

Keynote Address
IIIT Conference in Memory of Dr. Taha Jaber al-Alwani
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Bismillah Arrahman Arrahim,

Assalamu alaykum,

I am honored to give today a keynote address about a major contemporary Islamic scholar, leader, and good friend, Dr. Taha Jaber al-Alwani. Our American Muslim community has been blessed by the distinguished leadership of a select group of dedicated American Muslims, male and female, who are no longer with us. Among them, Dr. Taha was a towering figure. He was a prolific writer, and an outstanding thought leader with an admiring international following that I often encountered during my travels.

Dr. Taha was a scholar's scholar, and an Islamic visionary who understood both the true soul of Islam and the depth of the *ummah's* crisis. His command of the Arabic language was superb, and it gave him clear advantage in understanding, properly evaluating, and critiquing complex texts. At the same time, his writing style was crisp and accessible to the average reader.

Dr. Taha's major contributions are many. Among them is his rejection of the "sanctity" of traditional Islamic jurisprudence (as distinguished from divine *wahy* (revelation)), and his call for reevaluating it in light of modern needs. He was also instrumental in reviving the thought of various ancient scholars, such as the 14th century scholar al-Shatibi, and his theory of *maqasid al-shari'ah* (The Objectives of Islamic Law), which provided a solid interpretational foundation of the Qur'an. Furthermore, he wrote important treatises on *fiqh al-awlawiyyat* (jurisprudence of priorities) and *fiqh al-aqalliyyat* (jurisprudence suitable for Muslim minorities in the Diaspora). He topped all these intellectual accomplishments by engaging in *praxis*. That is, he implemented his religious and jurisprudential beliefs in his daily life. In the rest of this talk, I shall expand on the matters mentioned in this paragraph to give you a better understanding of how important Dr. Taha's contributions were to our community and the world.

In his book, MAQASID AL-SHARI'AH, Dr. Taha argued that Muslim scholars should have engaged more vigorously in critiquing their own tradition over the centuries, instead of leaving that task to others. For, they were more qualified to do so. He noted some of the barriers that hindered jurists from engaging in such critique. Among them was the cultural respect for elders, and the wish to preserve '*ijma'* (consensus), an important value in jurisprudence and Muslim communities. The former barrier was intertwined with the unfortunate social view that critiques constitute an *ad hominem* attack on the scholar and not merely a critique of his views. The second barrier was intertwined with the view that any critique was divisive to the *ummah*

and harmful to its unity. In critiquing these barriers, Dr. Taha resorted to the purest of traditions, that of the Prophet Muhammad (SAAW) who encouraged free *ijtihad*, a critical jurisprudential activity that, more often than not, leads to differing opinions. In fact, as we all know from the Prophetic tradition, a person who engages in *ijtihad* and reaches the wrong conclusion will be rewarded with a *hassanah* (reward) for having tried diligently to find the right answer. For in Islam, it is better to think and be wrong, than not to think at all. So, trying to preserve unity of the *ummah* by suppressing critiques of the tradition is not the Islamic way.

Negative attitudes towards the internal critique of the tradition led to intellectual stagnation in Islamic jurisprudence, and the resulting age of *taqlid* (imitation). It also discouraged freedom of expression. Had this freedom been respected, as it was during the days of the Prophet, difference of opinion would have been mainstreamed into society as normal. Furthermore, those with opposing views would not have had to resort to forming parties and sects. Dr. Taha correctly emphasized in his analysis that the proliferation of sects and parties was not the result of differing opinions. Rather it was the result of the demise of freedom of expression that permitted vigorous dialogue.

This last observation was quite insightful. We know that freedom of expression was prevalent in the days of the Prophet. Not only did he speak of *hassanahs* for those who engaged in jurisprudence as we noted earlier, but there is a whole *surah* in the Qur'an which recounts how the Prophet engaged in dialogue with a woman who disagreed with him (*al-Mujadilah*). Elsewhere in the Qur'an, we are told that the Prophet was sent to us to deliver glad tidings as well as warnings; but not to dominate us. In other words, he did not come to impose his beliefs upon us. He was just relaying the message; the rest was up to us. So, if the Prophet himself had no divine permission to dominate us or our beliefs, how could anyone else impose such dominion over us in the name of Islam and discourage, even punish, others who insist on exercising their freedom and expressing their own views?

