

A historiographical approach to the Qur'an and Shari'a in late 19th century India: The case of Chiragh 'Ali*

Carimo Mohomed

mohomed.carimo@gmail.com

Contributing Scholar

Centro de Estudos de História Religiosa

Universidade Católica Portuguesa

Rua Professora Virgínia Rau 13, 3D

1600-673 - Lisbon

Portugal

Abstract

Analysing the book *The Proposed Political, Legal, and Social Reforms in the Ottoman Empire and Other Mohammadan States* (1883) and undertaking a historical contextualization, this paper problematizes the *epistemis* and epistemological framework underlying the articulation of Chiragh 'Ali's discourse, focusing on how he viewed the Qur'an and Shari'a according to the intellectual debates in the 19th century. Often refuting, in his writings, missionary and Orientalist criticisms of Islam as being hostile to reason and incapable of reform, Chiragh 'Ali rather argued that the Islamic legal system and schools were human institutions capable of modification. While defending that the Qur'an taught religious doctrine and rules for morality, Chiragh 'Ali held the opinion that it did not support a detailed code of immutable civil law or dictate a specific political system, drawing on an examination of the traditional sources of the Islamic law and methods to overcome the rigidity of traditional theologians.

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Keywords

India; Islam; 19th century.

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The second half of the 19th century was a period of great richness in the history of modern Islamic thought, when a group of Muslim intellectuals, in different parts of the world, rigorously examined the fundamentals of Islamic jurisprudence. The main theological problems at the core of these examinations focused on the validity of the knowledge derived from sources external to the *Qur'an* and the methodology of traditional sources of jurisprudence: the *Qur'an*, the *hadith*,¹ *ijma*,² and *qiyas*.³ The epistemological step adopted was to reinterpret the first two, the *Qur'an* and the *hadith*, and to transform the last two, *ijma* and *qiyas*, in the light of Western scientific developments, including the social sciences. Among those who had a strong impact were al-Afghani (1838-1897), Sayyid Ahmad Khan (1817-1898), Muhammad 'Abduh (1849-1905) and Amir 'Ali (1849-1928). Fascinated with the technological and scientific developments occurring at the time in Europe (the Newtonian conception of the Universe, Spencer's sociology, Darwinian ideas and even the Western style of life), they presented Islam in a way that was consistent with modern ideas, and all of them argued that, as a world religion, Islam was capable of adapting to the changing environment of each age, particularly since the use of law and reason was characteristic of the perfect Muslim community (ANSARI 1986, p. 510; DALLAL 1993, p. 341-359; MOADDEL 2001, p. 669; MOADDEL 2005, p. 42-45; RAHMAN 1966, p. 284-5).

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Although the felt need for reformist thinking was endogenous, with movements proposing a fresh rereading against the inherited traditions (PETERS 1980, p. 131-145), the shock of European expansionism beginning in the later part of the 18th and early 19th centuries, the expansive social and intellectual power of Europe, seen not only as an adversary but also as a challenge – in some cases an attractive one, illustrated by the reforms introduced by the Ottoman sultan Mahmud II (1808-1839) and his successors, or by Muhammad 'Ali Pasha (1769-1849) in Egypt –, brought a new element that reinforced that feeling. The power and greatness of Europe, science and modern technologies, political institutions of European states, and social morality of modern societies were all favourite issues, which forced the formulation of a fundamental problem of how could Islam and Muslims acquire the strength to confront Europe and become part of the modern world.⁴

¹ Often translated as 'tradition', a *hadith* is a report of the deeds and sayings of prophet Muhammad. The *hadith* literature does not qualify as primary source material, as it was compiled from oral reports that were present in society around the time of their compilation, well after the death of Muhammad. For further details on this and other Arabic expressions, please refer to the *Encyclopaedia of Islam*.

² *Ijma* is an Arabic term referring to the consensus or agreement of the Muslim community basically on religious issues. Various schools of thought within Islamic jurisprudence may define this consensus to be that of the first generations of Muslims only, or the consensus of the first three generations of Muslims, or the consensus of the jurists and scholars of the Muslim world, or scholarly consensus, or the consensus of all the Muslim world, including both scholars and laymen.

³ In Islamic jurisprudence, *qiyas* is the process of deductive analogy in which the teachings of the *hadith* literature are compared and contrasted with those of the *Qur'an*, in order to apply a known injunction (*nass*) to a new circumstance and create a new injunction.

⁴ In Egypt and other parts of the Ottoman Empire, especially the Arabic ones, the cultural renaissance movement that began in the 19th century became known as the *an-Nahda* ('awakening', 'renaissance'), and it is often regarded as a period of intellectual modernization and reform. In traditional scholarship, the *an-Nahda* is seen as connected to the cultural shock brought on by Napoleon's invasion of Egypt in 1798, and the reformist drive of subsequent rulers in Egypt and the Ottoman Empire under the *Tamzimat* ('Reforms'). However, recent scholarship has shown that the Arab renaissance was a cultural reform programme that was

After the Great Mutiny – or Sepoy Revolt – of 1857-1858, and although the great majority of the insurgents were Hindus, the last Mughal emperor Bahadur Shah Zafar (1775-1862) was put on trial by the British and charged with being behind an international Muslim conspiracy stretching from Istanbul, Mecca and Iran to the walls of the Red Fort in Delhi. To consider the importance of this event, seen as a kind of 'Clash of Civilizations', one should bear in mind the fact that even nowadays comparisons are being made to contemporary events and situations (MALIK 2008). The Mutiny was crushed, the Emperor was sent into exile in Burma, where he passed away in 1862, and India came *de jure* under British rule (ALAM 2006; DALRYMPLE 2007; ERALY 2004; GASCOIGNE 1998; RICHARDS 1998).

