Assimilating Islam: A Broad Analysis of Islamic Reformist Discourse in the Modern Period

Syed Ahmed Uwaisi

Contents

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Islamic reformist thought is largely viewed to be inspired by the work of Muhammad Abduh, although not always directly. Within this tradition are both thinkers considered by historians of Islamic law as 'Utilitarian', who seek to engage in reform of the law within the existing legal paradigm, as well as 'Liberalists' who approach the law from a simplistic and ethical perspective, not seeking to interact with the classical tradition, which is technical and daunting for most thinkers. This essay does not focus on individual thinkers or cases in too much detail but rather uses examples of their writings to create a clear picture of the nature and style of their arguments, and as an aid to illustrate my own conclusions based on my exposure to Islamic legal thought. By creating a broad overview in this manner, anyone who studies their writings will understand them in context of a larger historical narrative. Nationalism, as an offshoot of Colonialism was the force that sought to absorb existing social institutions into its realm of dominion, and it was in context of submission to the authority of the Nation State that attempts to 'reform' Islam must be viewed. If this is not done, then people will view the reformers as people who were trying to genuinely aid the cause of the Islamic nation, although they were only facilitating their estrangement from the original institutions of that specific social model. Thus forming a broad understanding of the particular slant of the modernist thought techniques within Islamic law will enable the historian to more accurately perceive the general implications of their thought.

The Sources of Reformist Thought:

It would seem that most of the discourse over the last couple of centuries pertaining to reform of Islam, both from the West and from splinter groups within Islam has been directed to beliefs and practices of contemporary Muslims, taken collectively to represent Islam. Most criticism bypasses the intellectual tradition, although this has been the subject of criticism at times also. On the whole, contemporary discussions on the reform of Islam are in reaction to negative expressions of faith observed by extremist splinter groups. Many assume that the prescriptions of Islamic law motivates these groups, and thus they critique Islam on the basis of these observations, making passing suggestions towards the abandonment of 'extremism' and adoption of 'modern values' and 'liberal views'. This type of critique is shallow on the basis that these values already exist in the scriptural foundations of Islam, but also because such behaviour is taken to be the basis of critique, rather than

the intellectual tradition that represents the actual substance and body of Islam as a religion. Academic study accepts that the intellectual tradition is what constitutes Islam as a religious thought system, not simply what people who claim Islamic faith outwardly practice and inwardly believe.

If a contemporary 'Islamist'- inspired youth makes it his role to establish a 'Sharia Only' zone in his local town centre whilst living in England, or worse, perpetuates an act of manslaughter justifying it as an Islamic duty, it is not because of Islam or the need to reform Islam but rather due to his neglect of the Islamic Intellectual Tradition, consisting of understanding the fundamental debates between classical theologians, Asharites and Mutazila, as well as understanding the debates between jurists and the history of Islamic law, and how the scriptural sources of Islam were subject to scrutiny and contextualisation by classical scholars. Awareness of this tradition allows him to navigate within the modern world while still maintaining his Islamic ethics and values. Ignorance of it leads to zealotism and isolationist tactics which almost always end in failure to adhere to Islam successfully[1].

Most of the debate surrounding reform of Islam today has two main flaws: 1) It is initiated on the basis of assuming that radical behaviour constitutes correct Islamic belief, on the basis of which the religion must be scrutinised and de-radicalised so that it conforms to Western liberal values, and 2) it ignores the fact that it is the Islamic intellectual tradition and not the practice of Muslims that defines Islam. A third point motivating this line of thought is this, that throughout Islamic history, Islamic beliefs and practices, when seen to deviate from the prophetic norm, have been periodically subject to scrutiny and criticism from within. One would be hard pressed to prove that all people who claim adherence to Islamic ethics believe that their thought system obligates them to act as we have seen 'extremist' groups act in recent times. The answer that remains suggest that most criticism and call for reform is perhaps lacking intellectual integrity and real scholarly impulse, but is based on surface level perceptions of 'extremism'. It stems from assumptions and mass hysteria, both within and without 'Islam', as a thought system and a group of people.

Some take the example of conservative reactions to new laws in Pakistan that seek to curb marriage of teenage girls[2]. Most would assume that it is the Islamic tradition which encourages this type of marriage, and would be even more convinced when certain religious groups and 'scholars' are arguing how this type of marriage is

[1] See Tim Winters, 'The Poverty of Fanaticism', pp.283-96 of Joseph E.B. Lumbard (ed.), 'Islam, Fundamentalism, and the Betrayal of Tradition (Bloomington: World Wisdom, 2004)

[2] 'Girls 'Treated as Cattle': Child Brides Divide Pakistan', Wajahat S. Khan and Henry Austin. 2014.

commanded by Islam. Reformers would capitalise on this to assert that a new way of viewing Islamic law is needed, but this assumption of ideal marriage which is ignorantly defended as Islamic contradicts both classical substantive law as well as key legal principles. Again, ignorance of the intellectual tradition is the cause for this crisis of understanding, which will not be solved by any new hermeneutic.

The Precedent of Internal Criticism:

Work on understanding the intellectual tradition has been greatly widespread in recent times in academia, and there is no shortage of literature on the subject, but when people discuss the subject of 'Islamic Reform' in reaction to the behaviour of its supposed adherents, it becomes clear that most do not bother to read up on the classical thought systems of Islam and how this was connected to the ruling power of the Sultan who would thus govern the Islamic people. In my understanding, there should not be critique of aberrance emerging from the Islamic people outside the context of the intellectual tradition, since problems that many perceive to be new are simply recurrences of older problems that have been dealt with by scholars in a sophisticated and scientific manner but which their modern day successors fail to admit on behalf of the Islamic people.[3]

Understanding Islamic Reform becomes easier because it then is used as a term to refer specifically to inter-Islamic discussions on aspects of the Intellectual Tradition that have been forgotten. I use the term 'restoration' instead of modernisation or 'reform' because it refers to a process of replication of older, more accurate living standards rather than an adjustment of supposedly 'orthodox' attitudes.

