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Islamic Legal Reform: Between Classical Jurisprudence and Contemporary Application

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Abstract

This article explores the transformation of Islamic legal systems following Western influence, highlighting the emergence of two reformist trends identified by Wael Hallaq: religious utilitarians and religious liberals. It traces the historical shift towards Western-style codes exemplified in the Ottoman Tanzimat reforms and subsequent civil law adoption and examines how utilitarians like Muhammad Abduh used juristic tools such as maslahah and darurah to adapt Shari'ah to modern needs. In contrast, liberals like Fazlur Rahman pursued contextual reinterpretation of scriptures, emphasising the maqasid (objectives) of Islamic law. The essay analyses the methods, key figures, and impact of each group, demonstrating that, despite differing approaches, both aimed to synthesize foundational Islamic values with contemporary legal frameworks. The study concludes by considering the significance of these reform movements for modern Islamic legal theory.

Introduction

"All the states of the Near East are moving, at a lesser or greater speed, toward adopting legal systems based in form upon Western models and drawing their substance from at least the underlying principles of Shari'a law, except where these principles are repugnant to modern thought, in which case legislation is directly based in whole or part upon Western models."[1] Based on this connotation, it is asserted that Western domination of the Muslim world led to the steady substitution of Sharia by Western-inspired legal codes. This essay explores the resultant tensions and legal transformations. It contends that while Islamic law, particularly within Sunni traditions, has undergone reform through utilitarian and liberal methodologies to meet modern demands, the most sustainable future for Islamic jurisprudence lies in a principled convergence. This convergence would harmonize classical jurisprudence with ethical, maqasid-based reform, thereby preserving Islamic legal authenticity while responding pragmatically to contemporary societal needs. The essay will then present the antithesis, suggesting that these reforms have sometimes undermined Sharia's authenticity and functionality. A convergence will be proposed, acknowledging the emergence of hybrid models of Islamic law, though imperfectly. The essay primarily focuses on Sunni legal schools but also incorporates respected Shia contributions. After discussing the global evolution of Islamic law, the essay concludes with a focused analysis of Pakistan's legal reforms.

[1] David Bonderman, *Modernization and Changing Perceptions of Islamic Law*, 81 *Harv. L. Rev.* 1169 (1968)

As the Qur'an states: "And We have not revealed the Book to you except that you may explain to them what they differed about, and as guidance and mercy for a people who believe."[2] A theme echoed elsewhere in the Qur'an, such as in Surah Al-Kahf, where the importance of divine guidance, ethical patience, and humility in the pursuit of knowledge is emphasized (Qur'an 18:66–82).[2] This foundational principle supports the dynamic reinterpretation of Islamic law in pursuit of justice, clarity, and compassion.

Research Methodology

This essay employs a qualitative doctrinal research methodology. It draws on primary sources such as the Qur'an and classical juristic texts, alongside secondary sources including books, peer-reviewed journal articles, and case law. Emphasis is placed on textual analysis and comparative legal reasoning, especially between classical Islamic jurisprudence and its modern adaptations. The study adopts an interdisciplinary lens and engages with legal theory, Islamic studies, and contemporary statutory reforms in Muslim-majority states to contextualize the evolution of Islamic legal thought in light of utilitarian, liberal, and hybrid methodologies. Furthermore, a limited comparative reference is made to English jurisprudence to highlight intersections in legal reasoning and ethical underpinnings.

History

Classical Foundations of Islamic Legal Schools

Islamic legal theory was crystallized during the classical period, particularly by the 10th century. Sunni jurists, especially those of the four major schools (Hanafi, Maliki, Shafi'i, Hanbali), largely believed the foundational principles of Islamic law had been established. For instance, Ibn Khaldun noted that after the formation of the core texts and their transmission, the role of scholars became one of preservation rather than innovation. On the contrary, western scholars including Joseph Schacht[3] and Noel Coulson[4] have argued that Islamic law became rigid through taqlid (imitation), reducing space for legal creativity.