The period between 1857 and 1947 - year of independence and partition of India into two states - was very rich in Islamic reformist thinking, originating an intense debate that crossed the geographical borders of India and anticipated many contemporary issues: women's condition, the role of religion in politics or the end of the Caliphate. At the same time, the world at large went through significant events, which influenced India and the Islamic world, then almost entirely under imperial and colonial European rule. Throughout this period, Muslims in India witnessed the growth of a public sphere as members of its elite attempted to use newspapers, journals and tracts as a means to inform public opinion, discuss the contemporary condition of Muslims and usher in social and religious reforms (SEVEA 2006).

One of the individuals to propose a reform of Islam was Sayyid Ahmad Khan (1817-1898), founding figure of the Aligarh movement. After the events of 1857-1858, Ahmad Khan came to the conclusion that the Muslims of India had to accommodate the British and use modern education to advance themselves, a line of thought that influenced, among others, Chiragh 'Ali (1844-1895), who is the focus of this paper, especially his conceptions regarding the *Qur'an* and the *Shari'a*,⁵ according to the intellectual developments of European thought in the second half of the 19th century.

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Sayyid Ahmad Khan and the Aligarh movement

After the Sepoy Mutiny of 1857-1858, the leading figures of the Muslim community in India posed a series of questions about their future. The answers

as endogenous as it was Western inspired. For further details on this, please refer to HOURANI 1983, and SHEEHI 2004.

⁵ Normally translated as 'Islamic Law', *shari'a* means, in Arabic, 'street, path, way'. In a legal context, the word *shari'a* refers to 'the way or the path a Muslim would want to follow what God wants us to do'. Traditionally, Muslim scholars take primary source material – the *Qur'an* as well as accounts from the life of Prophet Muhammad, referred to as *hadith* – and derive laws based on their interpretations of these texts. These laws pertain to two different areas of life, either religious observance (prayer, fasting, and almsgiving) or civil and criminal issues (marriage, family law, business transactions, taxation, and warfare). Of course the ways in which someone derives laws from his or her interpretations of 'what God wants us to do' varies according to time and place. So, it is also crucial to point out that translating the word *shari'a* simply as 'Islamic law' is not entirely sufficient. *Shari'a* includes scores of moral and ethical principles, from honouring one's parents to helping the poor to being good to one's neighbour. It is incorrect to equate *shari'a* with criminal punishments. If we understand it as the idealized 'path to God', then what constitutes a moral and legal course to the divine is a subjective and ever changing interpretation of Islam's sacred texts by human beings. For a brief introduction on this and other topics regarding *Shari'a*, please refer to KADRI 2011, and MASUD 2001.

were many and one of them was the Modernist one, starting with Sayyid Karamat 'Ali (1796-1876) and his disciple Sayyid Amir 'Ali, both from Bengal (BOIVIN 2003, p. 83-105), and culminating with Sir Sayyid Ahmad Khan, from the United Provinces (nowadays Uttar Pradesh). The Modernists, who were deeply influenced by Western modern liberal thought, tried to interpret Islam in a way that was considered as rational, and Sayyid Ahmad Khan eventually came to the conclusion that the Muslims of India had to accommodate themselves with the British (SYED 1991, p. 193-194).

Born in 1817, Sayyid Ahmad Khan was caught by the events of 1857 in Bijnaur as a civil judge in the British East India Company, and his journal between May 1857 and April 1858 became a monograph with the title *Tarikh-i Sarkashi-i Bijnaur*, which is a history of the Mutiny in Bijnaur (KHAN 1858). Ahmad Khan also published a book in Urdu, *Risalah-i-Asbab-e Baghawat-e Hind (Causes of the Indian Mutiny)*, later translated into English (KHAN 1873), in which he criticised the mutiny of the previous years, arguing that there had been only one cause for it, all the others being a consequence: the fact that the natives of India blamed the government for the diminishing of their position and dignity and for maintaining them in a lower position.

In 1860-61, Ahmad Khan published his *Risâlah Khair Khawahân Musalmanân: An Account of the Loyal Mohamadans of India*, in which he defended that the Indian Muslims were the most loyal subjects of the British Raj (Rule), because of their disposition and because of the principles of their religion. Being convinced that the British had come to stay and that their supremacy, with that of the West, could not be doubted in the near future, Sayyid Ahmad Khan came to the conclusion that the Muslims should rethink their way of living, being at the risk of falling further. For him, the existing resentment was due to mutual prejudices and ignorance. His effort to mediate between Christianity and Islam took shape in his work *Ahkam-i Ta'am-i Ahl-i Kitab*, which dealt with the social contact between Muslims, Christians and Jews, and in a commentary to the *Bible*, where he tried to establish that both religions derived from the same source and that their similitude would be quickly recognised by whoever studied and compared them. At the same time, Ahmad Khan tried to make Muslims see that modern Western education would only be beneficial to the community, and also tried to synthesise it with Islamic religious thought, defending that in Islam there was nothing that opposed the study of science and that there was nothing to be afraid of from its impact.

