In spite of all the controversy concerning Shariah and its seeming impenetrability into Western societies, the true nature of Shariah is rarely discussed. Shariah, in fact, is a unique embodiment wherein sacred texts – the Qur'an and Sunnah – join with secular efforts – like reason (Aql) and traditional beliefs and customs (Urf). Although in technical terms it is only one part of Islam, both the masses in Islam and non-Muslims consider Shariah as the center of Islam. For example, all Muslim seminarians are very involved with Shariah; it is part of the generic knowledge that all Muslims acquire growing up; and it shapes main Islamic practices. However, Shariah reflects only one component of Islam – alongside theological doctrines and ethical virtues. It represents only one-thirteenth of the verses of the Quran. Many recent Muslim reformists and revolutionaries like al-Afghani in Egypt, Muhammad Iqbal in Pakistan, and Ayatollah Khomeini in Iran were critical of the traditional Muftis and called for updating Shariah law and reducing its spread.

**Terminology**

Shariah is an Arabic term rooted in “Sh-r-a” meaning the clear path which leads to a source of water. The Quran uses it for all paths especially religious paths (42:21; 7:163). It also acknowledges the various divine paths, namely Shariah, among faithful especially Abrahamic faiths; it is a divine plan to examine people how much they are striving in a race to spread all virtues (5:48). Generally and in broad usage, Shariah is equated with religion, not only Islam, which the Quran applied to that of Noah, Abraham, Moses, and Jesus (42:13); this is why Muslims usually use the phrases the “Shariah of Moses” and the “Shariah of Jesus.” Consequently, just the last form of Shariah was revealed to the Prophet Muhammad (45:18). In a technical and particular manner, Muslims reduce Shariah to religious laws, especially Islamic ones, so when they are talking about the practice or
domination of Shariah mostly they mean applying Islamic laws and rules.

When Muslims refers to the study of Shariah they use the term Fiqh. Fiqh is also an Arabic term meaning deep understanding. The Quran attributes this level of understanding to an accomplishment by the hearts (7:179; 6:69 & 98; 17:44 & 46; 63:3). At the first centuries of Islam, the term Fiqh used to be used for all aspects of Islamic life particularly calling Islamic doctrines as the Greater Understanding (al-Fiqh al-Akbar), but gradually it became restricted to Islamic regulations and jurisprudence. Therefore, nowadays Fiqh means a science which is attempting to conclude Islamic regulations of actions from the relevant sources. The master of Fiqh (Islamic Jurisprudence) is called Faqi who must have great familiarity in advance with several sciences like of Arabic literature, of exegeses of the Quran, of Hadith (the narrations related to the Prophet or infallible Imams in Shia-Islam), of the learned men (who narrated the Hadith), of logic (to argue correctly), of social realities (to understand Urf/Custom and usual norms). The science which discusses methodology of using these sources is called the Principles of the Islamic Jurisprudence (Usool al-Fiqh).

The process exercising Fiqh is called Ijtihad. Ijtihad is an Arabic term that comes from “Jahad” meaning the high struggle. It appears also in form of Jahad an Islamic term referring to a great effort in the path of God. Therefore Ijtihad (independent reasoning) echoes a profound process of effort in order to deduce Islamic regulations. So, Mujtahid, one who has high expertise in this profession, is the same Faqi. There are plenty of the Quranic verses like (9:122; 16:43; 39:17-18; 2:168-170; 4:83) that are used by Muslim scholars to infer that acquiring Ijtihad is an Islamic obligation and laypeople have to follow Mujtahid. A similar title is Mufti meaning a Muslim professional who declares Fatwa (juristic opinion). Fatwa is an authoritative legal opinion deduced from Islamic sources and reveals two aspects: Mufti/Mujtahid scholarly effort and divine will on particular actions. While the divine aspect is sacred, the human aspects are fully secular. No God’s involvement and intercession occurs in process of making Shari’ah law. It’s completely human and limited to both knowledge and methodology of Mufti/Faqi/Mujtahid.

