Declaring Ramadan: Processes Before Positions

The blessed month of Ramadan is almost upon us. It is a month of contemplation, fasting, prayer and tranquility. But just as the tranquility of Paradise is "surrounded by disliked matters,"[i] Ramadan can only be arrived at after crossing the uncomfortable terrain of moonsighting debates. In this run up to the sacred month, otherwise ordinary words can acquire great rhetorical force: "Local!" "Global!" "Sighting!" "Calculations" "Saudi!" "Pakistan!" Each word is backed up by arguments, documents and video clips. But must these exchanges be inevitable, and is there a way out of this impasse? I believe there is if we read our classical heritage with some care.

It is true that scholars of Islamic law have, since the earliest of times, disagreed over the correct method of declaring the beginning of the blessed month. There is a classical precedent for each of local sighting, global sighting, and even astronomical calculations. Thus, the disagreements that beset us at the beginning of the blessed month do have a basis in classical scholarship. However, there is something that we are missing as we churn out these classical positions. The missing point is *process*.

Classical works of Islamic law provide details on *how* the new moon is to be established. We are told by some classical jurists that, if the sky is clear, a large number of people are required to have seen the moon, as the sighting of only a few on a clear night is inherently suspicious since most onlookers did not see it.[ii] If the sky is overcast, then some jurists stipulated two witnesses for a valid sighting,[iii] treating it as akin to establishing a fact in court, whilst others accepted a single witness,[iv] treating it as a religious report. In either case, they required that the individuals be morally upright. The question here is, *who* is it that will determine whether a group sighting is large enough on a clear night? Who is it that will decide whether a witness is upright or not? Who will determine the number of witnesses required on an overcast night? Each of these points has its own conditions that need to be verified by one who is suitably trained and is vested with the authority to do so. This is the Muslim judge who has been placed in a position to declare the beginning of the month. Thus, the entry of Ramadan is established through a judicial process.

Ramadan is not a private matter for individuals to declare. Private individuals are only to raise their possible sightings to the appropriate authority who will then consider whether to accept or reject the sighting, and will consider which conditions to consider to declare the beginning of the month. This is why books of Islamic law discuss the case where an individual is sure that he/she saw the new moon, but was unable to convince the judge of this; should such a person fast? The commonly stated answer is that such a person does fast. However, this only applies to the person in question; everyone else is to await the official judgement on the matter.[v]

This is why, in Muslim countries, one rarely finds households divided over when they start fasting or celebrate Eid. In these countries, there is typically a governmentally appointed council that is vested with the authority to declare the beginning of the

month. The man on the street need only turn on the radio or the television to know if the appointed council has declared the beginning of Ramadan. This is the *process* that works of sacred law attest to. The reason for this is clear. The communal purpose of Ramadan and Eid cannot be realised if a society is divided over when it starts and finishes the month. This *process* prevents that from happening.

So what should people do in a minority context such as Britain? The answer is clear. It is that the community must strive to appoint a representative council to declare the entry of the blessed month, which the community must then follow. This is not a new idea. There are many chapters of the law that attest to this. The Friday prayer is one example. Classical works of law imply that towns should, ideally, have only one Friday prayer service, so that the entire town comes together for a single congregation every week. This led to the question of who was to appoint the one imam to deliver the sermon and lead the town in prayer. If left to the people, each group and sect would vie endlessly to have its own group represented. The answer, at least according to scholars of the Hanafi legal school, was that only the ruler, or the one appointed by the ruler, could choose the imam of this congregation.[vi] The public had no authority to start their own Friday prayer. They could only choose to pray behind the appointed imam, or stay at home. In the minority context, scholars of the Hanafi school stated that where there is no Muslim ruler to make such a decision, the community itself must come together and appoint the imam.[vii] In this case, no one individual can choose to lead the Friday prayer, only the one appointed by the community. This is effectively what happens in Mosques all over Britain. Mosques represent communities; members from the community run these mosques as representatives of the community, and they determine who leads the Friday prayer. Shariah courts in Britain attempt to apply the same logic. Where there is no Muslim ruler to appoint judges to annul marriages in which women are abused, the Muslim community can come together to appoint a body to represent them in performing such a function. There is precedent to all of this in the works of Islamic law. The matter of Ramadan must be treated likewise.

