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# Islamic Shari'a Law, History and Modernity: Some Reflections*

# Direito Islâmico da Shari'a, História e Modernidade: Algumas Reflexões

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## Abstract

In the last two centuries, Muslim modernists have introduced major legal reforms that led to the restriction of the range and scope of Islamic Shari'a Law and the overhaul of legal thought and practice in the Muslim World. Nevertheless, every time a new legal reform is proposed, it is met with outcries from Islamists who label it un-Islamic and blasphemy against God. This paper examines some major premodern scholars of Islamic jurisprudence whose thought and practice about Shari'a Law featured tremendous flexibility in the way they understood their role as legislators and accepted a diversity of rules. The paper shows how important Islamic history is for a proper understanding of Islamic Shari'a Law, which accommodates change and constant interpretation.

**Keywords:** Islamic Shari'a Law, Muslims and Modernity, Islamic Legal Reforms

## Resumo

Nos últimos dois séculos, os modernistas muçulmanos introduziram reformas legais importantes que levaram à restrição do alcance e do escopo do Direito islâmico da Shari'a e à revisão do pensamento e da prática legais no mundo muçulmano. No entanto, toda vez que uma nova reforma legal é proposta, ela é recebida com protestos de islamistas que a rotulam como anti-islâmica e blasfêmia contra Deus. Este artigo examina alguns importantes estudiosos pré-modernos da jurisprudência islâmica, cujo pensamento e cuja prática sobre o Direito da Shari'a apresentavam uma tremenda flexibilidade na maneira como eles entendiam seu papel como legisladores e aceitavam uma diversidade de regras. O artigo mostra como a história islâmica é importante para uma compreensão adequada da Shari'a, que acomoda a mudança e a interpretação constante.

**Palavras-Chave:** Direito Islâmico da Shari'a, Muçulmanos e modernidade, Reforma legal islâmica

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## 1. Introduction

In a speech on the National Women's Day on 13 August 2018, the Tunisian President Mohamed Beji Caid Essebsi endorsed the Colibe report (issued by the Commission of Individual Liberties and Equality on 1 June 2018[1]) and announced that he will submit a request to Parliament to amend the law of inheritance, giving women and men equal rights. Essebsi's announcement was met with angry reactions from many Tunisian Islamists who alleged that it contradicts the terms of Islamic Shari'a law, which assigns to men a higher share of inheritance than to women. Al-Azhar, the most influential religious institution in Sunni Islam and based in Egypt, joined the fray. It issued a declaration that labeled the proposal un-Islamic because it violates the clear stipulation of God's revelation, specifically verse 11 of chapter 4 in the Qur'an: "God commands you that a son should have the equivalent share of two daughters."

The objection of Tunisian Islamists, al-Azhar, and other Islamist groups is grounded in a highly contentious belief that Muslims (and humans in general) have no authority or agency to amend what God has clearly and definitively stipulated in the Qur'an. It might sound astonishing to many today that this view is not in agreement with the position of most premodern Muslim jurists who had a fundamental role in defining and laying out the theoretical and practical apparatus of Islamic Shari'a law. It is also not in agreement with the general tendency of these same groups who have supported major overhaul and modification of Shari'a law in recent decades. This paper will examine some discussions by leading legal jurists from premodern times in order to show the flexibility with which they dealt with issues pertaining to Shari'a and what role they gave to the legal injunctions of the Qur'an. It highlights the importance of history in understanding the dynamics of Islamic Shari'a law, and exposes the manipulation of religion done today by some Islamist groups, whose rejection of certain initiatives to amend Shari'a law is politically motivated.

1 The reports was issued in three languages: Arabic (https://colibe.org/ريرقتلا/?lang=ar), French (https://colibe.org/le-rapport/), and English (https://colibe.org/report/?lang=en).