Arguing that the *Qur'an* should be interpreted according to each time and its conditions, Sayyid Ahmad Khan defended that the *Hadith* (Traditions of the Prophet Muhammad) did not furnish an adequate basis for understanding Islam, and that religion had suffered many changes in the course of time, especially with the additions and mixings of the specialists' opinions. So, it was necessary to extract all the 'exotic' ideas and put them in their respective perspectives. Ahmad Khan conceived a new educational system, in which the responsibility to educate future generations would be on the Muslim community itself and in which the intellectuals would receive education in Islam and in Western sciences,

becoming Aligarh's main educational basis, with future impacts on the Indian Muslim society in the modernist trend.

Ahmad Khan created two schools in the cities of Muradabad and Ghazipur, having established in the first one, in 1864, the Scientific Society, which was moved in 1867 to Aligarh. The objectives of the Society were to translate works on Arts and Sciences from English or other European languages; to find and publish rare and valuable oriental works that did not have a religious character; to publish the weekly *Aligarh Institute Gazette*; and to offer lectures on scientific subjects or others that were considered useful. The main objective for Aligarh was to become the source of a new leadership for Indian Muslims, responding to the new conditions in the world and based on new kinds of knowledge, claiming this new knowledge for Islam and protecting the faith and identity of their English-educated sons in the face of competing sorts of belief and allegiance (LELYVELD 1982, p. 101; PETERS; IQBAL; HAQ 2002; REETZ 1988).

After his visit to England in 1869-70, where he was also able to visit Oxford and Cambridge Universities and some colleges, like Eton and Harrow, which would serve as models for the 'Muhammadan Anglo-Oriental College' (LELYVELD 1982, p. 87), Ahmad Khan was back in India in October 1870 with a new orientation for his ideas and efforts, dedicating himself to the social and intellectual regeneration of Indian Muslims. For him, Islam's demonization and the distortion of its history in the West were directly responsible for the political adversity to Indian Muslims, and a more objective approach to the past would make the West end its strong aversion to Islam and its followers, also ensuring that even the Muslims rediscovered their own identity and ideals. History would be an instrument in the Muslim renaissance and this attitude influenced many like Shibli Nu'mani (1857-1914), Zaka' Allah (1832-1911) and Maulawi Mehdi 'Ali, known as Muhsin al-Mulk (1837-1907), among others. Ahmad Khan was in the judicial service until his retirement in 1876, moment from which he established himself at Aligarh and where the 'Muhammadan Anglo-Oriental College' was created in 1875, and becoming, in 1920, the Aligarh Muslim University. In 1886, he established 'The Muhammadan Educational Conference', which was held annually in many Indian cities, and the magazine *Tahdhîb al-Akhlâq (Refinement of Morals: Mohammedan Social Reformer)* was published with the aim of educating and civilising Indian Muslims, with Ahmad Khan being its principal contributor until the end of the periodical in 1893. The essays written by him examined the foundations of Muslim society, as well as its institutions, in the light of reason and religious sanction. The *Tahdhîb* attracted an audience that shared with Sayyid Ahmad the objectives of reform. While on one hand he tried to contain the forces of scepticism and irreligion liberated by Western influences, on the other he strongly fought the opposition to Western education.

Although he had no expertise in Western sciences or Islamic ones, especially in the study of the *Qur'an* or the *Hadith* (something which earned him some criticism from some '*ulama*'),⁶ Ahmad Khan tried to demythologize the *Qur'an*

⁶ '*Ulama* is the plural of '*alim* and refers to the educated class of Muslim scholars engaged in the several

and its teachings. His interpretation of some fundamental aspects of Islamic teachings which could not be demonstrated by modern scientific methods found a strong resistance in some more traditionalist sectors. Yet, in spite of that, he earned a widening popularity in the elite and, in the early 1880s, he became a very important figure in the Muslim community. Ahmad Khan wanted to reinterpret Islam, defending a modern *'ilm al-Kalam* (literally, 'science of discourse') with the aim of showing that 'the Work of God (Nature and its laws) was according to the Word of God (the *Qur'an*)', something that earned him the epithet of *Naturi*, i.e., *rationalist*. For that reinterpretation, Ahmad Khan elaborated a *tafsir* ('exegesis') that was published at the same time as it was being written. The work started in 1879 and was completed with the author's death in 1898. This *tafsir* found strong resistance not only from the *'ulama* but also from some of his friends and admirers, like Nawab Muhsin al-Mulk, who were uncomfortable with the radical interpretations of some of the *Qur'an's* verses. In response, Ahmad Khan wrote a little treatise with the aim of explaining the principles of his *tafsir*, which was published in 1892 with the title *Tahrîr fî'l-asûl al-tafsîr*, where he declared that Nature was the 'Work of God' and that the *Qur'an* was the 'Word of God', and no contradiction could exist between them (VOLL 1994, p. 112), meaning that if some verse, or its interpretation, was in contradiction with Nature, a new interpretation had to be found.