I argue that the reform attempts of Liberalist and Modernist elements within legal thought have largely failed to replicate the depth and intellectual rigour of the classical legal system. If reform has failed, then we are left with the conclusion that internal 'restoration' of Islamic moral values and socio-economic principles is the necessary course of action, and that the intellectual tradition must be the basis of 'restoration' effort and not abandoned, as is urged by Liberalist elements within Islam as a group, as well as their 'fundamentalist', Salafist counterparts[4]. This is not to say that customs and inherited practices cannot be criticised, yet this essay focuses on a specific thought trend that isolates aberrant beliefs and practices and projects them back towards the Intellectual tradition, in the form of the legal schools and speculative theology. I argue these systems cannot be completely done away with, nor is this necessary. Eccentricities, extremism and superstitions on the other hand are under

[3] See general heresiographical literature, *Farq Bayn al Firaq*, Baghdadi, Abdal Qahir; *Kitab Milal wa'n Nihal,* Shahrastani; *Iqtida Sirat ul Mustaqim*, Ibn Taymiyya; *Fadaih al Batiniyya*, Ghazali, Abu Hamid; *Talbis Iblis*, Ibn al Jawzi, etc.).
[4] See, 'Anatomy of the Salafi Movement', Quintan Wictorowitz. *Studies in Conflict &Terrorism*, 29:207-239, 2006. Routledge.

the constant scrutiny of the Intellectual tradition and should not be accepted within the thought systems of Islam. They should never be defended and least of all attributed to the Islamic scriptural sources, as was the case of underage marriages in Pakistan I mentioned earlier.

Arguments of Islamic Reformers:

In this essay I have emphasised a few reasons, such as political acknowledgement of Islamic law, of why the medieval jurists codified and 'legalised' certain 'clear' (*nass*)[5] verses from the Quran. Modernist writers upon encountering this method felt alienated from the text in this way; Fazlur Rahman specifically criticises jurists' focus on *nass* as a sign of the 'regression' and 'increasing literalism' of Islamic law. He, alongside many others which I will mention, sought to reverse the legislation process to arrive at the same legal environment that existed when the laws were still being abrogated and developed- during the Prophetic era. Doing this allowed them greater flexibility to re-legislate for areas such as civil law, family law, government legislation, and penal codes. This was in context of the perceived demand for the codification of legislation that arose through the impact of Western legal systems.

Reformist thought holds that since the Prophet and early generations did not codify their belief and actions, the medieval tradition is obsolete and unnecessary. They also held that jurists were wrong to codify and study the faith academically, something which has led to moral decline and neglect of 'ethical aspects' of the Quranic laws[6]. It holds that Sharia is non-specific to the *hadiths* and the intellectual tradition, and is a general term for right guidance, *huda*, it is perceived to be as general as 'right thinking'[7].

Such dissolution of well thought out religious boundaries is not required, and I feel that people today would respect and appreciate a thought tradition to be distinguished from others so that an individual can study it taking into account all of its aspects, rather than briefly study a watered down summary of it, which is portrayed

[5] "The Muslim lawyers and dogmaticians began to confuse the issue and the strictly legal injunctions of the Quran were thought to apply to any society, no matter what its conditions, what its structure, and what its inner dynamics. One clear proof that, as time passed, Muslim legists became more and more literalist is reflected in the fact that sometime during the 2nd/8th century (the prominent features of which were the rise of the Tradition and the development of technical, analogical reasoning), the lawyers neatly tied themselves and the Community down to the „text" of the Holy Book until the content of the Muslim law and theology became buried under the weight of literalism." (Islam, 39-40)

[6] See Muhammad Hashim Kamali, 'Punishment in Islamic Law: A Critique of The Hudud Bill of Kelantan, Malaysia. *Vol. 13. Arab Law Quarterly, pg. 205*, 1998, for his criticism of the 'anti-Quranic' law of the jurists, which arises from inaccurate implementation of their verdicts by the government of Malaysia.

[7] Fazlur Rahman, 1966: 114- "Sharia is coterminous with the good"

in certain modern style publications. Dissolving the boundaries makes differentiation and thus academic thinking difficult. The boundaries of Islamic law do not have to be unnecessarily discarded.

The methods that were advocated for this reversal of the legal system however did not meet the standards of the traditional legal system, and seemed mostly arbitrary, temporary and utilitarian. Concessions and abrogation, public welfare and juristic preference are a few aspects of traditional law which denote flexibility and adaptation, however they are permanent and not utilitarian. Concurring with Hallaq (1997), I seek to analyse aspects of the thought of reformist thinkers to reach the conclusion that most of their arguments are fleeting assumptions about the rigidity and inaccuracy of traditional legal methods, or vague suggestions for re-introduction of already existing principles.

Abdal Wahhab Khallaf:

Abdul Wahhab Khallaf [8] argued that the Quran was simply a guideline, and could not be used to substantiate legislation; "In the footsteps of Rida, he sharply distinguishes between those parts of the Book that deal with matters of worship and ritual, and those that deal with civil matters, with regard to the latter, the Quran provided no more than general principles"[9]. Further to the argument that his critique was on the application of traditional law and not its principles is the fact that he himself is shown to promote the traditional legal system by citing certain traditional legal maxims, such as "Things are assumed to be permissible until the contrary is proven" and the concepts of alleviating hardship (*qillat taklif*) and promoting human welfare (*maslaha*). Hallaq is also found to criticise the arbitrary nature of Khallaf's method on the basis that he agrees with these general Sharia concepts but that their rejection of all legal rules, maxims and precepts is sheer arbitrariness[10]. He says, "As it stands in both his and Rida's theories, law derived on the basis of necessity, interest and need remains only nominally Islamic and dominantly utilitarian" [11]

Allal al Fasi:

[8] See, Abdul Wahhab Khallaf, *Ilm Usul al Fiqh*, 1957, *Maktaba Dawatul Islamiyya li Shabab al Azhar*.

[9] (Hallaq, 1997: p.222)

[10] (Hallaq, 1997: p.224)

[11] (Ibid.)

Hallaq criticises the famous Moroccan politician and writer, Allal al Fasi[12] on similar grounds, "while he hovers over a renewed notion of *istislah* to justify, if nothing else, the modern reforms in the law, he proves himself unable to embrace a legal philosophy that relegates the texts of revelation to a place subservient to the imperatives of modern social change"[13]. This is a recurrent failure among many of the early legal thinkers termed as 'utilitarian' due to their creative, but flawed use of certain traditional legal concepts. "He was not able to sufficiently advocate natural law, and his support for traditional legal theory was frustrated by his realisation of the need to adapt to modern problems. In short, Fasi could neither accept nor reject the structures of conventional legal theory, with the attendant consequence that he was never able to make any advance toward pinning down a modern theory of law." [14]

Where al Fasi is criticised for inability to accept the need to express a new methodology, failure to express similar processes is also identified in the writings of Sudanese Islamist leader, Hasan Turabi. Certainly, he states that the basis of all legal cases should be broad adaptation (*istishab al wasi*), and comprehensive analogy (*qiyas ijmali al wasi*), he also states that the legislator needs to first look at the Quran and then the Sunna in order, and to subject the literal laws in these two sources to expansive principles that take into account the current situations, but Hallaq criticises Turabi's method for not including the way the text is reconciled with reason when the text necessitates hardship.