Now, one might hear a voice stubbornly declare, “Okay, I’ll follow this appointed body as long as they follow local sightings!” Unfortunately, this is not how the process works. If the authority is vested in a judge, or a body acting as the judge, the prerogative is theirs to decide which method to use. The insistence of only observing the “correct” Ramadan is akin to insisting that only the “correct” Muslim enters one’s mosque; it is a thought process that is sectarian in nature and destructive in consequence. Unless the appointed judicial body totally violates and steps outside of what is considered acceptable opinion, it has to be followed. So where do we find this pool of acceptable opinion?

The world of Sunni Islam, the Muslim majority, ultimately settled on limiting the pool of acceptable opinion to the four established schools of law: the Hanafi, Shafi‘i, Maliki and Hanbali. This is not to say that great scholarship cannot exist outside of these schools, but rather, when it came to *process*, it was impossible to run a society

with its needs for clearly identifiable rules and procedures, if there was no clear way to limit and define acceptable legal opinion.[viii] And as these four schools had matured to such a degree that it became increasingly hard to be recognised as one trained in law outside of the domain of these four schools, with their clearly defined hierarchy of rules, and great tradition of legal literature to draw upon, it made sense to only accept them as representing the law of God in the society of man. This Sunni paradigm ran Muslim societies for centuries, and it is of great use to us. It relieves us of having to force our own *correct* answer onto others. It is enough for an answer to be *acceptable*, after which we must strive for the right *process* in order to establish the will of God on earth.

If we look at the large corpus of legal works authored under the aegis of these four schools of law, we will find that every method currently followed, in Britain or elsewhere, has a basis in sacred law. Relying on astronomical calculations, for example, is an opinion that a number of reputable scholars across legal schools have championed, with the strongest voices belonging to the Shafi'i school.[ix] Global sighting, meaning following a sighting from a faraway land, has been upheld as the strongest opinion of the Hanafi and Hanbali schools, and, according to some, the Maliki school.[x] Local sighting, meaning each locality following its own sightings, has been seen as the strongest opinion of the Shafi'i school, and, according to some, the Maliki school.[xi] In truth, if a person looks through the corpus of legal works, he/she will see that the methods that were deemed acceptable were vast. As long as the judicial council vested with the authority to declare Ramadan follows any of these, then it must be followed. It is that simple.

So what to make of the long articles defending local sighting as the *correct* way to declare Ramadan, or global sighting, or other methods? These should all be seen as academic papers. These would be presented to such a judicial body to advise of the best method to follow. Otherwise, they are of no practical consequence because an individual cannot declare their own month.

The issue of moonsighting illustrates the wider purpose of the central devotional acts of Islam that make up its five pillars. Each of these upholds not only the faith of individuals, but the very community of faith to which these individuals belong. The detailed rules of the ritual prayer, fasting and zakat provide much guidance and clarity on *how* a community of faith is to be formed, strengthened and spiritually nourished. If the community finds itself in discord and disarray, its members can only blame themselves for not having established these pillars as they were instructed.

Note: Most references below are to the Kuwaiti Fiqh Encylopaedia (*al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*) which is perhaps the best and most accessible comparative *fiqh* reference, contributed to by leading scholars across the Muslim world. Each entry in the encyclopaedia provides references to the primary legal sources from which it draws.

