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How Are Religious Norms and Public Good are Taught in Madrasas?

Norms in the Madrasa Sphere: Between Tradition, Scripture and the Public Good

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Maslak: the embodied world

It is very important to get a grasp of this narrative in order to understand one thread of Muslim traditionalists. One might not agree with them, but to remain ignorant of their narrative is to intentionally misunderstand them and also to fail to grasp the complex discursive horizons in which they overlap and differ with other intellectual horizons like modernists, revivalists, salafis etc.

Most people in Western policy circles and academia possibly heard the term madrasa, Deoband or Deobandi for the first time in the wake of the post 9/11 world. In that context keywords like Taliban, al-Qaida and madrasas became the terms for the media's rhetorical diet. Educated members of the public, correctly associate the Deobandi movement with the madrasas of south Asia, a network of seminaries that are often treated with dread since they are yoked to Western security interests in south Asia. In this presentation I will look at some of the normative practices of the Deoband school, a representative sample of issues to illustrate how religious norms and the public good are advanced within madrasa networks.

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Deoband: preserve Islamic thought against European onslaught; combat the ahl-I hadith; a continuation of the tradition of Ahmad Sirhindi and Shah Waliyuallah—a combination of intellectual tradition that is blended with a rich metaphysical intelligibility of tasawwuf.

Less well-known is the fact that far from being a political movement or militant group or a network of madrasas (even though it manifests itself in such networks and institutions) Deoband is first and foremost an ethical and moral franchise that advocates a specific *nomos* or *maslak* from among traditional blends of Islam. The term *maslak* is a key element in the vocabulary of south Asia's traditional Sunni ulama. Since the most important contribution of the traditional `ulama (clerics) is in the sphere of Islamic law and ethics, the `ulama's near monopoly of ethical discourse is significant.

I use the term *nomos*, made famous by Robert Cover in American juridical and ethical circles as a useful provisional translation for *maslak*. *Maslak* as a *nomos* is the normative universe that people inhabit. More important than rules, principles of justice or formal institutions are the narratives that locate and give meaning to the law. *Maslak* provides the **narrative** that describes, shapes and regulates the normative universe of adherents who adhere to traditional Islamic thought. In Cover's words "law and narrative are inseparably related."¹ "Every prescription is insistent in its demand to be located in discourse—to be supplied with history and destiny, beginning and end, explanation and purpose." And, in Cover's view, the force of interpretive commitments holds the normative universe together. Drawing on Cover's understanding of a *nomos*, I work with a more lucid category in order to deepen my work on these south Asian traditionalists and their global reach.

What has intrigued me in my explorations of representative samples of the Deobandi ethical discourse is their sustained rhetorical commitment to key elements of their *maslak* which often involves a critique of their adversaries, which include among others, Westernization and modernization. I will use the word *maslak*, *nomos*,

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nomosphere interchangeably. But often the critique and diatribes talk about the subversive ability of Westernization to undermine age-old Islamic norms and values. Yet, when it comes to the implementation of a range of practices inspired by Western science, technology and economic practices from organ transplantation, brain death, to women's issues and Islamic banking, one finds among the rulings of these very same south Asian ulama a surprising Islamic justification to endorse these modern practices in terms of an Islamic *nomos*. In other words, the pragmatic outcome in Deobandi ethical deliberations is striking. Surely, what is evident is an accommodation of changing social norms.

In order to show how tradition, scripture and the public good is constructed within the madrasa-sphere let me introduce you to one key thinker among the Deoband school and the way he imagines and exfoliates his concept of tradition. Note that tradition is not only a thought-style, which it is, but it is also a mode of living.

This figure is Qari Muhammad Tayyab (d. 1403/1983), former principal of the Dar al-'Ulum Deoband in India. Unless one were in the thicket of the madrasa-world of the Indo-Pak subcontinent, Tayyab's name would not mean much. Yet, by all accounts he was a paragon of traditional piety and learning of the Indian Hanafi-Deobandi tradition. In post-partition India he assumed a role of pontifical solemnity during a five-decade stewardship as principal (*mohtamim*) of the famous Deoband seminary.

Apart from his stature as a *bien pensant*, he also enjoyed a distinguished ancestral pedigree.² He was the grandson of Muhammad Qasim Nanautvi (d. 1297/1880), the highly revered founding figure of the Dar al-'Ulum at Deoband, in Uttar Pradesh. Tayyab's father, Hafiz Muhammad Ahmad (d.1347/1928) was also a principal of the Dar al-'Ulum for a good four decades. After the latter's death, his youthful, but reluctant son Tayyab, after much cajoling from Deoband's venerable hierarchy, assumed the deputy principal's job and later became principal in 1929.³

Under Tayyab's leadership the Deoband seminary increased in national and international visibility together with the growth of the institution in terms of student numbers, faculty and campus expansion. But there were also spells marked by faculty

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feuds and the resignation of senior figures. He remained in his post till 1981 when he faced the most severe test of leadership in a bitter administrative showdown with a rival group within the seminary that culminated in his removal.⁴

In what I will present I draw from two of Tayyab's work. He wrote a long essay titled *Ijtihad aur taqlid* (Independent Reasoning and Authority), written sometime in the late 1960's or early 70's. The other is his key text called *The Religious Orientation and Ethical (Nomothetic) Temperament of the Ulama of Deoband*. Both texts are in Urdu.

Drawing on a rational Aristotelian approach Tayyab argued that all new events, contingencies and challenges required a systematic taxonomy in order for one to reach what constituted the universals. He made a point to state that human beings were distinguished as *thinking beings*, a distinction that elevated humans from all other animals.

Perception and understanding formed the centrepiece of his hermeneutic. Understanding was signified by the word *fiqh*, which was also the word for the discipline of law or norm making or norm-discovery in Muslim thought. *Fiqh* or "understanding" was linked to the heart or the pectoral region of the body.⁵ In other words, for Tayyab understanding was not merely discursive but it was the discursive tradition tied to human subjectivity and the inner needs of the human being.