Sudanese Islamist leader, Hasan Turabi, blames the medieval scholars for failing to address subjects such as national economy, the political process, government, foreign relations, etc. Today, he argues, Muslims are in need of new legislation that allows them to deal with these concepts. Public law needs extensive *ijtihad*, and apparently, traditional theory fails to provide a means for this to take place. I seems that it would have been an exercise in futility for most scholars to sit thinking about 'positive-legal' solutions to problems that Muslims would not face for another five hundred years, and would not the tool of *ijtihad*, independent reasoning, be enough as a legal precept to facilitate forming ideas on those subjects mentioned by Turabi? Turabi failed to explain the role of revealed texts in revelation, so that how they may be explained when they appear to stand in contradiction to the ideas of human welfare remains unknown. In Hallaq's view, Turabi's failure to elaborate any detailed theory is why it is not fitting to regard his thought

[12] See, Allal al Fasi, *Madkhal fi al Nazariyyah al- 'Ammah li Dirasat al Fiqh al Islami wa Muqaranatuhu bi al Fiqh al Ajnabi*, (Rabat: Mu'assasat 'Allal al-Fasi, 1985)

[13] (Hallaq, 1997:226)

[14] (Ibid.)

as something which can rightfully be called "Turabi's Revolution"[15]. He also criticises him for failure to address the fundamental problem of text and context, and whether the revealed text has superiority, as the jurists held, or if the situation has superiority and laws must be created in light of broader principles. This was the same deficiency identified in all of the other thinkers, and unless the fundamental distinction between divine principle (*Sharia*) as the permanent aspect and juristically derived laws (*fiqh*) as the constantly changing aspect is made, there will always be the discussion on the issue of the difference between text and context, divinely revealed legislation and social reality.

This apparent contradiction seems to be the one of the main focuses of traditional jurisprudence; it would not be intelligent to assume, as some do, that it took a thousand years for Islamic scholars to address this issue, when it was their main occupation and object of study. Such considerations emerge even for the non-scholar who makes intention to obey the commands of the Quran and direct their lives according to its norms, let alone the jurists who created elaborate techniques for the facilitation of these supposed problems.

Muhammad Iqbal:

Pakistani Philosopher, Muhammad Iqbal did not advocate total abandonment of older institutions of law in Islamic society: "in a society like Islam the problem of a revision of old institutions becomes still more delicate, and the responsibility of the reformer assumes a far more serious aspect"[16]. It seems that Iqbal's criticism is not actually directed towards the intellectual tradition as a whole, but rather its adherents who neglect to implement justice by failing to adapt their application of Islamic rulings to new situations. Iqbal alludes to the flexibility of Islamic legal thought, drawing attention to the variety of legal literature, and offers suggestions for the revision of legal verdicts. He, like all reform minded Islamic thinkers, draws attention back to the legal fluidity of the early generation, who did not codify any legal system. It would be wrong for one to assume based on his writings however that legal fluidity implies libertinism and antinomianism, i.e. disregard for the law. [17]

He affirms the validity of the formative period and points out that the early scholars worked actively to meet the needs of a new civilisation, proven by the fact that there were around 19 law schools in operation

[15] As depicted in Abdelwahab El Effendi's '*Turabi's Revolution'* [London: Grey Seal, 1991].

[16] (Iqbal, 2009: p.192-3)
[17] (Iqbal, 2009: p.190).

between the 1st and 4th Islamic centuries all working to provide solutions for new problems in accordance with Islamic ethics.

He states that Islamic law is built for "adaptation and evolution, not stagnation"[18]. Iqbal's main point of criticism is de-contextualised application of legal verdicts that causes a negative effect on the faith of adherents to the Sharia. He cites an example of a woman who was forced to apostate from Islam in order to attain a certain type of divorce from her husband. Such injustice cannot be said to have occurred simply due to the backward laws of the Hidaya, which he criticises, since this manual was used by many generations, but rather the application of its verdict by the judge, "In view of the intense conservatism of the Muslim of India, Indian judges cannot but stick to what are called standard works. The result is that while the peoples are moving the law remains stationary." [19]

Iqbal's critique of the use of standard texts simply shows his lack of understanding of the complex institutions and systems in place for the implementation of Islamic justice during the post classical legal period, as is demonstrated in writings such as Colin Imber's '*Ebus Su'ud*: the Islamic Legal Tradition'[20], and that the sudden inconsistency that appeared in the implementation of Islamic law upon the arrival of the Western Imperialist systems was directly due to this political inconvenience, and in no way reflected upon the post classical legal system in itself. Iqbal stresses that there is legal precedent in Abu Hanifa for the idea that legal solutions for non-essential aspects of the law do not have to be based on the solutions of the Prophet and companions, and that these can be worked out according to the necessity of the individual. A jurist who uses preference, or independent reasoning to solve a problem related to inheritance or divorce does not need to base his decision on hadith reports, since those particular hadith which relate to these matters will have been solutions for particular companions living in certain conditions which no longer exist, and there is nothing from the *maqasid ush sharia* which restricts an individual to the solutions of previous generations for non-essential aspects of the Sharia. He writes:

"It was perhaps in view of this that Abu Hanifa, who had, a keen insight into the universal character of Islam made practically no use of these traditions. The fact that he introduced the principle of Istihsan, i.e. juristic preference, which necessitates a careful study of actual conditions in legal thinking, throws further

[18] (Iqbal: 2009, p.191)
[19] (Iqbal, 2009: p.194)
[20] See, Colin Imber, '*Ebu's Su'ud*: The Islamic Legal Tradition', pp.25-59: 'The Law: Sharia and Qanun'.

light on the motives which determined his attitude towards this source of Muhamamdan Law… On the whole, the attitude of Abu Hanifa towards the traditions of a purely legal import is to my mind perfectly sound; and if modern Liberalism considers it safer not to make any indiscriminate use of them as a source of law, it will be only following one of the greatest exponents of Muhammadan Law in Sunni Islam." [21]

He too fails to realise that 'contexutalism'[22] and public interest were increasingly at the centre of pre-Colonial legal discourse, and that local customary law was used as a basis of implementation of law, and that the court system and local representatives facilitated this process. More importantly for the purpose of this essay, he fails to see Liberalism as nothing more than a process of 'tidying up' after the Imperialists and eradicating the last remaining elements of the traditional structure- acting as pure facilitators of indigenous assimilation to Nationalism. The fact that he was awarded knighthood is indicative of his role in this process.