Structure

The Quran revealed to the Prophet Muhammad interprets particular events and needs of the people. Also the Prophet appeared for Muslims both as a spiritual leader pointing to transcendental objects, and as a human being with ordinary demands who experiences peoples’ laughter, fears, hopes, family issues, and thus helps them to manage daily affairs, face problems, solve conflicts, and be open God’s revelation. These lived experiences provided an intensive foundation for regulating various aspects of life including individual and family, local and international community, cross-cultural communications, and even the environment. This inspires practicing the faith in every single moment of life, regardless of place or time. But in reality we are bond by time and space. To meet timeless truths with timely life creates the process of Ijtihad and brings the human mind and secular element before the sacred texts (the Quran and Sunnah). Two sources appear to help Ijtihad: reasoning (Agul) and the consensus of Muslims (Ijma). How do these sources work together to develop Islamic Sharia and Fiqh?

There has never been general agreement as to how the different issues of jurisprudence should be categorized. I would like to recount the most common classification in order to offer the big picture of Islamic regulations. It divides all the Islamic laws into two groups:

1. “Worship and Affairs of Self-Perfection,” (Ibadat) including the issues of cleanliness, Salat (ritual prayer), Sawm (fasting), and Hajj (the pilgrimage to Mecca);

2. “Social, Economic, Family, and Political Affairs,” (Muamilat) including al-’amr bil ma’ruf wa al-nahy ‘an al-munkar (Exhortation to perform the good and prohibition of doing evil), Hijab (social clothing), Mahram and non-Mahram (lawful intimate sociability and unlawful intimate sociability), congregations, resolving social conflicts; Zakat (almsgiving), Khums (a fifth share), endowment, buying and selling, Riba (usury), investment, partnership, divorce, wills and inheritance; arbitration, Caliphate and Imamah, Islamic punishments, Shura (counsel/parliament), Jihad, and so on.

Indeed, this holistic feature of Islamic laws inspired Muslims with two concepts: first, “Comprehensive Shariah/Islamic law,” namely God has a law, regarding each single action and behavior that must be considered; second, acts of worships are more fixed and bound to God’s restrict commands but the other acts are more flexible and bond
to human development. This approach was applied in history of Islam in dealing with the Quran and Sunnah and applying the reason and consensus. To see how this deal requires applying human hermeneutics on all four sources of Shariah, I give several examples as follow.

All Islamic denominations\(^1\) agree with the complete authority of the Quran, surely issued by God. Nonetheless, some of its meanings are not obvious and need examination; the text includes simultaneously universal/general (Aam) and particular/special (Khas) aspects; it contains unconditioned (Mulq) and conditioned (Muqayyad), indicated (Mubayan) and non-indicated (Mujmal), and abrogating (Nsik) and abrogated (Mansukh) propositions. The Quranic verse 7 chapter 3 explicitly acknowledges multiple statements which call for a different hermeneutic (Ta`wil). The nature of the Quran, namely being words, and its verbal essence encourage linguistic and hermeneutical study. Moreover, Islamic revelation took place gradually and more or less related to particular situations during 23 years of the Prophet’s life. For example, the prohibition of drinking alcoholic beverage happened in three phases (2:219; 3:43; 5:90).\(^2\) Also, records of particular circumstances for specific revelation “Shan-e Nuzol” (the circumstances of descending) motivated Fiqh to think of the relationship between Shariah and the demands of time and space. They elaborated Islamic commands into scholarly divisions – particular-general, conditioned-unconditioned, indicated-non-indicated, and historical events as positive or negative.