Qur'an and Shari'a in Chiragh 'Ali

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Sayyid Ahmad Khan's ideas had a deep impact on Chiragh 'Ali (1844-1895), who was of Kashmiri background and who grew up in North India. After his father's death, at a young age, Chiragh 'Ali's family responsibilities, along with the turbulent events of the 1857 Uprising, prevented him from pursuing formal higher education. However, he was able to find work with the colonial regime in various revenue and judicial positions. In 1877, with the recommendation of Sir Sayyid Ahmad Khan, Chiragh 'Ali entered the administration of the *nizam* ('ruler') of Hyderabad, where he rose to the position of finance secretary (WAHIDUR-RAHMAN 1982, p. 57-70).

His writings often refuted missionary and Orientalist criticisms of Islam as being hostile to reason and incapable of reform. He argued rather that the Islamic legal system and schools were human institutions capable of modification. Chiragh 'Ali was of the opinion that while the *Qur'an* taught religious doctrine and rules for morality, it did not support a detailed code of immutable civil law or dictate a specific political system. Besides becoming Aligarh movement's most outspoken critic of traditional Islamic scholarship and legal stagnation, Chiragh 'Ali also explored the confusion that some Western writers, and even some Muslims, made, as they either confounded the *Qur'an*, which he called the 'Mohammadan⁷ Revealed Law', with the *Fiqh* or *Shari'a*, which he referred to as

fields of Islamic studies and Polymath. Literally, *'alim* means 'he who knows' and some Muslims use the term *'ulama* to describe only the body of scholars who have completed several years of training and study of Islamic disciplines, while others also include those with lower knowledge.

⁷ An archaic and Western terminology for Islam and Muslims.

the 'Mohammadan Common' or 'Civil Law', or thought that the *Qur'an* contained the entire code of Islam, or that the 'Mohammadan Law', invariably taken for the 'Mohammadan Common Law', was infallible and unalterable.

In his English-language writings, such as *The proposed political, legal, and social reforms in the Ottoman Empire and other Mohammadan States*, published in 1883, and in his Urdu articles, many published in Sir Sayyid Ahmad Khan's journal, *Tahdhîb al-Akhlâq (Refinement of Morals: Mohammedan Social Reformer)*, Chiragh 'Ali espoused a variety of modernist positions, and, following a similar approach to Sayyid Ahmad Khan's, *i.e.*, rationalizing religious dogma and examining the traditional sources of the Islamic law and methods to overcome the rigidity of the traditional theologians, Chiragh 'Ali rejected all classical sources of jurisprudence except the *Qur'an*, constructing thus a new basis for the law. 'There are', wrote Chiragh 'Ali,

certain points in which the Mohammadan Common Law [*i.e.*, the *Shari'a*] is irreconcilable with the modern needs of Islam... and requires modifications. The several chapters of the Common Law, as those on political Institutes, Slavery, Concubinage, Marriage, Divorce, and the Disabilities of non-Moslem fellow-subjects are to be remodelled and re-written in accordance with the strict interpretations of the Quran (ALI 1883, p. XXVII).

As has been said *supra*, this modernist *exposé* was developed in response to critics of Islam, one of whom was Reverend Malcolm MacColl (1831-1907), a British clergyman and publicist, and a persistent campaigner for the Christian nationalities under Ottoman rule, and a lifelong friend of Gladstone (1809-1898), with whom he developed a political alliance, in opposition to Benjamin Disraeli (1804-1881), who was pro-Ottoman (like Queen Victoria herself).

MacColl began to publish articles in the early 1870s, writing with increasing proficiency. His earliest writings were almost entirely on ecclesiastical and theological matters. He also maintained contact with continental Roman Catholic dissidents such as the Croatian Bishop Josip Juraj Strossmayer (1815-1905), and Dr. Ignaz von Döllinger (1799-1890) in Munich, acting as a discreet intermediary between them and Gladstone, leader of the Liberal Party. Both Strossmayer and Döllinger were strongly interested in the 'Eastern Question' and the ending of Turkish rule in the Balkans. This, as well as similar currents of opinion in the Liberal Party, may have been responsible for MacColl's own interest in combating Turkish political power during the last three decades of his life. From 1876 onwards, MacColl was an active defender of the Christian inhabitants of the Ottoman Empire (which was equated with 'Islam'), writing a series of violent attacks on Turkey and its friends in Britain in letters to newspapers, articles in reviews, and publishing several books. In his private letters to Gladstone, after the Bulgarian atrocities of 1876, MacColl urged the Liberal leader to denounce the Ottomans and is perhaps partly responsible for the powerful speeches Gladstone made on the issue in the final months of 1876 and early 1877. MacColl published two major works on this issue himself: *The*

Eastern Question: Its Facts and Fallacies appeared in the spring of 1877 and ran through five editions; and *Three Years of the Eastern Question* followed, in the early autumn of 1878, immediately after the Congress of Berlin had ended.

In the first years of the 20th century, MacColl was an active opponent of Muslim spokesmen such as Sayyid Amir 'Ali and the Turkish writer Halil Halid, sometimes admonishing them on doctrinal points of their own religion, arguing for instance that the Sultan of Turkey was not the Caliph of all Muslims, and arguing that reforms in Islam, *i.e.*, the Ottoman Empire, were not possible because Islamic states were branches of a cosmopolitan theocracy bounded together by a common code of essentially and eternally unchangeable civil and religious rules (RUSSELL 1914).