This is the crux of the intellectual *mihna* (crisis) in Islam. We still have memories of the great imams Abu Hanifah, Malik, al-Shafi'i, Ibn Hanbal and Ja'far as-Sadiq, each of whom suffered a severe *mihna* caused by his beliefs. Dr. Taha adds the example of the great scholar Al-Razi who asked his students to bury him secretly at night so that his opponents would not dig him out and disfigure his corpse.

How did we go from the freedom of expression of early Islam to intolerance, even vengeance, and the harsh imposition of "official" uniform thought in later centuries? One answer, according to Dr. Taha, is the political system which capitalized on other barriers to *ijtihad* in order to develop a new jurisprudence that became subject to that system's interests, by jurists who were subject to its power. Many jurists who resisted worldly pressure ended up in jail, if

not worse. Dr. Taha was quite right. The political systems that flourished after the passing of the Prophet and the four rightly guided *khalifas* were deficient in two respects: democratic governance and conflict resolution. Freedom of expression does not flourish in a vacuum. It is organically linked to other freedoms, such as freedom of religion that Islam also guarantees. Indeed, these freedoms are part of the grand architecture of the Islamic worldview that rests fundamentally on the concept of *Tawhid* and the values that this One God propagated across the universe. Among these values is the fundamental equality and dignity of all human beings.

These values are best realized in a *shuratic* state based on *bay'ah* (an ancient form of election), with an independent judiciary answerable to God and not to a despotic ruler. So, it should come as no surprise that such a state is described in the Qur'an. Unfortunately, however, the *shuratic* state was not given the chance to blossom after the death of the Prophet. In modern terms, this state corresponded to what we call today a democracy. Many modern Muslims rejected this conclusion because according to them the democratic State represented the Will of the People, while an Islamic state represented the Will of God. However, this argument suffers from a real ontological and conceptual categorical mistake. For, when Muslims elect their leaders, the resulting state represents the Will of the People. However, to the extent that the people themselves freely choose to submit to God's Will, this makes the democratic state an Islamic state *par excellence*. For, its citizens would have exercised their "freedom to" twice: the freedom to choose a leader and the freedom to choose *taqwa* (piety)," without being subject to the coercion of their leaders.

In this regard, it is important to remember the signature call of Islam, "*Allahu Akbar*", which has many meanings. We note that "God is great" is not one of them. The correct translation is "God is greater." But He is greater than what, or whom? This is where different interpretations arise. A common one is the following: God is transcendent and there is none like Him. He is greater than the most powerful oppressor on earth. He drowned Pharaoh's armies in the blink of an eye, and could do the same to any oppressor on earth just as fast. The call "*Allahu Akbar*" reminds us that God's compassionate justice will always have the upper hand whether on this earth or in the afterlife. For all these reasons, this call is a liberating call to justice, freedom and human equality. It is an impetus to democratic governance based on *taqwa*, not authoritarian governance based on oppression.

As I mentioned earlier, the post *al-Khilafah al-Rashidah* era was deficient in two respects: democratic governance and conflict resolution. I have already refuted the fallacy in the argument that what we call today "democracy" is un-Islamic. As to conflict resolution, we have in the *sunnah* of the Prophet many valuable examples. In fact, the first such example happened when he was still quite young. History tells us that *al-Ka'bah* burnt down and was rebuilt before the advent of Islam. Makkan tribes then argued over who was going to put the blessed

black stone in its place in the *Ka'bah* structure. The conflict was heating up, so the youth Muhammad, who was known for his honesty, was chosen to resolve it. (At that time, he had not received the message.) He proposed that the tribes put the black stone in the midst of a robe, and have their chiefs carry the robe together to the *Ka'bah*. Once there, he lifted the black stone to its proper place and a serious tribal conflict was averted. Had Muslims studied this and other examples of conflict resolution by the Prophet carefully, and developed its jurisprudence adequately, the Muslim World would not be in its current state.