The second source is Sunnah or Hadith. Sunnah (lit. tradition) in Islamic context means the speech, action, and confirmation of the infallible individual – the Prophet for the Sunni and the Prophet and Twelve Imams in Shia. There is a division among Sunnah or Hadith regarding how many and how people reported it. Most Muslims trust in Mutawatir (successive) narration which is conveyed by narrators so numerous and various that it is not conceivable that they have agreed upon a wrong one\(^3\). Mutazilite did not trust this. More disputes happened about what is valid in much of non-Mutawatir reports of the Prophet’s (and the Imams’) life. Could we trust to a single narration that conducts a strong guess mostly? Few are overly accepting about this Sunnah, some is overly rejecting of such Hadith, and majority treats it with some clear criteria related to the reporter. However, Muslims consider the Sunnah valid as long as it supports the Quranic idea. It means if there is a Sunnah saying something contradicting the Quranic view, it is not valid anymore. Since there are many contradictory reports in Sunnah, Scholars also discuss how to treat them and harmonizing them, preferring some to others, and so on. Beside these particulars in the Sunnah, study faces the same hermeneutical challenges of the Quran – the need to interpret words. The classic principles of Islamic Jurisprudence (Usool-e Figh) examines these points concerning sacred texts:

1. The meaning of a word must be examined in five steps: in vocabulary; in the context; in the statement; in the deduction process of the word per se; and in the deduction process of the statement. Other examinations criticize the issues within the statements (see, al-Shashi, 2003).

2. What do the religious commands and avoidances entail? Obligatory and forbidden, being desirable and undesirable, or neither? Do they imply immediate application or can they be done after a delay? For once or forever?

3. If there are general (Aam) and particular (Khas) laws, how might they be reconciled? What about unconditional (Mulq) and conditional (Muqayyad) law? The first group of laws is related to individual people and to special professions, and the second is related to the nature of things like the essence of praying, regardless of who is praying.

4. What is the relationship between spoken (Mantiq) law, the direct meaning of speech, and implied speech (Mafhum)?

5. What are the implications of a law? Does the introduction to an ordered thing also need to be ordered? What about the requirements of a forbidden law, are they also forbidden? If we face a situation that

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\(^1\) Merely Akhbars, a very minority among Shia-Muslims, are limited to sacred reports of the Prophet and the infallible Twelve Imams. This school appeared at the late Safavid period and rejected using reasoning, Ijma, and referring to the Quran to achieve Islamic regulations.

\(^2\) In my book in press “The Intellectuals Foundations of Islamic Culture, An Introduction” I suggest many examples in the Quran. Also I highlight how Islamic Fiqh institutionalized them and paved path toward changing some issue from forbidden to allow in particular situations.

\(^3\) It is said that Mutazilite did not grade Mutawatir Hadiths believing they may have fake attributes to the Prophet (Amarragi, 2009, 99).
requires us to do two different things, at the same time: for example praying or cleaning the mosque? Which of them has priority and what priority is implied? Does an order include numbers warning about the opposite side? And what must a person do if s/he is in the situation that is involved in two contradictory orders for the same action: for example praying in a particular place that is currently forbidden might be acceptable because prayer is more important than place (Motahhari, 1382).

As has come to light, these are linguistic investigations that connect the principles of Jurisprudence to the philosophical, especially linguistic approaches. They are, obviously, linked to the philosophical perspectives and secular changes.

There is a well known quotation of the Prophet saying that, all my people do not gather together in false beliefs or actions. This brings out the idea of ijma (consensus), agreement of the Muslim community, among the four sources of Islamic laws. Although there are several disagreements between Sunni and Shia, and among Sunni itself, more or less Ijma is considered as a one source of law in Islam. However, it, by nature, highlights the question how the gathering of non-sacred peoples create sacred outcomes.