Tayyab also stresses that any renovation of Islamic thought must point in the direction of what he called the "prophetic pedagogy": *minhāj-i nubuwwat*. Just as the Prophet Muḥammad inaugurated a whole new mode and way of thinking at the inception of Islam, similarly it was only by adhering to the same prophetic model that one could attempt refashioning Islamic thought. The prophetic model made perfect moderation and balance the cornerstone of Islamic teachings. Once one had mastered and grasped the prophetic pedagogy then it was possible to articulate Islamic thought in a whole new format, he said. But if one dared to step away an inch, from the prophetic model

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the project was bound to be doomed. In that case calls for a renewal of Islamic thought will fail, and result in disfiguring Islamic teachings. In Ṭayyab's words:

"The only thing required today is this: based on an understanding of the prophetic methodology there is a need to formulate in the idiom and style of the day a new projection and appropriation of Islamic thought. Only through this approach can one truly renovate Islamic thought. However, if we depart from the prophetic pedagogy (methodology) in renovation and forsake its tradition-based wisdom, then the result would be to alter Islamic thought and subvert the entire process. Renovation of thought can be summarized in two brief phrases: our questions or topics (*masā'il*) should be ancient but our arguments should be new. Only by pursuing renewal in this manner can we fulfil the responsibility of divine stewardship (*khilāfat-i ilāhī*) and the delegation of prophecy. "⁶

But this *nomos* or *maslak* is not fully comprehensible unless one digs deeper into what he means by the prophetic pedagogy. In brief, the elements of a *maslak* involves several sub-narratives to make for the overall compelling story or narrative. First, it involves a historical narrative: how Islam originated and how this version that is received by the Deoband tradition is the most correct one. Second, it involves a pedagogy of the self; the formation of the madrasa student is absolutely crucial to the Deobandi *nomosphere*. The most important part of that pedagogy is the indispensable role of **apprenticeship** between student and teacher. In this sense it resembles the relationship between sufi master and disciple. For the Deobandis this apprenticeship (*sohbat*) is absolutely crucial.

Like the Prophet had Companions who imparted his teachings and knowledge to the successor generation so every generation must have access to a living person and community who mediates the teachings of Islam. It is not only knowledge from books. So while the madrasas have a standard curriculum, called the Nizami curriculum, that is not the defining marker of being a Deobandi. You are reminded that in the past, one's attribution and identification of scholarly genealogy was not by one's name and

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personal achievement, but always by your relationship with your teacher. So Abu Hanifa's students in the 7th century were known as the Companions of Abu Hanifa, not as Abu Yusuf or Muhammad al-Shaybani. The relationship between student teacher goes beyond merely the affective relationship but also on the formation of a scholarly community, a set of epistemic kinships, epistemic DNA that are viewed as more intimate and sacred than family or biology. The key element here is reverence for the teacher. That reverential relationship is absolutely crucial to the transmission of both the integrity of the tradition and as a consequence the correct understanding of the tradition.

In his view it was absolutely crucial that one should grasp the "principles (*uṣūl*), universal maxims (*qawa'id-e kullīyya*) and precepts (*ḍawābiṭ*)" that underlie the teachings of Islam. In doing so one was then able to relate how Islam's doctrines, values, ethics, devotions and social transactions fit in with the prophetic model. It appears that by *uṣūl* or principles, Ṭayyab meant those reasons, arguments and authority that served as a foundation for other consequential developments.⁷ Principles in his vocabulary also played the role of a universal maxim (*qā'ida kullīya*). In other words, the principle became the standard by which all derivatives were weighed and measured. By *ḍawābiṭ* or precepts he meant a general rule that controlled the action of all particulars in a specific topic.⁸ In other words, Ṭayyab detested the idea that the hermeneutical paradigm inherited from previous generations should in any way or form be molested. For to alter these inherited standards and precepts of evaluation, to him meant to break with the past; in other words, the reasons that were provided for actions in the past ought to be kept alive, re-validated if necessary with fresh arguments in order that they may remain part of the grounds of adjudication. What would be acceptable are epistemic supplements. In fact he made it explicit that there should be no dissonance between the new and old hermeneutic. With unmistakable clarity, he wrote:

"The very first imperative to bear in mind when compiling (*tadwin*) and conciliating (*tartib*) Islamic thought, is to do so by keeping in mind the existing foundational

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interpretative principles (*asāsī uṣūl*). This ensures that renovation is not bereft of the emotive insight (*dhawq*) inherent in these principles. For ultimately, these very interpretative principles lead to the maxims (*qawā'id*) and goals (*maqāṣid*) of the Sharī'a. These principles and maxims are actually the embodiment of the prophetic methodology (*minhāj-i nubuwwat*)...Absent these inherited maxims and precepts (*ḍawābiṭ*) there can be no true renovation of Islamic thought, the result will be merely be a simulacrum of renovation (*dimaghī fikr ki tashkīl*)."⁹

To be a Deobandi is to combine or if you want articulate a nomos in which comprehensive interpretive principles are blended with personal intellectual mentorship and apprenticeship (*sohbat*) with a teacher.

