

The Islamic Principle of *Maslaha* as Practical Wisdom for Human Development

Jochen Lobah

1 Introduction

Since the beginning of the last century Muslim thinkers have taken a common stance on the evident backwardness of Muslim societies in comparison with Western societies. It was less the benchmark of the industrialized and developed West, but rather the widespread shortcomings with regard to the genuine principles of Islam which had been the target of deep criticism by Muslim jurists and intellectuals. The Islamic reform movements towards the end of the nineteenth century had been founded and developed by Jamal ad-Din al-Afghani, his disciple Mohammed Abdouh and his follower Rashid Rida. It paved the way for a large critical discussion vis-à-vis some inherent features and attitudes within Muslim societies. Furthermore, the very famous claim of the French historian and orientalist Ernest Renan during a lecture given at the Sorbonne University in 1882 that Muslim societies are backward because they lack a fundamental reform process and enlightenment, unlike Western Christianity, had been immediately counterattacked and contradicted by al-Afghani and Abdouh. Both considered the evident phenomenon of *decadence* within Muslim societies from a completely opposite viewpoint: Muslim societies were backward due to their negligence of religious values and proper Islamic practices, i.e. their backwardness had been the result of the Muslims' forgetfulness of the very fundamentals and principles of original Islam. They stated that the "golden era of Islam" from the seventh to the thirteenth century was a time of widespread Muslim orthodox practice and religious awareness which had been the main reason for the highly developed Muslim societies in the early years of

Jochen Lobah is the regional representative of the German Hanns Seidel Foundation in Morocco and Mauritania.

J. Lobah (✉)
Hanns Seidel Foundation, Rabat, Morocco
e-mail: lobah@hssma.org

Islamic history. Modern Muslim thinkers like Muhammad Asad, Malek Bennabi, Fazlur Rahman and currently Tarik Ramadan extended their analyzes of the intrinsic social and economic problems of Muslim societies to the very reasons of colonialism. All these eminent Muslim intellectuals highlighted the fact that Muslim societies must have been colonized for the simple reason of their aforementioned lack of awareness and capacities with regard to a deeper understanding of their own cultural Muslim values and genuine Islamic teachings. These values had once in history an immense impact on the development of civilizations in the East as well as in the non-Muslim West. Nowadays these values have lost all powers and creativity to form and to sustain cultural, social and economic development at a first glance, especially referring to the disillusioned HDI-Index of Muslim countries. But there can be no doubt that the history of Islam shows clearly, without euphemizing it, that Islamic values contributed immensely to scientific, economic and human development in general until the beginning of the fourteenth century which had seen in Ibn Khaldun the last great Muslim scholar for many centuries to come. Yet the reason for this intellectual standstill in the course of Islamic civilization is not to be searched mainly in outward factors like Mongol invasion of the Middle East or the crusades alone. "Centuries before any contact with the West, a reactionary movement took place, and the elaborate dynamic intellectual stream came to an abrupt standstill after the closing of the doors of *ijtihad* (free investigation/independent reasoning). The Sharia became static and confined to the voluminous traditions of the four schools of thoughts (Hanafi, Maliki, Shafi, Hanbali). Furthermore, the Universal phenomenon of exploiting religion as a tool of suppression has been fully employed in various periods in history by Moslem rulers." (Yamani 2006).

One of the most relevant issues of all Muslim reformers is therefore the quest for opening of the doors of *ijtihad* with regard to the central sources of Islam, the Koran and the traditions of the Sunna, in order to find adequate solutions for problems and challenges of our present day life. Unfortunately there has also been established an unanimous consensus that the doors of *ijtihad* have been closed from the fourteenth century on, after the last great theological and juristic contributions of Al Ghazali, Ibn Taymiyya and Ibn al Qayyim al Jawziyya. All these eminent thinkers of Islam tried to contribute, despite their different approaches to spiritual, juristic and social questions of Islam, to a further development of Muslim societies, stressing the fact, that Islam provides "the" framework in order to cope with individual and social challenges, removing hardship on the individual as well as the social level. It is obvious that the practice of *ijtihad* has been applied not merely with regard to the interpretation of the Islamic sources, namely the Koran and the Sunna, but also a great deal with regard to the daily concerns of Muslim societies which had not been encompassed by clear-cut text references of Sharia ruling (*ahkam*). Although the very basis of Sharia is not alterable from Muslim's point of view (*ibadat*/rules of worship) and therefore valid for all times. Therefore it should be stressed again that the legal aspect of the Koran does not exceed 8 % of the whole text which means approximately 500 of the 6236 verses of the Koran at its best. So far as the Koran stresses again and again the fact that it has been revealed for people who think