Aql (Reason) is recognized by Muslims as the fourth source of Islamic laws. They attempt to explore the rational implications of religious regulations. Faqih believe there is a parallel between rational and religious order and judgments. Since God is the head of reason, the creator of reason, and the universal intellect, his judgement does not oppose reason at all. They argue what is certainly good for reason is Mustahab in Shariah, even better is Wajib, Makruh is tolerated, and evil is Haram. The latter concerns the body or soul, the individual or society, the worldly or otherworldly. On the other hand, because reason believes in pursuing social interests (Maslhat) in religious judgments so it tries to discover it in following the religious order. It is worth mentioning that although there is a fully rationalistic taste, all subjects are approached through common sense but are also based on customary tradition (Urf) in Usool al-Fiqh. In the Sunni context reason as the fourth source of Islamic jurisprudence is mostly equated with Qiyas which means the process of deductive analogy. Based on Qiyas, the jurist can reach the judgment of a recent event or issue through examining a similar issue which is in the Islamic tradition.

Rational Practical Principles

Muslim scholars also formulated practical principles of reason when there is not a clear deduction from the Quran, Sunnah, Ijma, and reason. These rational principles can apply to all sections of Islamic law. Moreover, they illustrate how human reason makes a marriage between ordinary reason and religious duty.

1. The Principle of Exemption (Bara‘al) means that we are released from our religious obligation and we have no duty. This happens when we have no idea about the obligation and state of a subject like whether this food is legal or illegal. In such cases of doubt, exemption is offered and legality is presumed.

2. The Principle of Precaution (Ihtiyat) means that we must be cautious. This happens when we have a clear idea about an obligation but have options, like being offered two bottles when we know one of them might be alcohol – better to avoid both.

3. The Principle of Options (takhyur) meaning we have the option to choose one of two things, whichever we like. This might occur when we have an unclear idea about an obligation but do not know how to go forward or what path to take. So we are allowed to opt for one.

4. The Principle of Precedence (Istishab) meaning believing in the continuity of a previous state (the certainty does preclude doubt). This happens when we have no idea about the obligation but we know the previous state of the subject, e.g., whether our hands are still clean or are dirty.

5. The Principle of Prohibiting Devices (Sadde Zaraye) means that what is not usually Haram (unlawful) per se but could be since it might lead to something Haram; thus it becomes Haram. Because the extension of this principle can bring hardship to a society, (an axiom in Islam says: Difficulty necessitates facilitation or Shariah comes to make things easy not hard (2:185)), it is restricted to conditions like the device which, in most cases, leads to harm (Mafsidah). This has to be specified regarding its harmful aspect and limited so that when that harmful aspect is removed the principle is removed. For example, one is not allowed to sell army tools when they might be used for the wrong reason.

\[^4\] Shia law discusses the same idea under the name of relation between Wajib or Haram and their introduction (Musadeem Wajib).
6. The Principle of Preference for the good (Istihsan) means leaving an opening for stronger evidence or a hidden analogy. For example, a person who cannot manage his financial affairs because of immaturity (Safih) is not allowed to have fiscal dealings by himself including even use of funds for devotion and charity. If he wills to spend some of his wealth on charity, his will must be followed, although his independence will generally not be accepted; this is for his benefit, as well as others.

7. The Principle of Public Interest (Masalih Mursalah) means considering the public interest, not mentioned in the Quran and Sunnah, in the process of legislation especially in regards to new issues. These may be considered as religious issues as long as they are presented and agreed to by common interest. Since this can mean a change to Shariah, and to conventional law, it is conditioned on civil involvement (Mu’amilat), necessary, objective, and clear common interests and not limited to a specific group.