Unfortunately, it is clear from reviewing ancient history that many Muslim leaders were deficient in their conflict resolution skills, and that this deficiency is still with us. The blood bath around the Muslim World today is only a recent example. This is not to deny that some differences within the Muslim World across history involved pivotal doctrinal matters, but it is to argue that openness to conflict resolution could have avoided a blood bath in most cases. This is most notable in the historical battle of *Karbala'*. According to AL-AKHBAR AL-TIWAAL, by the historian al-Dinawary [9th Century], when faced with this conflict, al-Hussein, the grandson of the Prophet, attempted repeatedly to resolve it with the Umayyad generals to avoid bloodshed. He made several proposals, such as offering to leave to the borders where he would fight the enemy. Fearing al-Hussein's stature in the *ummah*, none of his proposals were accepted. The result of this failure to resolve the conflict peacefully has divided and devastated the *ummah* till this day. In other words, we are still in grave need of developing conflict resolution skills, and it is time to acquire them and heal the schism.

Incidentally, one Muslim sect that has actually taken conflict resolution very seriously is the Isma'ili sect, especially in Africa and Canada. The rest of us could learn from them. One more fact: it is for this reason that when we at KARAMAH teach Islamic law, we couple it with a module on conflict resolution.

Dr. Taha recognizes that there have been also external barriers to the blossoming of *ijtihad*. The dark age of colonialism made a critique of the tradition more difficult. For, it became imperative for scholars to defend the Islamic tradition against outside attacks that tried to obliterate it. He is right, and there is more. For example, the French colonialists in Algeria closed all *madrasas*, and with them the study of the Arabic language, thus creating an unbridgeable barrier between Muslims and their Qur'an and *hadith*. As a result, generations of Muslims learned about Islam from every other source except the Qur'an itself. Many lost that personal close link with the Qur'an that Dr. Taha speaks about. Ultimately, knowledge of Islamic law and values receded and was often replaced by culturally and politically motivated religious rules that are problematic.

With Islam under severe attack, it was very hard to engage in reformation, although some scholars like Muhammad Abduh and Rashid Ridha did. After colonialism, many parts of the

ummah lived through the stage of *quasi*-independence and foreign-imposed authoritarian rule, displacing all Qur'anic teachings to the contrary. Many jurists, even muftis, became employees of the state. Thus, religious authenticity and *taqwa* waned in the face of these adverse developments that combined to ultimately usher the new grand *fitnah* we live in today. It has turned Islamic values and symbols on their head, and left death and destruction in its wake, all in the name of Islam, our beautiful religion.

Today, we have armed extremist groups that violate every overarching Islamic principle, from that of *Tawhid* and *'Adalah* (Compassionate Justice) to *Rahmah* (Mercy) and the dignity of human life. They do this in the name of Islam. Some of our youth around the globe follow these pied pipers to their certain death because they love Islam and do not know any better about their religion. Often, our children learn Islam from the cultural perspective of their parents at home, the distortions of the neo-orientalists in school, and partially qualified imams at the mosque, not to mention the highly biased media. We, the educators, the jurists, and the social leaders have let them down. We did not do our job of teaching them about the truth and beauty of our religion. We did not give them the intellectual armor to protect them from enemies masquerading as friends. Today, we all pay the bloody price.

Another important critique provided by Dr. Taha about the decline of jurisprudential activity, and our knowledge of Islam, rests on the fact that for centuries jurists busied themselves with the *jiz'iyat* (particulars) of the religion, and forgot about the *kulliyat* (universals, overarching principles). As a result, new issues were examined from a limited partial perspective that may have been suitable for other times and places, but not our modern realities. This deterioration in juristic wisdom led to a neglect of the important role of *kulliyat* in understanding the Islamic worldview within which all laws, including *al-juz'iyat*, must be situated. It also made it easier later for Muslims and non-Muslims to engage in the equally academically reprehensible approach of proof texting in the attacks and counterattacks on Islam.

These are some of the deficiencies and maladies that Dr. Taha addressed in his writings, reflecting the urgent need for reformation. His reformation ushered a brilliant revival and recombination of the various methodologies devised by earlier scholars in order to develop jurisprudence suitable for our times, as well as for our place, the United States. In this effort, his and my intellectual paths converge.