(li quamin yatafakkarun),¹ juristic reasoning with regard to different challenges of completely various societies had been based on a sound application of reason, aiming to promote *maslaha* (public interest) especially regarding issues where clear text evidence (*nusus al Koran*) were not available. Fostering public welfare has ever been considered as acting in favor of the general meaning and intentions (*maqasid*) of Sharia (the path who lead to the water-source/life-source) even when the Sharia text references remain silent. The principle of *maslaha* must be regarded as one of the most famous and most influential tools for human and social development within the history of Islamic civilization, although its development has been neglected due to the tremendous intellectual stagnation mentioned above. The main reason of the closing of the doors of *ijtihad* was primarily a political one, protecting rulers from new interpretations of the Koran and the Sunna as well as from Muslim jurists who had to subscribe to one of the four major Islamic legal schools (*madhahib*) and their “eternal” established opinions. The immense stagnation on the economic, social and scientific level within Muslim societies from the late twelfth century until the modern age is also mainly the result of the a widespread practice of *taqlid*, i.e. blind imitation or following one expert in legal affairs, despite the fact that the legal ruling concerned had been issued centuries ago in completely different social as well as geographic contexts. The closing of the door of *ijtihad* has been commonly accepted despite the fact that neither a scholar, nor the average Muslim, let alone a ruler, has the right to declare that the interpretation of the very sources of Islam have come to a definite end. But this is until the present day one of the most important contemporary challenges and issues of Muslim societies, intellectuals, scholars and rulers. Yet, the proper and sustainable application of *maslaha* as a key factor for social and individual development cannot be treated separately from the question of the re-opening of the doors of *ijtihad*: “This, and nothing else, was the attitude of great Islamic thinkers whom we describe as imams (“leaders”). The never pretended to be infallible; they were learned men devoted to the search for truth, ant they knew that the duty of thinking could never cease to be a duty for man.” (Asad 1981).

2 The Meaning of *Maslaha*

Within the context of Islamic principles the notion of *maslaha* must always be grasped in relation to the general intentions and objectives of the Sharia (*maqasid al Sharia*). Despite its bad connotation for non-Muslims and the West in general it should be remembered again that literally it means the way to the watering-place, or “the clear path to be followed and the path which the believer has to tread in order to obtain guidance in this world and deliverance in the next.” (Kamali 2008, p. 14). Regarding the contemporary tendency of narrowing and exploiting the meaning of

¹ Koran, Surah 45:13.

Sharia through extremist groups and jihadists in the course of internal seditions within the Muslim society (*fitna*) as well as the establishment of the concept of an enemy, the deeper meaning of Sharia cannot be highlighted enough regarding the meaning of *maslaha*. The derivation of its meaning “refers to a beaten track by which wild animals come down to drink at their watering-place. It is the road which leads to where the waters of life flow inexhaustibly.” (Gai Eaton 1994). From this orthodox and widespread consensus regarding the meaning of Sharia results that the “principal object of Sharia is realization of benefit to the people concerning their affairs both in this world and the hereafter.” (Kamali 2008, p. 32). There is an overwhelmingly common opinion among scholars and ordinary Muslims that the prevention of evil and corruption must be considered as the most relevant aim of the deeper intentions of Islamic law in general. In his famous work *Al Muwafaqat fi Usul al Sharia* one of the greatest Muslim scholars of the golden age of Islam, Al Shatibi (?–1388), stressed the fact that within the framework of the deeper objectives of Sharia benefit for people, namely *maslaha*, is of utmost importance within a Muslim society. At the same time the great Muslim theologian Ibn Qayyim al Jawziyya developed a similar definition with regard to the relationship between Islamic Law and the notion of Maslaha, describing the “Sharia as a system based on welfare of the individual in the community. It is all justice, all compassion, all benefits, and all wisdom (*hikma*); thus any principle which becomes unjust, uncompassionate, corrupt and futile is not a part of Sharia, but inserted therein by false interpretation.” (Yamani 2006). Resulting from this conclusion there is a general reasoning of Muslim jurisprudence with regard to problems and challenges of the society without referring explicitly to the Sharia due to its silence concerning the matter dealt with. Despite the absence of a clear-cut Sharia ruling the principle of guidance must correspond to the deeper meaning of the Sharia which is focused on people’s benefit and removing all kind of hardship. The literal meaning of *maslaha* is indeed benefit or preventing harm.