8. The Principle of Objectives in Shariah (Maqasid al-Shari’ah) concerns the objectives which Shariah follows in each single law. Traditionally it is thought that Shariah comes to preserve and protect (1) faith; because the human is a religious creature by nature (30:30); (2) life, humans are God’s vice-regents on earth (2:30; 5:32); (3) property and wealth, the Quran recognizes property as a means for maintaining life (4:5; 3:14); (4) reason and intellect are human endowments (8:22); (5) family, lineage and marriage are recognized as signs of God’s presence (30:21). These five objectives are called Kulliyat al-Khmas (the five universals) because they cover the reasons for a great part of Shariah. Imam al-Shatibi (d. 1388) and his unique book “al-Muwafaqat fi Usul al-Shari’ah” (The Reconciliation of the Fundamentals of Islamic Law) are well-known for leading the way in new intellectual conversations among scholars. He develops his philosophy based on four fundamentals premises about the objectives of Shariah: (1) happiness for the whole of humanity; (2) making sense for the public good; (3) religious obligations must fit human limitations and capacities; and (4) that Shariah is consistent with the rational customs of people. These points indicate how rationality impact on interpreting Shariah law: being conservative about Ibadat, the acts of worship (which are designed by God, lead to God’s mercy, are done just for the sake of Him, and cannot be changed). This is done by applying the principle of Precaution, while being very liberal about Mu’amilat wa Adat or civil and social activities. The latter, based on reason and custom lead to an easiness of life and can be tolerated by applying the Principle of Exemption.

The Five Schools of Islamic Jurisprudence

The scholars of Usool-e Fiqh study the four above-mentioned sources and the practical principles, Fiqh applies them in the concrete and on particular subjects and, thus, Islamic law takes shape. Schools of law formed the four following legal systems, called Madhhab among Sunni-Islam. Let us take a glance briefly at how they compare to the Shia school of jurisprudence in applying practical principles, and acknowledging rational achievements:

Hanafi. This school is named after Abu Hanifah (699-767) whose roots come from Kabul and was born in Kufa. He was the most liberal and rational Imam among the leaders of the Shariah schools. In this context liberal means openness to secular achievements and concerns, while rational means that the texts should be interpreted in a common-sense way rather than taking only their literal meaning from revelation. Abu Hanifah is known as the founder of the ‘people of opinion’ which is opposite of the ‘people of the Hadith.’ Although the use of analogical reasoning (Qiyas) preceded him, Abu Hanifah is recognized as the one who systematized this idea. He also developed Istihsan (juristic discretion – the determination of something as good). This concept is in opposition to Qiyas and tries to detach a case from its particular context. In this process there is respect to Urf (the customs of the local population) as long as it does not contradict a clear statement of the Companions. His school is considered the oldest and largest school of jurisprudence schools among the Sunnis. Ibn Khaldun reports that Abu Hanifah accepted only 17 Hadiths and used to reject even proven Hadiths which seemed no longer to make sense, while other leaders of law schools affirmed so many authentic Hadiths. Some outstanding examples are Imam Ahmad ibn Hambal, considered by some current academics to be the Salafists’ spiritual leader; he believed in 30,000 Hadiths, Imam Malik narrated 300 Hadiths (Ibn Khaldun, 1984, 2:539-540). In addition, one of Abu Hanifah’s disciples is known for advocating the trick “al-Hiyal al-Shariyah” that helps the faithful to make excuses in practicing a restricted application of Shariah.
Maliki. This school is named after Imam Malik bin Anas (711-795) who was born in Medina. Believing in the statement of the Companion, Qiyas, Istihsan and Urf, he added Istislah (applying pervious certainty to a new unclear subject), Masalih Mursalah (considering the public interest which is not mentioned in the Quran and Sunnah in the process of legislation especially for new issues), and Sadde Zaraye (prohibiting what usually leads to evil). Imam Malik tried to provide a flexible school of law in order to make a connection between Islamic law, public interest and everyday facts in Muslim life.