[i] "The Fire is surrounded by lusts; and the Garden is surrounded by disliked matters;" al-Bukhari, hadith no. 6487.
[ii] This is the insight of the Hanafi legal school: *al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*, c.v. "Khabar," vol. 19, p. 16. Some Maliki texts also indicate this: *al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*, c.v. "Ru'yat al-hilal," vol. 22, p. 25.
[iii] This is the strongest position of the Maliki school: *al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*, c.v. "Khabar," vol. 19, p. 17; and c.v. "Ru'yat al-hilal," vol. 22, p. 25.
[iv] This is the strongest position of the Shafi'i and Hanbali schools, who stipulate this whether the sky is overcast or clear, and of the Hanafi school, who only stipulate this if the sky is overcast: *al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*, c.v. "Khabar," vol. 19 pp. 16-17; and c.v. "Ru'yat al-hilal," vol. 22, pp. 25-7.
[v] This is the opinion of all four schools of law, who differ only on whether such a person must expiate for consciously violating the fast, or not. Some notable scholars of the early Muslim community, however, held that such a person is not obliged to fast at all. There is greater disagreement concerning someone who sees the new moon for the month of Shawwal (the day of 'Id al-Fitr) if the judge does not accept their testimony. Many scholars held that such a person does not fast; although, Malik and Ahmad b. Hanbal (founders of the Maliki and Hanbali legal schools) held that such a person must ignore their own sighting and fast. See *al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*, c.v. "Ihlal," vol. 7, pp. 150-1.
[vi] Al-Marghinani, *al-Hidayah*, ed. Talal Yusuf, 4 vols. (Beirut: Dar Ihya' al-Turath al-'Arabi, 2000), vol. 1, p. 82.
[vii] Al-Laknawi, *'Umdat al-ri'ayah 'ala Sharh al-Wiqayah*, ed. Salah Abu al-Hajj, 7 vols. (Beirut: Dar al-Kutub al-'Ilmiyyah, 2009), vol. 1, pp. 321-3; Ibn 'Abidin, *Radd al-muhtar 'ala al-Durr al-mukhtar*, (Cairo: 1885), vol. 1, pp. 540-1.
[viii] A good exploration of the social need for fixed rules as the reason for the dominance of the schools of law is Mohammad Fadel, "The Social Logic of Taqlīd and the Rise of the Mukhtaṣar," *Islamic Law and Society*, 3, (1996): pp. 193-233.
[ix] Scholars upholding this can be traced all the way back to the first Islamic century. The textual basis for this opinion is the hadith narrated by al-Bukhari, "When you see it [the new moon of Ramadan] then fast; and when you see it [the new moon of Shawwal], then break the fast. If it is hidden from you (*ghumma 'alaykum*) [i.e. if the sky is overcast] then estimate it (*fa-qdiru lahu*);" (al-Bukhari, hadith no. 1900). The last verb, *fa-qdiru*, can be validly understood to mean calculation. Of the scholars who held this, are Abu al-'Abbas b. Surayj (d. 306/918), one of the leading founders of the classical Shafi'i school, the Shafi'i scholar and renowned mystic Abu al-Qasim al-Qushayri (d. 465/1072), the leading Shafi'i judge Taqi al-Din al-Subki (d. 756/1355), the Shafi'i legal theorist al-Zarkashi (d. 794/1392), the renowned Maliki legal theorist al-Qarafi (d. 684/1285), and some Hanafi scholars. The late Shafi'i commentator al-Qalyubi (d. 1069/1659) held that all sighting-claims must be rejected if calculations show that a sighting was impossible, stating, "This is manifestly obvious. In such a case, a person may not fast. Opposing this is obstinacy and stubbornness." See *al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*, c.v. "Ru'yat al-hilal," vol. 22, pp. 31-4. The leading scholar of the late Shāfi'ī school Muhammad al-Ramli (d. 1004/1596) held that the expert astronomer was obliged to follow his own calculation as was the non-astronomer who believed him; this position has been used by some contemporary Shafi'i scholars to state that in the modern world, with its precise calculations, the strongest opinion of the Shafi'i school should be that everyone must follow calculations; see 'Umar b. al-Habib al-Husayni, *Fath al-'ali fi jam' al-khilaf bayna Ibn Hajar wa-Ibn al-Ramli*, ed. Shifa' Hitu (Jeddah: Dar al-Minhaj, 2010), pp. 819-22. See also the fatwa of the Hanafi scholar Dr Salah Abu al-Hajj (http://www.anwarcenter.com/fatwa/معنى-حديث-لا-تصوموا-حتى-تروا-الهلال-ول last accessed 9/5/2016) which states, after arguing against relying on calculations, "However, the position of [following] calculations is the position of a considerable group of jurists, so it is a respected disagreement in Islamic law, whereby, if a state were to adopt it, it is not rejected, because the judgement of a judge removes disagreement, and the adoption of a state is [as] the judgement of a judge."
[x] *Al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*, c.v. "Ru'yat al-hilal," vol. 22, pp. 36-8.
[xi] *Al-Mawsu'ah al-fiqhiyyah al-kuwaytiyyah*, c.v. "Ru'yat al-hilal," vol. 22, p. 37. The authors of the *Mawsu'ah* state that local sighting is only the strongest opinion of the Shafi'i school. However, many key Maliki texts also attest to the superiority of local sighting; see for example al-Dasuqi, *Hashiyat al-Dasuqi 'ala al-Sharh al-kabir*, 4 vols. (Beirut: Dar al-Fikr, n.d), vol. 1, p. 510.