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THE FATIGUE OF THE SHARI‘A

AHMAD ATIF AHMAD
To Dima, Iyad, and Kindah

 الذين أعادوني حِيْثِهم إلى تنسي التي كتب غادرتها زمناً
ثم عاد حبيهم فغادرتي إلى غياب رجعة

Ahmad
عن عبد الله بن عمرو بن العاص قال سمعت رسول الله صلى الله عليه وسلم يقول:
"إن الله لا يقبل العلم إلاانزاعاً بانتزاعه من العباد ولكن يبقي العلم ببقي العلماء حتى إذا لم يبق عالماً اتخذ الناس رؤساء جهالاً فسفروا فأتموا غيرو علم فضلوا وأضلوا."

—Bukhari’s Sahih, #100 (Chapter 3, On Knowledge = Kitab al-Ilm)

حدثنا ابن حميد قال حدثنا سلمة قال حدثني محمد بن إسحاق عن نافع عن ابن عمر قال سمعت النبي صلى الله عليه وسلم يقول "ألا إنما أجعلكم في أهل من خلا من الأمم كما بين صلاة العصر إلى غروب الشمس."

حدثنا أبو كريب قال حدثنا عتان بن علي عن الأعمش عن أبي خالد الوالي عن جابر بن سمرة قال كأنى أنظر إلى أصبعي رسول الله صلى الله عليه وسلم - وأشار بالسبيحة والتي عليها - وهو يقول "بعثت أنا والساعة كهذه من هذه."


عن أنس بن مالك عن النبي صلى الله عليه وسلم قال "إن قامت الساعة وفي يد أحكام فسيلة فإن استطاع أن لا تقوم حتى يفرخها فليفرخها."


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Series Editor’s Preface

When I was invited to become the editor of the Palgrave Series in Islamic Theology, Law, and History, I sought to find works that are not just interesting but compelling—works that can be described as publishing events. I sought to find works that leave an indelible mark on the field that neither the conscientious scholar nor student can rightly ignore. The present book by Ahmad Atif Ahmad, an already accomplished scholar in his own right, is without a doubt an event in the history of Islamic Studies. Ahmad’s *The Fatigue of the Shari’a* is highly original, addictively readable, and awe-inspiringly brave; it is the kind of book that justifies the very existence and continuation of this series. Reading Ahmad’s book has been a full-fledged event in my own intellectual life to the point that I feel genuinely fortunate to be given the privilege of introducing it to specialists and nonspecialists alike.

In this meticulous and singularly unique book, Ahmad takes his readers on a thrilling and thought-provoking journey through Islamic law, theology, and history. He deals with a little-known, practically forgotten, debate that has thoroughly profound implications for contemporary Muslims. Ahmad asks the notoriously incendiary question: What if, due to the change in times and people, the divine law or the norms ordained to human beings through Revelation cease to be relevant? In Ahmad’s language, the fatigue of divine norms means a condition in which, for whatever reason, God’s laws or prescriptions are no longer compelling or fitting for the believers. The issue he deals with is the very existence of divine guidance for every age and time, and whether it is conceivable that God’s law would become unavailable, or, for whatever the circumstance, absent from the lives of the faithful.

What makes this study invaluable is that Ahmad offers a very accessible and comprehensive review of the Islamic classical theological and jurisprudential debates on these issues. The discourses found in the classical tradition are rich, nuanced, and very often surprising, and they are also extremely relevant to contemporary Muslims and non-Muslims alike. Ahmad does not shy away from investigating the implications of the
classical debates on contemporary understandings of the nature and role of Shari’a. Beyond this, in what must become compulsory reading for all students of the Shari’a, he analyzes the ways that the discourses on what he calls “the fatigue of divine norms” ought to affect the analytical assumptions and methodologies of any serious scholarly study of Shari’a.