Chiragh 'Ali rejected MacColl's argument by making a distinction between the 'Muhammadan Revealed Law' of the *Qur'an* and the 'Muhammadan Common Law' that was developed in the course of Muslim history. Islamic jurisprudence, he argued, was compiled at a very late period and, as such, could not be considered essentially and eternally unchangeable. This distinction between the revealed law and the common law of Islam, which will be seen with more detail *infra*, not only enabled Chiragh 'Ali to refute MacColl's claim on the rigidity of Islam, but also set the theological basis for his reinterpretation of the *Qur'an* in terms of the standards of modernity.

For Chiragh 'Ali

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the fact that Muhammad did not compile a law, civil or canonical, for the conduct of the believers, nor did he enjoin them to do so, shows that he left to the believers in general to frame any code, civil or canon law, and to found systems which would harmonize with the times, and suit the political and social changes going on around them (ALI 1883, p. 11).

For him, this new basis of Muslim law was rational, dynamic, progressive, and in tune with the standards of the modern civilised world. In terms of such standards, Chiragh 'Ali addressed the Orientalists' and the missionaries' criticisms of Islam on the issues of polygamy, religious intolerance, slavery, concubinage, and *jihad*. On this last issue, he would also publish, in 1885, his book *A Critical Exposition of the Popular "Jihad," Showing that All the Wars of Mohammad Were Defensive; and that Aggressive War, or Compulsory Conversion, is not Allowed in the Koran* (ALI 1885).

Political, legal, and social reforms

Chiragh 'Ali dedicated his work *The proposed political, legal, and social reforms in the Ottoman Empire and other Mohammadan States* to the Ottoman Sultan Abdul Hamid II (1842-1918) and was originally published in 1883, seven years after the first Ottoman Constitution and five years after its suspension in 1878. This work is divided in three parts: 'Introduction'; 'Legal and Political Reforms'; and, finally, 'Social Reforms', which deals with questions like 'Position of Women' (p. 112-127), 'Polygamy' (p. 128-129), 'Divorce' (p. 130-144), 'Slavery' (145-174) and 'Concubinage' (175-183). In the 'Introduction' (p. I-XI),

the author starts by explaining that his book had been written to respond to Reverend Malcolm MacColl and his article "Are reforms possible under mussulman rule?", published in the *Contemporary Review* of August 1881. It was also being published for the information of those European and Anglo-Indian writers who were suffering under the 'delusion' that Islam was incapable of any political, legal or social reforms.

Chiragh 'Ali expresses his surprise towards the ill-information of English writers on a topic of vital interest to England, for "[t]he British Empire is the greatest Mohammadan Power in the world, *i.e.*, the Queen of England, as Empress of India, rules over more Mohammadans than any sovereign, not excepting His Imperial Majesty the Sultan of Turkey", and argues that

the ideas that Islam is essentially rigid and inaccessible to change, that its laws, religious, political and social, are based on a set of specific precepts which can neither be added to, nor taken from, nor modified to suit to altered circumstances; that its political system is theocratic, and that in short the Islamitic code of law is unalterable and unchangeable, have taken a firm hold of the European mind, which is never at any trouble to be enlightened on the subject. The writers of Europe do not deeply search the foundations of Islam, in consequence of which their knowledge is not only superficial in the highest degree, but is often based on unreliable sources (ALI 1883, p. I-II).

Chiragh 'Ali defends that Islam is capable of moral and social progress, and tries to show, with this book, that the 'Mohammadanism' taught by Prophet Muhammad possessed sufficient elasticity to enable it to adapt itself to the social and political revolutions going on around it, making a distinction between the 'Mohammadan Common Law', or *Shari'a*, and the *Qur'an*. While the first one was by no means unchangeable or unalterable, only the *Qur'an* was the 'Law of Mohammad', or Islam. According to Chiragh 'Ali, Muslim Law was Republican in character and the 'Mohammadan States' were not theocratic in their system of government: being based on the principles of democracy, 'Mohammadan Law' was on that account a great check on Muslim tyrants.

Using history, Chiragh 'Ali considers that the first caliphs were republican in all their features (comparing them to the Dictators of the Ancient Republic of Rome), with each successor chosen among the people by common consent, and, contrary to what MacColl had written in the *Contemporary Review*, in an article published in November 1876, the government of Turkey did not and could not claim or profess to be theocratic. To support his assertion, Chiragh 'Ali quotes Sir Henry Elliot, the British Ambassador at Constantinople, who had written that there was a concern in proving that the government of the Ottoman Empire was '*properly democratic*' (emphasis in the original; ALI 1883, p. III).

Chiragh 'Ali, then, elaborates about the several schools of 'Mohammadan jurisprudence' (*madhabs*), or 'churches' as he also calls them, which were developed in accordance with the social and political changes going on around the Muslim world, with a view of adapting the law still further to the progressive needs and altered circumstances of the Muslims. However, not one

of those schools was final and 'they were merely halting stages in the march of Mohammadan legislation'. As throughout history, changing conditions required a change in the laws, the change in modern circumstances required a change in the law. For him, legislation was an experimental and inductive science, not logical and deductive. "The differences of climate, character, or history must be observed; the wants and wishes of men, their social and political circumstances must be taken into consideration, as it was done in the various stages of the first days of the growing Moslem Empire", as had done the four founders of the *madhabs* (Hanafi, Maliki, Shafi'i, and Hanbali) and whose principles could not be binding either on the Muslims of India or Turkey, because they were local in their specific applications (ALI 1883, p. IV-V).

