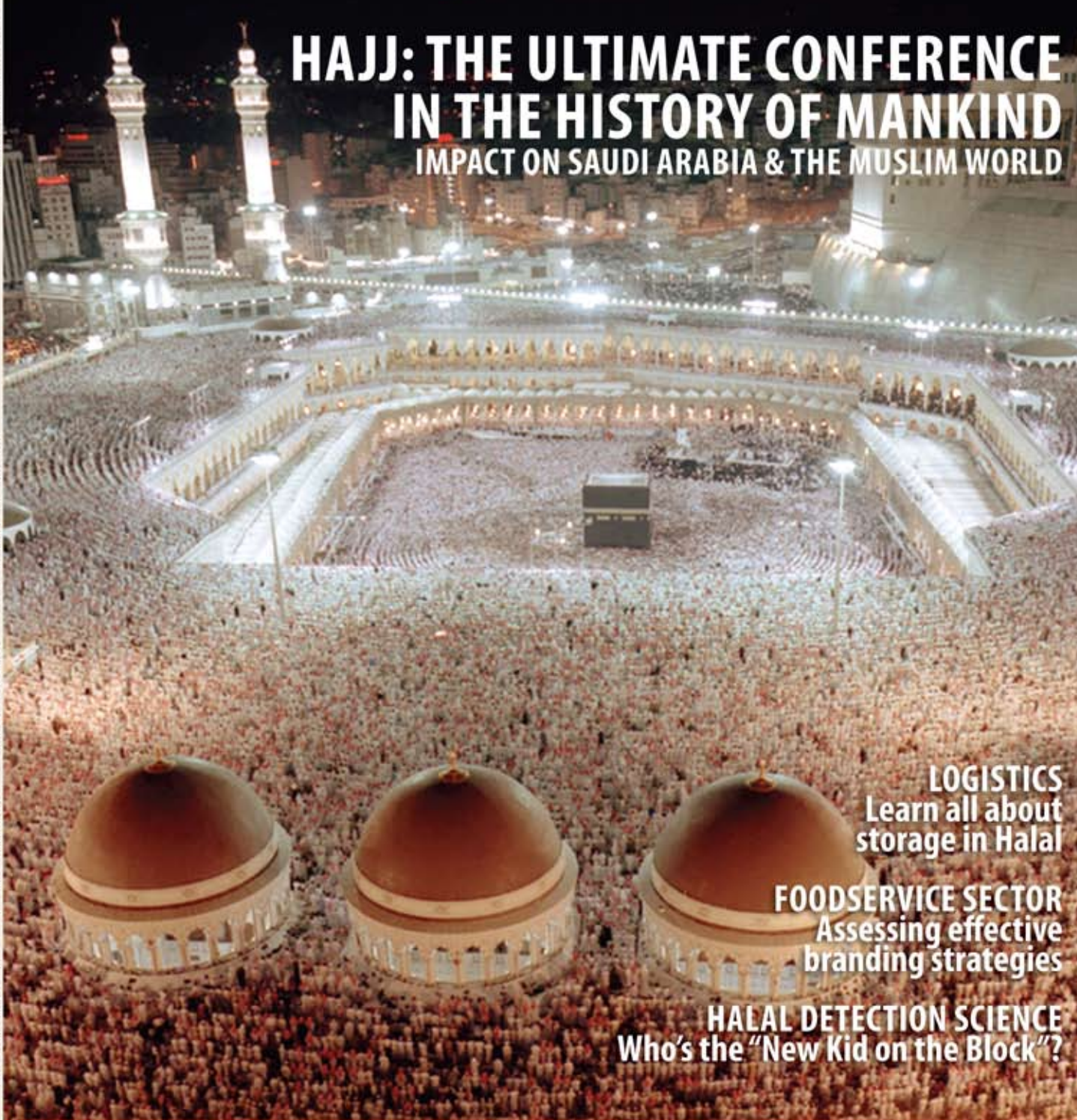


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HAJJ: THE ULTIMATE CONFERENCE IN THE HISTORY OF MANKIND IMPACT ON SAUDI ARABIA & THE MUSLIM WORLD

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Halal Industry within Islamic Principles: **A SHARI'AH PERSPECTIVE ON HALAL AND HARAM**

Following the earlier parts of this series, I shall proceed, in the third and final part, to review the Fiqh rules governing the valid slaughter of animals. The remaining sections provide an overview of the role of general custom in the determination of what is lawful and unlawful in foodstuffs, and then also a general characterisation of the relationship between Islam and science, as far as this concerns our subject.