Having said all of this, I have hardly done justice to Ahmad’s masterful work. The classical debate on the fatigue of divine norms raises critical foundational questions on the relationship of divine revelation to Shari’a; the eternality and changeability of Shari’a; the status of pre-Islamic revelation, including Jewish and Christian divine norms; and the role of pluralism, tolerance, and orthodoxy. Of equal importance to this topic are the debates on *ijtihad* and the *mujtahid* as the instrumentalities of avoiding the fatigue of the Shari’a, the confrontation between Shari’a and modernity and postmodernity, and the various reform movements in contemporary Islam that sought to avoid the atrophy of Shari’a values in Muslim societies.

I described this book as an event because if it gets the attention it deserves, it will force the rethinking of much of the inherited platitudes about Shari’a, and it will also challenge the often tiresome banality that plagues the field of Islamic Studies. Without a doubt, it will raise the standard for scholarship in the field. But well beyond this, I hope that Ahmad’s book will eventually be translated to Arabic, Persian, and Turkish, among other languages. Although many Muslim scholars will be familiar with the historical materials that Ahmad relies on, they will not have seen or conceived of the problem in quite the same way. I do strongly suspect that if this book reaches the Muslim world, it will spark a debate, controversy, and new fields of investigation that will become a part of this book’s enduring legacy.

Khaled Abou El Fadl
Los Angeles, California
November 2011
Preface: Speaking of History in a Time of Change

As I delivered ten lectures on “the fatigue of divine norms” in a graduate seminar on Islamic political philosophy (RGST 281) at the University of California in Santa Barbara during the winter quarter of 2011, the Egyptian revolution of January/February 2011 was raging. The significance of this revolution will certainly be debated for a long time, most likely beyond and after our lifetime. I could not offer a real-time interpretation of this revolution, but I could reflect on some of its potential consequences for the subject.

As I tend to focus on the long view in reading the life and transformations of Muslim societies, I am fairly unconcerned about the immediate aftermath of this revolution, compared with its potential long-term effect. I am also skeptical about the suggestion that an immediate change in the customs and practices of the Egyptian society (and other Muslim societies) will result from this revolution, although I would not be surprised if a slightly faster change (faster, i.e., measuring by the pace of the past three centuries) occurs after this revolution. I do not see this revolution as a “revival-of-the-Shari’a” moment, based on political action. Perhaps on the social level, and again looking through a long-term lens, a breakdown in the social structures that supported certain versions of the Shari’a may be foreseen. But no government could be charged with the task of bringing the Shari’a to life, if this Shari’a had already lost its life (something I contest here).

The 2011 Egyptian Revolution took place, many will remember, after a new Tunisian revolution (December 2010 and January 2011), two decades after an Algerian ‘revolution’ was aborted (1989–1991), and three decades after the Islamic revolution of Iran (1979). The resonance of the Egyptian revolution, with steps forward and backward in the days to come, will probably go in an overall direction of reconsideration of many aspects of social, moral, and political life, now a reconsideration from within Muslim societies, which is bound to lead to conclusions different from the “reform”
movements of the twelfth/eighteenth–fourteenth/twentieth centuries. No prophet could have foreseen this revolution; hence, no prophecies should speak to its future with authority. As always, we only have the lessons of history, which remain inconclusive and sometimes even deceptive, but that is all we have. (Note that the history that has been taught for a long time in European and North American universities will be asked questions it could not answer, compared to, say, the way things were about half a century ago. Stable times allow the thriving of dogmas. I feel privileged not to live in these times.)

In the lectures I delivered before my students at the University of California in the winter of 2011, I attempted to draw on the medieval debate on the fatigue of the Shari’a, stating that insights from those who participated in it, notably Muʿtazili, Ashʿari, and Hanbali theologians and jurists, help us to see how the status of the Shari’a could be seen from within, from the perspective of those who have a commitment to it, full or partial. We could learn from the Muʿtazilis not to exaggerate the importance of specific readings of divine norms at any given generation, whether those given by the early followers of the Prophet Muhammad or the schools that were subsequently established. We could learn from the Ashʿaris a religious version of the idea that change is a factor in history just as powerful as continuity—hence even divine norms might simply cease to be available through the usual “means” of scholars or mujahids. We could learn from the Hanbalis that individual responsibility could not be forgotten, during and after the times of the strength of institutions such as the madhhab.

