



# Islamic Law

## Myths and Realities

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## Human Rights in Islamic Law, Realpolitik, and Middle East Foreign Policy

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**T**his paper intends to analyze al-Shatibi's monumental contribution to Islamic law and how it elucidates Islamic legal thought with regard to basic human rights. Unfortunately, there are many examples of Muslim leaders who do not respect those laws, both domestically and internationally. This paper will highlight cases where realpolitik controls and guides those states, rather than defending their kin Muslims according to principles that have historically guided Islamic legal thought and practice.

### **Al-Shatibi's Significance in Islamic Jurisprudence**

#### **Al-Shatibi's Life and the Sociopolitical Environment of his Age**

Al-Shatibi is a well-recognized Muslim jurisconsult (faqih). He lived most of his life and got most of his education in Granada, Spain. His date of birth is not known; however, he died in 1388. Al-Shatibi lived in an age of political turmoil for two reasons: (1) Muslims were losing power in Andalusia, and (2) there was a





lot of fighting for power in Granada, and specifically, the city of Jativa (where al-Shatibi gets his name) had signed an agreement with King James so that Jativa became semi-sovereign under its Muslim leader. Along with this unrest came the instability of political life, even though the advent of people from Andalusia created a thought-provoking milieu. The Andalusians who fled to Granada at the time were said to have the best clothes and the women at the time were well adorned with jewelry.

The arrival of the Andalusians in Granada transferred to them knowledge about farming and small-scale industry. The Andalusians were also very fond of singing, and Granadins noted that Andalusians sang in public, even in the market.

The Andalusians' as well as North Africans' travel to Granada at the time definitely led to a lively cultural exchange. It is in the midst of this exchange that al-Shatibi grew and learned from various religious scholars and linguists traveling through Granada, and specifically Jativa because of its well-known paper production.

### Al-Shatibi's Cultural and Religious Education

In al-Shatibi's time in Granada, there were two important religious institutions: 1) the Great Mosque, where people prayed and where lectures were held, and 2) the Nasserite School (founded in the mid-1300s), a school that was architecturally impressive and a place for scholars traveling through Granada to lecture. Many Andalusian and North African scholars taught and exchanged ideas at this institution.<sup>1</sup>

Therefore, even though political life was not stable in Granada and Muslim Spain, generally speaking at the time, Granada continued to be a lively metropolis that attracted scholars from different fields and from different parts of the Muslim world.

This rich cultural and intellectual milieu surrounded al-Shatibi in the 1300s.<sup>2</sup> Among the scholars who taught and influenced al-Shatibi were scholars from Andalusia, Loja, Granada, and also many from Tlemcen of North Africa. One of the major influences

on al-Shatibi's thought and methodology was the philosopher Mohamed al-Farabi (al-Raysouni 1991, 98).

Al-Shatibi's most famous contribution was in his book *al-Muwafaqat* (*The Agreements or The Agreed Upon*). The title of this book, according to al-Shatibi (*al-Muwafaqat*, 24), was suggested by one of his contemporaries, who felt that Muslim jurisconsults from different *madhahib* (Muslim legal schools) would agree on what al-Shatibi has to say.

*Al-Muwafaqat* has gained him notoriety till this day because it is in this book that he writes about the sources of Islamic law and links that to the theory/principle of *maqasid* (the end goals of shariah).

### The Relevance of al-Muwafaqat

*The Agreements'* importance stems from its emphasis on a principle in Islamic law called "*maslaha*"/"*maqasid*." The end goals of shariah are five: preserving religion, preserving the mind, preserving the self, preserving wealth, and preserving posterity. However, preserving those five elements is part and parcel of the more encompassing principle of public welfare in Islamic law. The five principles mean the following:

- Preserving religion: Abiding by the five pillars of Islam and the protection of practicing the faith and those five pillars through prayers, fasting, almsgiving, professing the faith, and the pilgrimage to Mecca.
- Preserving the mind: Allowing the followers of the faith a proper education and the freedom to express their faith in public (e.g., wearing the headscarf for women, calling to prayers five times a day, etc.).
- Preserving the self: Protecting the body against any harm and protecting the sanctity of human dignity and life (e.g., the due process of law and the prohibition of captivity and torture in captivity). Preserving the self also includes the freedom to travel and the freedom to express oneself.
- Preserving wealth: Protecting private and public property from negligence and harm, or protecting against the usurpation of private property. Preserving property is concerned with four main principles: the

<sup>1</sup> Abu Al-Ajfan 1984, 29).

<sup>2</sup> Al-Shatibi's date of birth is not certain, but it is thought that he was born before 1318 (Abu Al-Ajfan 1984, 32).



circulation of assets, clarity in all dealings, justice/equity, and protecting property from transgression.