OF CUSTOMS AND FOR DETERMINATION LAWFUL & THE UN

REQUIREMENTS OF A VALID SLAUGHTER

The rituals of a valid slaughter and its accompanying requirements of cleanliness are fairly well-known to the Halal industry, and the prevailing practices are also deemed to be compliant with Shariah guidelines. Discussions have indicated some of the features of a valid slaughter and what may be regarded to be Mandub or Makruh. The discussion that follows highlights some of the additional requirements of a valid slaughter, and also some disputed issues:

- 1)** The element of intention: A lawful slaughter occurs only when it is with the intention for a valid use, and not merely to kill an animal for the sake of killing. Hence, a slaughter without such an intention is non-Halal.
- 2)** Reciting the Tasmiyah (i.e. Bismillah) at the time of slaughter is obligatory (Wajib) according to the majority of Madhahib, whereas the Shafi'is considers it to be recommended (Mandub) and abandons it as Makruh.

Words By
PROF. DR.
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SCIENCE OF THE LAWFUL

All schools would, on the other hand, exonerate from these requirements the case of genuine forgetfulness without intentional preclusion. Intentional preclusion on the other hand makes the slaughter non-Halal.

It is noteworthy that the

Qur'an stipulated Tasmiyah for slaughter in contrast to the pre-Islamic Arabian practice of reciting the names of deities. It is also instructive to note that mankind is not naturally entitled to take the life of an animal unless it is with the permission of the Creator, and

Tasmiyah is an affirmation and acknowledgement of that.

Richard Foltz, author of *Animals in Islamic Tradition* (2006) draws the following conclusions from his review of the evidence: "First, the tradition takes the relationship between humans and other animal species quite seriously. Second, animals are seen as having feelings and interests of their own. And third, the overriding ethos enjoined upon humans is one of compassionate consideration."

3) Ritual slaughter is allowed by a person who is a Muslim or follower of a revealed scripture, including Christians and Jews. The Quran has thus affirmed that "the food of the Ahl-al-Kitab" is Halal for Muslims, and vice versa (al-Ma'idah, 5:5).

The food and slaughter of the Ahl al-Kitab is Halal to us generally even if they omit the Tasmiyah, or recite the name of Jesus Christ or Moses, peace be on them. Some Muslim jurists have disputed this last position, but since the Quranic permission is conveyed in unqualified terms, it is Halal for Muslims to consume their food and their slaughter.

4) According to a general consensus of the leading Madhahib, severance is required of the four vital passages in the slaughter of animals, namely the trachea, oesophagus and jugular veins. Some minor disagreements have arisen to the effect that slaughter occurs even if the oesophagus is not cut, though it is recommended to sever the four sections all at once.

The following slaughter practices are recommended (Mandub):

- Recitation of both Tasmiyah and Takbir;
- Completion of slaughter in daylight so as to prevent error in the correct procedures;


- Facing the Qiblah, although the Maliki School does not require this;
- Except for the camel (which requires Nahr, as opposed to Dhabh, in standing position with a left leg tied up), all animals should rest on the left side with their heads lifted upwards; and
- Clemency to the animal and avoidance of rough handling.

The following are considered reprehensible (Makruh) in the slaughter rituals:

- Slaughter by a disabled person;
- Abandoning the Tasmiyah according to those who do not consider it obligatory, namely the Shafi'is and some Malikis;
- Facing the animal in a direction other than the Qiblah;
- Nahr of the cattle and Dhabh of the camel; the normal method is in the reverse order.
- Inflicting pain on the animal such as by severing the head completely or breaking the skull, dragging the animal, and slaughter from the back of the neck; and
- Slaughter by a dull and unsuitable knife.