Not only did Ṭayyab clearly state that any renovation of thought should be realigned with the inherited interpretative framework or hermeneutical paradigm, but he also believed that certain specific practices could not be skirted. Precepts related to devotional acts and dogma that were derived from the universal maxims, Ṭayyab argued, generated a number of particular applications (*juz'īyyāt*) which were in themselves authorized by the Sharī'a. Hence when it came to doctrinal beliefs and devotional practices, he countenanced no change or alteration.¹⁰

However, there were spheres of life where he did countenance change or development. These were the zones of inter-human transaction (*mu'āmalāt*), social intercourse (*mu'āshara*), political and social life (*siyāsa*), he argued. These spheres of life overtly carried the imprint of their times and were thus mutable. In these areas, he rationalized, the Sharī'a provided an abundance of general principles and a paucity of specific applications. In fact, he argued that the Sharī'a mindset itself anticipated that the particular applications designed to serve the specific spheres of inter-human transactions, politics and social life were time-sensitive and therefore, they were designed to change according to the vicissitudes of time.¹¹

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But even these applications related to the social and public sphere, Ṭayyab argued, were always tethered to the general maxims and principles of the Sharia. For this reason deliberations about such issues required the technical skills of specialist scholars, namely the *'ulamā*, to ensure continuity. Some of the issues related to the spheres in question were in his view extremely challenging and required the skills and insight of "visionary scholars" (mubassir *'ulamā*) who had successfully accomplished such assignments in the past he stated without providing any examples. Again the skills and the type of human resources were implied to be necessary to undertake such tasks.¹² Playing on the Arabic alliteration of the terms *ijtihād* (intellectual effort) and *ijād* (invention), he cautioned that in the sphere of religious knowledge "a Muslim was permitted to pursue intellectual effort (*ijtihād*) but not permitted to engage in *de novo* invention (*ijād*)."¹³ He stressed that *ijtihād* could not in any manner or form veer away from conformity (*ittibā'*) to the tradition. Conformity for him had two senses: adhering to the prescribed applications (*juz' iyyāt*) when the teachings so mandated, and fidelity to a set of universal maxims that informed one's interpretative labors (*ijtihād*). Even when only adhering to the prescribed applications, he pointed out, one was implicitly adhering to the interpretative canons (*usūl-i ijtihād*) that undergirded these practices.¹⁴

It is clear that Ṭayyab was unflinchingly committed to the principles of the tradition, namely the standards and reasons laid down for the production of moral norms and practices. The question then arises, would he be open to supplementing the set of reasons and standards to which he subscribed? One got the sense that while Ṭayyab appeared rhetorically committed to adhering to the rules of the game as he saw it, he was also implicitly saying that the reformulation of Islamic thought could only take place via a process of *supplementary renovation*, not *de novo* renovation. Elsewhere Ṭayyab conceded that the challenge modern interpreters faced in terms of intellectual effort (*ijtihād*) was to find new reasons and rationales for Sharī'a practices. The task at hand was to elucidate the meaning of the Sharia within a contemporary idiom.¹⁵

In these reflections, Ṭayyab played the role of a ventriloquist for the deep scepticism the *'ulamā* harboured towards the modern educated Muslim sector who favoured a

comprehensive revision of the tradition. There was a general suspicion that Muslim modernists repeatedly advocated change, reform and transformation paying scant regard to the integrity and coherence of a community of practice. When it came to social reform, Ṭayyab argued, it was not sufficient to only advocate the broad outlines of policies and remedies. Just as physicians needed to understand the specific medical history of a patient before recommending medications, so too reformers needed to grasp the specifics of the body politic before engaging in providing remedies. Tayyab's spiritual master Ashraf Ali Thanvi had a similar stance with regard to modern Muslim reformers: they, he said, screamed at the ulama to change, but did so from a distance, Thanvi said.

A precondition in Ṭayyab's view for any kind reform and renewal of thought included the need to engage in the messiness of applied practices for the public. In other words, he viewed, the pastoral role of religious leaders to be a non-negotiable in any such project. Reform, he proclaimed, could not only be attained by announcing general rules but was only possible by restoring the community back to health through a series of applied practices. "Principles and policies (*uṣūl*) that have no truck with practices," he warned, "are mere mental ornaments and do not have any truck with a life of practice."¹⁶ Here Ṭayyab was consistent with traditional modalities of thinking going back centuries on the importance of bodily practice and also confirmed contemporary reflections that stressed how bodily involvement provided a rich practical sense to life.¹⁷

Applying the universal principles together with their practical applications as developed within the juro-moral tradition were the bedrock of Ṭayyab's project of renovation or reformulation of Islamic thought. He could not imagine a programmatic approach that jettisoned the prescribed applications of practice in order to replace them with new ones. For him that was the ultimate act of subversion of Islam and Islamic thought. The practical applications, in his view, were redolent with the wisdom of the prophetic methodology and preserved the sapiential memory of the ancient past. The universal maxims he invoked were principles of general application. They were

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well known in the tradition and were often invoked as short hand in juro-moral discussions and debates. Ṭayyab listed some 31 aphorisms or maxims that encapsulated the non-negotiable universal principles he advocated. They covered a mix of maxims ranging from those that aspired to preserve practical wisdom, deepen esoteric reflection and those that kept eschatological and salvific concerns at the center of religious practice and thought. Among these maxims were: "There is no Islam except in community;" "there is no monasticism in Islam;" "people should not be compelled to accept a religion;" "we do not discriminate among any of His prophets;" "do not harm, nor retaliate with harm;" "all believers are a brotherhood;" "all of humanity is a single brotherhood;" "whoever takes a life without justification is as if he had killed all of humanity," among other maxims.¹⁸ In other words, Ṭayyab provided a checklist with which any reformulation must retain continuity. In short, he believed that the actual memory of the tradition must be actively engaged. And tradition was reinforced by mimetically applying the modalities and practices of tradition.

Most important, even more important than the substantive issues of rules and principles that he deemed to be non-negotiable, was the *character* and *capacity* of the persons embarking on the project of reformulation of Islamic thought. (italics for emphasis) Two qualifications were necessary for the person about to embark on reformulation or reform: he must possess intellectual excellence and embody a commitment to practice. "The most important initiative," he pointed out was "the selection of the persons of action who were visionary in matters of religion and occupied a status of wisdom and insight (*faqīhāna sha'n*) by grasping the primary and secondary aspects fully while embodying the true spirit of Islam. And they should behold the practical wisdom dispensed by God for which the formulation of this religion came into existence."¹⁹ In his view, the true credentials were the moral character and habits of those engaged in the reformulation of Muslim thought.