I also argued, knowing that this is an easy target for critique, that reconciling the three positions is not impossible, if we do not insist on the rigid faith that old positions mean virtually nothing in new contexts (because ideas mean something only in their context), and after that, they could only “pose to be pictured” (as if this were possible), rather than studied for insights.

In my lectures, I also discussed the changes the medieval debate underwent, throughout the times of the confidence and critiques of modernity. The present moment seems to be a new point of departure, which invites us to a wait-and-see posture.
In 2008 Khaled Abou El Fadl provoked me, with theses and questions, to revisit the question of futur al-Shari‘a, which I had first encountered in a reading of Zarkashi’s (d. 794/1392) Bahr in the early 1990s. In the ensuing three years, I went back to this and related questions repeatedly, and in the process, what was a minor interest in old and new debates about the life and destiny of the Shari‘a crystalized into the thoughts I put into the following chapters. It is now Khaled Abou El Fadl who deserves to be acknowledged before anyone else at the outset of this publication.

I also acknowledge the contribution of my graduate students who attended my lectures on “the fatigue of divine norms” at the University of California in Santa Barbara during the winter term of 2011. I thank Nathan French, Ahmet Temel, Sohaira Siddiqui, Burhan ‘Ali, Samaneh Oldi Ghadikolaei, and Munther al-Sabbagh for their input and questions. Thanks also to Nasser Rabbat of MIT, who continued to hear me talk about this topic and offered critique until he got tired of it; to Charles Butterworth and Barbara Stowasser, who offered questions and comments after a lecture I gave under the title “Debating the Fatigue of the Shari‘a” at Georgetown University in 2010; a Palgrave anonymous reviewer of an earlier draft who drew my attention to an important Achilles’ heel; and Suni Ann Sebastian of Newgen Knowledge Works for editorial suggestions that improved my prose.
Could God’s guidance, available to previous generations as religious histories tell us, simply cease to be accessible at some point? Has this already happened; is it about to happen? Assuming these questions are clear enough, at least the following potential answers can be given to them: (1) Yes, this has already happened—the revelations of “prophets” such as Abraham, Moses, and Muhammad are already irrelevant to modern life; (2) no, knowledge and adherence to divine revelations has not faded away, but this might happen soon, in the near future, that is—or some may want to put it this way—we will soon be unable to access or make sense of any of these “divine revelations”; (3) no, this will never happen, because God will never abandon humanity. I deliberately ignore (for now) answers that make distinctions among the different revelations, saying that some will survive because they are the true revelations while the false ones will wither away. I ignore this family of answers for several reasons; for one, I am not writing about all the religions for which the aforementioned prophets or other sources of God’s guidance are relevant. Nor do I plan to mediate amid different claims to the truth.

One (likely) way to answer the aforementioned questions is to raise another set of questions about the terminology employed and the criteria one is allowed to use to answer them. I will discuss several strategies of answering the question of the “fatigue” of divine norms with questions, since this is at the heart of this project. But before proceeding any further, I must state that what follows is a commentary on the debate on 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.

There are multiple forms of the debate (or multiple debates) on the destiny of “God’s guidance” that could be invoked in this context. Many readers will assume that the perspectives employed in these debates must neatly fall into two categories, the theological and the nontheological (perhaps societal, political, or epistemological, among other possibilities). The assumption is reasonable, since there must be two different perspectives
from which to look at this issue, one attached to the divine revelations in question and another detached. This separation, however, is easier to make in theory than to apply in practice. The theological dimension, at least in the context of this debate, could not be separated from nontheological, empirical or theoretical, assessments of social and political life, inasmuch as it relates to the question at hand. Moreover, the theological dimension could not easily be disentangled from a priori epistemological assertions that could be argued without any reference to God, divinity and the divine, or anything of this type.