## 2. The historical record

The historical record demonstrates that the overwhelming majority of Muslim jurists throughout the centuries did not take the word of the Qur'an literally as something absolute, and sometimes ruled on matters without first examining the Qur'an.[2] When they took notice of what the Qur'an stipulates, they either freely amended the text by playing it against other revealed sources (other qur'anic verses, Sunna of Muhammad, Bible, etc.) or ignored it and heeded the views of the founding fathers (mainly, the Companions of Muhammad and their successors). They even devised hermeneutical tools in order to make the Qur'an say something different from the literal meaning.

An example that displays this tendency on the part of premodern Muslim jurists is the following from a very influential legal text by Ibn Tahir al-Baghdadi (d. 1037), who was a significant Sunni legal theorist and belonged to the Sunni sub-school known as the Shafi'i school.[3] In his discussion of the permissibility of seafood, al-Baghdadi noted not only the broad disagreement among schools but also the one within his own:

> The followers of al-Shafi'i disagree concerning aquatic animals. Some claim that fish are permissible but that frogs are forbidden. Others say that if the animal is in the form of a fish or of an animal ritually slaughtered in good faith then the eating of it is permitted if it comes from the sea without being ritually slaughtered; however, if it is of a form of something which is not permitted to be eaten in good faith, then one is forbidden to eat it. This is the judgement of Abu Thawr.
>
> Others say that everything from the sea is to be judged by the law of fish except the frog which is forbidden because the Prophet forbade killing it. This is the judgement of 'Ali ibn Khayran.
>
> Malik and Rabi'a declare all aquatic animals allowable, even the tortoise and the like. This is suggested by a report from Abu Bakr who said: "There is nothing in the sea besides animals which

2 For a new pioneering study on early Islamic legal thought, see Lena Salaymeh, *The Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions* (Cambridge: Cambridge University Press, 2016).

3 Sunni Islam is branched into several schools, of which only five exist today: Hanafi, Maliki, Shafi'i, Hanbali and Zahiri. Each of these schools has its own Shari'a system, and they disagree on some fundamental aspects of legal theory and practice. As a result of modern legal reforms and the creation of nation states, most Sunnis today are not aware of this diversity, and the realm of each school, except in two countries (Saudi Arabia and Iran), has been reduced to a very small area: family law, marriage, inheritance, religious rituals, and the like.

> God would slaughter for you."
>
> Abu Hanifa forbids everything which does not have the form of a fish among the aquatic animals.[4]

Even though the discussion is about practice (what seafood is legitimate to eat and what is not), it actually exposes the complexity of legal theory in the first centuries of Islam, which left its mark on the nature of Islamic Shari'a law since. It is rather astonishing that the Qur'an – which actually provides a statement on this issue: "Licit for you is the game of the sea and its food" (Q. 5.96) – is not cited or even mentioned. Al-Baghdadi gave four differing views as reflective of what was accepted among Sunni jurists. One view references the prophet Muhammad, who only forbad eating the frog (probably on account of it being amphibious, meaning it belongs to two realms). Another view cites the opinion of the first caliph Abu Bakr, who allowed everything in the sea.[5] A third view is attributed to a leading jurist from the ninth century named Abu Thawr (d. 854) who only legitimized the eating of seafood that looks like fish or is similar in shape to land animals that are edible. A fourth view is ascribed to Abu Hanifa (d. 767) – the eponym of the most popular school of Sunnism (the Hanafi school) – who declared that for seafood to be edible it must be in the form of a fish (which is very likely based on Jewish law, specifically Leviticus 11:9).

The discussion effectively means that medieval Sunni jurists placed on the same par the practice (Sunna) of the prophet Muhammad, the view of caliph Abu Bakr, and the views of jurists Abu Hanifa and Abu Thawr. Al-Baghdadi did not say that Muslims must look into the Qur'an and follow verbatim what it says, which would have disallowed the views expressed by prophet Muhammad, Abu Hanifa, and Abu Thawr.

It is also interesting to point that al-Baghdadi's discussion underlines the two aspects of law: the dynamic and the static. The opinions of Muhammad, Abu Bakr, Abu Hanifa, and Abu Thawr were expressed as part of the dynamic process of law making. Over time, they became static laws.