Three Examples:

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As Muslims became more integrated into the fabric of South Africa's cultural, economic, and political landscape during the middle of the twentieth century, there was a commensurate growth in the complexity of Muslim subjectivity. In part they sought answers in religious discourse for agonistic ethical problems by reaching out to the 'ulamā. Often the local 'ulamā provided ethical guidance to meet the needs of their communities. On other occasions the 'ulamā and members of the lay public solicited fatwās from Islamic institutions in the Indian subcontinent or the Middle East.

These fatwās shed light on how Muslim subjectivities were shaped by both Muslim constitutional jurisprudence and secular constitutional discourses. The fatwā discussed below was produced during the apartheid era.

Fatwa on Bank Interest

In the mid-1960s the South African Muslim community was surprised by a fatwā on the subject of bank interest, described as *ribā*, the legal term for usury that was prohibited in the Qur'an and the sharī'a. In 1964, Qārī Muḥammad Ṭayyib (d. 1983), the rector of the leading Muslim seminary in India, Dar al-'Ulum Deoband, visited South Africa. Ṭayyib was a highly respected traditional scholar (*'ālim*). During his extended visit to South Africa, the rector was asked whether it was permissible for Muslims living in a Muslim-minority context to engage in interest-bearing commercial and banking transactions. The query was the initiative of a prominent Durban businessman, A. M. Moolla, which the rector forwarded to the Dār al-Iftā', the office that issued fatwās at the school of Deoband.

The Deoband fatwā was issued a year later in 1965.²⁰ It stated that the ancient authorities of the Ḥanafī law school, one of the four prevailing Sunni legal traditions, permitted interest or usury-bearing transactions to take place between Muslims and non-Muslims in a territory deemed to be an "abode of hostility" (*dār al-ḥarb*). Many leading Indian Muslim scholars, the fatwā stated, viewed India to be such a territory, and thus it was permissible to engage in commercial transactions involving usury (*ribā*). The fatwā continued:

If the position in the Republic of South Africa is similar, then the classification of that country as a Darul Harb and the application of

rulings with regard to dealings in interest [*sudi karobar*] between Muslims and non-Muslims would also be applicable. According to your statement, Muslims are in a very small minority in the Republic of South Africa and this proves that non-Muslims are in the overwhelming and ruling majority there. This indeed is the only basis for classifying it as a Darul Harb.²¹

Mild outrage and consternation perhaps best characterizes the response of the South African Muslim leadership. In a rare move, the leading South African `ulamā group, the Jamiatul Ulama of Transvaal province (now renamed as the Gauteng province)—which viewed itself as the standard bearer of the Deoband school in South Africa—strongly dissented from the Indian fatwā. Muftī Ebrahim Sanjalwi (d. 1983), speaking on behalf of the organization, said that he doubted whether South Africa could be neatly classified as a *dār al-ḥarb*.²² While there were some features that suggested South Africa resembled an “abode of war”, there were other characteristics that suggested it was an “abode of safety” (*dār al-amān*). South Africa, in Muftī Sanjalwi's view was a liminal space, or rather an intermediate territorial jurisdiction in terms of classical Islamic law.

In his response, Muftī Sanjalwi downplayed the question of territorial jurisdiction. Instead, his arguments fastened on to the sources of Islamic law, namely the Qur'an and *Sunna* (prophetic narratives). Only knowledge derived from such authoritative sources could be used in order to formulate sharī'a laws, he argued. In making this move—a deft sleight of hand—he could bypass the obligation to follow the authority of traditional law schools and instead make a direct appeal to the sources of law. The laws of the sharī'a, he argued, were based on certainties and not on dubious sources. The prohibition of interest was explicitly and unambiguously mentioned in the Qur'an, Muftī Sanjalwi pointed out. For this reason alone, he stated, it was not permissible for Muslims to deal in interest-bearing transactions; neither in trade with fellow Muslims, nor for that matter, in their transactions with non-Muslims. With this counter-fatwā, the South African affiliates of the Deoband school distanced themselves from what they considered to be the ill-informed juridical response of the parent institution in India.

My second example comes from India. In the summer of 2005 a heated controversy held Muslim India in a spell of confusion. An influential section of India's Muslim religious leadership was caught on the horns of a dilemma. They could either yield to the authority of tradition by honoring a traditional Islamic legal edict related to sexuality or alter the rule in the light of new realities.

Imrana, a mother of five, living near the city of Muzaffarnagar, in the state of Uttar Pradesh, claimed that she was raped. The rapist was none other than her father-in-law, she claimed. Little is known about the context and circumstances resulting in the crime. But for my purposes here such details will not be relevant to illustrate my point with respect to this case. Unless the woman in question lacked all her sensibilities, making such a claim was no small matter with devastating consequences for her standing in a society where a woman's honor is linked to her husband's social standing.

Tragically, it was not the alleged crime that gained saturated media coverage. Rather, it was the decision issued by a Muslim cleric, a member of the `ulama, attached to an influential seminary that provoked public outrage. A juristconsult, known as a *mufti*, a low level one affiliated to the famed Darul Uloom Deoband seminary about a hundred miles from the Indian capital Delhi issued a juridical opinion, known as a *fatwa* that fueled the controversy. Imrana, the assistant Mufti said, was no longer married to her lawful husband. Reason? In terms of the tradition of Islamic law, any offspring male or female could never lawfully marry nor remain married to someone with whom any of one's parents had sexual intercourse. It does not matter whether sexual intercourse occurred within a legitimate wedlock, or illicitly as in this case through rape or adultery for that matter, according to this mufti.

The reasoning goes like this. Sexual intercourse within wedlock creates certain moral barriers or walls that prohibit the parties involved to marry certain relatives. For instance, a divorced wife cannot marry her ex-husband's father, namely, her former father-in law. The reason is that the sexual encounter with the son created the bonds

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of consanguinity that renders the father and any direct ascendants higher up like the grandfather prohibited to her. Similarly, if the father had a sexual encounter with a woman, then she is prohibited to his children. Such moral barriers are irreversible and cannot be breached.