My focus on how Muslim theologians and jurists debated the destiny and the status of God’s guidance does not preclude discussions of pre-Muhammadan revealed laws. Non-Muslim followers of pre-Muhammadan laws would probably not concede the points Muslim theologians and jurists made about the destiny and status of previous revelations. But it is important to note that the issue for my purposes does not come down to true and false revelations. (Muslims, incidentally, say that they believe all the revelations given to all these prophets are true.) The question is more about the degree to which several of God’s revelations have remained available over time. The relationship among different “revelations” or “religions,” at any rate, is not the central issue here. The central question I am considering is the destiny and current status of God’s guidance, taken from a Muslim perspective. The inquiries concern whether humans could live in a world without guidance from God. If yes, what should the believers do then? How could one learn or ascertain that God’s guidance is no longer available? Do we already inhabit that world of the fatigue of guidance, the fatigue of divine norms, the fatigue of the Shari'a?

* * *

Once upon a time, the question of “whether the Shari’a was going to survive until the end of time” was debated by jurists and theologians who, in a sense, participated in the making of this Shari’a. These jurists first asked some basic questions about what the survival of the Shari’a should mean. When a majority of them defined the survival of the Shari’a as the availability of “knowledge” of it through scholars, they set out to discuss the nature of this knowledge and how it may be deemed available or unavailable. Some of the participants in this debate were theologians who looked at it as logically contingent on the question of God’s justice (and the perfection of God’s world) and whether this justice and perfection allowed such a condition as the inaccessibility of God’s norms. Some participants used “empirical” data: their observations made these think, for example, that knowledge of the Shari’a was both abundant and on the rise and hence
could not easily be subjected to dissipation before the end of the world. And many saw the issue of “unavailability” of God’s norms as multifaceted and connected with other inquiries.

Come modern “change” in Muslim societies, the Shari’a was asked to justify itself, and a debate about modern laws and their relationship to the Shari’a started. The parameters of the discussion were different, and the question moved from the “future” to the “present” tense. Is this (behavior that took place or suggested normative behavior) compatible with the Shari’a? Is this the Shari’a? What is the Shari’a? But the old debate offered many lessons that could not be ignored. The medieval jurists offered insights about the Shari’a that we could still use in studying the modern debate on the Shari’a.

The tense moved once more from the “present” to the “past.” Some now discuss the demise of the Shari’a as a fact of the past. The medieval debate with its insights and the modern history of the Shari’a (being an essential background to the postmodern “death-of-the-Shari’a” thesis) remain relevant to this most recent debate. There is a risk in discussing all of these in one long essay, but believe it or not, ignoring any part of the story carries a higher risk. I will take the first risk (which consists of conceptual and analytical difficulties), and if I have failed to make my views clear in this essay, I could revisit the issue to clarify and explain in the future. The other risk, that is, losing old insights and eclectically considering a complex issue as if from a simple privileged standpoint, is one for which there is no remedy. The medieval debate continues to give us a challenge that I think is insurmountable. It insists that empirical research (while useful) will continue to fail to provide a satisfying answer. The difficulties inherent in the concepts of knowledge and “Shari’a” itself will survive any assertion of the death of the Shari’a.

Foundations: Chapters One–Three

Chapters one and two attempt to show that, to be fully understood, the debate on the destiny or the current status of God’s norms must be split into several more manageable inquiries and (perhaps perplexingly for some) connected to other inquiries. Chapter one addresses the splitting and chapter two the connecting.

Chapter one suggests that a debate on the fatigue of the Shari’a may be seen as having occurred in three overlapping phases, as I indicated earlier. The first has jurists at the center and includes the medieval Mu’tazili, Ash’ari, and Hanbali positions. This debate by itself suggests splitting the question of the fatigue of the Shari’a into several questions. The conceptual
complexities of the issue arise, almost fully, in this phase. One learns that defining the Shari’a is a challenge, that defining fatigue is another, and that even when the fatigue of the Shari’a is defined as the death of a certain type of scholarship, the debate does not end.