A second example comes from another powerful legal manual by the jurist Ibn Qudama (d. 1223), who was a renowned theorist of the Hanbali school of Sunni law. In his discussion of the maximum duration of a pregnancy, Ibn Qudama admitted that there is no agreement among Sunnis on this question, and he listed the different views about it, which range from two years to no limit.

- 2 years: 'A'isha[6] (d. 678), Abu Hanifa[7] (d. 767), Sufyan al-Thawri (d. 778), and Ibn Hanbal[8] (d. 855).
- 3 years: Al-Layth b. Sa'd (d. 791)
- 4 years: the overwhelming view of the Hanbalis, al-Shafi'i[9] (d. 820), the popular view of Malik[10] (d. 795).
- 5 years: 'Abbad b. al-'Awwam (d. 804).
- 6 years: al-Zuhri (d. 741).
- 7 years: another view attributed to al-Zuhri.
- No limit: Abu 'Ubayd (d. 838).[11]

As the above list shows, medieval Muslim jurists did not have a uniform position about the maximum duration of a pregnancy. We find this disagreement not only between leading jurists, but also within the same schools. We also find missing in this discussion the view of the Qur'an, which actually addresses the issue of pregnancy in the verse that says: "its bearing and weaning are thirty months" (Q. 46.15). Thus, according to the Qur'an, it takes thirty month to conceive of and nurse an infant. Although the text does not specify the exact length of each stage, it is rather evident that if the two stages cannot exceed two and a half years,[12] then the pregnancy itself must be less than that. (Interestingly, the view of al-Azhar has been consistent with the list above rather than with the explicit text of the Qur'an).[13]

How come we find premodern Muslim jurists and schools of Shari'a disagreed with the Qur'an? The direct

4 Al-Baghdadi, *Usul al-din*, translated in Andrew Rippin and Jan Knappert, *Textual Sources for the Study of Islam* (Chicago: Chicago University Press, 1990), 106.

5 It is unclear if Abu Bakr based his view on Qur'an 5:96. It seems rather obvious that al-Baghdadi did not make a connection between the two and assumed that Abu Bakr's view reflected his personal opinion.

6 Wife of Muhammad, she was a major transmitter of hadiths and her statements feature in many discussions about Islamic law.

7 Major early jurist who is the eponym of the Hanafi school.

8 Major early jurist who is the eponym of the Hanbali school.

9 Major early jurist who is the eponym of the Shafi'i school.

10 Major early jurist who is the eponym of the Maliki school.

11 Ibn Qudama, *al-Mughni* (Cairo: Maktabat al-Qahira, 1968), 8:121–122.

12 If the Qur'an actually means 30 lunar months, then the entire period would be equivalent to 2 years and 5 months in the common calendar.

13 See for example the position expressed by the vice president of the Azhar University: <https://www.youtube.com/watch?v=6IV4JRdes0A> (accessed on 3 February 2019).

answer is that the Qur'an was not the starting point or the absolute authoritative text when it came to Islamic legal theory and practice. We thus realize how flawed it is to classify the Qur'an as the starting point of Islamic law (and Islamic thought in general) as some modern scholars have argued.[14] Moreover, in this discussion of the maximum length of a pregnancy, we also see the dynamic aspect of Islamic law in its formative phase (the conversations and differing views of early jurists), which became later on the static legal framework by which many jurists abided.

The dynamism and diversity of classical Islamic legal theory and practice was informed by a fundamental presupposition that essentially delegated to the jurist the task to "poking" in God's mind and determine what God intended. This is best expressed in the following words of one of the most authoritative Sunni theologian/jurist, Abu Hamid al-Ghazali (d. 1111). They convey the general attitude of many jurists when it came to determining Shari'a law. Al-Ghazali listed four pivots that represent a road map for the jurist, and inform the principles of Islamic law and how to deduce laws from the sources:

1. The first pivot is the fruit, which refers to the rules themselves: mandatory, prohibitive, suggestive, restrictive, permissive, reprehensible, etc.
2. The second pivot is the fruit-bearer, which refers to the three sources: the Book, the Sunna, and Consensus and nothing else.
3. The third pivot is the method of harvesting, which refers to the methods of inquiry: according to the explicit meaning, implicit meaning, pervasive use, or rational and deductive analysis.
4. The fourth pivot is the harvester, who is the seeker.[15]