However, not all Muslim authorities enforce such metallic reasoning. For most early authorities in ethics, only a sexual encounter **within a valid** marriage can erect such moral barriers. But one school, known as the Hanafi school claimed that any sexual encounter, even adultery, could create such a barrier. The Hanafi tradition was also the dominant rite of interpretation regulating the incident of Imrana and added a layer of complication.

Since the father-in-law had a sexual encounter with Imrana, the wife of his son, and it made no difference whether this was coerced or voluntary, the consequences were stringent: she was no longer lawful to her husband.

When the jurists at the Deoband seminary were informed as to the injudicious application of the rule as it was a matter of rape and not adultery, they remained unmoved. In fact, they dutifully skulked behind the façade of centuries-old legal prose and interpretations with a solemnity bordering on idolatry. Even an unlawful act like adultery or rape, they contended, can have the unintended consequences of creating the moral barriers as shaped by Islamic law. Defendants of the ruling spilt a great deal of ink and supplied copious arguments from classical authorities in order to demonstrate that their argument was carried by tradition and backed by stellar authorities of the Hanafi tradition.²³ They did concede however, that a respectable minority of classical Muslim authorities questioned whether unlawful sex, such as fornication or adultery, could create the barriers of consanguinity.

However, what most right-thinking people found scandalous was that a woman's claim to have been raped did not even figure in the moral calculus of the ruling. Rape, in the

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view of the traditional Deoband authorities, was just another form of adultery by coercion; if ever there were a moral oxymoron, then this would top the list.

Other Muslim jurists did some hang-gliding over the issue but lost nerve at the last minute failing to say explicitly that rape was fundamentally different to adultery and its accompanying concerns about the violation of consanguinity. The Ahl-i Hadith or Salafi religious authorities who followed the plain meaning imprimaturs of Islam's scriptural authority derived from the Qur'an and the prophetic tradition while bypassing the canonical law schools, were the time-ravaged war horses who argued the case for Imrana. Mawlana Madani, an hadith expert affiliated to the Ahl-i Hadith school in Varanasi countered that the Deoband scholars overlooked a winning argument offered by other traditional viewpoints: barriers of consanguinity were not created by an unlawful act such as rape or adultery.²⁴ A crime cannot create moral consequences as a normal act would do.

Instead of reviewing the ethical and moral violation of Imrana in the light of the reality faced by women like her in India and the world-over, the folks at the Deoband seminary found a scapegoat. They laid the blame for the fiasco at the feet of what they called the sensationalist pro-Western media for blowing the matter out of proportion and distorting the facts. They also upbraided Muslim critics of their ruling, dismissing such figures as being faux reformers and unqualified to venture an opinion in religious matters. Even worse, they lambasted critics for possessing the gall and temerity to challenge the authority of the religious scholars. The Deoband scholars claimed Muslim critics who challenged their ruling were driven by malice, ignorance and with a goal to earn cheap publicity.²⁵ They also chastised the minority Ahl-i Hadith tradition for coming down on the wrong side of the argument.

By refusing to acknowledge that rape cannot be conflated with adultery or fornication, known as *zina*, the Deoband ulama effectively drew a moral equation between lawful or unlawful *consensual* sex between a man and a woman out of wedlock on the one hand, and with the act of rape or coercive sex, on the other. The difference is that in the case

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of rape, the agency of a woman was besieged by the overwhelming power of the assailant whereas adultery is voluntary.

Did the framers of the strict rules of consanguinity have in mind that the rule they formulated would also be applicable to coercive sex? Clearly, the plain meaning and implication of a rule always refers to the most common and default occurrences of a practice: in this case it would be barriers created by marriage.

One can understand that it might have become unbearable for a marriage to survive given the trauma of rape with a close relative of a husband. If the ulama had counseled the couple on grounds of emotional distress why it might be in the best interest of both parties to part, it would have made the ruling more palatable. But more troublesome was the fact that the very idea of rape did not even feature in the opinion delivered by the Deoband ulama in their subsequent writings and justifications.

Rape has featured prominently in several internationally publicized cases where Muslim women were penalized for being pregnant outside wedlock as in the case of two Nigerian women. In Pakistan women who complained of rape were jailed for confessing to adultery while the men were never prosecuted for the same offence; or their confessions were treated as instigating a scandal against men and was treated as a punishable offence.

The incident above provides a glimpse of what is at the center of the debate on Muslim ethics today. Male Muslim religious authorities are committed to **implementing the canonical tradition of fiqh with integrity, as an act of piety and religiosity**. The question many people would ask is if fidelity to the tradition does not result in what would by any account be a misapplication of tradition, even if it carried the stamp of authority to it.

Now the interesting thing is that a minority of people within the traditional ulama community did dissent from the dominant view and favored an ethical position,

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including some Deobandis and imported another mode of reasoning. So while the majority of the Deobandis got a bad rap for this incident, there were also elements from within that redeemed the schools' reputation at the margins. But even in the dissenting viewpoint held by the scripturalist Ahl-i hadith hinged on a linguistic interpretation that favored Imrana and technically saved her marriage. But hardly anyone from those quarters raised the question of the crime of violence committed against Imrana.

One is reminded of the words of the moral theorist, William Gass. Gass reflects on Tolstoy's caricatured but rationalist figure Professor Katavasov and described him as "a man in love, not with particular men or women, not with things, but with principles, ideas, webs of reasoning.; and if he rushes to the aid of his neighbor, it is not because he loves his neighbor, but because he loves God's law about it."

This incident and countless others repeatedly demonstrate that numerous Muslim societies are entangled in very complex social, economic and political processes which shape notions of self, society, community, body, sexuality and, family, among others, on the one hand. These developments occur within nation-state contexts with variegated political systems ranging from multiparty secular democratic systems, monarchies, authoritarian states, Islamic states to absolutely destitute and impoverished states surviving on handouts from global agencies and support from non-governmental organizations.

