Editorial

Consensus in the Islamic Legal System: An Indispensable or a Negligible Source?

All Muslims regard the Qur'an as authoritative. The Sunnah, on the other hand, although authoritative to the majority of Muslims, does not enjoy such universality.[1] Yet to the Sunnis and Shi'ahs, both of them are so authoritative that they are unquestionable sources of Islamic legal system. Thus, they are sources "from" which Islamic law is directly derived. So what makes "consensus" (*ijmā'*: whether of the Muslim community or of the scholars) such a compelling candidate for an additional source of the legal system as far as Sunnis are concerned? I contend that (1) the early jurists viewed this as the safest way to inoculate and safeguard that system (and the other sources) from individual abuse and personal manipulation and that (2) without consensus and why it was originally construed and framed (notwithstanding how it was applied) by the jurists, the Qur'an and the Sunnah (despite their inherent religious and theological authority) would be meaningless or inadmissible as legitimate sources of law. But before I discuss consensus, I would like to address the two authoritative sources of law.

All Muslims accept the Qur'an as God's own words and therefore as the main source of the legal system (*fiqh*). Before the jurists began to deliberate and codify *fiqh*, the Shari'ah was already embedded in the Qur'an and Muslims were living their socio-religious and politico-economic lives in accordance with its teachings. Therefore, when the jurists were ready to put the laws into written form, they located all its original rules and expounded upon them. However, universal recognition differs from universal agreement on the meaning of specific injunctions. In addition, it certainly differs from the claim that the Qur'an covers every foreseeable legal injunction, for it does not.

For a variety of reasons, the the Sunnah, does not enjoy any universal authority, among them (1) Some Muslims have questioned how the Prophet's teachings have been preserved and passed on, (2) classical and modern scholars have raised serious doubts about the authenticity of certain hadiths, and

(3) the existence of several versions of obviously credible ones raised questions as to what exactly the Prophet must have said or done.

Early Muslims recognized the problem of fabrication and sought to weed out out spurious traditions and expose inauthentic narrators by focusing on the chain of transmitters instead of the text. Even if they were successful, that does not completely remove the core problem of risking or jeopardizing Islamic principles or guarantee any credibility for using the Sunnah to enact laws, because in matters of law only impeccable information can be used.

Other problems raised are (1) whether all of the Companions, and by default their narrations, are equally trustworthy; (2) the fact that the Sunnah was written down so late; and (3) the acceptance of hadith transmission according to the sense (*riwāyah bi al-ma'nā*). In fact, Muslims like Chiragh Ali (d. 1895), a follower of Sayyid Ahmad Khan (d. 1898), and Mahmud Abu Rayyah, who wrote in 1958, felt that Sunnah can neither be relied upon nor used as a source of the legal system.[2] However, the overwhelming majority of Muslims have not only acknowledged its indispensability, but have also accepted that the early efforts to weed the hadith were effective and that there are more than enough authentic hadiths to legitimize the Sunnah's status.

Consensus

According to Imam al-Shafi'i, the so-called founder and master architect of jurisprudence,[3] consensus, as the third source of the legal system, is defined as "the adherence of the congregation of Muslims to the conclusions of a given ruling pertaining to what is permitted and what is forbidden after the passing of the Prophet."[4] The jurists cite Q. 4:115 to justify or support consensus: "If anyone opposes the messenger after guidance has been made clear to him, and follows a path other than that of the believers, We shall leave him on his chosen path and burn him in Hell, an evil destination." On the other hand, consensus derives its sanction from a statement ascribed to the Prophet: "Indeed, my community will never agree on error (*ḍalālah*)."[5]

From the above definition, several points merit clarification. Consensus was not needed while the Prophet was alive. Besides, as a source of law himself (*shāri'*) through God's delegation (Q. 59:7), the Prophet did not need consensus in legal matters, and so it was not yet in effect. However, the Qur'an did encourage him to consult others – but only in world matters. Still, according to Q. 3:159, it was ultimately up to him to decide the issue and then rely upon God.