■ Preserving posterity: The emphasis on the role of the parents in the upbringing of their children, including their education, especially their religious education.

His contribution in this text is mainly to legal theory (*usul al-fiqh*).

The sources of Islamic law, or *usul al-fiqh*, are divided into two categories. One category is comprised of *al-nas* (the text), i.e., the Qur'an and the Sunna. The other constitutes human judgment in several forms, e.g., *al-ijma* (the consensus of the fuqaha) and *al-qiyas* (analogical reasoning).

Theoretically, therefore, there are two kinds of issues in shariah: *qat'iyat* and *dhaniyat*. Issues that deal with *qat'iyat* (definitive rules) are rules that are not changeable according to Islamic law, for example, times of prayer, fasting, alms giving, etc. The second type deals with *dhaniyat* (doubtful issues), i.e., issues that allow for thought and speculation. Those issues are open to *ijtihad* (exercising one's thoughts or making an effort to analyze and contextualize legal principles), and those issues change with time and place — especially those pertaining to interhuman relationships.

**A few scholars have recognized the importance of public welfare and the end goals of Islamic law. For example, Esposito writes:**

*While all fuqaha came to accept the four sources of law, Islamic jurisprudence recognized other influences, designating them subsidiary principles of law. Among these were custom (urf), public interest (istislah), and jurist preference or equity (istihsan). In this way, some remnant of the inductive, human input that had characterized the actual methods of the law schools in their attempt to realize the sharia's primary concern with human welfare, justice and equity were acknowledged. (Esposito 1988, 34)*

**Sardar also stresses the importance of public welfare in Islamic law:**

*Beyond these limited parameters, the sharia is completely open: it can be developed and shaped according to the needs of society and time by any*

*number of its other sources: al-ijma, al-qiyas, al-ijtihad and istislah. The sources of the sharia that supplement the Qur'an and the Sunna are problem-solving tools; they provide a methodology for adjusting to change. (Sardar 1985, 114–15)*

**Aside from the few scholars who have recognized the importance of public welfare as a guiding Islamic legal principle, contemporary moderate Islamists have also stressed its importance. For example, Yusuf al-Qaradawi, a contemporary member of the Muslim Brotherhood, writes:**

*First, we need to investigate and analyze our cultural heritage in fiqh literature with its different schools and at different ages, in order to choose what will ensure the enforcement of al-maqasid (end goals of sharia) and the resurrection of al-maslaha (public welfare) in light of the changes taking place in contemporary life. Second, we need to go back to our roots: i.e., to the Qur'an and the Sunna, to analyze it in light of al-maqasid (end goals of sharia). Third, we need to spend more effort in understanding contemporary issues that were not part of our ancestors' life, i.e., where the old fuqaha did not contribute to the issue as it relates to our modern times. (al-Qaradawi 1973, 108–9)*

**Al-Qaradawi also writes:**

*If one takes a verse from the Qur'an or any particular hadith, without relating it to al-maqasid (the end goals of sharia), one is likely to misunderstand and misinterpret the sharia. This is why al-Imam al-Shatibi in his book al-Muwafaqat, insisted that to understand al-sharia one has to comprehend and know its end goals. This only happens when one is knowledgeable about the verses of the Qur'an and the Hadith; why, how, and when they were revealed, the reason behind revelation, which hadiths are eternal, and which were temporal ... etc. (Qaradawi 1981, 152)*

**As mentioned by al-Ghanouchi indicates that “the end goals of sharia should provide a legal basis for future Muslim societies” (Darwish 1992, 130–39).**

**Also, the late al-Turabi wrote:**

*Worship is the most inclusive of all end goals of sharia. The end goals of sharia agree with another source of jurisprudential reasoning and that is istishab (using*



*precedence from other cases until opposite rules prove to be better for the common good). Istishab promotes gradual change, i.e. it does not negate all that came before Islam and generate a totally new system, istishab is a state of continuous change. Therefore if we combine istishab with al-masalih (public welfare) we will find the essence of public life in Islam. (al-Turabi 1980, 26)*

The principle of public welfare stresses the importance of developing Islamic law based on the idea that good is lawful and that lawful must be good. It basically extends Islamic law to adapt and change according to the time and place it exists in. Public welfare also integrates the use of human reasoning in the application of Islamic law (without crossing the realm of *qat'iyat* [absolutes] that are clearly stated in the textual sources).

Thus, the principle connotes issues such as modernity, civil society, and governance according to Islamic law and Islamic mores. By implication, public welfare and preserving the mind, religion, self, posterity, and wealth are the essence of the ideal Islamic state and of the importance of human rights in Islamic legal practice. Whether domestically or internationally, Muslim leaders should uphold those principles as a guide to their actions and foreign policy. With the rise in Muslim-minority genocide in China and Myanmar, Muslim-majority countries should leverage their foreign policy with both countries to help stop those violations.