Fazlur Rahman:

Fazlur Rahman's main criticism against the traditional jurists, based on his writing in 'Major Themes of the Quran', is that they would emphasise a particular legal injunction of the Quran, and stifle the importance of the ethical aspect of those verses[23]. He is also found to criticise Islamic legal scholarship for focusing on the *nass* (direct commands in the scripture taken to indicate obligation or prohibition specifically), which he claims distorted their vision of the law as presented in the Quran. It may seem that in his attempt to locate the causes for what he perceives to be the 'decline' of Islamic society, among which he mentions the 'monism' of Ibn Arabi, Sufi theosophy, Ash'ari 'fatalism', and legal 'literalism', Fazlur Rahman perhaps neglects to consider the particular role of the Islamic jurists within society and the reasons for why they emphasised the legal and legislative aspects of the Quran and not its moral aspects. One of these reasons is that the study of the ethical aspects of the Quran was the role of other scholars, and that the jurists had to clearly identify to governments and the public that there are specific commands in the Quran which they must appreciate as 'law proper' and not simply discard as a book of 'guidelines' or boundaries. It is my contention that the imperative to depict the Quran as a source of legislation[24] by the traditional Jurists is something the significance of which often goes overlooked while discussing their

[21] (Iqbal, 2009: p.197)
[22] See, 'Some Reflections on the Contextualist Approach to Ethico-Legal Texts of the Quran', Abdullah Saeed.
[23] (Fazlur Rahman: 1980, 48-9)
[24] See, 'The Quran: The Primary Source of Fiqh', Hasan, A. 1999. *Islamic Studies, Vol. 38, No. 4. Pp.475-502*

thought and methods by modern 'reform oriented' groups, who dismiss them as overly literal, based on modern examples of inaccurate implementation of Quranic laws by some groups.

Fazlur Rahman writes that medieval theologians created a concept of God of "an arbitrary despot inspiring more fear than anything else", when it is not for certain that all people took it this way, especially bearing in mind that Sufi thinkers who were responsible for conceptualising God also adhered to traditional schools of theology. Most of the criticism he presents in 'Islam' consists of fleeting remarks at aspects of Asharite theology and the age old modernist rhetoric that the supposed 'closure of the gates of ijtihad' had led to a regression of Islamic thought for 500 years. He presents his own hermeneutical method which he calls a 'Double Movement' theory:

> "To Rahman, the Quran was "the divine response, through the Prophet's mind, to the moral-social situation of the Prophet's Arabia". To apply this divine truth to all later ages, including our own, requires scripturalist interpretation in the form of "a double movement, from the present situation to Quranic times, then back to the present". For Rahman, the first movement consisted of "understanding the meaning of the Quran as a whole as well as in terms of specific tenets that constitute responses to specific situations"; it was "to generalise those specific answers and enunciate them as statements of general moral-social objectives that can be 'distilled' from specific texts in light of the sociohistorical background and the often-stated *rationes legis*…" [25]

Despite his valuable conception of a 'double movement' theory to better contextualise Islamic law in modern situations, he fails to comprehensively address what he considers to be wrong about the traditional legal principles in any sufficient manner as would legitimise the total abandonment of such a complex and varied legal system. The fact that he saw himself as an outlaw to orthodoxy meant that his books did not comprehensively refer to the traditional thought systems as a point of reference to Islamic 'reform' but rather involved himself as an 'enlightened' thinker and his attitudes towards the Quran in isolation from the historical intellectual tradition of Islam. His failure in this regard is his presentation of himself and his few, scattered hermeneutical approaches as a replacement for an entire legal tradition. Due to their failure to fully engage with the traditional hermeneutic and remaining at the fringes of orthodoxy, the arguments of the Liberalists have not academically progressed beyond the writings of those mentioned in this essay.

[25] (Stowasser, 39)

Fazlur Rahman appreciates however that the synthetic approach to Islam which prevents rigid theology and misplaced application of verdicts such as that mentioned by Iqbal happens at the heart of orthodoxy. It may be implied on the basis of his writing on the concept of revival that corruption in application of theology and law only take place at the fringes of orthodoxy, when people become careless or heedless. After this corruption happens, however, it is inevitably followed by a revival and people are redirected towards a synthetic approach that is both indistinguishably fundamentalist and progressivist. He writes:

"Islamic orthodoxy seems to develop in recreated formations of quanta that issue from time to time from the very heart of Islam. It is characterised by an indistinguishable blend of reinvigorated fundamentalism and progressivism: it develops not by self-propulsion, so to say, but by watching, adjusting, and absorbing within itself that which moves within it. It is a synthetic activity and this very character it is that signifies "orthodoxy"[26]

Fresh thought is thus inevitably found at the heart of orthodoxy, and those who adhere to this method without the subtleties of its founders, such as Ghazali, inevitably fall prey to fanaticism and zealotism in their attempt to remain supra-orthodox while compensating for their lack of comprehension of its inner workings. Hallaq criticises Fazlur Rahman for using a small selection of cases, which do not represent the law in full, perhaps that this may stop people from solving problems other than those which he cites, however, I hold this criticism to be irrelevant, since the nature of the double movement theory is so simple that if it is even used on one example then this is sufficient as an example to show where it can also be applied to other cases. Other criticism include the possibility that there is no information about the background of a certain verse or hadith report, and even more so, when there is no Quranic or Sunnaic text to be found regarding any problem. Inevitably use of *taqlid* will be necessary at times when we have no insight to make accurate *ijtihad* ourselves. Hallaq's criticism in this regard is somewhat stretched, and it does not really pose any problem to Fazlur Rahman's general legal thought, which clearly emphasises that the law continuously evolves and is abrogated to suit time and place, thus the only constant is the universal principle of justice and human welfare. Still, there may be a need to furnish Quranic verses and hadiths in order to prove why a certain legal verdict is Islamically ethical, otherwise, people will take the imperatives of Islamic law as something which is derived purely based on free thought and arbitrary reasoning, as was

[26] (Fazlur Rahman: 1966, p.111)

assumed by some of the other earlier orientalist thinkers that Haim Gerber sought to refute in his study of Khayr ud Din Ramli.

Ismail Ragi al Faruqi:

Where thinkers who operate within the paradigm of 'Islamic Modernism' do not simply criticise the rigidity of traditional legal thought, they make suggestions for hermeneutical tools that already exist within the traditional system. In the traditional system, there is explicit mention of the idea that all laws that are contained within the system are subject to gradations and levels, ranging from absolutely forbidden to absolutely obligatory, with many subsequent grades in between. Most of the work of classical jurists revolve around their studies and decisions on legal commands and how they were graded according to importance. Case in point, *Sadr ush Sharia* describes the definition of *hukm* as:

> "The communication of God relating to the acts of those persons who are subject of law, by way of demanding them to do or not to do an act, or giving them a choice for its performance, or declaring a thing to be a cause or a condition of a command, or an impediment to it." (*Tanqih*, 13-14).