Consensus must be arrived at, a priori, among a group of Muslims. But does this process have to literally involve all Muslims? Some scholars argue

that this was possible only among the Companions, for their numbers were relatively small and they could all be geographically accounted for. When that reality ended, some scholars interpreted consensus in any given region. When this was no longer feasible, it was further restricted to that of scholars of any given region. Wael Hallaq writes about the consensus of Iraqis in early Islam: "Consensus extended in theory to all countries, but in practice it had a local character. On matters related to general practice, all Muslims were deemed to participate in forming consensus, whereas on technical points of the law, the scholars had the monopoly."[6] Madinah's scholars sometimes shared the belief in the universal consensus, but they limited consensus to the practice of their city, which was deemed binding and inerrant.

Consensus is necessary only in jurisprudential matters. But given that the jurisprudential and legal domains encompass all aspects of life, jurists have to reach a consensus on what to do with those people who break the law and determine whether it is a punishable offence or crime. However, because some theological positions are subsumed under legal matters, consensus is expected for certain theological matters, such as belief in angels, without which one's belief cannot be considered complete (Q. 2:285 and Q. 2:177). More significantly, there has to be a consensus as to what the verses mean to the belief system and what their absence means to any Muslim.

Consensus makes sense if it is a source "through" which law is derived, because unlike the Qur'an and Sunnah it cannot be resorted to to locate the maxims and components with which to enact laws. Instead, strictly speaking, it is a mechanism "through" which, rather than a literal entity "from" which, laws are enacted. In this sense, it is a metaphorical source that relies upon the Qur'an and Sunnah for its legal vitality and efficacy. Therefore without consensus, the understanding and application of the Qur'an and the Sunnah would be delegitimized. Jurists find the Qur'anic injunction, understand and analyze it, formulate the legal code, and then seek consensus to legitimize their understanding, analysis, and enactment of the law.

The role ascribed to consensus would be limiting and constricting if it were applied strictly to wider Islamic learning, for it would mean that no scholar's opinion would be deemed valid until, at least, a majority of other scholars agreed with it. That is why it is not widely applied in that sense. Although an agreement on any issue and in any analysis is welcome, there has never been, nor should there be, a call for consensus in individual expressions and personal opinions, as a requisite for being accepted. In fact, Muslims have always anticipated divergent opinions and taken for granted the differences of analytical positions. The contents and methodologies of *Tafsīr al-Ṭabarī*

(d. 923), and the *Tafsīr al-Kabīr* of Fakhr al-Razi (d. 1209) and others are classic examples this.

Finally, there was still room for different opinions and divergent positions even in the field of law. No matter how much the jurists disagreed, when it came to law there had to be consensus both in their understanding of the sources' contents and their derivation of the applicable laws. This is where curtailing abuse and manipulation become important, for no scholar should try to impose his understanding on the rest. There were also other matters of debate, such as whose consensus should count as well as how wide or inclusive it should be. The formation of multiple schools of law and the acceptance of their opinions also indicated that consensus did not mean total agreement. In this case, it was construed as operating within the confines of each school.

I think credit should be given to the early Sunni scholars and, by extension, to Islam for making consensus a source of the legal system. Although it may seem negligible for not being a real, tangible source, construing and framing it as a source of law indicates the understanding that a durable legal system needs a system of checks and balances. One of the anticipated positive consequences of this was the prevention of any abuse, monopoly, or manipulation of the texts of the Qur'an and Hadith. Even though some verses are not easily subject to manipulation, numerous other ones are. Consensus, as a supporting source for the Qur'an and Sunnah, guarantees that no one can unilaterally enact laws based upon his own understanding. And before consensus, other scholars will identify the incorrect understandings and conclusions and either correct or discard them.

Scholars took consensus seriously. For instance, in some *fiqh* books the first thing that they do, even before beginning their discussions of legal chapters, is almost always cite their textual justification for it before addressing technical and practical matters. For example, he would justify the five daily prayers by first citing those verses that make them obligatory (e.g., Q. 4:103 and Q. 2:43) and then the relevant hadiths, such as the one that lists prayers as one of the five pillars.[7] He would conclude by stating that the entire Muslim community has reached consensus with regard to these specific prayers.