3 The Historical Development of *Maslaha*

Maslaha owes its development to the propagation of Islam into different regions and cultural contexts. Islamic principles were facing consequently new challenges within new social orders, traditions and cultural habits. Furthermore, Muslim jurists and theologians discovered that nor the clear text of the Koran (*nass*) nor the Prophet’s Sunna do indeed deal with all social, economic and cultural problems of societies at various times and places, consequently no concrete and binding ruling (*ahkam*) from the genuine Islamic sources could be directly applied to them. One of the main contributions to the development of the fundamentals of Islamic law (*usul alfiqh*) must be attributed to the great Imam Abu Hamid al Ghazali (died 1111) who tried to categorize former attempts to clarify the principles and the higher objectives of Islamic law:

In its essential significance, *maslaha* is a term that means seeking something useful (*manfa'ah*) or warding off something harmful (*madarrah*). But this is not what we mean, because seeking what is useful and preventing harm are objectives (*maqasid*) sought by creation, and the good (*salah*) in the creation of mankind consists in achieving those *maqasid*. What we mean by *maslaha* is preserving the objective (*maqsud*) of the Law (*shar'*) that consists in five ordered things: preserving religion (*din*), life (*nafs*), reason (*aql*), progeny (*nasl*) and property (*amwal*). What ensures the preservation of those five principles (*usul*) is *maslaha*; what goes against their preservation is *mafsadah*, and preventing it is *maslaha*. (Ramadan 2009, p. 62, in Arabic).

It is evident that Al Ghazali established a horizontal categorization of the higher objectives of Islamic law, making them broadly applicable for different social, cultural and economic contexts, integrating “the human and social context into their reflections as to the concrete and practical implementation of rulings.” (Ramadan 2009). Despite the fact that the door of *ijtihad* (free investigation/independent reasoning) had been closed shortly after Al Ghazali, Islamic law underwent an immense development toward the implementation of legal rulings at a given time and/or in a given context, without losing the faithfulness to the objectives of Islam’s general sources, the Koran and the Sunna. From a modern viewpoint it seems that Al Ghazali had also narrowed the “scope of public interest (*maslaha*) as a source of legislation, but yet inherent in this definition is a very wide scope of application for public interest considerations.” (Yamani 2006).

Al Ghazali’s categorization clearly highlights the fact that Islamic civilization contributed during its early stage to concepts which promoted a sustainable human and social development. Analyzing Al Ghazali’s second category of his essentials, preserving one’s life, there is already evidence for the presence of the later principles of human rights since “safeguarding the right to life includes protecting the means which facilitates an honorable life such as the freedom to work, freedom of speech and freedom of travel.” (Kamali 2008). The same holds for the third category of *maslaha*, the safeguarding of reason or intellect (*aql*) which presupposes a social ambiance which is favorable to learning and the right of access to education. The realization of the fourth category, the safeguarding of lineage or progeny, necessitates a “favorable environment for the care and custody of children.” (Kamali 2008). The last category corresponds to the second, the right to life which implies the right to work and to ownership, presupposing fair-trade and good work conditions in general.

4 *Maslaha* and *Ijtihad*: Contemporary Development Prospects

It is interesting and astounding at the same time that particularly three jurists and eminent Muslim thinkers which nowadays are commonly affiliated to Islamic fundamentalism were keen advocates of *maslaha*. Ibn Hanbal, famous for having founded one of the four remaining and official schools of law (madhab) in Islam, the Hanbali law school or Hanbalism, which is the prevalent school in the Arabian

Peninsula, “relied extensively on considerations of public interest, *maslaha*, and many rulings have been validated on this basis.” (Kamali 2008). This stance shows that the so-called most conservative and literalist law school like Hanbali Madhab never agreed with the closing of the door of *ijtihad* (independent reasoning) since relying explicitly on *maslaha* means to rely on an independent and fresh interpretation of the Islamic sources, Koran and Sunna, at any given time and circumstance in order to provide legal rulings corresponding to new economic or social challenges. An astonishing example for *maslaha* which in this case promotes tolerance and farsightedness with regard to social peace and balance is the famous anecdote of Ibn Taymiyya’s pupil Ibn Qayyim al Jawziyya concerning some wine drinking Tatars in Damascus during the fourteenth century. Ibn Taymiya’s disciples wanted to “forbid them doing so, but Ibn Taymiya did not allow this, his reasoning being that God prohibited wine because it distracts from prayer and devotional rituals, but in the case of the Tatars, wine distracts them from murder, loot, and rape, which is an excellent example of public interest consideration” (Yamani 2006). This example shows first of all that Ibn Taymiya was not a theologian whose first worry was to cope with infidels (kafirs), (since he is widely seen as a key figure of global and modern salafism) but to provide legal rulings which correspond to Al Ghazali’s second category with regard to *maslaha*, to safeguard life, whether of a Muslim or a Non-Muslim and to promote social balance and peace, even if it necessitates the permission of drinking alcohol within a Muslim social context. Ibn Taymiya’s disciple Ibn Qayyim al Jawziyya adopted a very distinguished attitude regarding man’s economic activity. For him, *maslaha* must guarantee excellent work and trade conditions within a Muslim society due to their importance with regard to the standard of life and individual development prospects.