It is clear that for al-Ghazali, deducing laws from the fundamental sources is not a passive process. Rather it hinges on the seeking jurist following a sophisticated method of inquiry. The jurist must carefully examine the language (laid out in no. 3) in order to produce from the sources (the Qur'an, the Sunna of Muhammad and the Consensus of early jurists) the different types of rules (enumerated in no. 1) and thus define Shari'a law. As such, the sources do not speak for themselves. They need the jurist to say what they mean according to a set of hermeneutical tools, which, for all intents and purposes, become as important as the sources themselves.

Al-Ghazali's view is one of many variant views on the sources and tools that form the bases of the principles of Islamic Shari'a law. And it is true that Muslim jurists never agreed on these sources/tools and their ranking. However, their disagreement is often over who is entrusted to be a seeker, and whether this is something divinely ordained to a specific lineage or attained by any Muslim through study and expertise. For instance, Shi'i jurists take the Imam (often nicknamed the Speaking Qur'an)[16] as God's delegate to be the absolute source on legal and religious matters; it is no surprise that adherence to the Imam and his teachings is the main tenet of Shi'ism. Jurist al-Qadi al-Nu'man (d. 974) best expressed this premise:

> God revealed His Book, gathered together in it all the religious obligations that he imposed on the worshipers, clarified in it that which He saw fit to clarify, and left ambiguous in it that which He saw fit to leave ambiguous. He did this in order to compel the worshipers thereby to need those whom He made superior to them and obedience to whom He imposed as an obligation of the faith, and in order to guide them to the Imams. He taught the Imams exclusively knowledge of the religion, and caused the believers to need the Imams in that regard.[17]

Thus, according to al-Qadi al-Nu'man, the Imams, and only them, can speak on behalf of God and clarify to their followers God's laws which he communicated in the Qur'an, the clear therein and the hidden. It follows, therefore, that the believers should not seek on their own the Qur'an directly because doing so will lead them to error.

Besides, Shari'a has other principles that govern the thinking process of the jurists. They fit under the broad

14 See, for example, Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997), 1.

15 Al-Ghazali, *al-Mustasfa*, ed. Muhammad al-Shafi (Beirut: Dar al-Kutub al-'Ilmiyya, 1993), 7.

16 On the Imam as the speaking Qur'an, see Muhammad Ali Amir-Moezzi, *The Silent Qur'an & the Speaking Qur'an: Scriptural Sources of Islam between History and Fervor*, trans. Eric Ormsby (New York: Columbia University Press, 2016).

17 Al-Qadi al-Nu'man, *Disagreements of the Jurists: A Manual of Islamic Legal Theory*, ed. and trans. Devin J. Stewart (New York: New York University Press, 2015), 45.

concept of what some modern jurists call *Maqasid al-Shari'a* (Objectives of Shari'a).[18] Three are significant: *istihsan* (subjective reasoning), *maslaha* (public welfare), and *darura* (dire necessity). The Objectives of Shari'a take their logic from the belief that Shari'a has a purpose, and this purpose is to benefit those who believe in God.[19] So, the rules of Shari'a are simply the means to achieve this aim and what God truly intended.

This is best summed up in the following words of the famous Tunisian jurist Ibn 'Ashur (d. 1973), which bring to mind the view of al-Ghazzali discussed above:

> In instituting the commands, the Lawgiver has primary and secondary objectives. Some of these are explicitly stated, some merely alluded to, while others are to be inferred from the texts. We therefore conclude from this that whatever is not clearly stated but can be arrived at from induction, is intended by the Lawgiver.[20]

The words of Ibn 'Ashur, like those examined previously, point to the realization among most Muslim jurists about the complexity of defining Shari'a law, and the important role of the jurists in determining, on behalf of God, God's intent. Therefore, the jurist must always subject the textual sources to a rigorous process of examination and inquiry in order to make sure that what is intended by the Lawgiver is made known.