Nevertheless, each Sunni madhhab contributed uniquely to the evolution of the law. The Hanafi school which is dominant in the Ottoman Empire and South Asia has developed intricate procedures for criminal law, including standards of evidence and gradations of punishment. While the Maliki school emphasized on the customary practice ('amal) of Medina, influencing family law codifications in North Africa. Whereas,The Shafi'i school was especially important in organizing and systematizing usul al-fiqh, or legal methodology, which laid the foundation for how Islamic law is derived. The Hanbali school, on the other hand, focused on strict adherence to the literal meaning of religious texts. In addition to legal theory, the Sunni schools also helped shape practical legal institutions. For example, they developed the concept of kafalah, which refers to guardianship or sponsorship. This concept is still very relevant today, especially in issues like child custody, alternatives to adoption, and laws that protect minors. Because of this, kafalah and similar institutions have become an important part of recent reforms in Islamic family law, particularly in debates about how to best serve the interests of the child from an Islamic ethical perspective. Although this essay mainly focuses on Sunni schools, it's worth briefly mentioning the contributions of Shia legal traditions, especially the Ja'fari school. The Ja'fari school is known for upholding the principle of continuous ijtihad, which has helped maintain scholarly independence over time. Its detailed work in areas like personal status law and guardianship has shaped family laws in places like Iran.

Colonial Encounter and Legal Modernization

In the 19th century, things began to change significantly as European colonization and the Industrial Revolution brought Muslim societies into closer contact with Western legal systems. This pushed many reformers and governments in the Muslim world to start modernizing their own legal frameworks in response. The Ottoman Tanzimat reforms introduced secular commercial and penal

[2] Qur'an 16:64; see also 18:66–82

[3] Joseph Schacht, *An Introduction to Islamic Law* (Oxford University Press 1964).

[4] Noel Coulson, *A History of Islamic Law* (Edinburgh University Press 1964).

codes, culminating in the Ottoman /Majalla, a codified version of Hanafi fiqh in civil law.[5] In a similar vein, Malaysia's integrated Shafi'i thought with statutory frameworks. Similarly, Egypt adopted a hybrid system in1949 codification of personal-status law. Other examples include Tunisia (1956), Pakistan (1961), and the Gulf states (2002 onward).

Comparative Analysis

Contemporary Developments and Global Impact

Islamic contract law began formulating in the seventh century and reflects the transactional context of that period. It treats all agreements, whether treaties, civil, or commercial, as binding, grounded in the Qur'anic command, "Be faithful to your pledge to God, when you enter into a pact" (Qur'an 4:32).[6] Islamic jurists developed classifications of contracts in their works of fiqh, deriving rules from the Qur'an, Sunnah, and juristic reasoning. Although only around forty Qur'anic verses address contractual matters, these formed the ethical foundation of the system.[7] Central limitations to contractual freedom include the prohibitions of riba (interest) and gharar (speculative uncertainty). Riba is clearly forbidden in the Qur'an, "God hath permitted trade and forbidden usury" (Qur'an 2:274),[8] while gharar is restricted by analogy to maysir (games of chance), condemned in verses such as Qur'an 2:219 and 5:90 to 5:94. Jurists like Ibn Rushd sought to limit uncertainty by requiring clarity in subject matter and price, while reformers such as Abduh and Rida argued that only exploitative forms of interest were prohibited.[9] These classical doctrines continue to shape the modern Islamic finance industry, which emerged in the late twentieth century to meet global economic needs. Instruments such as Murābahah, Mudārabah, and Mushārakah have been restructured to comply with Shari'ah. In Murābahah, the Supreme Court of Pakistan ruled that the transaction must involve an actual sale with the bank assuming risk, rather than acting as a disguised lender.[10] Mudārabah enables profit sharing between a capital provider and an entrepreneur, while Mushārakah allows for joint investment with agreed profit and loss sharing. Institutions like AAOIFI have helped unify standards across Sunni schools, and jurisdictions such as the United Kingdom have adapted their legal systems to accommodate Islamic finance, making London a leading hub.[11]However, legal challenges remain, as seen in cases like Islamic Investment Co. v. Symphony Gems and Tan Sri Abdul Khalid Ibrahim v. Bank Islam Malaysia, where courts grappled with interpreting Islamic contracts through secular legal frameworks.[12] Despite such difficulties, the industry has expanded significantly, with assets exceeding 1.4 trillion US dollars by 2012.[13] More broadly, Islamic legal principles have interacted with Western legal thought in deeper ways than often acknowledged. Concepts like maslahah (public interest), fairness in contracts, and restitution reflect similar concerns found in English legal traditions, particularly within the framework of equity.[14] These shared concerns reveal a common commitment to justice and balance, echoing legal pluralism as articulated by H. L. A. Hart, who recognised the coexistence of multiple legal systems in one

[5] Wael B Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (Columbia University Press 2013).

