

Sharia Law, Islamic State & Jihad

Yesterday, Today and Tomorrow

By Shaykh Dr Mohammad Akram Nadwi (Oxford)

MEOC – Cambridge Islamic Sciences Worldwide –

<http://courses.meoc.org.uk>

Seminar at Queen Mary University, London & Live Online – Saturday 8th
February 2014

Supplementary Reading

Islam

1. Islam does not provide the definition of anything. It does not define man, does not define God and does not define knowledge. It is people who define these things.
2. The Quran and Sunnah are guidance to the people. They can negotiate within the realities they live in, the way forward.
3. For Muslims the important thing is that the way must lead them to the obedience of Allah and his Messenger (PBUH), and to understand the connections between themselves and Allah.
4. The purpose of Islam was and remains to bring people to full conscience to their Creator and to worship Him according to the ways taught by His Messenger (PBUH).

Shari`ah

1. Shari`ah is a path, if there is no path then either people will not move or they will make their own path.
2. Any human authority cannot be an end, it is just means. Iman and Islam are the end.
3. Islam is a relationship between human beings and their Creator. It is not primarily a social system or an economic system or a political system.
4. When you choose between things, it is your conscience that decides. Your Iman and Islam form your conscious; otherwise you will be satisfying your reasons.
5. If you treat Shari`ah as the end of your effort then you will achieve very little.
6. The fact that you establish a state based on Shari`ah does not mean that everything is abiding by it.
7. What happens when any human institution becomes fixed is that domains of existence become narrow, the range of test becomes narrower, so the outcomes are simpler, easier, but also poorer, and ultimately weaker.
8. In England, when the government wanted to introduce seat-belts or helmets or other beneficial legislations, they sensibly spent a long time a

focus on
avoid
conflict
with laws
rather than
submission

long time explaining the benefits, so that by the time the law was introduced, there was already a consensus on its function.

Otherwise regulations of this kind are impossible to enforce, no matter how powerful, disciplined and organized the state and its agents are.

The contrary example will be the prohibition in America which led to an explosion in crimes.

Society

1. The society in the Muslim land was Islamic and tolerated secular rulers who were competent in their exercise of the power and made sufficient efforts to support and maintain Islamic ethics, even if within their palaces the rulers did not follow the guidance of Islam.
2. Many Muslims think that if the committed believers disposed state powers, the problems of the society will go away. It is not the case.
3. In truth it is the other way around. The society, its functions and its relationships need to be Islamic oriented. Otherwise simply seizing the power of the state, whoever does it, Muslims or non-Muslims, and however they do it, by force or by an election, the consequences will almost certainly be the same as any coup. They will just be given a different name. For real change, you will need to work bottom up and throughout at least one generation. Otherwise the reform will not work.

State

1. The purpose of Islamic state was not to give Arabs or Muslims a glorious position in this world. The main concern of the Muslims is, sadly, to try to restore the formal glory.
 2. The way forward is not oriented to achieving the worldly glory for Muslims or even defending the dignity of Muslims as Muslims in the world.
 3. The reason that Muslims are suffering in their dignity and have lost their worldly glory and position is because they do not consciencely and consistently orient their efforts to the larger goal.
 4. In the desperation of dignity and glory we find for example that Muslims will claim anything in the world that they admire as having some original form in the Quran and Sunnah. For example democracy exists in Islam because you have Shura. All the discoveries of the Science can be found in the Quran.
 5. In this perspective, Muslims became confused and self-contradictory - they want the power of the enemies of Islam while wishing to be unlike the enemies of Islam.
-

6. The result is trying to copy the cultural, political and economic systems of the enemies of Islam, while giving that system an Islamic colouring and some very weak roots in the texts of Islam.
 7. In short, the crisis of the Ummah is deficiency in their Iman and Islam, not in the efficiencies of the enemies of Muslims.
 8. To learn that efficiency may improve some Muslims position in the world, but it will not make up their deficiency in their Iman and Islam.
 9. You can test this proposition very easily. Ask any group of Muslims actively seeking political power in the name of Islam. Suppose you have won the power you want, what are you going to do with it? Very few, if any, will have an answer, except in the terms of restoring or insisting upon the external symbols of Islam, the dress code, legal code and sectarian hostility of various kinds.
 10. If you ask any of them how will one Muslim help another one, how will they care for each other, they will have no answer. They will have answers only for negative things, the banning of music, interest or something else.
 11. In short the program of the political activists in practice, even if not in their hearts and intentions, is a negative program. It is a program to remove from power, what they believe to be un-Islamic or anti-Islamic. Very little attention, if any, is given to the positive things like building brotherhood amongst Muslims.
-