Let me summarize Dr. Taha's approach: To understand Islamic law, we have to understand first the grand architecture of this world, and to know how to properly situate derivative principles, laws and particular rules within it. The core of all such architecture is the concept of *Tawhid* (the unicity of God). According to Dr. Taha, from this foundational principle emanates the two major principles, those of *Tazkiah* (self-purification) and *'Umran* (building civilizations). Both these principles presume two divine gifts, namely, our free will and *istikhlaf* (vicegerency) on

earth. These two gifts give us the ability to choose to live the virtuous life of *Tazkiah* and to choose to work diligently for *'Umran*.

Yet, such choices cannot be haphazard. They are based on the characteristics of this material world that God has created and in which He situated us. So, how do we know what is the right thing to choose? Besides *Fitra* (or human instinct), God gave us a sacred book that helps us navigate the moral and material challenges of this world. The Qur'an thus becomes a major reference point in our lives, on which we base our worldly, as well as our heavenly knowledge, reasoning, and decisions. This is a major point that Dr. Taha drives home repeatedly in his discussion of "*al-jam' bayn al-Qira'atayn*" (combining the two readings). This is a reference to reading (or more accurately, comprehending) the world, as well as the Qur'an. According to Dr. Taha, combining these two readings is critical to bringing about *Tazkiah* and *'Umran* on earth.

At this point, I cannot help but compare my approach to the divine grand architecture of this world with that of Dr. Taha. We both assume free will and the gift of *istikhlaf*. We also both start from *Tawhid*, but then Dr. Taha takes an activist approach stressing what we ought to do on earth, namely *Tazkiah* and *'Umran*. On the other hand, I go on to derive from *Tawhid* the principle of *al-Mizan* (scales or balance) that governs our universe. Indeed, God tells us repeatedly that He has created this universe according to precise calculations, and in due balance. This balance is reflected in human society in the principle of *'Adalah* (Compassionate Justice), and is the key to promoting harmony. But *'Adalah* does not happen haphazardly. It requires a detailed knowledge of a situation as well as a good understanding of Qur'anic guidance. By combining these two readings and choosing to promote *'Adalah*, we achieve at once both *Tazkiah* and *'Umran* on earth. So, Dr. Taha and I both start from the core principle of *Tawhid*, yet using different approaches we end up in the same place.

Turning back to Dr. Taha's work, we note his important work in the area of *maqasid al-shari'ah* (Objectives of *Shari'ah*). In this part of his work, he revives the tradition of judging acts and determining rules in light of their objectives. The objectives of *Shari'ah* promote our well-being on earth. However, utilizing this method of analysis risks sinking into error through subjective evaluations. For this reason, jurists developed *dhawabit* (criteria) that govern the use of this method. Among them are (1) determination of whether the matter under consideration indeed involves the desired objective in question, (2) examination of the priority of this objective, (4) assessing it in light of both its positive and negative consequences, and (4) combining considerations relating to the particular situation with those relating to overarching principles. These are only some of the safe-guards a jurist needs to observe in order to ensure that she is on the right track.

The last safe-guard is quite important for Dr. Taha. He notes that as Islamic thought declined, jurists became less knowledgeable about the grand architecture of Islamic principles, and

limited their work to refining the particulars they inherited. When faced with new problems, they again assessed those, not in light of the grand picture, but only with respect to these particulars they were familiar with. This led to impoverishment of the Islamic juristic tradition and a slew of erroneous and harmful results.

This critique gains special importance in light of another part of Dr. Taha's work, *Fiqh al-Aqaliyyat* (jurisprudence for Muslim minorities). Given his deep knowledge of Islamic jurisprudence, he could readily recognize some of the worst offenses of modern Muslim jurists who stuck to *fatwas* and rules of times past without looking properly into the situation at hand or the *maslaha* (interest) that the *Shari'ah* was supposed to preserve. He argued that new questions should be evaluated in light of the grand architecture of Islamic law and its objectives. Mere imitation of past jurists will not do. Here it is important to remember the classic Islamic juristic mantra that rules change with time and place.