The very core focus of the study of the jurists was to decide through reason the extent to which ethico-legal Quranic verses were to be implemented. In context of this, how does a student of Islamic law react upon seeing the arguments of Ismail Ragi al Faruqi who discusses the "necessity of getting at the motive, intent, or purpose behind Quranic passages" and also "the need to discover a 'hierarchy' in the Quran's value system"?[27] Most likely, to those not aware of the intellectual tradition, these ideas would come as revelation to them, but to many others who are, it is simply repetition of the basic modernist imperative to reinvent the Islamic jurisprudential wheel. On the other hand however, if these nuances of the classical tradition are being ignored, then writers such as Faruqi are to be credited in offering these hermeneutical approaches since they are inadvertently promoting a key legal principle that the adherents of the traditional systems are possibly ignoring. This is especially true in context of the case for an Islamic feminism, where women are mistakenly viewed as inferior due to an equally 'modernist' patriarchal reading of Quran 4:34 by supposed advocates of 'true Islam'.

Muhammad Said Ashmawi:

[27] (Stowasser, 1998: 38-9)

Some Islamic scholars dealt with Quranic commentary, others with theology, and others with Sufism. Criticism levelled by reformist thinkers against their traditional predecessors comes from lack of understanding the divisions and specialisms of the scholars. Due to reading the writings of the jurists purely on surface level, scholars such as Ashmawi criticise the medieval scholars for things that they were not entirely responsible for. One example which has now appeared in two places among the reformists is the idea that jurists did not see the connection between the Prophet and the Quran. This metaphysical understanding of the Prophet was something usually dealt with by Sufi scholars who spent time understanding these things, and perhaps jurists reflected on these things in their spare time, but when it came to dealing with legislation and law, it would not have been academic for them to make emotional and spiritual comments about the law. As for Ghazali's acclaimed synthesis between law and spirituality in *Ihya*, this was only necessary for the lay Muslim to understand the deeper meaning of ritual. He breached a certain professional boundary in creating that book, but this did not imply that he wanted jurists to 'spiritualise' the law, theirs was an entirely academic and legal discipline and it had to remain that way.

Jurists needed to expound the law in as formal and non-synthetic way as possible, the scholars during the Abbasid periods lived with a certain amount of doubt in regards to the willingness of rulers to implement Quranic laws, as was comprehensively done under the Ottoman Empire. Jurists depicted the Quran as the ultimate law book, and they extracted laws from it in a methodical and exacting way, the government had to recognise and pay attention to their discipline. Does it need to be said that constructing positive legal systems out of revelation such as the Quran or other religious texts is an academically tasking activity? I feel the need to criticise Ashmawi and Fazlur Rahman based on this understanding. In both their writings, a common theme appears where jurists are blamed for failing to see the connection between the Prophet and the Quran, and that the way they 'literally' expound the law based on individual verses and hadith depicts the prophet as a passive receptacle of revelation and not its source. The jurists too were humans and used the law within a human context, if it did not seem helpful to them, they would not have devoted themselves to study of it. From Ashmawi we get the impression that the jurists are seen as quasi-human codifiers of minutiae spending their time on formulating inapplicable legal maxims:

"The dialectical relationship between revelation as a text and the human reality that gives rise to it is indispensable for a proper interpretation of the Quran. This holy Book, Ashmawi maintains, is nothing

less than a "living creature" which dynamically interacted with daily existence and the social fabric throughout the Prophet's lifetime. It is the basis not of abstract formulations but rather of human conduct in actual reality." [28]

The fact that the jurists expounded the law in a de-contextualised and rigid manner does not detract from their understanding of the book as a living document, nor their understanding of its relation with the Prophet. I view that jurists would have naturally come to the conclusion that indeed, the legislation of the Quran was subject to abrogation, as many other *tafsir* scholars had done, but at their own pace, and that the demands upon them to suddenly adjust their methodology was unnatural, caused by Colonialism and the sudden response of weaker Muslims to the call to modernise and assimilate. Their criticism and detachment from orthodoxy and its ways perhaps even slowed down the refinement of the Islamic legal system rather than accelerate it. Ashmawi's argument that the Quran is a "living creature", is a Sufi argument, not legal. His argument that the abrogation phenomenon shows that it serves human interest, is a commentary based argument, which has already been considered within legal scholarship nonetheless. His argument that some Quranic discourse has universal import and that some is specific to the Prophet, again has already been considered within legal scholarship. He addressed many issues of Islamic law, such as that of alcohol, international law, and commerce, and reinterprets them in light of the context of the original revelation-context, much like F.Rahman's 'Double Movement' theory, however fails to present any comprehensive methodology that can be universally applied, which is the actual role of Sharia. Just like today's academic scholars may have understanding of other disciplines, it is not necessary that they comment on those subjects when discussing their specialist subjects. The jurists may have had understanding of Islamic spiritual ethics and metaphysical theories of the Prophet, but they did not feel the need to mention this in the law books.

The Ideal Modernist Legal Platform: The Organic Prophetic Legislation Period:

Iqbal refers to the explanation given by Shah Waliallah about the inner dynamics of the Prophetic legislative method:

"The law revealed by a Prophet takes especial notice of the habits, ways, and peculiarities of the people to whom he is specifically sent. The Prophet who aims at all embracing principles, however, can neither

[28] (*Usul ash Sharia,* 50, in Hallaq: 1997, p.233.)

reveal different principles for different peoples, nor leaves them to work out their own rules of conduct. His method is to train one particular people, and to use them as a nucleus for the building up of a universal Sharia. In doing so he accentuates the principles underlying the social life of all mankind, and applies them to concrete cases in the light of the specific habits of the people immediately before him. The Sharia values resulting from this application are specific to that people; and since their observance is not an end in itself they cannot be strictly enforced in the case of future generations."[29]

Emphasising the specific and restricted nature of prophetic laws to the community to whom they were revealed, Iqbal seeks to combat inconvenience and injustice that arises through the forced application of legal rulings which do not pertain to ritual. It is very possible that laws that were once just for previous generations, when applied in modern times, would create injustice. This has particular significance in relation to the Wahhabi thought movement, which disregards all legal authority emanating from the legal tradition and necessitates direct obedience to the unfiltered text of the Quran and the Hadith on all matters.