## 3. Modernity and Islamic Law

The advent of modernity in the nineteenth century caused a major change in the attitudes of Muslims towards Shari'a law and its realm and legal apparatus. I precisely mean here the adoption of a new legal system in every Muslim country based on a modern constitution that in some cases superseded Shari'a, limited Shari'a to a specific realm, or functioned in parallel to Shari'a. Muslim reformers realized that political reform (which they saw as the fundamental step towards the political empowerment of the Muslim World against European hegemony) could not be achieved unless the Shari'a is heavily reformed and reduced to a small realm (primarily marriage contracts, inheritance, religious rituals, and the like).

Modernists have argued that the true teachings of Islam and the voice of the Qur'an show that God delegated the legislative matters to the Muslims to decide them. For instance, in his *Proposed Political, Legal, and Social Reforms*, the Indian modernist Cherágh Ali (d. 1895) declared that "the only law of Mohammad or Islam is the Korán."[21] Then he contended that, "the Korán does not profess to teach a social and political law" and that "it was neither the object of the Korán, the Mohammadan Revealed Law, to give particular and detailed instructions in the Civil Law, nor to lay down general principles of jurisprudence."[22] He concluded by saying that the Islamic tradition "unfetters us" from traditional Shari'a, and "encourages us to base all legislation on the living needs of the present, and not on the fossilized ideas of the past."[23]

Similarly, the great religious reformist Muhammad 'Abduh (d. 1908) of Egypt divided Islam into two components: 1) beliefs and religious practices, and 2) social relations. He posited that beliefs and religious practices are regulated by God and Muhammad, and the Muslims (be they individually or communally) cannot change these rules. Social relations, however, are to be determined by the Muslims themselves because civil law has to conform to the ever-changing conditions of the Muslims.[24] 'Abduh also introduced the very powerful concept of *talfiq* (hybridization) in order to allow the jurist to bypass the limitations of his own school and reach outside of it to another school if its Shari'a is more appropriate for particular purposes.[25] The success of 'Abduh's hybridization system is so widespread among Sunnis that the majority do not uphold anymore to the strict school system (most Sunnis today might not even know to which school of Sunni law they belong, or are

18 On the notion of "Objectives of Shari'a, see the studies in Adis Duderija (ed.), *Maqasid al-Shari'a and Contemporary Reformist Muslim Thought: An Examination* (New York: Palgrave, 2014).

19 On the premodern debate regarding whether there is such a purpose, see Rami Koujah, "Divine Purposiveness and its Implications in Legal Theory: The Interplay of *Kalam* and *Usul al-Fiqh*," *Islamic Law and Society* 24 (2016): 171–210.

20 Muhammad al-Tahir Ibn 'Ashur, *Maqasid al-shari'a al-islamiyya* (Beirut: Dar al-Kitab al-Lubnani, 2011), 20.

21 Cherágh Ali, *The Proposed Political, Legal, and Social Reforms in Ottoman Empire and Other Mohammadan States* (Bombay: Education Society's Press, 1883), ii.

22 Ali, *The Proposed Political, Legal, and Social Reforms*, xiv.

23 Ali, *The Proposed Political, Legal, and Social Reforms*, xl.

24 Muhammad 'Abduh, "iIkhtilaf al-qawanin bi-ikhtilaf ahwal al-umam," in *al-A'mal al-Kamila,* ed. Muhammad 'Imara (Beirut: al-Mu'assasa al-'Arabiyya li-l-Dirasat wa-l-Nashr, 1972).

25 On the notion of "hybridization," see Mohammad Hashim Kamali, "Shari'ah and Civil Law: Towards a Methodology of Harmonization," *Islamic Law and Society* 14.3 (2007): 391–420.

not aware that there is not one single Shari'a in Islam).