Certain aspects of the distinction between the Makruh and Haram are not always accurately stated. Note for instance that some individual writers have labelled as Haram that which may actually amount to no more than Makruh.

Some of the Halal procedural guidelines also stipulate ritual cleansing for leather materials made from animals that have not undergone Halal slaughtering. This is evidently not a requirement of the renowned Hadith, recorded by Muslim and Abu Dawud, which provides: "when any hide



The law may recognise some food as Halal but may not be liked by the people and may thus to all intents and purposes be relegated to the category of Makruh, or else that a Mubah is elevated to the level of Mandub by the people's preference for it.

is tanned, it is purified."

The ruling of this Hadith is general ('Aam) and unqualified, hence it includes "all hides even of the dog and the pig. This is the position of the Zahiri School, also recorded by Abu Yusuf, the disciple of Abu Hanifah, and it is preferred by al-Shawkani."

Furthermore, it is quite obvious from our perusal of the relevant rules that the Shariah prohibition of carrion is confined to eating and does not extend to the use of its hide, horns, bones and hair, all of which are permitted. They are valuable Maal, and if they could be put to a good use, they should not be wasted.

THE ROLE OF CUSTOM ('URF)

General custom ('Urf, 'Adah) is a recognised source of law and judgment in Islam. It is defined as "recurrent practices that are acceptable to people of sound nature." To constitute a valid basis of judgment, custom must be sound and reasonable and must not contravene a clear text or principle of Shariah. Custom is rejected if it is in conflict with a clear injunction of Shariah, such as some tribal practices that deny women their rights of inheritance.

In the event, however, of a partial conflict between a text and custom, the latter may qualify or specify the former. A valid ruling of custom often takes precedence over the normal rules, or the ruling of analogy (Qiyas). This is because custom represents the people's convenience, and adopting it

is often tantamount to removal of hardship, which is one of the expressed purposes of the Shariah. It is commonly acknowledged that a great deal of the Fiqh rules and the rulings of Ijtihad have taken their cues from the prevailing practices of the time.

The role of custom is evidently recognised in the evaluation of the Mandub and Makruh in foodstuffs, which often correspond with what is approved or disapproved by the people of sound nature (often referred to as the Ahl al-'Urf). The law may recognise some food as Halal but may not be liked by the people and may thus to all intents and purposes be relegated to the category of Makruh, or else that a Mubah is elevated to the level of Mandub by the people's preference for it.

When this is the case, then according to a leading maxim of Fiqh: "Custom is the basis of judgment (al-'adatu muhakkamatun)". For instance, custom determines the question of whether or not an object is regarded as valuable property, or Maal, that carries market value. For instance, honey bees and silk worms were at one time not regarded to be Maal but were later determined to qualify as Maal by the people's usage and acceptance of them as such, and a Fatwa was accordingly issued in its support.

Custom is, moreover, changeable with the advancement of science and technology, which often set in place new practices

that may soon gain wide recognition and acceptance.

People's tastes regarding foodstuffs are also affected by the media and advertisements and so forth. New practices take hold among people as and when they prove to be convenient, which is often reflected in their lifestyle and food varieties. All of this is likely to carry the seal of Shariah approval if no principles have been contravened. Furthermore, people's approval and disapproval also play a role in the determination of what may be regarded as a compelling necessity (Darurah).

ISLAM AND SCIENCE

Islam and science are too broad and also too important to be treated in a short passage intended merely to identify what bearings they have on the Halal and Haram in Islam. However, the first question that arises concerns the basic premise of these concepts: Halal and Haram are evidently not determined by reference only to human reason or scientific knowledge, but a combination of these and the guidance mainly of divine revelation (Wahy).