### **The Far East's Muslim Minorities: The Antithesis of Public Welfare and the Goals of Islamic Law**

Whether one writes about the Uyghurs or the Rohingyas, according to most human rights NGOs these groups are recognized as minorities facing gross state violations, if not genocide, in China and Myanmar, respectively. Muslim societies feel strongly about the persecution and genocide of Muslim minorities in China and Myanmar, however, Muslim state leaders have not been supportive in the least to those minorities.

#### **Arab Involvement in China**

China is today the largest importer of crude oil (European Council of Foreign Relations Report 2019), with most of its importation based in the Middle East.

China is also interested in developing the Belt and Road Initiative (BRI), which would establish secure land and sea routes to connect Europe and Africa to China more easily. The Chinese government produced two documents solidifying those interests, the Arab Policy Paper in 2016 and the "Visions and Actions on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road" in 2015 (European Council on Foreign Relations 2019).

As a result, China has signed agreements with 15 Middle Eastern countries (European Council on Foreign Relations 2019).

China claims to seek a higher moral ground than the U.S.'s presence in the Middle East by stating that it promotes stability in the region by means of "developmental peace," however, its policies indicate otherwise; China already has a military base in Djibouti and supplies a limited number of arms to some Middle Eastern countries (European Council on Foreign Relations 2019).

Saudi Arabia is the second largest exporter of crude oil to China as well as many GCC countries like the UAE, Kuwait, Oman, Qatar, and Bahrain (European Council on Foreign Relations 2019).

Therefore, Saudi Arabia, as well as other GCC countries, did not utilize crude oil as a bargaining tool to save the Uyghurs, like they did in 1973 with the oil embargo against the U.S. GCC countries chose realpolitik economic interests over requesting humane treatment of the Uyghurs: preserving life, faith, the mind, property, and posterity, in al-Shatibi's words.

#### **The Myanmar Rohingyas**

The Rohingyas have a history of being accepted as migrant labor, especially in Saudi Arabia. King Faisal granted them the right to migrate in the 1960s (Associated Press News 2017).

However, with the recent change in monarchy came a switch in both how the migrants already in Saudi Arabia were treated and policies toward the Rakhine State's flagrant genocide of the Rohingyas (Glimpse from the Globe 2020).





Although Saudi Arabia has condemned the human rights abuses in Myanmar under pressure from the OIC (Organization of Islamic Cooperation), it has overnight imprisoned thousands of immigrant Rohingyas. GCC countries are also strengthening their ties with Myanmar regardless of how they are treating their Muslim minority, to the extent that Kuwait not only invited Myanmar's diplomatic representation, but it is also providing the salaries of Myanmar's public diplomats (Glimpse from the Globe 2020).

The GCC countries, especially Saudi Arabia, have a vested interest in economic ties with ASEAN countries: Saudi Arabia's oil line runs through Myanmar to the Chinese province of Yunnan (Associated Press News 2017).

The GCC countries have around 1.5 million migrants from Myanmar and, as with all migrant labor in the GCC countries, there is a lack of accountability for basic human rights abuses regarding the kind of work, the length of hours of labor, and many other documented abuses (Glimpse from the Globe 2020).

## Conclusion

In the case of both the GCC's and Saudi Arabia's foreign policy with China and Myanmar, realpolitik has dominated those relations without the slightest moral commitment to mitigating human rights abuses, ethnic cleansing, and genocide in either Myanmar or China

with regard to their respective Muslim minorities, the Uyghurs and the Rohingyas.

Saudi Arabia is the key player in this drama, as it exports approximately 20 percent of Chinese crude oil needs. It defies the OIC and many Muslim countries' populations who revolted against conditions in Myanmar and China. The policies are diametrically opposed to any religious and cultural affiliation of the ideal observance of human rights according to al-Shatibi's notion of public welfare or the preservation of the five basic rights: life, mind, faith, property, and posterity. The gross domestic violations of basic human rights aside, many Muslim-majority populations have expressed solidarity with their kin in China and Myanmar; Sekin outlines how several Islamic organizations and religious scholars address those grievances as "informal Arab attitudes towards the 'Uighur' problem" (2015). Sekin lists the East Turkestan Education and Solidarity Association, Sheikh Salman Bin Fahd (a Saudi preacher), the Association of Algerian Muslim Scholars, the World Muslim League led by Saudi Arabia's Mufti, and the International Union of Muslim Scholars, aside from several online and various media sources, as organizations that address the issue. However, realpolitik interests and the lack of accountability of GCC countries to their own populations have led to current foreign policy choices that run against the rudimentary principles of human dignity in any faith and culture. □



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