Modern Muslim jurists have generally accepted the logic that changing conditions necessitate changing Shari'a laws. I will discuss two examples that illustrate this tendency. They relate to two components of the pilgrimage (Hajj) rituals: one is the quota placed on the number of Muslims who could make the Hajj each year, and the other is the restriction on animal sacrifice that each pilgrim is mandated to offer at the conclusion of the pilgrimage. Both of these measures amend prior laws set by all classical schools of Shari'a.

According to the Qur'an (verse 3: 97), "Pilgrimage to the House (Ka'ba) is a duty owed to God by people who are able to undertake it." Jurists have understood it to mean that those who do not have the financial means or good health are exempted from this religious requirement. But as a result of the massive increase in the number of pilgrims coming to Mecca in the 1970s and 1980s, the Kingdom of Saudi Arabia requested that Muslim jurists support a rule to limit the number of Muslims who could make the pilgrimage each year because the venues cannot accommodate everyone who wants to come. The decision was to set a yearly quota per country: one in every thousand Muslims can make the pilgrimage in any given year, and this was ratified by the Organization of Islamic Cooperation (OIC) in its meeting held in Jordan in March 1988.

A similar petition by the King of Saudi Arabia was submitted to the Supreme Council of Senior Religious Scholars in Saudi Arabia to impose a limit on the number of Muslims inside the Kingdom. It was discussed and approved by the Council on 1 August 1997. The fatwa that the Council issued gives the following rationale for placing a limit on the number of pilgrims:

> The Council discussed the reality of the matter with respect to the Hajj and what the pilgrims experience in terms of excessive congestion at many of the ritual sites, roads, and places, which is caused by the surge in the numbers of pilgrims in the last few years. This is happening despite the efforts that the government of Saudi Arabia – may God make it successful – has undertaken in order to ease the access to ritual sites and the continuous measures it is adopting every year to facilitate to the Muslims the performance of the Hajj. … As such, the Council of Senior Religious Scholars does not see any reason to prevent a policy that organizes the Saudi pilgrims, including that, as long as dire necessity requires it, the government not permit who performs the Hajj to repeat it unless five years have lapsed, as is the case with non-citizens who reside in the Kingdom.[26]

It is clear from the text quoted above that what necessitates amending Shari'a law and imposing a restriction on the number of pilgrims is the issue of congestion that is harmful to pilgrims. Thus, the principle of dire necessity allows the jurist to amend Shari'a law.

The second case also relates imposing restrictions for reasons that have to do with problems caused by the changing circumstances. Classical schools of Shari'a unanimously stipulated that at the conclusion of the Hajj rituals, each pilgrim must offer an animal sacrifice and administer it in person, or at least be present during the slaughter. Due to the massive number of pilgrims converging on Mecca, the practice has become a sanitary and organizational nightmare. Jurists could not ban the practice outright because it was well entrenched in religious law. Instead, they issued a restriction in the form of an encouragement to pilgrims to delegate this ritual to an organization that would do the sacrifice on behalf of the pilgrim, provided it meets certain requirements. Instead of offering a sacrifice, pilgrims are now "encouraged" to purchase a certificate stating they have fulfilled the obligatory ritual of sacrifice. Below is a legal fatwa issued in 2010 by the former mufti of Jordan Nuh Ali Salman, which allows the pilgrims to delegate a company to do the sacrifice on their behalf:

> It is permissible to delegate the purchase and slaughter of sacrificial animals to others. Thus, it is not prohibited according to Shari'a for the Muslim to delegate this to a trustworthy company. He pays to it the cost of the sacrificial animal, and the company purchases and slaughters the animal, even if it takes place in a country outside the Kingdom of Saudi Arabia, because elsewhere the animals are cheaper. But there are a few conditions that must be observed:
>
> - The slaughter must occur on the day of the Adha Holiday or the three days that follow it.
> - The sacrificial animal should not be younger than five years for camels, two years for cattle or goats, six months for sheep provided they are fattened.
> - The sacrificed animals must contain no blemishes or disabilities that compromise their shape; for example, it is not permissible to sacrifice an animal that has lost an eye.

