The Fatigue of the Shari‘a

Ahmad Atif Ahmad
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In this challenging and thought-provoking monograph, Ahmad Atif Ahmad draws on the issue of *futūr al-Sharī‘a* (the end of access to divine guidance due to the absence of qualified jurists) to explore how early Muslim scholars debated its possible loss. Basing himself upon the analysis of medieval Sunni legal and theological texts, the author divides his monograph into four parts: Part I, "Foundations," chapters 1-3; Part II, "Jurists and Nonjurists," chapters 4-6; Part III, "Modernity and Its Questions," chapters 7-8; and Part IV, "Beyond Modernity," chapters 9-10.

Ahmad situates his project as a commentary on the debate over the destiny of religious teachings "from the point of view of Muslim jurist-theologians and those who engaged the intellectual production of these jurists and theologians" (p. 1). He pursues his central goal, to explore "the destiny and current status of God's guidance from a Muslim perspective" (p. 2), by explaining that medieval Muslim theologians and jurists defined the Shari‘a's survival in terms of the availability of scholarly "knowledge" about it (p. 2). Utilizing these medieval debates to offer important insights into similar contemporary debates, he insists that empirical research will continue to refute the "death of the *sharī‘a*" thesis.

In the Introduction, Ahmad poses a question that goes to the heart of this debate: Could God's guidance, available to previous generations as religious histories tell us, somehow become inaccessible at some point? His premise is that the "fatigue of the *sharī‘a*" has been a subject of continuous debate throughout the Islamic tradition and thus cannot be considered a "recent" or "modern" phenomenon. He closely evaluates two kinds of debates: (1) those in the Islamic tradition about the end of access to *futūr al-Sharī‘a* and (2) those in modern western scholarship in the discipline of Islamic legal studies about the Shari‘a's death.

One of the important issues in this book is Ahmad's discussion of this supposed "fatigue" in relation to other intertwined inquiries about the nature of *ijtihād* (independent reasoning), God's guidance and justice, and the availability of His guidance today (p. 15). This suggests to the reader that the claims made about this fatigue can be answered only after addressing auxiliary, yet fundamental, concerns about the Shari‘a in Muslim societies. Ahmad further complicates the question of its death by pointing out the medieval relationship between legal and theological reflections on this question. He alerts readers to the problem of defining "*sharī‘a*" and "fatigue of the *sharī‘a*" and observes

that current attempts at providing a definition have, in fact, actually narrowed and restricted the full scope of its meaning, function, history, and relevance.

It is this definition that makes arguments about the Shari'a's death possible. Ahmad criticizes such assertions by arguing that they are predicated on the notion that it must be dead, not because those jurists who participate in its formulation think that it is, but because those who claim to be qualified to help produce it are unaware that their endeavor is impossible, and thus they must be seen as unqualified to speak to the question of a living Shari'a. In this understanding, "the real *sharī'a* is dead according to the neutral observer" (p. 4).

Contemporary assertions in western academic scholarship have declared the Shari'a's death partly based on claims about the absence of its necessary institutions (e.g., *madhāhib* [legal schools]) and the irrelevance of its contemporary participants. Ahmad challenges these notions on the grounds that the *madhāhib*'s existence is not a testimony to the Shari'a's existence today. He employs the idea of the "self-consciousness of the beginnings" (p. 45) to stress that pre- and post-*madhhab ijtihād* is an important element in acknowledging the similarities between these two conditions. For him, *ijtihād* – especially pre-*madhhab ijtihād* – helps one understand the arguments about the Shari'a's survival despite the end of the *madhāhib* (p. 50).

The author stresses that outsiders and non-practicing jurists are the ones offering arguments about the Shari'a's death (p. 54). He explains that the way Muslims think of it differs fundamentally from that of the outsiders: "I do not belong among those who think the *sharī'a* can only be seen as history," Ahmad insists (p. 13). He emphasizes that the Shari'a is not thought of as history in Muslim societies, for there is "a specific way of thinking about history and thinking about the past. Muslims today do not think of *sharī'a* in this manner. It is through this perspective that we can test the claims about the death of the *sharī'a*" (p. 182).

Ahmad does not simply dismiss the counterarguments presented in western scholarship about the current state of affairs of the Shari'a, but acknowledges that the state of Islamic law "bears very little resemblance to any moment in medieval Islamic history" (p. 147). Nor does he dispute the fact that "significant changes took place in the last two centuries and led to a new condition in the status of the *sharī'a* in the world." (p. 157) However, he does not view this acknowledgment as an excuse to "deny the underground life of the *sharī'a*, which is the only reason there are still supporters for it who can publish to argue that it must be restored" (p. 147). The monograph's key conclusion is that "the *sharī'a* as a legal science, as a language and profession serving multiple professions, and as culture and sensibilities, as a political and social and organizational legacy, is too complex to be given a death certificate or authoritatively claimed to have reached a degree of unprecedented fragmentation" (p. 147).

His rejection of the "death of the *sharī'a*" arguments is based on his accurate assessment that such judgments and arguments are based on the history of the codification process and the modern state's role in serving as an anti-Shari'a agent (p. 149).

Among the central issues tackled in this book are the insider/outsider problem and the notion that contemporary Islamic legal studies lacks a cohesive methodology. The first problem should not be easily dismissed for the sake of "academic study," because it is an epistemological issue. This is not to say that only "insiders," namely, only Muslim scholars and intellectuals, can understand their own tradition, but that some "academic" work makes normative claims about what Muslims should and should not do. For example, they are told that contemporary legal systems are not "Islamic."

This constant engagement with normative Muslim discourse fuels this discussion. To be clear, we are not talking here about the insider/outsider problem as defined by Russell McCutcheon in his *The Insider/Outsider Problem in the Study of Religion: A Reader* (Cassell: 1999): "whether, and to what extent, someone can study, understand, or explain the beliefs, words, or actions of another" (p. 2). The issues here are not "academic objectivity" and whether non-Muslims can understand and explain the Islamic legal tradition, but rather of acknowledging the reality of the perspective that represents a Muslim worldview, with all of its contradictions and biases, and a worldview generated from within the academic discourse.

A central theme runs throughout Ahmad's work: It is the privileged observers and outsiders who are proclaiming the Shari'a's death, as indicated by his contention that "[i]t is very hard for those who would like to participate in an assessment of how 'alive' the *sharī'a* is today to not have any sense of entitlement to participate in it" (p. 182). He insists that being a qualified jurist or a pious Muslim is not what he intends to stress as a *sine qua non* for participation in the Shari'a. Instead, for him such participation means to "possess a sense that he could seriously suggest solutions to the *sharī'a* problems" (p. 182). He emphasizes that the Shari'a should be seen from the inside rather than from the outside.

This important contribution to Islamic legal studies will benefit all students of Islamic studies. He recounts memorable anecdotes, reminding the reader of how the Shari'a is being constructed today in such normative learning centers as Cairo University's Dar al-Ulum and al-Azhar. His anecdotes, which situate this "death" debate against the backdrop of intra-Muslim discourses, enable this book to provide invaluable insights into the study of current Islamic legal thought via a detailed analysis of this very debate.

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