Jihad

1. The point is not to get power. The point is to get nearness to Allah. One way to that is that you go to Jihad. Think clearly when you die, your book has ended, you cannot change it and you cannot improve yourself.
2. Jihad has become for many young people a romantic thing to do. Romantic things like love and sex are a lot more attractive, and a lot easier than marriage. The success of marriage depends on your ability to keep your word and contract through all the trials and tests, which come in life. Living as a Muslim is also a test of your ability to keep your word that you have given when you testified as a Muslim.
3. When you see suffering in Syria, your response should be passion and desire to help. If you have perspective of practising and thinking Muslim, you need to ask what will please Allah in this situation. You should not ask what would give me relief. A Muslim when he prays, he asks for the ability to do will of Allah. On the contrary, when he is obsessed by some events in the world, he will lose this perspective and he will pray to Allah to do his own will.
4. If you can restore the larger perspective, you will be able to ask practical questions. For example, what will help the people I want to help, instead of asking what will give me relief from my feelings?

Secular Societies

1. If you live in a strong small isolated castle, you can have good safe life. But this life is not exposed to all what Allah has put in the world to test and improve.
2. This is why Muslims will experience many different conditions: majority, minority, power, weakness, wealth, and poverty.
3. It should not be a matter of regret that Muslims are in a situation of minority and are deprived of power.
4. What is regrettable is that Muslims, whether in majority or minority, live and express their Islam in a narrow space, and do not carry it to all spheres of existence and efforts. For example, knowledge, business, arts, crafts, and so on.
5. In other words being in a minority position or weak position should be viewed as opportunity to take and pass the test, in a particular way, which is not open to Muslims in different situations.
6. Look at your situations positively, what you can do, not what you cannot do.
7. Example of free email providers when the charge is to be exposed every time you see or check your email, you have to make the effort not to see, to ignore singles or dating websites and stuff like that. In real world you cannot wait for halal internet. The internet is like a road, public space which is open to negative influence.
8. Even in the Islamic state you cannot fix all the prices and all the conditions of the market place without risking damage to the proper functioning of the market. That is broadly true of the public space generally. So what we experience in west as minorities is an extreme form of what we would experience if we were living in a Muslim majority state. You get haram wherever you go, you cannot block it completely.
9. Take secular education, you cannot avoid. Your test as Muslim is how to benefit from it without being ruined by the harm in it. You have to take for the balance between the good and the harm, which one is the greater.
10. You always will have all these sophisticated situations.

Mohammad Akram Nadwi

Oxford

Supplementary Reading

How to compete for power and why

The principal reason for the waste of the effort of the Muslims, whether they are fighting or not fighting, is that they do not have a clear and comprehensive plan. For example if we know that the Americans are harming Muslims or Islam, we may think that the right thing to do is to fight them, to bomb them. But it is not the right thing to do. Unless and until we have worked out the consequences - the immediate and long term outcome - of doing this. The same is true for those who say we should not fight, because we cannot win. What is wrong in this case is the same. Those who say this they have not reflected the long and short term consequences of this attitude.

What is right or wrong in such situations is not being active or passive, but being intelligent about what follows. Actions that you take, this includes taking no action at all, have an effect on your society and your state. When you have deliberated on those effects, then and only then you are likely to make the appropriate decision. It is very rare indeed that a situation leaves you no choice, but it can happen. In this case there is no sin in what you are forced to do. So long as you do not become habituated to it, or worse come to accept it. If there is a danger of that, you have religious duty to move out of that necessity - if you cannot, then at best you can desire and pray for it.

What I mean by Muslims having clear and comprehensive plan? As always we look for guidance to the practice of the first Muslims and God's Messenger. His primary concern was not that the idolaters were in power and persecuting the believers, but that the idolaters would not listen to God's Message. He was not primarily interested in achieving or restoring glory, but in enabling all the people including idolaters to come into safety of Allah's protection and favour. Because this was always his priority, his manner of speaking about his enemies, his policies and actions towards them and his decisions about if, when, and how to fight were beneficial to the Muslims and the idolaters.

For us now this means that we should desire, imagine and work towards not the destruction of the enemies of Muslims, but their guidance. If we do this, then the decisions that we take, whether it is fighting or not fighting, will be wise and fruitful.