Then, Chiragh 'Ali refutes the opinion of Reverend Edward Sell, Fellow of the University of Madras, who had written in 1880, in his book *The Faith of Islam*, that the orthodox belief was that since the time of the four Imams, there had been no *Mujtahid*⁸ who could do as they did, and if circumstances should arise which absolutely required some decision to be arrived at, it must be given in full accordance with the *madhab* to which the person framing the decision belonged – a situation that prevented all change, and, by excluding innovation, kept Islam stationary.

For Chiragh 'Ali, changes were not prevented and there was no legal or religious authority for such an orthodox belief, 'or rather misbelieve', nor could it be binding on Muslims in general:

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[i]n the first place the founders of the four schools of jurisprudence never claimed any authority for their system or legal decisions, as being final. [...] They were very far from imposing their analogical deductions or private judgments on their contemporaries, much less of making their system binding on the future generation of the wide-spreading Moslem Empire. In the second place none of the Mujtahids or Mohaddises would accord such a high position to any of the four Imams or doctors of jurisprudence.

So, the *Mokallids*, those who followed blindly any of the four doctors, were wrong, and the characteristics of each of the four orthodox schools showed that they were never intended to be either divine or finite (ALI 1883, p. VIII). Every system was progressive, incomplete, changeable and undergoing alterations and improvements; and, consequently, the legislation of the 'Mohammadan Common Law', *i.e.*, the *Shari'a*, was changeable and progressive (ALI 1883, p. XII-XIII).

Sources of Law

According to Chiragh 'Ali, the sources for that Law, civil and canonical, were three: 1) the *Qur'an*; 2) the traditions from the Prophet and his Companions (*Sunna* and *Hadith*); and 3) the unanimous consent (*ijma*) of the learned Muslims on a point of the civil or canon law not to be found in the two preceding sources.

⁸ A *mujtahid* ('diligent') is an individual who is qualified to exercise *Ijtihad* ('independent reasoning') in the evaluation of Islamic law.

He also adds a fourth one, *Qiyas*, analogy of the process of reasoning by which a rule of law was established from any of the three elements.

Explaining with more detail each one of them, Chiragh 'Ali starts by saying that the *Qur'an*, the 'Mohammadan Revealed Law', did not profess to teach a social and political law, nor to give particular and detailed instructions in the Civil Law or to lay down general principles of jurisprudence. The more important civil and political institutions of the 'Mohammadan Common Law' based on the *Qur'an* were bare inferences and deductions from a single word or an isolated sentence. In short, the *Qur'an* was not a civil or political code, nor did it interfere in political questions or lay down specific rules of conduct in the Civil Law. What it taught was a revelation of certain doctrines of religion and certain general rules of morality. The Muslims had applied its precepts to the institutions of their daily life as the Christians had done with the *Bible*. And as, in Christendom, Theology had been separated from Morals and Politics recently - late 17th century, middle of the 18th -, the 'enlightened Mohammadans' of Turkey and India were also trying to do the same in that century, *i.e.*, the 19th, something that would not affect their religion (ALI 1883, p. XIV-XVIII).

In what refers to the *Sunna* and *Hadith*, there were many traditions from the Prophet, his Companions and successors, on the various subjects of the social, political, civil, and criminal law incorporated in the Muslim law-books, and at a certain point

the vast flood of traditions soon formed a chaotic sea. Truth and error, fact and fable, mingled together in an undistinguishable confusion. Every religious, social, and political system was defended, when necessary, to please a Khalif [Caliph] or an Ameer [Amir, *i.e.*, Prince] to serve his purpose, by an appeal to some oral traditions. [...] It was too late when the loose and fabricated traditions had been indiscriminately mixed up with genuine traditions, that the private and individual zeal began to sift the mass of cumbrous traditions. The six standard collections of traditions were compiled in the third century of the Mohammadan era, but the sifting was not based on any critical, historical, or rational principles. The mass of the existing traditions were made to pass a pseudo-critical ordeal. It was not the subject matter of the tradition, nor its internal and historical evidence which tested the genuineness of a tradition, but the unimpeachable character of its narrators and their unbroken links up to the time of the Prophet or his Companions, with two or three other minor observations and technicalities

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and, contrary to what some European writers defended, the Traditions were not generally binding on the conscience. The fact that Prophet Muhammad never enjoined to collect traditions and the fact that they were not based on sure and positive grounds showed to Chiragh 'Ali that they were not unchangeable and immobile (ALI 1883, p. XVIII-XXI).