The second phase of the debate has society and government at its center and draws on old themes from medieval Islamic political philosophy but is also affected by political developments that attended colonialism and the modern nation-state. The historical moment was characterized by a diffusion of the teaching of Islamic law among several institutions, many of which stood at the juncture of the remaking of this law. In this phase, the nature and role of the Shari’a in society and government were argued, and so was the influence of these two elements (in their modern version) on all functioning laws. This phase of the debate also witnessed an emphasis on the prophetic tradition, the hadith of the Prophet Muhammad, placing hadith at the center of the sources of norms, as opposed to the madhhab or schools of law that dominated medieval legal thinking.

The third phase of the debate has epistemology and power at its center. In this phase, one could draw as much as one likes on the past but the judgment is finally rendered based on an empirical observation, which also assigns different values to what one could observe today. The chief analytical tool here, however, is foreign to the whole system under consideration. It is ultimately a judgment about what “knowledge” is, about the conditions of the possibility of certain types of knowledge, and about knowledge’s connection with power. The Shari’a, in this post-Foucaultian world, must be dead, not because jurists who participate in it think that. In fact, it is because those who claim to be qualified to participate in the production of the Shari’a are unaware of the impossibility of their endeavor that they must be seen as unqualified to speak to the question of the life of the Shari’a. The real Shari’a is dead, so notes the neutral observer.

This division (of the phases) appeals to concepts and analytical tools more than it does to history, given the overlap among its phases. Chapter one explains the limits to which this project may be considered a work in Islamic legal history, arguing, in effect, that more is gained by considering the debate on the fatigue of the Shari’a a continuous one, which employed several tools and attended to different conditions. If our moment is privileged, it is because it could draw on the insights gained from each one of these “phases” rather than subject their concepts to criticism or subvert one of them to the benefit of another.

Chapter two demonstrates that the question of the fatigue of the Shari’a is connected to other inquiries, notably (a) the unaided intellect’s ability to arrive at binding norms, and (b) the possibility and meaning of lacunae in fully functioning Shari’a models. The chapter shows the importance of these issues especially in understanding the phase of the debate that has
jurists at the center. Chapter two also points to the relationship between legal and theological reflections on the fatigue of the Shari‘a and medieval Islamic political reflections on society and government (to which I go back in some detail in chapter eight). This latter connection is significant in analyzing the fatigue of the Shari‘a—all lead to one of two basic conclusions on the fatigue of God’s norms, which proposed by schools of thought. The Mu‘tazili position drawing on reason’s capacity for independent judgment, the Ash‘ari position that God’s control and possession of the world makes Him unanswerable to humans’ sense of justice, and the Hanbali position relying on the popularization of ijtihad and its insistence on the foundational sources (Qur’an, Sunna) as the basis of the Shari‘a—all lead to one of two basic conclusions on the fatigue of the Shari‘a: Yes it could happen, so said the Ash‘aris, and no it could not happen, so asserted the rest. All participants in this debate, once again, understood the question to be one of the survival of access to God’s norms through some form of ijtihad or human effort. I see each one of these positions as offering different insights, and I am prepared to try to reconcile them in different ways before putting my energy into rejecting any one of them.

Chapter four focuses on loosely connected stances, notably the Mu‘tazili position that rejected the possibility of the fatigue of God’s norms, which provoked Juwayni (419/1028–478/1085) to refute it. This position, that of Ka‘bi (d. 319/931), is not only consistent with the Baghdadi Mu‘tazili school with which Ka‘bi is associated, but also does indeed explain many basic Mu‘tazili doctrines that predated Ka‘bi and were later engrained in Mu‘tazili usul al-fiqh through Abul-Husayn al-Basri’s (d. 436/1044) Mu‘tamad. ( Though
I am told by Aron Zysow that I should think of Ka‘bi as a revolutionary figure whose view may not be consistent with any one, Zysow acknowledges that the thinness of the evidence of Ka‘bi’s detailed ideas makes one resort to secondary sources in any case, and one needs a good argument to grant a general privilege to non-Ash‘ari over Ash‘ari sources in the exercise of recovering the lost nuances of Ka‘bi’s ideas.) This chapter also explains other positions from the same family of ideas that emphasize the role of reason in arriving at conclusions one may attribute to God. Ibn Rushd comes up with an interjection of a different flavor, and his view of the ultimate harmony of reason and revelation is discussed in this chapter.

