impacted. The son of the rapist, Imrana's husband, cannot nullify his biological affinity to his father. Even though Imrana was violated against her will, the facts or realities independent of her own volition as a result of the rape have altered her social and marital status.

One can imagine how the shame she suffered from the rape by her father-in-law disrupted her relationship with her husband. Furthermore, if she remained married to her spouse, she would likely be forced to interact with her father-in-law after he served his prison sentence. Such subsequent interactions could have negative consequences for Imrana's well-being and could trigger memories of her trauma. Against this backdrop, the Hanafi-Deobandi ruling of separation, when contextually considered among a certain class of families in India, is possibly a more humane solution. Of course, if Imrana has no social support outside her marriage, her separation could have dire physical and material consequences for her. While allowing her to remain in her marriage could turn out to be a form of psychological cruelty, a divorce without an adequate social welfare net could destine her to a life of poverty. Perhaps the better option would be to give Imrana the requisite psychological and social counselling in order to enable and empower her to make an informed decision. After all, she was the victim of a rape, but also the victim of authorities nullifying her marriage. If she received counselling,

³¹ Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, MA, 1985), p. 162.

she might be better positioned to evaluate whether life after marriage is economically feasible or whether the marriage is indispensable to her dignity and the well-being of her five children.

The Deobandi mufti activated the Hanafi law ruling in a mechanical manner without considering the dignity of the people involved. Nor was the Hanafi mufti courageous enough to look outside Hanafi tradition for guidance. Had he drawn on the Shafi'i tradition, for example, Imrana's marriage would not be nullified as a result of rape. At the same time, it would be untenable for her to live in a community where everyone knew that religious authorities had deemed her marriage illicit. Nor could she and her spouse, for convenience, claim to follow the Ahl-i Hadith, which did not void her marriage.

So Imrana and her spouse might pose themselves the question that Veena Das asks about herself in her study of Muslim practices in India:

How do I cultivate morality as a dimension of everyday life, when certain forms of knowing ... contradict my feelings that there are forms of being together that I can come to experience as part of my ordinary mode of life, that I wish to acknowledge but for which I should not be required to give justifications?³²

Yet Imrana and her spouse are not the sole arbiters of their moral destiny. Marriage is not only a practice deliberated in the domestic sphere. In India, Muslim marriages are linked to the state via personal law statutes. Multiple informal moral authorities (the ulama) also shape the couple's moral sphere, as do secular discourses about crimes such as rape and folk perceptions of morality. While the juridical discourse of the ulama looms large, there are also alternative narratives of ethics.

In India, freedom is often conceived differently from how it is in the West. Notions of respect, dignity and honour do not have a singular narrative, nor can they be sustained without proper consideration. 'Cultures, subcultures, [and] fragments of cultures', as Williams observes, 'constantly meet one another and exchange and modify practices and attitudes.'³³ The ways one thinks about tradition in changing moral contexts should acknowledge the power of tradition for Muslims, as well as the tradition's cultural and political contexts.

³² Veena Das, 'Moral and Spiritual Striving in the Everyday: To Be a Muslim in Contemporary India', in Anand Pandian and Daud Ali, ed., *Ethical Life in South Asia* (Bloomington, IN, 2010), p. 233.

³³ Williams, *Ethics and the Limits of Philosophy*, p. 158. See also P. Rabinow, *Essays on the Anthropology of Reason* (Princeton, NJ, 1996), on the 'particularities' of culture, p. 56.

Tradition in Moral Contexts

Imrana's story provides a window to the heart of the debate about Muslim ethics. Male ulama are committed to implementing the canonical tradition of fiqh, claiming to do so with integrity, and as acts of piety and religiosity. However, many Muslims question whether the ulama can remain faithful to tradition without violating contemporary moral norms. Indeed, this challenge is shared across cultures: a 'language of universality' in tension with the repeated 'translation' of incommensurable levels of living and meaning.³⁴ In this in-between space, which I have called the *dihliz* elsewhere, the gap between universality and translation comes with risks. It requires that we foster a certain future and goal, or what Bernard Williams calls a 'teleologically significant world'.³⁵

If such a world is out of reach, then it can bring about an epistemology of despair that the truth is out of reach. Humans have sought to avoid this despair by placing faith in an omnipresent, all-knowing God who embodies the truth (*tawhid*). But in a tawhid-centred truth world, the goal should not be certainties of right versus wrong. Ethics is the realm of the undecided, where we find ourselves between the contending norms and multiple realities of life. Ethical space is also an aesthetic space, where beauty manifests itself in life and all its forms, including the violent and the tragic. So the obligation is to cultivate an ethos, a space or a dwelling for habitation. Equality, compassion, justice, freedom and other moral virtues take place within this space. Action is always framed by ethos, which prevents action from becoming oppressive. When action and ethos combine, new possibilities of the ethical emerge. Tradition, truth-seeking and optimism are critical parts of ensuring that the truth is discoverable. But for this to be possible, an ethos must be situated in a space in between 'what is' and 'what ought to be' – the *dihliz*.