Emphasis on Maqasid ush Sharia among Reformers:

It is for this reason that Fazlur Rahman and Iqbal, upon whom he seems to have based his writings, emphasised in their respective reformist manifestos, 'Islam', and the 'Reconstruction of Religious Thought', the importance of writings on *maqasid ush sharia* (intents of the law). When a person reads about these concepts within the context of criticism of rigid application of law, it is quite likely that he assumes an antinomian approach to religious law, reducing his legal priorities to self-preservation and what he/she 'feels like', in light of the apparent neglect of the 'imperatives of the law' by the medieval exponents of law. This happens, despite the fact that Iqbal criticised it by saying, "Shatibi asserts that *maslaha* was indeed intended to work for the benefit of man, but in a way that is determined by God, not by man's own predilections"[30]. Using their criticism on the ancient jurists, some will assume that since scholars massively misunderstood the purpose of the Quran, this book is now within their ability to interpret freely. They will assume that modern academics who work on the subject of 'reforming' Islamic law are the equivalent of elite *mujtahids* such as Abu Hanifa or Shafii. This form of intellectual myopia is extremely widespread. Iqbal and Fazlur Rahman both describe the *maqasid ush sharia* tradition as an afterthought and a depiction

[29] (Iqbal,2009: p.197)
[30] (Iqbal, 2009: 197)

of the inability of previous jurists to understand the purpose of the law. However, the fact that this knowledge was only codified at a later stage does not demonstrate the exaggerated conclusion that 'it took them 500 years' of scholarship before they reached an understanding that the law had any inherent purpose or wisdom. Nobody can study any science without knowing its intents and purpose, and the Islamic jurists were no exception to this rule.

Iqbal is seen to be one of the earliest to use the method of analysing minor contemporary incidents of injustice and then attributing them back the Islamic intellectual tradition. He criticises the use of the standard Hanafi law book, 'The Hidayah' used in Muslim courts for a large part of the Mughal and Ottoman eras, attributing it to "intense conservatism". He states: "I venture to ask: 'Does the working of the rule relating to apostasy, as laid down in the Hidayah tend to protect the interests of the Faith in this country?'"[31]. It is clear he is overlooking the fact that this book is not used simply because of 'conservatism'; it is rather part of customary legal procedure in Indian courts. Also, it may be argued that use of this book is still not obsolete and its verdicts are still valid and applicable. His approach provides precedence to those who seek to classify the entire Islamic legal tradition as obsolete on the basis of this new and exciting *'maqasid ush sharia'* line of argument, the result is intellectual immaturity, on the basis that the entire Intellectual tradition is held to be 'against the Quran' or 'literalist', and even Iqbal himself does not accept the subjection of Sharia commands to human predilection[32].

The Use of Maslaha among Reformers

The concept of *Maslaha*, allows for suspension or abrogation of rulings pertaining to the 'Rights of Man' on the basis that it conflicts with public interest. Some jurists advocated the supremacy of *maslaha* over all other sources with an aim to allow certain rulings to be ignored and to create ease. One such thinker was Tufi, whose view that *maslaha* could override consensus was used by Rashid Rida, the student of Abduh, about whom Hallaq states, "he amplified the concept of public interest to such an extent that it would

[31] (Iqbal, 2009: 193)

[32] "Shatibi asserts that *maslaha* was indeed intended to work for the benefit of man, but in a way that is determined by God, not by man's own predilections. This explains why legal obligation is known to be demanding, though in a fair and reasonable manner. For while *maslaha* is aimed at promoting the interest of man in this world and the hereafter, it is defined by the revealed law, not the "secular" or utilitarian needs of man." 182-3.

stand on its own as a legal theory and philosophy"[33]. He would later use this principle to abandon substantive law (*fiqh*) rulings. We can now make a comparison that this methodology has been used with respect to the idea of *maqasid ash sharia* as well. Tufi argued that *maslaha* had precedence over the Quran, the Sunna, and the consensus of jurists, since these sources were subject to differences, whereas there is no difference with respect to *maslaha*. His limitations are that, like his 20th century inheritors, he does not define the scope of his theory, and there are no clear reasons as to why he would develop such a theory, since we cannot study his biography as we can with Abduh or Rida. It is maintained that "By the standards of Tufi's predecessors, contemporaries and successors, his theory was epistemologically inferior to the average theoretical discourse."[34]

Now, this theory sunk into the netherworld of Islamic studies, only to be partially resurrected in the twentieth century by only Abduh and Rida, his disciple, the Utilitarian reformers, whose theories did not proceed beyond their own writings, and were completely ignored by the other group of modernists, e.g. the 'liberalists', who no longer even referred to their school's doctrine within a legal context! The liberalists discuss essentially, the vague concepts of Tufi's redundant theory, without realising that the extent of their thought is encompassed by that theory. Beyond this, they hardly even refer to the thought of Abduh or Rida to substantiate their thought through scholarly precedent, even though modern historians like Hallaq classify their thought as an offshoot of Abduh's school. The result is that even if they were to search through Islamic intellectual history for a precedent, the most eminent and capable exponent of their legal method currently occupies a place in the backwaters of Islamic legal theory, and there unfortunately is no biographical material on him either.

Contextualism among Reformers:

The view that the Quranic law was evolutionary and in response to the prophecy of Muhammad are not unique to the reformists. It is possible that such a view was held by the early scholars also. Iqbal mentioned that as early as the 8th Islamic century, Imam Karkhi viewed that the verdicts of the companions were restricted to their time. Shah Waliallah mentions a hadith in his book *Al Insaf*[35] that indicate that Aisha argued in favour of contextualist understandings of a certain situation with Abdullah Ibn Umar. Umar Ibn

[33] (Hallaq, 1997: p.215)
[34] (Hallaq, 1997: 153)
[35] See 'Difference of Opinion in Fiqh', Shah Waliallah, trans. Dr. Muhammad Abdul Wahhab, 21-20. Taha Publishers, 2003.

Al Khattab ruled that zakat was no longer due to the eighth category, 'those whose hearts inclined to Islam', since Islam no longer required the tribal support of these people, and so the objective of zakat was fulfilled even if these people did not receive charity. Furthermore, in Sahih Bukhari, there is an example of the jurist, Shaybani, going to the companion Abdullah Ibn Abi Awfa to ask whether the Quranic verse about flogging came before or after the hadith about stoning as a penalty, highlighting that he wanted to know the context of the ruling so he could decide which would be better to apply, he did not take either source on face value but analysed both in context. Thus there is sufficient evidence for the precedent of earlier figures in 1) understanding the importance of circumstance and context in understanding a legal ruling, and 2) discarding aspects of laws that were specific to a specific context. It is ignored by some modernists that factors such as context were also important to the early jurists as well. [36]

Reformers often emphasis all of these factors, usually implicitly, but rarely together, so that one of them could come up with a work resembling the classical *usul* texts, which is what they are dying for. Whether it is Kamali discussing the penal code, or Wadud discussing the case for Islamic Feminism, there is always the sense that their writings represent special understanding that was not previously present. However, it is their eventual conclusion that is problematic since it eliminates from discussion the arguments of the classical thinkers. Realistically speaking, to most contemporary Muslims, the work of the intellectual tradition is confined to the pages of obscure history that nobody is genuinely interested in, except for some academics and traditional *muftis*. However, their nuanced understanding of the law could be a source of justice if understood and applied in the right place, yet the arguments of modern reformist thinkers seeks to blame the classical tradition for judicial injustice and leave us without any clue about how to approach the obvious debates that arise from claiming Islamic identity in the modern world, except for those few scattered hermeneutical techniques. Is it enough to advocate abandonment of Shatibi's *Muwafaqat*, or Sadr ush Sharia's writings, or Ghazali's *Mustasfa*, and simply declare the universality's of Wadud's 'intra-Quranic contextualism', Ismail Faruqi's 'textual hierarchy' or Fazlur Rahman's 'Double Movement Theory'? Islam would no longer be seen as a religion with a deep intellectual history, it would be seen as a contemporary social movement that advocates women's rights and intellectual democracy yet struggles over a period of 60 years to come up with any coherent and practically applicable hermeneutical system for the Quran.