Mohammad Akram Nadwi
Oxford

Maqasid of al-Shari'ah: some reflections

Today I will be talking about the *maqasid* of the Shari'ah. My main focus will be the argumentation, the reasoning, of great jurists of the early period. I will try to give the reasons, partly philosophical and partly historical, for the differences on this issue between the early and contemporary jurists. But I want to begin by explaining why it is important for us to be reflecting on this topic now.

Many people, including some very learned and pious Muslims with the best of intentions, use the concept of *maqasid* to justify the acceptance by Muslims of legal norms and regulations which they consider to be authentically Islamic rulings or fully compatible with authentically Islamic rulings. In other words, they use the concept of *maqasid* as a source of Islamic law. They use it as a means of entering into the Shari'ah certain laws, for example the laws dealing with what are called human rights, which have no obvious basis in the Islamic legal tradition. These new laws and the thinking behind them are said to conform to the *maqasid* of the Shari'ah and are considered to be acceptable to Muslims on that basis.

Now, it is most important to be clear at this point on what we are discussing here. The issue is not about the right or wrong of the particular legal rulings that are being advocated in this way. The issue is whether it is correct to claim that they are Islamic. Muslims do not have a monopoly on virtue or wisdom or intelligence: I do not know of any text in Qur'an or Sunnah that would lead one to make such a claim. Rather, Muslims are expected to look for virtue and intelligence in other peoples, and to learn from them, because God gives to these as well as those -- the treasures of His grace and favour are absolutely under His command and will. So, we must not be distracted into the fruitless debate about whether such a norm or ruling is Western in origin and to be rejected as unIslamic simply on the grounds of its non-Islamic origin. Instead, if we reject, it must be for better reasons than that. Equally, if we accept norms or rulings of non-Islamic origin -- whether we do this out of necessity, having no practical alternative, or we do this out of some personal preference -- we should not, without very careful and cautious reasoning, claim that these norms and rulings that we have accepted are Islamic; we should avoid giving them the authority and dignity of Islamic law. Just because lots of Muslims have to do something or choose to do something does not make it Islamic. People do things for reason of necessity or convenience -- but necessities and conveniences change from one time and place to another. What we understand as Islamic law is supposed to be more stable and enduring than that; in certain matters, indeed, it is or should be unchangeable.

What I fear is going on in the use to which the concept of *maqasid* is being put in our time is similar to what is done in many commentaries on the Qur'an. The commentators find an idea or sentiment that appeals to them, and which they are convinced will lead to improvement in people's understanding and

behaviour and then they claim that this is what the Qur'an means. They say so even if that is not at all what the Qur'anic words say; they say so even when they know that neither the Prophet nor his Companions ever understood those words to mean any such thing. What they could be doing is advocating that idea or sentiment that they believe in on the authority of their own reasoning and their own behaviour. But they do not take that heavy responsibility. Instead, they claim for that idea or sentiment the authority of the Qur'an. In effect, they are claiming that this idea or sentiment is what should have been revealed by God as the Qur'an, even when it was not. The temptation to do this is not restricted to modern times, when Muslims are politically weak in the world; rather, it has existed throughout Islamic history from at least the time of the Mu'tazila. Nor is the temptation to do this restricted to very foolish or very clever people who wish to harm Islam or the Muslims. Little harm comes to Muslims from such people, because their bad motives soon become obvious. The harm comes rather from the well-intentioned and pious Muslims who believe that, by their interpretations, they are serving Muslims and Islam. Despite their faith and piety, they find the Qur'an and Sunnah inadequate; they are not inwardly satisfied with the mercy of God embodied in the Qur'an and Sunnah; they think that these sources of Islamic faith, culture and law need improving. In our time, the improving takes the form of calls to reformation and enlightenment, on the lines of what happened to the faith and religious culture of Christians and Jews in the West. Qur'an and Sunnah are, for them, not a mercy but an obstacle, a hindrance, that they must use their wits and energies to get around.

In the end, the heart of the issue is submission or *Islam*, the acceptance of boundaries to the autonomy of human reason and judgement and human will. Muslims, on the whole, being *Muslim*, accept such boundaries; non-Muslims on the whole refuse them. My fear is that the concept of *maqasid* is liable to abuse in order to authorize and legitimize the adoption of norms and laws that have no sound basis in Islamic legal tradition. And because the Islamic legal tradition is an expression of *Islam*, of the submission that is the heart of our faith, I fear that contemporary misunderstanding of the concept of *maqasid* is a danger to the faith as well as to the religion and culture, to *iman* as well as *din*.