Chapter five focuses on the Ash‘ari position that continued for close to a millennium from Juwayni to ‘Attar (d. 1250/1835) [a major figure in between is Taj al-Din al-Subki (d. 771/1369)]. The Ash‘aris leveled their argument against Mu‘tazili and Hanbali opposition (against the Mu‘tazili in the earlier centuries and against the Hanbali position more pronounced in the later centuries). Some Ash‘aris came close to holding aspects of the positions their school opposed. This aside, the Ash‘aris stood against both Mu‘tazilis and Hanbalis, accepting that it was possible for the fatigue of the Shari‘a to occur, with many of them going as far as saying that it would likely occur.

Chapter six focuses on the Hanbali position that introduced the roots of a limited “ijtihad for all” doctrine and emphasized the access to the Prophet’s tradition (hadith) as the basis of God’s guidance. The arguments are made by the likes of Abu Ya‘la al-Farra‘ (d. 458/1066) and Abu al-Khattab al-Kalwadhani (d. 511/1116). Ibn Taymiyya (d. 728/1326) lays the groundwork for some of these arguments to develop further and acquire a different texture in later centuries. This position will partly influence Shah Waliyyullah al-Dihlawi (d. 1176/1762) but will be appropriated most cleverly and effectively by Shawkani (d. 1250/1834) as an “ultrafoundationalist” position in a different version of the debate in the early modern phase—the position that even after the madhhabs die, the Shari‘a lives on.

Maturidi (Hanafi) jurists and theologians had more or less forged their positions as hybrids out of the other positions and, hence, will not receive separate treatment.

**Modernity and Its Questions: Chapters Seven–Eight**

Chapters seven—eight address the conceptualization of the Shari‘a without a strong emphasis on the madhab and how adding the elements of
government and society to the mix affects the equation of the vigor or infirmity of the Shari’a.

Chapter seven tackles a shift in Sunni jurists’ status in their societies that weakened the debate about the fatigue of the Shari’a with jurists at the center. Some would probably argue that, by then, the old debate and the Shari’a itself could be spoken of only with a tinge of metaphor. The buzzwords for discussions on the Shari’a have become “tajdid” or renewal, “taqni” or codification, and islah or “reform” rather than ijtihad. The accessibility of the Prophet’s tradition was seen to play a role in the debate roughly paralleling the position previously occupied by the madhhab. Even those who opposed the newly formed and confidant ultrafoundationalist view, such as Bakhit al-Muti‘i (d. 1354/1935), acknowledged its strength. This chapter addresses the position of Shawkani (d. 1250/1834), who practically trivializes the medieval debate, as another sign of these shifts that affected the Muslim world and prepared for new perspectives on the Shari’a.

Chapter eight discusses the relevance of government to the question of the functionality of the Shari’a. The chapter addresses an aspect of the test of the life of the Shari’a not captured by the Mu’tazili/Ash‘ari/Hanbali discussion addressed in chapters four–six. I will not repeat my detailed discussion, in a previous work, of the impact of social and market standards (urf) on Sunni legal provisions. Instead, I will focus my discussion on the role of government in a Muslim society and its affinity with the Shari’a. Juwaynī’s classic on government (the Ghiyathī) guides my discussion of this multifaceted issue, which remains confined to the theoretical realm. (The prospects of a poststate world in our time makes me look forward to a new negotiation of the relationship between “government” (broadly conceived) and the Shari’a.)

These two chapters will focus on the aforementioned basic themes of the debate, rather than retell the full story of colonialism, modern developments in adjudication, education, and public knowledge in the Muslim world and in the world as a whole (nor do I plan to dispute much of the accepted narratives of these developments here).

**Beyond Modernity: Chapters Nine–Ten**

Chapters nine–ten discuss recent views that the Shari’a may have already become a case of lost knowledge or lost tradition. This discussion, while capable of reminding us of aspects of the medieval debate, came out of a different context and employed novel conceptualizations. I point to the