[6] Taqi al-Din Ahmad Ibn Taymiyyah, *Le Caire*, 1939

[7] Zulkifli Hasan, *Shari'ah Governance in Islamic Financial Institutions*, Edinburgh University Press, 2012

[8] Qur'an 2:274

[9] Daoualibi, Muhammad Mustafa, "The Islamic Concept of Interest," *Islamic Studies*, vol. 3, 1964; Ibn Rushd, *Bidayat al-Mujtahid*.

[10] *M. Aslam Khaki v. Muhammad Hashim*, PLD 2000 SC 225 (Pakistan), per Justice Muhammad Taqi Usmani.

[11] Bill Maurer, *Islamic Banking and Finance: Political Economy, Values, and Innovation*, Annual Review of Anthropology, 2005

[12] *Islamic Investment Company of the Gulf (Bahamas) Ltd. v. Symphony Gems N.V. & Ors* [2002] EWCA Civ 756; *Tan Sri Abdul Khalid Ibrahim v. Bank Islam Malaysia* [2010] MLJU 1577

[13] Hanif, Muhammad, "Differences and Similarities in Islamic and Conventional Banking," *International Journal of Business and Social Science*, Vol. 2 No. 2, 2011.

[14] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Islamic Texts Society, 2003

society.[15]The Islamic legal doctrine of maqāṣid al-sharīʿah, with its focus on justice and welfare, also mirrors Ronald Dworkin's idea of law as requiring moral coherence.[16]Together, these overlaps show how Islamic legal values are influencing areas such as finance, ethics, and dispute resolution in common law systems, offering a meaningful contribution to the evolving landscape of

Utilitarian and Liberal Methodologies in Reform

All the states of the Near East are moving, at a lesser or greater speed, toward adopting legal systems based in form upon Western models and drawing their substance from at least the underlying principles of Shari'ah, except where these principles are repugnant to modern thought, in which case legislation is directly based in whole or part upon Western models, an observation frequently attributed to David Bonderman in Modernization and Changing Perceptions of Islamic Law (Harvard Law Review, 1968).[17]This shift reflects Western dominance and the steady substitution of Shari'ah by Western-inspired legal codes. It underpins Hallaq's categorisation of Islamic reform into two trends: religious utilitarians, like Muhammad Abduh, Rashid Rida, and Hasan al-Turabi, who used juristic tools such as maslahah (public interest), darurah (necessity), takhayyur (selecting from different schools), and talfiq (legal patchwork), while Abduh's reforms in Egyptian courts rationalised Shari'ah rulings with social utility; and religious liberals, like Fazlur Rahman and Muhammad Sa'id al-'Ashmawi, who pursued contextual readings of the Qur'an and Sunnah, emphasising maqasid al-shari'ah over literalism.[18] The two trends share a goal of reformulating Islamic legal theory to integrate core religious values with modern social needs, though they differ in method: utilitarians select judicially useful precedents, while liberals reinterpret scriptural intent. Their efforts are part of a broader legal transformation that began in the nineteenth century, catalysed by Western colonial pressures and internal calls for change, and succeeded classical stagnation. Their legacy lives on in modern Islamic finance, legal codes, and constitutional reforms, reflecting the continued negotiation between tradition and modernity that shapes contemporary Islamic law.

Critical Analysis

Critiques and Symbolic Legalism

However, not all scholars view these developments positively. Wael Hallaq, in The Impossible State, argues that Islamic law cannot be authentically practiced under the modern nation-state, which centralizes authority and undermines the pluralistic, jurist-centered system of classical Sharia.[5] Haider Ala Hamoudi, in "The Death of Islamic Law" (2010), shows how even Islamist-led regimes codify and selectively apply Sharia in politically expedient ways.[7] He contends that Sharia has become symbolic, used for legitimacy rather than genuine legal governance. Codification often flattens the diversity of madhahib, reduces the role of mujtahids, and introduces legal eclecticism devoid of coherent methodology. Islamist regimes, even when claiming to implement Sharia, frequently preserve secular codes in economic and administrative domains. Moreover, many liberal reformers face rejection by traditional scholars and political elites alike, their influence limited to academia rather than lived law.

Clark Lombardi, in State Law as Islamic Law in Modern Egypt, demonstrates how the codification of Islamic law by state institutions has drastically altered its structure and purpose.[19] Legal reforms once rooted in pluralistic juristic traditions have been transformed into uniform statutes interpreted by state judges with limited grounding in traditional fiqh. Similarly, Rudolph Peters, in Crime and Punishment in Islamic Law, documents how contemporary applications of Islamic criminal law are often symbolic, inconsistent, or selectively enforced.[20] These critiques align with Hamoudi's

[15] H. L. A. Hart, *The Concept of Law*, Clarendon Press, 1961

[16] Ronald Dworkin, *Law's Empire*, Harvard University Press, 1986.