With the exception of a limited number of dietary prohibitions that Islam imposes, it is on the whole receptive to scientific evidence. If one considers the Islamic prohibition of carrion, spilt blood, alcohol and pig meat for consumption, most of these, if not all, can perhaps stand the test of scientific knowledge.

Scientific rationality

essentially confines reality to the data of sense perception, which precludes metaphysical reality and revealed knowledge as well as some of the non-physical sides of the human existence (such as reducing intelligence to the level of neural chemistry where mental and behavioural phenomena are understood merely as manifestations of physical processes).

Islamic juristic thought recognises various levels of distinction with a view to addressing temporal reality within its own perimeters. For instance, the distinction between Shariah and Fiqh did not exist during the first century of the advent of Islam, and the triple division of the Shariah into theology (Kalam), morality (Akhlaq) and Fiqh (practical rulings) also developed at a later stage. A certain level of separation was thus recognised between theoretical theology and the practical rules of concern to the daily life and conduct of the individual.

In the sphere of the applied sciences and the benefits they can bring to humanity, Islam maintains an open outlook. Thus it is not only acceptable but may even rank as Maslahah (public interest) to employ scientific knowledge for the good of the people. This aspect of pragmatism in the Islamic tradition is reflected in the fact that Muslims have not seen their faith as a hindrance to scientific knowledge. They have, on the contrary, made significant contributions to the advancement of science.

The Prophet pbuh advocated beneficial knowledge (al-'ilm al-nafi') that responds to people's legitimate needs, and accordingly instructed his followers to seek knowledge "even if it be in China." Thus it is not difficult to see that Islam accepts beneficial scientific knowledge from any source.

The robust advocacy of 'Ilm in the Qur'an, its open acceptance of knowledge gained through sense, perception and observation, and its encouragement of us to investigate the world around us, all in all depict a basic alignment and convergence of interests between Islam and science, and not otherwise.

Islamic philosophy that mainly studies purposes, as against science (which mainly studies causes), sees objects and events as signs (Ayat) of the Divine presence in the universe. Faith is understood by Muslims not as a limitation on science but as its vista for enrichment and perfection. Thinking Muslims should therefore work to vindicate the symbiotic relation of faith and reason, of knowledge and science, and advance a broader understanding of the civilisational objectives of Islam.

Consider for instance, the use of stunning and the thoracic stick procedures, and whether they are acceptable from the Shariah viewpoint. Questions may arise as to how stunning and thoracic stick practices were originally introduced: For reasons of industry convenience, for animal welfare, or both. Although the Shariah favours the smooth flow of lawful trade in the marketplace even at the expense of some compromise on other grounds, it does not favour measures that would present a threat to higher values.

Talfiq differs from Takhayyur in that the latter selects the ruling as it is of a different Madhhab to that of one's own, whereas Talfiq attempts to combine certain parts of different rulings/interpretations into a SINGLE FORMULA for purpose of implementation.

Any decision that a Shariah specialist makes on stunning and thoracic stick issues, without the required scientific input, is bound to be based on externalities and assumptions that would be less than adequate – given the sensitivity of the issues and extensive application of the decisions in question. This also serves to illustrate the symbiotic relationship that we envisage between the Fiqh and scientific knowledge.

CONCLUSION

The Fiqh discourse essentially elaborates the textual guidelines on Halal and Haram, which also have devotional (Ta'abbudi) features that go beyond common rationality. One can promote uniformity in Halal standards with regard to the Halal/Mubah, and also the Makruh and the Mandub, by recourse to the principle of selection (Takhayyur) and by singling out among the various rulings of the Madhahib one that may be most suitable for that purpose.

As an accepted method

of Islamic jurisprudence, Takhayyur is premised on the recognition that the leading schools of Islamic law have extended to one another and accepted one another as equally valid interpretations of the Shariah. Another method of selection is the patching up (Talfiq) of certain aspects of the rulings of different schools or jurists with a view towards amalgamating them into a single formula.