The third example comes from the work of Khalid Sayfullah Rahmani, head of the Islamic Fiqh Academy of India. He is also from the Deoband school, based in Hyderabad but articulates a different kind of moral narrative in the Deoband school. He adheres to most of what Tayyab had prescribed above, yet is also supplementing the ethical and moral tradition.

For Rahmani the Sharia is characterized by mercy, wisdom and benefit (maslaha). (Qamus al-fiqh 1: 106) The temperament of the sharia can be assessed from those

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scriptural teachings where the wisdom of practices are also elucidated in some detail. Another feature of the sharia, in his view and one that concurs with a well established maxim in Islamic law, is that it advances ease and convenience for people and to lift the burdens of inconvenience and difficulty. Hence the sharia does not design practices in order to test people's endurance and to subject them to some notion of an ordeal.

However Rahmani is quick to distinguish an Islamic notion of maslaha from a purely materialist understanding of benefit. "For materialists," he explains, "temporal gratification is the fulcrum of benefit, irrespective whether the outcomes are destructive and detrimental." (106) He gives the example of alcoholic beverages that provide for temporary pleasures and long term harm to the body and society.

In Islamic law the concept of benefit is entirely different. Benefit is conceptually conjoined to at least three things: a belief in an afterlife, faith in God and to conduct oneself in such a fashion in order to deserve divine benevolence. For this reason, many rules in the Sharia requires that one temporarily defer and forego worldly and material notions of compensation and benefit in the interest of reaping religious dividends and moral goods in this world and the hereafter.

Rahmani gives several examples of how on a superficial reading some sharia practices like fasting is nothing but thirst and hunger, five times daily prayers nothing more than a waste of time, pilgrimage one enormous ordeal of travel, unbearable crowds of people, a drain on financial resources, the sacrifice of needless amounts of animals as part of the sacrificial ritual. Similarly Islam's purity rituals require an extraordinary burden and exposure to difficulty. All of these rituals, he argues, from a material perspective involves harm to the practitioner. But from an Islamic perspective the spiritual and moral benefits of these practices far outweigh the ostensible harms they involve.

Sharia is based on five purposes: the preservation of religion, life, reason, wealth and offspring.

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To preserve religion: to take measures that would protect faith and institutionalize prayers.

Preserve life, means to earn an income and survival, avenge and justice for homicide

Preservation of offspring required marriage and the prohibition of fornication

Protect intellect, prohibition on intoxicants

Protect wealth involves the permissibility of many forms of transactions and the prohibition against theft and corruption.

There are several broad philosophical presumptions made in the construction of public good and norms.

1. Islam's personal laws are balanced, equipoised (mutawazin), in sync with human nature and in tune with the social good. (JFM 3: 32) balanced construction of law:

2. the source of this good is not the limited and deficient human intellect and knowledge, but the creator of the human being. God knows the needs and interests (daruriyat and masalih) infinitely better than humans. Divine omniscience.

3. communitarian notions of reason, not universal reason.

4. turn towards scriptural readings: nass and the gradual annexing of the canonical tradition with a kind of soft-salafism. It is like the Pope meets John Calvin in the back alleys of Geneva.

Conclusion

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What madrasa traditionalists invoke is an ontological and metaphysical otherness. It invokes another order: one that accepts the limits of reason and defers to the wisdom of God. If there is a retreat to the irrational and the archaic, then it is to reveal the limits of reason and the violence it imposes, especially when reason claims to make everything knowable and transparent. While the purposes of the Sharia are knowable, the acts of the Sharia, the purposes and forms of the practices are not always within the ken of reason.

Yet the madrasa tradition is deeply embedded in another kind of discourse of reason: a certain kind of embodied reasonableness. The primary function of norm-making and norm derivation stems from the *fiqh* tradition. As a prominent figure of the Deoband school who died in the mid-twentieth century, Manazir Ahsan Gilani explained, *fiqh* is the rational understanding or appreciation of the tradition—*inna al-fiqh ma`qul min manqul*. So *fiqh* is to some extent a rational discipline. Except that it is not a secular rationality, but it is one that is imagined to be restricted and restrained by the limits of heteronomy. *Fiqh* creates a particular kind of legality and ethicality that attaches the body to the soul, and connects practice to conscience.

Some times as in the Imrana case, *fiqh* turns into a brutal technical reason. Often such enforcement occurs with a thunderous theological authority, validating the truth. But it can be challenged from the margins of these central traditions as we saw the case of South Africa, or the minority rulings in the Imrana case. Some of those who contest the mainstream madrasa-sphere would argue that when law and justice are in conflict, the rule must give way to a higher reason, to justice, which is its primitive reason.

One is loathe to deprive individuals, communities, nations and societies for that matter, from their agency and harshly proclaim that they are victims of exploitative of globalizing forces, as many critics are inclined to do. Domination and hegemony is never total and complete. Individuals, communities and societies devise overt and covert means of resisting even the most brutal attempts of deprivation. The point I wish to make is that Muslims wherever they find themselves are making choices on a

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daily basis about a range of activities from the modes of their income, their choice of dress, as well as ethical and moral decisions of a variety of kinds.

Of course, their choices are not always autonomous ones. Obligations are foisted upon citizens of even the most liberal political states. Citizens and individuals are subject to rules, ordinances and conventions that are made in the form of demands by the state, society and community in obvious and not so obvious ways. From simple acts of paying one's utility bills, obeying traffic laws, showing courtesy to neighbors and strangers, caring for parents, spouses and pets—are all demonstrations that we are not entirely autonomous in our choices, no matter the protestations of radical libertarians.

Autonomy is often partial. We respond to a variety of impulses, not all of them rational in even our most basic decisions, even though most of the time we strive to reach reasonable and sensible outcomes.