Developing the concept of *Ijma*, 'the unanimous consent of all the learned men of the whole Mohammadan world at a certain time on a certain religious precept or practice for which there is no provision' in the *Qur'an* or *Sunna*, Chiragh 'Ali shows how throughout History there were different and diverging opinions on it and how it was considered not authoritative (ALI 1883, p. XXI-

XXV). Finally, Chiragh 'Ali explores the concept of *Qiyas*, which was considered by Reverend Sell, in his book, as the fourth foundation of Islam. Refuting that, Chiragh 'Ali says that, technically, *Qiyas* means analogical reasoning based on the *Qur'an*, traditions, or *Ijma*, and its authority as a source of law had already been denounced by many throughout history. Also, he is of the opinion that the several codes of Muslim jurisprudence were well suited to the then existing state of life in each stage of its development but that there were certain points in which the 'Mohammadan Common Law' was irreconcilable with the modern needs of Islam, whether in Turkey or India, and required modifications. For Chiragh 'Ali, the several aspects of that Law, like those on political Institutes, Slavery, Concubinage, Marriage, Divorce, and the Disabilities of non-Muslim fellow-subjects were to be remodelled and re-written according to the strict interpretations of the *Qur'an*, something that he attempts to show in the following pages of his book (ALI 1883, p. XXV-XXVII).

Chiragh 'Ali was of the opinion that legal, political and social equality on a much more liberal scale had to be granted in Turkey, in theory as well as in practice. On the other hand, conformity, in certain points, with foreign laws must be allowed to Muslims living under the Christian rule, either in Russia, India or Algiers. Political and social equality must be freely and practically granted to the natives of British India. Political inequality, race distinctions and social contempt evinced by Englishmen in India towards their fellow-subjects, the Natives, was very degrading and discouraging (ALI 1883, p. XXVII-XXVIII).

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All the reforms could be made by the Sultan of Turkey, because besides being competent to bring about any reforms on the authority of the *Qur'an*, and being a successor of the successors of the Prophet and the Amir ul-Muminin [The Prince of the Faithful], he was the only legal authority on matters of innovation. Contrary to what Colonel/Major Robert Durie Osborn defended, Chiragh 'Ali disagreed with the idea that a religious revolution was needed before a political reform in the 'Muhammadan States' could take place, and contrary to what Stanley Lane Poole defended, the author did not consider imperative to cut the social system from religion because Islam, as a religion, was quite apart from inculcating a social system (ALI 1883, p. XXVIII-XXXIV).

According to Chiragh 'Ali, the political and social reforms that he explained in the first and second parts of the book were neither casuistical deductions, nor fortuitous interpretations, nor analogical constructions of the *Qur'an*. On the contrary, they were the plain teachings, self-indicating evident meanings of it. For him, the *Qur'an* or the teachings of the Prophet were neither barriers to spiritual development or free-thinking on the part of Muslims, nor an obstacle to innovation in any sphere of life, whether political, social, intellectual, or moral, and all efforts at spiritual and social development were encouraged as meritorious and hinted at in several verses of the *Qur'an* (ALI 1883, p. XXXIV-XXXVI).

Although he considered the Sultan of Turkey as the successor of the successors of the Prophet and the Amir ul-Muminin, and the only legal authority on matters of innovation for that reason, Chiragh 'Ali was of the opinion that 'Church and State' in Islam were not combined together, as it was shown by

an episode in which the Prophet would have said that in matters of religion he should be obeyed, but on other matters he was only human; and the Arab Proverb 'State and Religion are twins' was a mere saying of the common people, and not a Muslim religious maxim, being incorrect to suppose that the acts and sayings of the Prophet covered all law, whether political, civil, social, or moral, and that, in fact, free-thinking was sanctioned by the Prophet.

This example and the above, when he defends the 'Republican character of Islam', *i.e.*, any form of government under which the laws may be said to foster the common good, show that Chiragh 'Ali made an effort to use the language of European readers and European political concepts, so that he could be understood. With the equation *State equals Politics* and *Church equals Religion*, and with secularism and *laïcité* as main ideological features in the late 19th century in Western Europe, with their *separation of State and Church, Politics and Religion*, Chiragh 'Ali tries to explain to his readers that, in Islam, *Politics and Religion* are separated. Although Islam does not have a *Church*, which is also a political institution, that equation would be maintained until today, as if the *State* were the only *locus* for *Politics* and as if the *Church* were the only *locus* for *Religion*.

Chiragh 'Ali concludes the 'Introduction' to his book stating that tradition secured the Muslims with enlightened progress and removed the fetters of the past, encouraging them to base all legislation on the living needs of the present, and not on the fossilized ideas of the past (ALI 1883, p. XXXVII-XL).

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The possibility of reform in Islam

Refuting the assertions of Malcolm MacColl, who had said that the Muslim states were only branches of a cosmopolitan theocracy, all bound by one common code of civil and religious rules and dogmas that were essentially and eternally unchangeable (what had been decreed by the Prophet twelve centuries earlier had to be applied forever in the Muslim world), for Chiragh 'Ali legal and political reforms were possible in Islam.

According to him, the Muslim states were not usually considered theocratic in their system of government and, in the earlier times of Islam, they were republican, only altered when the Ummayyads changed them into monarchy and despotism [between 661 and 750 in Damascus]. The fact that two Muslim kings professed the same religion did not prevent them from having political differences and even hostilities, as Indian history showed. In that republican period, or even with the first Ummayyads, there was not any common code or law book for the guidance of the government, or even a canon or ecclesiastical law book, except the 'Mohammadan Revealed Law' of the *Qur'an*. After the overthrow of the Ummayyads, and the establishment of the Abbassid dynasty (from 750 to 1258 in Baghdad), a need was felt for a common code of law, partly required for the guidance of government, and the security of person and property, as well as to coincide with the 'wishes of the despots'. However, there was not a common civil or canonical code, because different juridical schools sprang up, which recollected and interpreted the different traditions (ALI 1883, p. 3-8).