[17] David Bonderman, Modernization and Changing Perceptions of Islamic Law, 81 Harv. L. Rev. 1169 (1968).

[18] Wael B. Hallaq, *The Impossible State* (2013); Muhammad Abduh and Rashid Rida case examples.

[19] Rumee Ahmed, *Sharia Compliant: A User's Guide to Hacking Islamic Law* (Stanford University Press 2018).

[20] Fazlur Rahman, *Islam and Modernity: Transformation of an Intellectual Tradition* (University of Chicago Press 1982).

concerns that modern Islamic law, though formally preserved, has become detached from the dynamic, scholarly discourse that once sustained it.

Ethical Convergence and Pragmatic Synthesis

On the contrary, despite this divergence, a convergence is emerging. Hybrid models of Islamic law that are combining ethical objectives with modern institutional needs are visible in fields like Islamic finance, constitutional jurisprudence, and family law. These frameworks often rely on maqasid al-shariah to ensure that reforms remain grounded in Islamic values while responding to contemporary realities. Institutions such as AAOIFI, the Islamic Fiqh Academy, and Malaysia's Sharia courts exemplify this pragmatic synthesis. Broadly respected scholars like Mohammad Hashim Kamali[10] and Oxford-affiliated scholars such as Tariq Ramadan[21] and Qasim Zaman advocate for reform that is both rooted and transformative. While maintaining respect for classical jurisprudence, they propose methodologies that foreground ethics, social justice, and evolving human conditions.

The Case of Pakistan

Though this section primarily focuses on Sunni legal traditions, it is worth briefly acknowledging that Pakistan's legal system also includes Shia jurisprudential considerations, particularly within family law and inheritance disputes. While this essay does not delve into the specifics of Ja'fari interpretations, their presence reflects Pakistan's pluralistic approach to Islamic jurisprudence.

Pakistan, the country with a Hanafi Sunni majority, has implemented multiple reformist and Islamization efforts. The Muslim Family Laws Ordinance (1961) introduced restrictions on polygamy and strengthened women's rights in inheritance and divorce. General Zia-ul-Haq's regime initiated the Hudood Ordinances (1979), aimed at Islamizing criminal law. However, these laws were widely criticized for procedural injustices and gender discrimination. The Federal Shariat Court (1980) and the Council of Islamic Ideology have been central in reviewing laws for Sharia compliance. Yet their decisions often face resistance from parliament and judiciary, creating legal inconsistency. Islamic finance has flourished, with Pakistan among the leading countries in Sharia-compliant banking.[22] However, the system still grapples with harmonizing fiqh principles with modern financial instruments. Notably, while reforms have often drawn on Hanafi principles, the actual practice includes eclectic borrowing across schools. Attempts to reconcile tradition with modernity remain ongoing, especially in areas like child custody, blasphemy laws, and women's rights. Here, debates persist among conservative scholars, progressive jurists, and state institutions.

Conclusion

The future of Islamic law may not rest in a return to its medieval form nor in its wholesale transformation through Western legal frameworks. Instead, Islamic legal reform remains an evolving negotiation between fidelity to classical jurisprudence and responsiveness to contemporary legal, ethical, and institutional demands. While the traditional madhāhib provided robust doctrinal frameworks, reformist scholars such as Rumee Ahmed emphasize the need for a more agile and systematic engagement with Islamic law, one that allows for critical reinterpretation in light of changing constitutional and social realities. Critics like Wael Hallaq warn that state codification risks reducing Sharia to a symbolic structure devoid of its juristic vitality. Yet practical efforts, as seen in Meezan Bank Ltd v Federation of Pakistan [2022] PLD SC 387, show that Islamic legal principles, particularly in finance, can be substantively integrated within constitutional frameworks without abandoning Sharia's ethical core. Contemporary reform, guided by maqasid al-shariah and exemplified by thinkers like Mohammad Hashim Kamali and Tariq Ramadan, seeks to harmonize legal authenticity with moral purpose.[10] The path forward lies in neither uncritical adoption of modernism nor static preservation of the past, but in principled evolution informed by both tradition and context.

[21] Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oneworld 2008).

[22] *Meezan Bank Ltd v Federation of Pakistan* [2022] PLD SC 387

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