There are many examples in Islamic history where this rule was applied. Yet jurists continue to be sanguine about imitating ancient scholars. It is hard to see how our world can still be guided by those who never had a phone, a car or a securities market. Lazy imitative jurisprudence is dangerous in a world that has changed so drastically since medieval times. It can backfire and produce harmful results. Furthermore, while circumstances have changed drastically in Muslim majority lands, the change in circumstances is even more drastic and more urgent for Muslim minorities in the West. An energetic and insightful jurisprudence is necessary that re-considers issues anew in light of grand principles and local circumstances.

As it turns out, God gave Dr. Taha the opportunity to put this theory into practice. In 1997, I turned to Dr. Taha for help in a major crisis engulfing the Muslim community. Our organization KARAMAH had invited the late Justice Scalia to address a select group from the community on the First Freedom of our Constitution, religious freedom. The event was held at the Supreme Court building, and some of the visitors took tours into the Supreme Court Room. The Supreme Court Room is adorned with a marble frieze wrapping around its four walls depicting major lawgivers throughout history, including the Prophet Muhammad. One Muslim organization raised the objection that such representation of the Prophet was a graven image prohibited in Islam. It demanded that it be sandblasted and removed. The discussion with Supreme Court officials was becoming quite heated when I found out about it.

It was my judgement that the representation of the Prophet was quite generic and as a *bas* relief did not amount to a graven image as defined by Muslim scholars. The organization also objected that the Prophet's representation reinforced a false stereotype of the religion by representing the Prophet with a sword in his hand. In fact, the Prophet was also holding a book, and the Supreme Court architecture has an important symbolism of which this organization was not aware. In all the Supreme Court depictions, the sword represented

worldly authority. In the Prophet's case, it represented his political leadership in *Madinah*. The book was a symbol of his religious status as a Prophet and a lawgiver.

I contacted both Dr. Taha and Seyyed Hussein Nasr about this the situation, and asked them to provide me with their opinions to clarify the true Islamic position on this issue. They both understood the situation immediately, and agreed that no Islamic law was violated by the frieze. The support of the late Dr. Chima of Chicago and Imam Warith Deen Muhammad was also instrumental in ending the crisis. Armed with two Islamic opinions and the support of all these extraordinary men, I was able to put the revolt down and end the crisis.

Dr. Taha did not stop there. He had given me a short version of his *fatwa* in time to avert the crisis. Now, he said, he had to develop the *fatwa* fully and present it to the Supreme Court. He wanted to make sure that the Supreme Court understands that Islamic opinions or *fatwas* are serious intellectual products based on a wealth of legal tradition and precise reasoning. About a year later, the *fatwa* of Dr. Taha was ready and we had it translated into English. We made an appointment and went together to the Supreme Court. Unfortunately, Chief Justice Rehnquist was not available, and we handed the *fatwa* to the officials to transmit it to him. In the opinion, he points out the cultural significance of the frieze representation and the vast difference between it and those of pre-Islamic days. He also looked to the intent of the representation, namely to honor the figures in the frieze. Furthermore, he looked into ancient tradition to articulate the prohibition of graven images carefully, and to illustrate that the frieze did not present similar concerns. In other words, he did exactly what he advocated both in *maqasid al-Shari'ah* and *fiqh al-aqalliyat*, to reach a wise conclusion that fit our time and place, and took into account higher Islamic principles as well as cultural variants. Incidentally, for those who are interested in this opinion, I published it in a special issue on Islamic jurisprudence, in volume XV of the Journal of Law and Religion, 2000-2001.

Having said all this about Dr. Taha, I think there is no need to tell you that he was gender blind. I never heard him make a sexist statement, or an offensive statement of any kind. When it came to jurisprudence we had great conversations. He was never patronizing, personally or intellectually. In fact he often sought my legal advice, and at one point made me his official advisor. He was critical of patriarchal men and sought to enlighten them. Most importantly, he left behind two accomplished daughters, Ruqayyah and Zainab, who are jurists in their own right.

Dr. Taha was a humble and pleasant person with a healthy sense of humor. We shared several lunches in his office, with our friend Saber, over kabob and rice. Life was much simpler then. In short, Dr. Taha was a class act, as a person and as a jurist. May God rest his soul in peace.