Talfiq differs from Takhayyur in that the latter selects the ruling as it is of a different Madhhab to that of one's own, whereas Talfiq attempts to combine certain parts of different rulings/interpretations into a single formula for purpose of implementation.

The setting up of a Shariah advisory council is already under consideration. This should ideally bring together a group of learned figures of standing, and which is internally diversified so that its deliberations, advice and Fatwa are informed by the Madhabs, countries and cultural zones of the global

Ummah. This should also include representation from Muslim minorities in the West.

A set of procedural guidelines should be formulated for rule-making purposes, and plans should be drawn up that envisage high-level media impact and market penetration. A brief reference is also in order to an aspect of Islamic jurisprudence that enables the ruling authorities (Uli'l Amr) to raise the Mandub into an obligatory command, or a Makruh into a prohibitive rule, regulate certain aspects of Mubah, and even make a suitable ruling on doubtful matters – if such would be to the manifest Maslahah of the people.

This is an aspect of what is known as Shariah-oriented policy, or Siyahah Shar'iyah, which is a recognised principle of Islamic public law. The lawful authorities are thus empowered to introduce laws and formulate policies that secure the people's best interests in the light of prevailing circumstances.

Finally, there is a need to form a research unit (or units) that brings together researchers in Shariah studies, food sciences, market specialists, and social scientists who can conduct research on market particularities, and the customs and cultures of the various countries and regions of the world. The unit can then submit recommendations to the Shariah advisory council and the marketing sections of the Halal industry. 51

* Paper presented at the World Halal Forum "Sustained Development through Investment and Integration," Kuala Lumpur, May 12, 2008.

See for details al-Qurtubi, Bidayah, I, 328; al-Zuhaili, al-Fiqh al-Islami, III, pp. 659.

Foltz, Animals in Islamic Tradition, p. 27 (see note 35).

See for details al-Qaradawi, al-Halal wa'l-Haram, 61; al-Zuhaili, al-Fiqh al-Islami, III, p. 659.

Qaradawi, al-Halal wal-Haram, pp. 61-62. al-Qurtubi, Bidayah, I, p. 325f; Zuhaili, al-Fiqh al-Islami, III, pp. 661-663.

Idem, I, pp. 327-328; Zuhaili, al-Fiqh al-Islami, III, pp. 663-664; Qaradawi, al-Halal wa'l-Haram, p. 55f.

Abu Dawud, Sunan Abu Dawud, Eng. Tr. Ahmad Hassan, vol. II, p. 1149, Hadith No. 411. See for a discussion

also Kamali, Jurisprudence, p. 153; Qaradawi, Al-Halal wa'l-Haram, pp. 51-52.

Idem, p. 51.

Cf., Kamali, Islamic Jurisprudence, 369; Shabir, al-Qawa'id al-Kulliyah, p. 244 f.

Art.36, the Mejlle Ahkam-e Adliyye. The Mejlle records several other

legal maxims on custom, including "the usage of people is a proof

that must be acted upon." (Art. 37). See for further details Kamali, Islamic Jurisprudence, p. 371.

Cf., al-Qaradawi, al-Halal wa'l-Haram, p. 24.

Cf., Muslim, Mukhtasar Sahih Muslim, p. 494, Hadith No. 1871

thus records the Prophet's supplication in which he distances himself from

"'Ilm that brings no benefit."

For details, see M. H. Kamali, "Islam, Rationality and Science," Islam and Science, vol. I (2003), pp. 56-77.

For details, see Roger Garudy, "The Balance Sheet of Western Philosophy in this Century," in International

Institute of Islamic Thought, Towards Islamisation of Disciplines, Herndon, VA, 1986, p. 399f.

See for details on Takhayyur and Talfiq, Mohammad Hashim Kamali,

"Shari'ah and Civil Law: Toward a Methodology of Harmonisation,"

Islamic Law and Society 14(2007)

391-421 at pp. 406-411.

See for details on Siyahah

Shar'iyah, M. H. Kamali, "Siyahah shar'iyah or the policies of Islamic government," The American Journal

of Islamic Social Sciences.