But why should a scholar insist on citing consensus after having proved that prayers are sanctioned by the Qur'an and Sunnah? The answer is to fortify his understanding of the Qur'anic verses and Hadith, and his use of it with consensus, to prove that his conclusion is neither unique nor heretical. Given this reality, it stands to reason that in the domain of law, consensus may be more crucial to support one's understanding than one's quotation of the Qur'an and Hadith. Unfortunately, in our own day Muslims seem to be ignoring this

mechanism of consensus, which would now be very easy to adopt due to technological advances, thereby allowing abundant space for the manipulation and abuse of Islamic texts and teachings.

This Issue

We begin this issue with "Framing Political Islam: Syria's Muslim Brotherhood and the 2011 Uprising" by Amir Abdul Reda. He argues that despite the remarkable evolution in the movement's cultural/ideological framing, it could not attract the military, the masses, and the religious minorities. Abdul Reda posits that its ideological shift toward non-violence and post-1982 reorientation toward democratic elections prevented its members from playing a leadership role. He concludes that these three crucial aspects illustrate how poor cultural/ideological framing can doom an otherwise effective organization.

Next is Norbani B. Ismail's "Female Preachers and the Public Discourse on Islam in Malaysia." She analyzes Malaysia's activist female preachers' recorded online lectures, radio talks, and interviews to identify their preaching styles and themes. Determining that they are trying to create a sound moral and ethical society by fulfilling their own moral and religious obligations, she opines that they adhere to the authorities' rules and their society's norms so that they can continue to gain authority and trust from both the established religious authorities and the public.

Ahmed Mabrouk follows with his "A Model-based Semantic Network for Smart Representation and the Inference of Islamic Law." He introduces a novel hybrid approach for smart representation and the deduction of legal rulings, and also uses an *uṣūl*-based structure to represent the various elements of rulings across a multi-dimensional semantic network. Mabrouk argues that smart deduction engines provide compact codes of *fiqh* rules and deduce answers to the queries relevant to these rules. He also suggests that a fully computerized system that comprises a *fiqh* knowledge base and smart deduction engines can be developed. Finally, he delineates the proposed system's selective browsing, comparative analysis, deduction from *fiqh* rules, and fatwa assistance features.

We close with Ibrahim M. Zein's "Professional Ethics and the Education of Engineers at the International Islamic University Malaysia." He applies a methodic strategy to address (1) the discourse's theoretical aspect that utilizes textual strategies and content analysis and (2) the specific case of the IIUM's engineering faculty. Zain insists that his paper's main contributions deal with how to overcome predicaments in ethical sensibility, ward off dismissive ges-

tures, and distinguish between values and their realization in the everyday world. He argues that such a process enables the human agent to discover, rather than make, values and come to understand that ethical sensibility is not about truth and falsehood, butr ather about one's degree of realization.

I hope that our readers will find these papers not only thought-provoking and stimulating, but also sources of inspiration and motivation for their own research.

Endnotes

1. Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997), 22.
2. L. T. Librande, "Hadith," in *The Encyclopedia of Religion* (New York and London: Macmillan Publishing Company, n.d.), 6:149-150.
3. Hallaq, *A History*, 30 and 34.
4. Abdullah Saeed, *Islamic Thought: An Introduction* (London and New York: Routledge, 2006), 49.
5. *Sunan ibn Mājah*, "*Kitāb al-Fitan*," hadith no. 3950.
6. Hallaq, *A History*, 20.
7. *Ṣaḥīḥ al-Bukhārī*, "*Kitāb al-Īmān*," hadith nos. 8 and 4515; *Ṣaḥīḥ Muslim*, hadith no. 114; *Sunan al-Tirmidhi*, hadith no. 2609; and *Sunan Ibn Mājah*, hadith no. 3973.

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