In Islam, truth-seeking in ethics begins with discernment. The term fiqh, often used to describe the body of knowledge consisting of the applied rules of the shari'a, actually signifies knowledge and discernment.³⁶ Over time, this tradition of discernment ceased to be a process of active thinking about ethical knowledge and became an

³⁴ H.K. Bhabha, *The Location of Culture* (London, 1994), p. 124.

³⁵ Williams, *Ethics and the Limits of Philosophy*, p. 128.

³⁶ Abu al-Baqa Ayyub b. Musa al-Husayni al-Kafawi, ed. 'Adnan Darwish and Muhammad al-Masri, *al-Kulliyat: Mu'jam fi al-Mustalahat wa al-Furuq al-Lughawiyya*, 2nd edn (Beirut, 1998), pp. 690–691.

exercise in learning the opinions of one's predecessors.³⁷ The need to follow tradition under the imprimatur of obeying canonical authority (*taqlid*) became a priority. Following tradition became a sign of fealty to a law school. The dynamic act of discerning (*fiqh*) the discourse of revelation – the shari'a – and its intentions faded. In its place rose an impressive tradition of scholarship that canonised the authority of the ulama but was less creative. *Fiqh* became displaced from its ethical centre.

As early as the 11th century it took someone like al-Ghazali to castigate jurists (*fuqaha*) for being obsessed with the mechanics of rules. The applied rules governed the worldly needs of the moral subject or of public life (*fiqh al-zahir*). But al-Ghazali agonised and struggled to make sense of how such formal rules might govern and deepen the discernment of one's soul (*fiqh al-batin*). Al-Ghazali reoriented the *fiqh* tradition – whether social conduct (*mu'amalat*) or devotional and ritual conduct (*'ibadat*) – in narratives about the ethics of each practice. He did so by finding concordance between the external practice of rules applicable to the body and social conduct, and the governance of the self by repairing the soul. His work, *The Revivification of the Sciences of Religion (Ihya' 'ulum al-din)*, demonstrates his efforts to make this point. Among the ways believers expressed their love for God, according to him, was showing deference to God's commandments and abstaining from libertinism.³⁸

The norms and commandments that al-Ghazali cherished were rooted in Muslim tradition. They included elements of both continuity and change since the first generations of Muslims. Al-Ghazali's predecessors repeatedly renarrated the tradition to give it coherence. The norms that influenced al-Ghazali made sense in his medieval society, but they did pose challenges – and he pushed back against some of the cosmologies of his predecessors. He renarrated certain aspects of Ash'ari theology and provided space for rival interpretations of that theology. In the sphere of the moral and ethical, he took pains to provide a new account of how the ethical tradition of his time related to its past. While his interpretations garnered much appeal, he also encountered opposition. After all, such arguments are a feature of conflicts within traditions across different societies and religions.³⁹

³⁷ F. Rahman, *Islam* (Chicago, 1979), p. 101.

³⁸ al-Ghazali, *Ihya' 'ulum al-din*, vol. 4, p. 288. Obedience to God, for al-Ghazali, is a sign of a servant's love for God. See R. Brague, *The Law of God: The Philosophical History of an Idea* (Chicago, 2007), p. 184, n. 41.

³⁹ A. MacIntyre, 'Epistemological Crises, Dramatic Narrative and the Philosophy of Science', *The Monist* 60(4) (1977), p. 461.

We now live in a world shaped by the Enlightenment, which altered cosmologies of science, politics and religion. Hence important aspects of the narratives of tradition that made sense to al-Ghazali and other intellectuals no longer really apply. Today, renarration of tradition is not happening fast enough, nor is it generating meaningful moral consensus among Muslims. The rupture from the pre-modern to the modern has caused deep fissures in the Muslim self, and in Muslim political orders. As a result, apologetics have become more dominant, giving a superficial account of tradition in a bid to displace the facts of the world in which we are living. But the modern Muslim is not struggling simply with an epistemological crisis where the 'schema of interpretation which he has trusted so far has broken down irremediably in certain highly specific ways.'⁴⁰ Rather, a chronic condition is at play.

The builders of Muslim orthodoxy do not recognise this state of affairs, much less that a renarration of tradition is urgently called for. Even if the Muslim community came to recognise this crisis, another fear would immediately present itself. Many worry that any path out of this crisis will rely on resources derived from the non-Muslim West, which a significant number of Muslims regard as hostile to Islam. What this foreshadows, then, is a clash-of-civilisations narrative.⁴¹

Conclusion

Muslim thought uses different vocabularies to reflect traditions on which it is based. Only a greater sense of today's shared human web of interaction can effectively counter the-clash-of-civilisations narrative and its violent implications. For more than a century, Muslim religious scholars who were sensitive to the crisis at hand sought to address it by invoking *ijtihad* (independent, new thinking) and abandoning *taqlid* (imitation of the past). However, not enough work has been done to re-establish conceptions of the shari'a as a set of ethical and moral norms rather than a set of rigid rules or laws.