26 The fatwa is posted on <http://almoslim.net/node/217782> (accessed 3 February 2019).

- Some of the meat must be distributed to poor Muslims.
- If the company is delegated to slaughter for many people, the butchers must have a list of the names of delegators, and should mention each one ahead of the slaughter of the corresponding animal, and say that it is sacrificed on behalf of so-and-so. I am told that the companies that offer such a service do so.
- In conclusion, we thank those companies that do this service because they facilitate for the Muslims the fulfillment of this ritual, at a cost most Muslims can afford. May God reward them well.[27]

In this fatwa as well, it is evident that the notions of public welfare and dire necessity, and given the noble objectives of Shari'a, give the modern jurists power to amend any stipulation pertaining to Islamic law. This shows the willingness of modern jurists to amend the law, and the extent to which Islamic law operates today according to modern concerns and priorities.

## 4. Conclusion

The initiative of the Tunisian president Essebsi to propose an amendment to the Shari'a law in Tunisia that would make inheritance equal between men and women seems to be in agreement with the general tendency of classical Muslim jurists throughout the centuries whose understanding of Shari'a law was dynamic. It is also in agreement with the general tendency of modern Muslim jurists who have been open in countless occasions to amend Shari'a law and limit its application. Muslim jurists have operated throughout the centuries with the understanding that Islamic Jurisprudence does not mean blind adherence to the literal dictate of the Qur'an, but rather finding God's intent and what is best for the Muslims. They produced a huge diversity within Shari'a law, and developed a complex system not only for devising laws but also for amending them, and this system is still in practice today, albeit limited to a smaller realm than in premodern times. The condemnation expressed by al-Azhar and many Islamists of Essebsi's proposal seems therefore a political statement and an effort to protect their turf and monopoly over Islamic Shari'a.

27 Posted on <http://aliftaa.jo/Question.aspx?QuestionId=605#.Wf38EX1yVaw> (accessed on 3 February 2019).

## Bibliography


‹Abduh, Muhammad. *Al-A'mal al-Kamila*. Ed. Muhammad 'Imara. Beirut: al-Mu'assasa al-'Arabiyya li-l-Dirasat wa-l-Nashr, 1972.

Ali, Cherágh. *The Proposed Political, Legal, and Social Reforms in Ottoman Empire and Other Mohammadan States*. Bombay: Education Society's Press, 1883.

Amir-Moezzi, Muhammad Ali. *The Silent Qur'an & the Speaking Qur'an: Scriptural Sources of Islam between History and Fervor*. Trans. Eric Ormsby. New York: Columbia University Press, 2016.

Duderija, Adis, ed. *Maqasid al-Shari'a and Contemporary Reformist Muslim Thought: An Examination*. New York: Palgrave, 2014.

Al-Ghazali. *Al-Mustasfa*. Ed. Muhammad al-Shafi. Beirut: Dar al-Kutub al-'Ilmiyya, 1993.

Hallaq, Wael B. *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh*. Cambridge: Cambridge University Press, 1997.

Ibn 'Ashur, Muhammad al-Tahir. *Maqasid al-shari'a al-islamiyya*. Beirut: Dar al-Kitab al-Lubnani, 2011.

Ibn Qudama. *Al-Mughni*. Cairo: Maktabat al-Qahira, 1968.

Kamali, Mohammad Hashim. "Shari'ah and Civil Law: Towards a Methodology of Harmonization." *Islamic Law and Society* 14.3 (2007): 391–420.

Koujah, Rami. "Divine Purposiveness and its Implications in Legal Theory: The Interplay of *Kalam* and *Usul al-Fiqh*." *Islamic Law and Society* 24 (2016): 171–210.

Al-Qadi al-Nu'man. *Disagreements of the Jurists: A Manual of Islamic Legal Theory*. Ed. and trans. Devin J. Stewart. New York: New York University Press, 2015.

Rippin, Andrew and Jan Knappert. *Textual Sources for the Study of Islam*. Chicago: Chicago University Press, 1990.

Salaymeh, Lena. *The Beginnings of Islamic Law: Late Antique Islamicate Legal Traditions*. Cambridge: Cambridge University Press, 2016.