

Muhammad al-Tahir ibn Ashur was born in Tunis 1879 and died in 1973 at the age of 94. He came from a family of scholars, with his grandfather being especially renowned. When he entered Zaytuna, special care was made to provide him the best teachers. He was a teacher at Zaytuna all his life. His masterpiece is the *Maqasid al-Shari`ah al-Islamiyyah*, the Intents, or Higher Goals of Islamic Law, published in 1946. He is famous for standing up for the right cause: when the President of Tunisia wanted a fatwa to justify abandoning the fast of the month of Ramadhan because it decreased productivity, he made his response by reciting "Prescribed for you is fasting," and saying "*sadaqa-Allah al-`Azim*, and Bourghiba lies."

Influenced by a visit to Tunisia by Muhammad Abduh, Ibn Ashur combined a thorough knowledge of the classics with a desire to revive Islamic civilisation. In his writings, it is clear that he saw himself as a bridge between the classical Islamic legal heritage and the needs of a modern world. His references to the great works of law are respectful, but he does not hesitate to point out shortcomings.

Ibn Ashur situates his work to be relevant for the modern world. He believes that the discipline of *usul al-fiqh* has reached its limits and become over-burdened with methodological technicalities. We cannot generate legal responses to situations in the modern world by delving deeper and deeper into the meaning of a word. Instead, we must take up the perennial challenge to discover and implement the higher goals of the *shari`ah*.

Language is fundamentally, by its very nature, ambiguous. Language by itself is not enough to determine the intent of a speaker. Further, while written words are less subject to distortion, the spoken word is actually more likely to convey the speaker's intent. Taken as a whole, the entire field the word resides in must be studied and understood. One cannot simply take a word and endlessly delve into its meaning without understanding the larger context. In contrast, the example of the subsequent generations going back to Madinah to ask people about the meaning of a statement shows the importance of studying and understanding the big picture, the full context of a statement.¹

Because we cannot really ascertain the intent of a speaker from a single sentence, Ibn Ashur questioned the juridical weight of a single, isolated hadith in determining legislation. Instead, legislative value should be sought from the totality of the *shari`ah*. Ibn Ashur was so sure of this that he suggested that comments seemingly to the contrary from Imam Shafi'i and Imam Ahmad bin Hanbal must be distortions of their work. He worried that taking a solitary (*ahad*) hadith in isolation from the body of the *shari`ah*, the quest for understanding in context would be abandoned. Preferring the solitary hadith over a rational deduction based on established context would therefore be problematic. Ibn `Ashur believes that Shafi'i has been misunderstood as accepting a solitary hadith over the totality of the *shari`ah*; and that Ahmad bin Hanbal has also been misrepresented as accepting a weak hadith over *qiyas*. Ibn Ashur says that a weak hadith is open to error, and *qiyas* is open to error, but in

¹ Muhammad al-Tahir bin `Ashur, *Maqasid al-Shari`ah al-Islamiyyah*, Dar al-Nafa'is, 2001, p. 203.

addition, the weak hadith may be a lie, and the consequence of using it would be worse than using *qiyas*.²

Ibn Ashur understood that the basis of the *shari`ah* must be rational. He said,

One of the greatest things required by the universality of the *shari`ah* is that its rules be equal for all the communities following it to the utmost extent possible, because similarity in the flow of rules and laws is a help for achieving group unity in the community. Because of this special wisdom, Allah made this *shari`ah* to be founded on wisdom that may be reflected on (*i`tibar al-hikam*) and reasons that may be perceived by the intellect, which are not different even though the communities and customs are different.³

Because the *shari`ah* is universal, it must not be restricted to a single culture. The *shari`ah* came down in the Arabic language to an Arabic people, and therefore its coloring and style are Arabic. But its intent is universal, and so therefore it must be intelligible to people everywhere. This tells us that there are reasons for the law. The prohibitions, for example, of keeping raisin juice in certain kinds of containers comes from the fact that in the heat of the Hijaz the juice would quickly ferment. In cold climates, that would not apply. In fact, to stubbornly hold onto superficialities without understanding the intent is to “expose the *shari`ah* to being dismissed disdainfully.”⁴

Ibn Ashur saw this literal-mindedness to be represented by the Zahiri position. His strongest argument against that position is that the literal occasions which the Zahiris hold onto are quite limited, but the different situations people around the world encounter are unlimited. Therefore, the *maqasid* of the *shari`ah* must be engaged.

Ibn Ashur called for *ijtihad* in the strongest terms. He said, “*Ijtihad* is a collective duty (*fard al-kifayah*) on the community according to the measure of need in the community’s countries and situations.” He chastised the Muslims for neglecting *ijtihad* despite the fact that the capacity to do *ijtihad*, and the means for doing *ijtihad*, are available.⁵ He wanted to see Muslims coming forth to practice *ijtihad* for the global community. It was clear to him that the lack of *ijtihad* had grave consequences for the community. He called for a group of *mujtahids* from countries around the world, from different *madhahib* (schools), to address the needs of the community. This would be the basis for a renewal of civilisation.

There is a growing recognition that the enterprise of searching for and using the *maqasid* of the *shari`ah* must be taken up again. Civilisational renewal requires this kind of creative approach, and Ibn Ashur’s legacy is to challenge and invite us to take up this project.

² 204-205.

³ 320.

⁴ 215.

⁵ 407.