Some years ago, in a private exchange with Rached Ghannouchi, the spiritual leader of Tunisia's Renaissance Party (Ennahda), we debated the need for radical rethinking (*ijtihad*) in a time of western

⁴⁰ Ibid., p. 458.

⁴¹ To cite MacIntyre (ibid., p. 451), 'It is yet another mark of a degenerate tradition that it has contrived a set of epistemological defenses which enable it to avoid being put in question or at least to avoid recognizing that it is being put in question by rival traditions.'

hegemony.⁴² Ghannouchi asserted that *ijtihad* during a time of the political and cultural decline of Muslims could result in the colonisation of Muslim religious thought. I fervently argued the opposite, stating that such rethinking was especially needed to pull Muslim culture and religious thought out of its intellectual and moral quagmire. We did not manage to persuade each other 22 years ago. However, when his party won elections in 2011, Ghannouchi demonstrated visionary leadership in moving Tunisia towards democracy. In 2016, Ennahda abandoned political Islam, resolving to function strictly as a political party. Ghannouchi's party intellectuals sought to provide a fresh interpretation of Muslim political realities, using *ijtihad* to abandon one version of politics and embrace another. In this ethical pivot, Ennahda lent credence to Muslim tradition while enlivening it with the context of new realities.

The upshot here is the imperative for thinking anew. A potent reminder in this regard comes from the work of the émigré German Jewish political philosopher Hannah Arendt. Her use of the phrase the 'banality of evil' aimed to capture the facile, superficial defence of the Nazis and their sympathisers: 'We were just performing our patriotic duty.' As she strove to make sense of the evil committed by her compatriots that resulted in the near extermination of European Jews, she made an even more insightful remark. What startled her most in the accounts of such prominent Nazis as Adolf Eichmann, whom she observed on trial in Jerusalem, was the 'total absence of thinking.'⁴³

Arendt's introspection is both haunting and edifying. She quarrelled with the question of whether 'thinking as such, the habit of examining and reflecting,' could alone prevent evil.⁴⁴ Yes, thinking can disrupt our existing habits of thought, she conceded, and it can lead us to discover new ways of questioning. But the 'wind of thought,' Arendt's way of describing the harvest of thinking, was not knowledge as such. Thinking should result in moral reasoning that equips us with the 'ability to tell right from wrong, beautiful from ugly'. The conviction to declare 'This is wrong' or 'This is beautiful' involves a certain way of thinking.

For contemporary Muslim traditions, the need for ethical coherence calls for nothing less than 'a revolutionary reconstitution.'⁴⁵ This begins

⁴² Rached Ghannouchi during an extended visit to South Africa in March–April 1994 had several exchanges with me during which we discussed many of these ideas. He has also over time rethought some of his previous positions.

⁴³ Hannah Arendt, *Responsibility and Judgment* (New York, 2003), p. 160.

⁴⁴ *Ibid.*

⁴⁵ MacIntyre, 'Epistemological Crises, Dramatic Narrative and the Philosophy of Science', p. 461.

with thinking, which requires the freedom to state unequivocally that some things are right and others are wrong. Imrana's story should stand as testimony that violating human dignity and ignoring the ethical is nothing short of a moral and theological offence – a failure of thinking. We ignore the larger lessons at our collective peril.

Further Reading

- Ahmed, Shahab. *What is Islam? The Importance of Being Islamic*. Princeton, NJ, 2015.
- Ali, Kecia. *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*. London, 2006.
- Hallaq, Wael. *Shari'a: Theory, Practice, Transformations*. New York, 2009.
- Hefner, Robert, ed. *Shari'a Law and Modern Muslim Ethics*. Bloomington, IN, 2016.
- Masud, Muhammad Khalid. *Shari'a Today: Essays on Contemporary Issues and Debates in Muslim Societies*. Islamabad, 2013.
- Mir-Hosseini, Ziba, Mulki Al-Sharmani and Jana Rumminger, ed. *Men in Charge? Rethinking Authority in Muslim Legal Tradition*. London, 2015.
- Moosa, Ebrahim. *Ghazālī and the Poetics of Imagination*. Chapel Hill, NC and London, 2005.
- Rahman, Fazlur. *Major Themes of the Qur'an*. 2nd edn. Chicago, IL, 2009.
- Ramadan, Tariq. *Radical Reform: Islamic Ethics and Liberation*. London, 2009.
- Safi, Omid, ed., *Progressive Muslims: On Justice, Gender, and Pluralism*. Oxford, 2003.
- Sajoo, Aryn B. *Muslim Ethics: Emerging Vistas*. London, 2009.
- Vogt, Kari, Lena Larsen and Christian Moe, ed., *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition*. London, 2011.