Exploring further the confusion made by some writers between the *Qur'an*, which Chiragh 'Ali calls the 'Mohammadan Revealed Law', and *Fiqh* or *Shari'a*, what he refers to as the 'Mohammadan Common' or 'Civil Law', for him the 'Mohammadan Law' books, the fundamental codes of Islam, took very little or nothing from the *Qur'an*, and all the 'Mohammadan' jurists, casuists, *muftis*, and *mujtahids*, had by a tacit consent removed the law points from the text of the sacred book to the jurisdiction of the canon or civil law, whereas Muslims relied principally on the later lego-religious books instead of the *Qur'an*. To illustrate his thesis, Chiragh 'Ali quotes George Campbell, Edward Sell, W.W. Hunter and, especially, Cyrus Hamlin, an American missionary residing in Turkey, who, in the opinion of Chiragh 'Ali, was entitled to be more trustworthy because of his long stay and deep acquaintance with the 'Mohammadan' world. For Cyrus Hamlin, 'Tradition', *i.e.*, *Shari'a*, more than the *Qur'an*, had formed both the law and religion for Muslims. For Chiragh 'Ali, Islam was capable of progress and possessed sufficient elasticity to enable it to adapt itself to the social and political changes going on around it. The Islam, 'the pure Islam' taught by the Prophet in the *Qur'an*, and not Islam as taught by the 'Mohammadan Common Law', was itself a progress and a change for the better. It had the vital principles of rapid development, of progress, of rationalism, and of adaptability to new circumstances. What MacColl called the inviolable and absolutely unchangeable law of Islam was, for Chiragh 'Ali, the 'Mohammadan Common Law', which could in no way be considered infallible, consisting of general or particular customs, and certain and peculiar or ecclesiastical laws, while the *Qur'an* remained the only infallible law (ALI 1883, p. 8-10).

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Contrary to what MacColl had written, the institutions of a Muslim state and of the 'Mohammadan Common Law', the *Shari'a*, were not necessarily built upon the *Qur'an*. Very few points of the civil and canon law of the 'Mohammadan Common Law' were founded upon the *Qur'an*, while all other points of civil or ecclesiastical law were based on general and particular Arab customs. Some of them were reformed and improved, while others were simply put down as they were at the time, to be generally practised, and to be a necessary and inescapable part of the Arab institutions. For Chiragh 'Ali, had the Prophet thought it incumbent on him to frame a civil and canon law, other than the Revealed one, he would have done so. The fact that Muhammad neither compiled a law, civil or canonical, for the conduct of the believers, nor enjoin them to do so, showed that he had left for them to frame any code, civil or canon law, and to found systems which would harmonise with the times and suit the political and social changes going on around them (ALI 1883, p. 10-11).

Conclusion

Ideological debates and religious disputes in the 19th century resulted in the rise of several important issues in the wider Islamic world, such as the empirical versus the Islamic sciences, new forms of law versus the *Shari'a*, or Constitutionalism versus the Islamic conception of sovereignty. In their re-examination of Islamic worldviews, Islamic modernists pointed to the

methodological and conceptual inadequacy of Islamic orthodoxy. In India, the active presence of the followers of the Enlightenment, the Westernizers, and the Evangelicals resulted in the rise of a pluralistic discursive field, where modernist Muslim scholars faced a multiplicity of issues (MOADDEL 2001).

As it was seen, Chiragh 'Ali participated in those ideological debates and religious disputes. Influenced by the thought of Sayyid Ahmad Khan and the Aligarh movement, Chiragh 'Ali used modern education and science, which were developing at great speed on the second half of the 19th century, to address many issues, such as the rational and historical basis of law. At the same time, he pointed to the methodological and conceptual inadequacy of Islamic orthodoxy, an inadequacy which, in India, was constantly raised by the presence of the followers of the Enlightenment, the Westernizers, and the Evangelicals, each with their own aims.

Although Sayyid Ahmad Khan had always defended a political loyalty to the British and tried to protect the Indian Muslim community from the developments that were taking place in the Ottoman Empire, especially the political implications derived from the claims of Sultan Abdul Hamid II to the Caliphate, many Indian intellectuals participated on those debates, mainly to respond to the accusations made by some Orientalists and missionaries that Islam, frequently used to designate the Ottoman Empire, was immutable and theocratic. In this paper, based on Chiragh 'Ali's book published in 1883, which was written to address these and other issues, particular attention was given to his modernist and historiographical conception and approach of the *Qur'an* and *Shari'a*, which led him to conclude that there was nothing in Islam that could not be changed and, if it was true that Muslims in general had much fallen from the precepts of their Prophet, it was also true that Muslims were susceptible to a reformation in their social and political codes by adapting them to the changing environment, pointing to the fact that the interpretations of the *Qur'an* and *Shari'a* were something that changed with time. Using history and its tools as a modern science, and, at the same time, trying to retort to the Orientalists, Chiragh 'Ali also sought to contextualise the *Qur'an*, the *Hadith* and the rigidity of some theologians, from the past and from his own times, who defended their literalism as binding on every Muslim, no matter the place or time.

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