Muslim citizens and subjects in a variety of places are no different from those who confess other religious traditions or adhere to ideologies of one sort or another. Moral decision-making is a complex process and we do not always succeed in discovering all its dimensions even when undertaking the most meticulous of moral post-mortems. This partly has to do with the fact that a variety of hidden and public transcripts inform ethical and moral decision-making. Furthermore, even the formation of individuals through mass state-funded and globalized educational process have been unable to create a monolithic citizenry: diversity of viewpoints, philosophical and cultural orientations within a single Muslim society is as true for any other society, notwithstanding national and cultural commonalities. The point to be remembered is that Muslim societies in the last hundred years have undergone very rapid transitions in cultural, economic and political transformations, as have many colonized societies. Modernization and to that extent, westernization, reached Muslim societies through a process of filtration and entanglement, first by colonial domination and then later under neo-colonial domination via Western transnational organizations and the growth of liberal capitalism throughout the world.

If there was one sector that resisted westernization in one way or another, it was the religious intellectuals and scholars. Religious intellectuals varied, but especially the traditional religious community led by the ulama were not uniformly enamored by the charms of modernity. Going back to colonial resistance, culture played a pivotal role in resistance and liberation struggles. The two areas in which cultural sensitivity found articulation were language and religion.²⁶ In other words, a substantive part of the religious sector defended the indigenous culture and institutions against colonial designs to dominate them. These moves of cultural resistance, whether in India, Egypt, Indonesia or and even Central Asia, in all their interactions with Europe, involved a search for identity in indigenous tradition.

Invariably this meant that in reaction to colonial culture and ideology, the traditional Muslim intelligentsia invoked and reinterpreted the past as a means for self-strengthening. But whether such reaching out to the past also became meaningful to develop a basis for the future was questionable. It was not so much cultural revivalism as cultural defense. Often times, Muslim religious authorities popularized the term “reform” (islah) as part of the rhetoric to purge society of superstition, ignorance and reliance on charismatic authority. At the same time the preoccupation with such reformist moves also had the effect of generally disconnecting the religious sector from the mainstream of society. The latter, of course, moved to a totally different drumbeat. Hence the dissonance and the gap between religious authorities and those involved in running society in all its diverse spheres kept on increasing. For much of the twentieth century the challenge for Muslim religious authorities has been to come to grips with altered social reality, which as yet had to reflect in their own knowledge traditions.

During the 19th century Muhammad Ismail (d 1933) wrote very explicitly that solving the unknown with the known (ilhaq al-maskut bil mantuq) is called ijihad. Then he went on to explain the five interior capacities that a human being commands. The five powers or dispositions are: intellect (aqila), the dynamic (muharrika), the aesthetic

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(mutakhayyala), the imaginary (wahima) and the heart-related (qalb).

What is related to the refinement of the intellect is called dialectical theology if they rely on elaborating revealed doctrines by reason and spiritual labor if they resort to kashf.

What is related to the refinement of the dynamic is called fiqh.

That which is related to aesthetic is called purification, monasticism.

That which is related to the imaginary are those spiritual devotions and meditations

That which is related to the heart is the discipline of conduct that search for character, capacities, states and stations.

Interlinking of different cultural value spheres in fiqh: science, morality and culture. Fiqh's reasoning deliberates over science, morality to making proclamations about culture. Each of these value spheres are governed by distinct claims to validity, that result in truth, rightness and authenticity. Each also embody different rationality structures—cognitive-instrumental for science, moral-practical for morality and aesthetic-expressive for art.

This play of different rationality structures is articulated.:

He recognizes that the conditions in India of ignorance of the Shariat and the influence of other social communities on Muslim practice has resulted in the abuse of rights towards women. He is referring to certain crass patriarchal practices that are prevalent in India that are driven by cultural practices and social stereotypes resulting in the abuse of women's rights.

He urges ulama to work within the bounds of sharia and introduce stipulations in marriage contracts in order to reap the greater social good.

There are three kinds of conditions or stipulations in marriage. Default stipulations and that are entrenched in the formal marriage contract such as the right of the wife to be maintained, to mutually live according to sharia regulations, for the wife not to disobey the husband in matters of good, not to leave the marital home without the husband's consent.

Those stipulations that are ultra vires and conflict with the fundamental values of the marriage such as the condition that the wife waives the right to maintenance from the husband; or a condition that there will be no sexual congress in the duration of the marriage.

Stipulations of such a nature where the husband can forfeit some of his rights, since they are discretionary rights, not prescribed rights. So for instance a wife can stipulate that she would not tolerate the husband having a second wife.

The binding and legal nature of these stipulations that affect discretionary rights is subject to disagreement. Some say you can stipulate on something to which the law is indifferent or categorizes in the realm of the voluntary. To bind someone to something that is in itself optional and that has no substantive obligation within it, is notion that conflicts with a certain imagination of Islamic rights. So if the Sharia had given a husband the right to marry more than one wife, or if the wife is required to follow the domicile of her husband, then stipulating on such matters is to deny a husband access to such rights. Hadith: "Any stipulation that is not found in the book of God, is void." Another hadith: "Muslims are bound to their stipulations, except for a stipulation that makes licit the illicit and makes illicit that which is licit."

In this construction rights are encoded with substantive value. Rights are a priori and are not subject to a voluntarism.

Another school of thought argues that stipulations on discretionary matters are valid

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and the husband has a duty to comply. This point of view is also supported by a long list of authorities. The primary logic is supported by a Qur'anic text that one should comply to the commitments one had made. This is reinforced by the opinion of the jurist Jassas, who says: "Any stipulation that a human being undertake on themselves with reference to an act in the future, is a contract." Jassas continues to say: "And this contract is general in its obligation of compliance with all the attendant stipulations that a human being had undertaken as long as there is no evidence of these commitments being specific."

That means a woman can stipulate that she will not follow her husband's domicile or would want to collect her marital gift in a foreign currency, are all part of negotiable rights.

This logic assumes that human beings have a certain autonomy in negotiating their voluntary rights. And also, that not all rights are homogenous and of the same ontological, and hence, moral order.