The word *maqasid* is a plural form of *maqsid*, meaning literally goal or purpose or function. But in our context, that meaning is taken in the narrower sense of 'benefit' -- 'function' in the sense of 'usefulness'. So the *maqasid* of the Shari'ah means the good purposes or benefits that the *Shari'ah* is expected to secure for an Islamic society. Now, these purposes or benefits are not spelled out as such in specific texts of either the Qur'an or Sunnah. Rather, these purposes and benefits are supposed to reside in the Shari'ah as a whole, so that, in some sense, the *maqasid* represent key elements of the overall spirit, or overall framework, of Islamic law. One way of applying this concept of *maqasid* is to argue against the derivation of rulings by analogy with particular texts of either Qur'an or Sunnah because implementing such rulings might lead to outcomes, which contradict the *maqasid*, which contradict the overall spirit of Islam. For example, certain

rulings might lead to injustice, or do more harm than good in a particular situation, and so on. As I will explain in a minute, the Hanafi jurists did not develop this concept, because they had another that served the same purpose of blocking legal analogies that would lead to rulings that, in certain situations, did more harm than good. This concept was *istihsan*. Imam Shafi's rejected this concept, and his rejection of it is the basis of the development of the *maqasid concept* in Shafi'i fiqh.

Let us pause there to reflect on the fact that both these concepts represent a human effort to understand and interpret Islamic law. Both are avenues for, and exercises of, human reason and human judgement. As we would expect, the great Islamic jurists are without exception very circumspect, very reserved, when they do this. They do it only when they cannot find any other way to establish justice or prevent injustice. This is because the fundamental reason for Islamic law is the necessity of obedience to the command of God. Of course, Muslims are required to love God and His Messenger, not just to obey them. While the Law can in a general way encourage, it cannot expressly require the love of God. The Law concerns itself directly with the *hukm* of God, His command, and the how, the detail, of how that command is to be obeyed. Sometimes, either in the Qur'an or in the teaching of the Prophet, the *hikma* (the good reason, the wisdom and benefit) in the command is clearly indicated. 'Do this, because it is better for you'. But the reason for obeying the command is the fact that it is God's command, not that it has some benefit (known or unknown). The virtue of obedience to God rests in the confidence that God does not command what he does not also enable (you are never commanded to do what is impossible) and that He is all-merciful, and accordingly what He commands cannot but benefit those who obey. The true reward for obedience, the reward you can depend upon absolutely, is hereafter.

That said, obedience becomes easier when we have a reason for it. There is little harm in saying things like 'pork is forbidden because it goes off more quickly than other meat' or 'because pigs have more diseases that are transferable to humans'. But there is great harm in thinking that human convenience justifies human obedience to God's command. Only a little reflection will tell you that if the alleged hazards of pork can be removed, it does not therefore become permissible to eat it. The command stands regardless of its convenience or inconvenience. It stands because it is the command of God.

Similarly, we may reason, following the clear indications in the Qur'an to that effect, that wine is forbidden because it is intoxicant. Muslims were forbidden to approach the prayer when their consciousness of what they were doing was impaired by drinking wine. Now people can become so absorbed by many things (sport, poetry, stories, etc.) that their consciousness of what they are doing when they are praying is impaired. But we would not be right to pronounce these people intoxicated, nor to pronounce as forbidden the activities which led to their distraction from prayer or during prayer.

And yet, as we know, Muslim jurists in all epochs were faced with questions of what is lawful or unlawful in situations that were new, for which there was

no clear precedent in the Qur'an and Sunnah. Sometimes they were faced with situations in which different, even contradictory, rulings might be applied. So how did they deal with such situations? We know that they exercised their conscience and reason. But on what basis? What principles guide or regulate human judgement in matters of Law?

This is an issue that arises in every legal system whatsoever. For very minor infractions, like for example violation of parking regulations, judgment can be mechanical, so much so that a machine could decide the penalty -- £50 for one yellow line, £100 for double yellow, and so on. But as soon as motive, evidence, situational context, and other factors have to be taken into account, a human judge is needed to weigh the relevant factors against the law as written by the sovereign power in the jurisdiction concerned. The letter of the law must be applied within the margins allowed to the judge, but the judge can in certain instances issue a new ruling, set or upset a precedent, or make comments that, eventually, contribute to a change in the written law. There are rules, written and unwritten, that determine the scope of what judgements judges can pass.

Mohammad Akram Nadwi
Oxford

*For further information and for seminars and videos of Shaykh Dr Mohammad Akram Nadwi please visit **Cambridge Islamic Sciences WorldWide** at <http://courses.meoc.org.uk> – a division of Muslim Education and Outreach Cambridge (MEOC). Please sign up for email to keep you updated.*