[36] (For examples of such rulings, see Syed Sabahuddin Abdur Rahman, "Jurisprudence a la Umar - its contribution and potential", Islamic and Comparative Law Quarterly, 2/4, 1982, 241-9. Abd al-Salam al-Sulaymani, al-Ijtihad fi al-Fiqh al-Islami. (Rabat, Morocco: Wuzarat al-Awqaf, 1996), 132-3. Abou El Fadl, Speaking in God's Name, 147-50.)

Reformist Thought as a Tool of Nationalism:

Something unnoticed by later reformers such as Fazlur Rahman and Muhammad Iqbal was the argument for the context of reform based legal thought, a factor which determines how we perceive all attempts of reform on traditional Islamic institutions. This factor is Colonialism, and the movement proceeding from it in the Arab world- Nationalism. The dominance of the Nation State in determining the affairs of the Arab race during this period was vast beyond precedent, and its effect could be shown throughout education, legislation, social structures, literature, the arts, and beyond. One thing that the reform minded thinkers have in common is their desire to 'reform' or discard elements of the classical institutions which during the post classical period of Islamic law, was dominated by a complex system comprising of the Sultan, the Qanun, Muftis, Courts, and the Classical Islamic legal tradition. They are also critical of the supposed 'backwardness' and 'rigidity' of their contemporary traditional scholars and favour use of equitable juristic tools such as *maslaha* to change the Sharia laws which are being 'misrepresented'. When we assess their writings we agree with their sophisticated understanding of concepts of the religion, Iqbal refers to God, or Allah as "the very substance of reality", Fazlur Rahman describes the inner metaphysical relation of the Quran to the mind of the Prophet, almost as if the Prophet created it in his own mind[37], but there is a lack of recognition of the context of this phenomenon in their writings. Their writings are hugely beneficial to those who seek understanding of reformist thought surely, most probably in their opinion, it was better to improve deficiencies in attitudes towards Islam taken by their contemporary Muslims than to resist the cultural dominance of the West in a violent way, and they were right to do so.

However, perhaps they did not realise that the question of reform in Islamic law would have implied participation in the project to assimilate the old legal structures into the function of the modern nation state, which acted as a proxy to the major Western nations. It made little different if Muslims took a more sophisticated hermeneutic approach, which incidentally, has not yet taken place, since the essential components of their ability to function as a moralising force in human civilisation was dismantled. The trend has largely been that they can be made to 'assimilate' legal practices to a high degree, but can never

[37] ("To Rahman, the Quran was "the divine response, through the Prophet's mind, to the moral-social situation of the Prophet's Arabia". (Stowasser, 39, citing 'Islam and Modernism', FR.)

re-assemble the key structures of, for example, post classical Ottoman government, such as the court and the various officials who work within communities and facilitate the legal process. They have not yet been able to reverse the political effects of nationalism and overcome their dependence on, and inferiority towards Western nation states. Hallaq, in his 'Introduction to Islamic Law' describes, "the modern state constantly defined, redefined and influenced nearly every entity with which it came into contact. Whether incorporated into the Muslim world by imposition or by mimesis, its defining, constitutive and fundamental features were nearly identical everywhere, it declared itself sovereign while developing systematic mechanisms of surveillance and discipline; it lived on nationalism as the body lives on circulated blood, it appropriated the exclusive right to make and enforce law…" [38]

Once the institutions and personnel responsible for enforcing the complex system of justice that was Islamic law during the post classical Ottoman period were dismantled, the scope of influence for Islamic law had been narrowed. Helie Lucas writes that family law "emerged as the preferential symbol of Islamic identity"[39], the reason for this is explained by Hallaq to be "because it represented what was taken to be the last fortress of the Sharia to survive the ravages of modernization."[40]. The nation state is viewed to be an entity that, like Colonialism, seeks to centralise power and remove the effects of any systems that oppose its achievement of this type of power. Islamic family law, and the personal status that it gave individuals had to be severed from its own traditional judicial system, in order that legislation may be given by the nation state. All efforts towards 'reform' of Islamic law by scholars of the type mentioned in this essay and other more extensive studies therefore, in their aim to alleviate problems of Muslims, were cutting off their ability to maintain their traditional systems in the face of whatever opposition they faced, be it from Colonialism, Nationalism or even Globalisation at a later period.

The Islamic legal tradition consisted of a textual tradition, in the form of *fiqh* scholarship, a hermeneutical system, *usul al fiqh*, a *madrasa* system where these were taught, and besides this the court system presided over by the Qadi and the *qanun* of the Sultan, and then the various imperial officers operating at the local and provincial level. Now it may be quite easily said, although reformist thinkers were trying to 'adapt' the intellectual systems of Islam to modern thought, it was nothing but another current of thought proceeding from the forceful impulse of the emerging modern nation state which demanded all other independent

[38] (Hallaq, 2009: p.118)
[39] (Marie-Aimee Helie-Lucas, 1994, 391-407)
[40] (Hallaq, 2009: 115)

institutions to allow themselves to be absorbed by its authority. This impulse required the demolition of the Islamic legal tradition and the officials who controlled it, which were the *ulema*, so it made no essential difference if they did so out of sincerity to Islam, which most of them did, because what it represented was assimilation and submission to a new authority which many were sceptical of its ability to implement justice.

The process of assimilation to the authority of the Nation State was affected by both political and intellectual techniques. The Islamic reformist thinkers may be categorised as facilitators of the second type of assimilation, and they did so through gathering various juristic techniques such as *maslaha* which would be used in a more drastic manner, indicative of the urge to assimilate, as much has been demonstrated in the aforementioned examples, and it has also been shown that their methods do not equate to the elaborate system posed by traditional scholarship. The overall scope of the discussion of the reform of Islamic law is, in my view, a political one, and determines how people will consider legislation in the future and the characteristics they require in leadership and legal systems. Do they wish to assimilate a system as rich and elaborate as Islamic law to fit in with legislative methods used by Globalised Western civilisation or do they wish to keep it separate in order that they may try and utilise elements of its teachings, but different from how it is approached by Salafists, in order to balance the shift of power in the world in favour of those marginalised by the aftermath of Colonialism? That is the nature of the question that could equally be posed to citizens of Western nations as well as so called 'Third World' countries.