The conflict among religious authorities suggest a hermeneutical move that privileges specificity in contracts over the general meaning or the default meaning. This is Ibn Rushd's position and also that constructed by the Hanbalis.

Patient and physician privilege on medical matters: communitarian thrust. The good of the majority takes precedence over the needs of an individual. Autonomy is restricted or restrained in a variety of ways. Individual must first submit to the authority of tradition and its reason.

Early ulama were known as danishmand, intellectuals. In the time of Nizam al-Din Awliya, the latter remarked that in the madrasa mu`izzi there was an intellectual, danishmand whose name was Mawlana Zayn al-Din, who could give satisfactory answers to things.

¹ Cover, Robert M., Martha Minow, Michael Ryan, and Austin Sarat. *Narrative, Violence, and the Law: The Essays of Robert Cover Law*,

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- Meaning, and Violence. Ann Arbor University of Michigan Press, 2010.
- ² `Abd al-Hayy b. Fakhr al-Din al-Hasani, *Nuzhat al-khawātir*, 8 vols (Multan: Tayyab Akademi, 1413/1992), 7: 420-422.
- ³ Mawlana Habib Allah ed. *Majalis hakim al-umma ma` sawaneh-e hayat hakim al-islam hazrat mawlana qari Muhammad*, 2 vols. (Multan: Idara Ta`lif-e Ashrafiya, 1417AH), 1: 65-67.
- ⁴ On this conflict see Muhammad Manzoor Nu`mani, *Dar al-ulum Deoband ka qadiya `awam ki `adalat main* (Deoband: Daftar-e Ihtimam Dar al-Ulum Deoband, c. 1403/1982).
- ⁵ *Ibid.*, 36.
- ⁶ *Ibid.*, 43.
- ⁷ Muḥammad `Alī (A`lā) al-Tahānawī and (ed) Rafīq al-`Ajam, *Mawsū`a Kashshāf Iṣṭilāḥāt Al-Funūn Wa Al-`ulūm*, 2 vols. (Beirut: Maktaba Lubnan, 1996), 1:213.
- ⁸ *Ibid.*, 2:1110.
- ⁹ Tayyab, "Kalimat."
- ¹⁰ *Ibid.*, 44.
- ¹¹ Tayyab's grandfather and one of the founders of the Deoband school, Muḥammad Qāsim Nanautvi actually made a similar argument saying that some Sharī`a teachings bore the imprint of both spirit and form (*rūḥ aur qālib*) such as prayer whereas other teachings such as *jihād* only carried the imprint of its teachings in spirit, relegating the specific form to be decided by the community, see Sayyid Manāzīr Aḥsan Gīlānī, *Savānih-I Qāsimī: Ya`nī Sīrat-I Shamsul Islām*, 5 vols. (Lahore: Maktaba Raḥmāniyya, 1980), 2:26-27.
- ¹² Tayyab, "Kalimat."
- ¹³ *Ibid.*
- ¹⁴ *Ibid.*
- ¹⁵ Qārī Muḥammad Tayyab, *Ijtihād Aur Taqlīd* (Lahore: Idāra-i Islāmiyāt, 1978), 64.
- ¹⁶ Tayyab, "Kalimat," 44.
- ¹⁷ Pierre Bourdieu, *The Logic of Practice*, trans. Richard Nice (Stanford, Ca.: Stanford University Press, 1990), 66.
- ¹⁸ Tayyab, "Kalimat," 55-60.
- ¹⁹ *Ibid.*, 60.
- ²⁰ See Mohammed Makki, "Deoband Ulamas Declare South Africa a Darul Harb," *The Muslim Digest*, February 1966, 2-12; Ismail Abed, "A Refutation of the Deobandi Fatwa on Interest and Usury," *The Muslim Digest*, February 1966, 13-19; anonymous critic, "Moolla and Mullahs Break Silence," *The Muslim Digest*, April 1966, 2-8; "Deoband Fatwa Rejected," *Muslim News*, March 11, 1966; "A Reply to the Fatwa on 'Riba' from Deoband," *Muslim News*, April 22, 1966.
- ²¹ "An Important Fatwa Permitting Free and Full Participation by Muslims in the Economic Development and the Use of Banking and Financial Institutions in a Country like South Africa by the Muftees of Darul Uloom Deoband," trans. M. A. Mehtar "Farooqi", 1965, 8-9. I am grateful to Ismail Manjra for generously sharing with me his very well-preserved collection of documents and pamphlets from this period.
- ²² Jamiatul Ulama of Transvaal, pamphlet "Darul Harb and Riba," issued by Muftī Ebrahim Sanjalvi, dated 10 Zul Qadah 1385/March 3, 1966. I am indebted to Mawlana Ashraf Dockrat for providing me with copies of pamphlets and other documents from the archives of the Jamiatul Ulama of Transvaal.
- ²³ Ḥabīb al-Raḥmān A`zamī, *Tahqīq-i mas`ala-i ḥurmat-i muṣāharat* (Deoband, 1426/2005), Muftī Muḥammad Yūsuf Tā`aulvi, *Ḥurmat-i muṣāharat Qur`ān o ḥadīth kīroshnī main* (Deoband, 1426/2005).
- ²⁴ Abū `Abd al-Ḥaqq `Abd al-Salām bin Abī Aslam al-Madanī, "Personal communication," (Varanasi, 2006). All the scholarly authorities engage in extensive debates over the meaning of the word *nakaḥa* in Arabic. The Qur`an was explicit in stating that "whomsoever your fathers married." The key interpretative difference was whether *nakaḥa* meant the marriage contract or the sex-act arising out of marriage.
- ²⁵ A`zamī, *Tahqīq-i mas`ala*. 52-56.
- ²⁶ K. N. Panikkar, *Culture, Ideology, Hegemony: Intellectuals and Social Consciousness in Colonial India* (New Delhi, 1998). 80.