Like all jurist of the Hanbali school of law, Ibn Taymiya and Ibn Qayyim considered *ijtihad* a necessary practice in order to foster human, social and consequently intellectual development. They considered the *bab al ijtihad* open to anyone who was competent enough to exercise it (Kamali 2008). They never advocated for stagnation and over-legalization although within the present day context these eminent thinkers as well as the Hanbali law school are mainly identified with them. It shows rather the deep intellectual crisis not only Muslim societies but rather Muslim intellectuals are facing nowadays. Their approach to contemporary issues at that time was never narrow minded or dogmatic, but on the contrary, creative and innovative in a sense that they tried to find a solution for relevant problems without harming or contradicting the very objectives of Sharia itself.

It remains a paradox that while looking at the corruption and HDI-Index Muslim countries are struggling hardly to attain better positions. The same applies to the immense challenges Muslim societies are facing with regard to educational and environmental issues. The deep crisis of the present day Muslim societies has many different and complex reasons that cannot be analyzed within the context of this short contribution. To rediscover its wisdom and creativity in order to deal with the fundamental changes of life conditions as well as political challenges (question of power, administration, vision of a modern society) it will be of utmost importance

for the Muslim society that its jurists, intellectuals and its civil society as well re-open the doors of free investigation and independent reasoning, the *bab al ijtihad*. As Muslim civilization clearly shows, there is no need to imitate or to adopt only ideas and legislations from outside. First of all there is a need of renaissance (*Nahda, tadjdid*) of its own wisdom (hikma) and intellectual capacities within Muslim societies in order to cope with its genuine problems in a global world context. It is the Indian Muslim thinker Abul A'la Mawdudi which reminds Muslims on the basis of the Sharia rulings that there are Rights of all Creatures and that “all creation has certain rights on man. They are: he should not waste them on fruitless ventures nor should he unnecessarily hurt them or harm them (Mawdudi 1980).” With regard to a sustainable environmental responsibility Muslims are urged to treat nature and creation in an extremely careful manner so that “Islam does not approve even of the useless cutting of trees and bushes. Man can use their fruits and other produce, but he has not the right to destroy them. Vegetables, after all, possess life. Nor does Islam allow waste among lifeless things; so much so that it disapproves of the wasteful flow of too much water. Its avowed purpose it to avoid waste in every conceivable form and to make the best use of all resources—living and lifeless (Mawdudi 1980).”

To mobilize Islam's deeply ethical and moral concerns for human development as well as for a sustainable protection of the environment, i.e. nature and creation in general, there is an urgent need for Muslims to rediscover the capacity of their cultural values and heritage to “educate their hearts and minds to resist the aberrations of humankind and societies and seek to transform and fashion the world into what is best for human beings: dignity, justice, love, forgiveness, welfare, and peace.” (Ramadan 2009). In this sense Islam and its law have always advocated the middle way (*al wassatiyya*) and it is an ethical and spiritual imperative for Muslims to resist against two fundamental threats: “Against evolution and progress devoid of conscience or soul on the one hand, and against literalist immobilism (rigid imitation, *taqlid*) and misleading formalism on the other.” (Ramadan 2009). Reanimating their deeper meanings the principals and ethical values of Islam are undoubtedly proper tools to contribute to mankind's sustainable development as well as to social and environmental responsibility. *Maslaha* has always been understood as practical wisdom for the sake of humanity's development alone. It is worth to strengthen the rediscovery of its methodology and creativity.

References

- Asad M (1981) *Sahih al Bukhari: the early years of Islam*. Dar al Andalus, Gibraltar
 Eaton CLG (1994) *Islam and the destiny of man*. The Islamic text society, Cambridge
 Kamali MH (2008) *Sharia law, an introduction*. Oneworld publication, Oxford
 Mawdudi AA'I (1980) *Towards understanding Islam*. Islamic foundation, Leicester
 Ramadan T (2009) *Radical reform, Islamic ethics and liberation*. University Press, Oxford
 Yamani AZ (2006) *Islamic law and contemporary issues*. University Press of the Pacific, Honolulu