Conclusion:

Coulson, in his history of Islamic law, stated that "an irreconcilable conflict was produced between the traditional law and the needs of Muslim society, in so far as it aspired to organise itself by Western standards and values"[41], he characterises the system by rigidity and assumes, as Schacht and other early Colonialist thinkers did, that it was unable to offer solutions due to its rigid hermeneutic. He also states that "there seemed, initially at any rate, no alternative but to abandon the Sharia and replace it with laws of Western inspiration in those spheres where Islam felt a particular urgency to adapt itself to modern conditions." More modern research belonging to the 'post-modern' period actually reinterprets the nature of the cultural exchange during this period as one of domination and assimilation of the Islamic legal

[41] (Coulson, 1963:149)

system by the monolithic Nation state, and not one of gradual self-improvement by imitation, as Coulson suggests was being undertaken by Islamic reformists.

Research also shows that it was not simply the *fatawa* or the legal principles that governed the implementation of justice, but rather than there was a comprehensive system of officials and moral witnesses who operated at the community level ensuring fluency of the legal method and ensuring open lines of communication between the centre and the other regions, and the legal procedure was mediated before and after the official court procedures by family structures as well.

Also, if it is the *fatawa* and representation of law by the jurists which is the subject of critique, then Haim Gerber's study of the 19th century Palestinian Mufti Khair ud Din Ramli showed that the Muftis used the dearth of legal opinions to create flexible solutions to various problems relating to family and civil law. In fact, it may be said that the 17th-19th period was the most successful period of Hanafi law, as the major commentaries and compendiums were now established and jurists had been using independent reasoning (*ijtihad*), personal discretion of the jurist (*istihsan*), local customary law (*urf*), and relaxation of formal rules (*istihsan*) to create facility in precisely those areas of law that Coulson believes required imitation of Western legislation. Therefore it is most interesting to observe that the peak of development of Islamic law and the period in which it was increasingly being tailored to suit the needs of the population as well as the state, which was a moral authority unlike most of its predecessors (Abbasids, for example), was the same period in which it was criticised by agents of Colonialism to be 'rigid' and in need for adaptation. Haim Gerber's study addresses the Imperialist critique on Islamic law, based on its supposed deficiency for being 'religious' and not really equivalent to Austinian perceptions of law, he regards this approach as insufficient as a description of the anthropological realities of that period. Through his study of Ramli's *fatawa* (Verdicts) he observes that there was much more 'positive legal' discourse as well as worldly focus in the writings of the Muftis as is supposed, which is a refutation of thinkers who held that Islamic legal thinkers were unable to differentiate between law and ethics, and purely 'created' law out of ethical verses of the Quran[42]**.** This research also indicates that the supposed 'rigidity' that characterised Islamic law after the supposed 'closure of the gate of Ijtihad' was largely non-existent, and that interpretive and contextualist tendencies among the legal scholars never truly ceased. Gerber states "an examination of Ramli's collection indicates that the gate of *ijtihad* was never really closed and that Islamic law always

[42] (Reading al Ramli, one gets the strong impression that the jurists knew full well to distinguish between the very important ethico religious aspects of the law and the purely legal…" Gerber:169)

retained an extremely important element of open- endedness and flexibility"[43]. Thus, taking our understanding of Islamic law from some of the thinkers classed as 'reformist', be they Utilitarian or Liberalist, would cause retardation of our understanding of this legal system since the problems they often address were already being solved during the 1st or 2nd centuries of Islamic legal development, and minor issues such as the apparent 'irreconcilability' of Quranic legal verses to practical application are purely artificial, problems that were periodically dealt with by scholars belonging to the pre-Colonialist, post Classical legal tradition of Ramli and his predecessors.

[43] (Gerber: 174)

Bibliography:

Abdul Wahhab Khallaf, 1957 *Ilm Usul al Fiqh,* Maktaba Dawatul Islamiyya li Shabab al Azhar.

Allal al Fasi, 1985*Madkhal fi al Nazariyyah al- 'Ammah li Dirasat al Fiqh al Islami wa Muqaranatuhu bi al Fiqh al Ajnabi,* Rabat: Mu'assasat 'Allal al-Fasi.

Coulson, N. J 1963 *A History of Islamic Law,* Edinburgh: Edinburgh University Press.

Gerber, H. 1998 'Rigidity Versus Openness in Late Classical Islamic Law: The Case of the Seventeenth-Century Palestinian Mufti Khayr al-Din al-Ramli', *Islamic Law and Society,* 5: 2, 194-95.

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

Hallaq, W. B 2009 *An Introduction to Islamic Law,* Cambridge: Cambridge University Press.

Hasan, A. 1999 'The Quran: The Primary Source of Fiqh', *Islamic Studies,* Vol. 38, No. 4. Pp.475-502

Helie-Lucas, M. A. 1994, 'The Preferential Symbol for Islamic Identity: Women in Muslim Personal Laws', in Valentine Moghadam, ed., *Identity Politics and Women*: *Cultural Reassertions and Feminisms in International Perspective*, 391-407, Westview Press, 1994.

Imber, C. 1997 *'Ebu's Su'ud: The Islamic Legal Tradition'*, pp.25-59: 'The Law: Sharia and Qanun', Stanford: Stanford University Press.

Iqbal, M. 2009 *The Reconstruction of Religious Thought in Islam,* Dodo Press.

Khan, W. S and Austin, H. 2014 'Girls Treated as Cattle: Child Brides Divide Pakistan', *NBC News,* [online], March 29th 2014, Available at: <http://www.nbcnews.com/news/world/girls-treated-cattle-child-brides-divide-pakistan-n65956 > [Accessed 20 April 2014].

Rahman, F. 1966 *Islam,* London: Weidenfeld and Nicolson.

Rahman, F. 2009 *Major Themes of the Quran*, 2nd eds. Chicago: University of Chicago Press.

Saeed, A. 2008 'Some Reflections on the Contextualist Approach to Ethico-Legal Texts of the Quran', Bulletin of the School of Oriental and African Studies, University of London, vol. 71, Pp.221-237.

Stowasser, B. 1998 'Gender Issues and Contemporary Quran Interpretation', cited in *'Islam, Gender and Social Change'*, ed. Y. Y. Haddad and L. Esposito, 1998, Oxford: Oxford University Press.