Shafi'i. This school is named after Muhammad ibn Idris al-Shafi'i (767-820) who was born in Gaza City and studied with Imam Malik. He recognized Qiyas and the statements of the companions, rejecting the validity of Masalih Mursalah or Istislah (consideration of public interest or human welfare in choosing one rule over another). He wrote a book on verses of the Quran concerning laws and is the first Muslim scholar to present a text on Usool al-Fiqh. The Sunni schools of jurisprudence are perched between two extreme borders: the people of Hijaz who were also the people of the Hadith, devoted to the appearance of the Quran and Sunnah; and the statements of the companions; the people of Iraq who depended on opinion and analogue reasoning in their search for religious regulations. Imam al-Shafi'i stood at the middle point. He was open to examining the social contracts and business dealings as well as the more formal statements (Abd ar-Razzaq, 2011).

Hanbali. This school is named after Ahmad ibn Hanbal (780-855) who was born in Baghdad and is celebrated among Salafi peoples as “Sheikh al-Islam” (the scholar of Islam) and recognized as a father of the very orthodox scholars who advocated few restrictions to the Hadiths and Sunnah. Limited to the Quran, Sunnah, and statements of the companions, he respected all Hadiths and did not recognize rational efforts to discover true Islamic law. He did not try to deal with the different hypothetical situations which are necessary for establishing a school of law, saying that religious statements and Fatwa are restricted to the present facts rather than imaginary situations. However, he applied restricted rules regarding praying and open rules regarding business among people. Imam Hanbal expanded the judgments about business and social contracts according to their objectives and results.

Ja'fari. This school is named after Ja'far ibn Muhammad al-Sadiq (702-765) who was born in Medina. He is the sixth Imam of Twelver-Shia and their jurisprudence is known for his name. The Jafari School is limited to the Quran, Sunnah, Ijma, and reason; the school applies four practical principles. These four, including the role of reason in Shariah, were taken from the Shia explanation. They are known in the Shia context as “practical principles” and can be applied by any Muslim regarding a specific subject without being limited to Mu'tahid with regards to canon law. The Shia does not apply the other the above-mentioned practical applications directly, though in practice there is room for Urf.

How to Deal with Shariah in a Secular Age

Once again, Muslims, more or less, grow up with Shariah regulations in their family and daily affairs and find it a part of their identity. They look at Shariah as the unparalleled source of prosperity, safety, and happiness both here and hereafter (2:201). They show less tolerance in terms of worship, prayer, and private deeds, but they question some of the harsh public punishments and political and public affairs. Considering the public aspects of Shariah, one must attend to its secular aspects which should start with a linguistic and rational investigation of the Principles of Jurisprudence. Here, I present some suggestions to those who are concerned about secular values, such as human and women rights and democracy. How might one interact with such issues within the context of Shariah?

First and foremost, we have to recognize both elements of Shariah - sacred and secular; even something as direct as a traffic accident is open to interpretation, thus Shariah law cannot be grasped as locked into one interpretation. Both legal processes - sacred and secular - involve interaction between fact and interpretation; the traffic example concerns external fact and the Shariah is a textual fact. It is a long journey from Islamic regulations to imposing a penal code in 21st century. This demands a hard struggle for humanity as the process is affected by many factors. There is a philosophical discussion among different schools of jurisprudence in Islam regarding how human efforts meet God's will. Shariah or Islamic law is not completely divine.

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3 It is ironic that Salafists and Wahhabists who proclaim themselves as the followers of Imam Hanbal, more or less, do not follow his way of deduction in Islamic law by limiting themselves to several Hadiths.
nor is it fully human. Shariah law ensures us of God’s satisfaction because Islam allowed *Ijtihad* (deduction of Islamic law from authorized sources). *Ijtihad* requires both the science of jurisprudence and the principles of jurisprudence so that mutual understanding and a common language between the secular mind and Mufti mind can contruct the proper and productive cooperation.

Second, awareness of these two aspects can encourage us in a holistic approach toward Shariah involving both stable and changeable elements. Muslims cannot ignore the Shariah because it is God’s will, but they also cannot ignore its human, rational and secular element. There is always a negotiation between the divine aspect which is absolute and sacred, and the human aspect which is conditioned and secular. Non-Muslims should not insult Shariah because it is a part of Muslims’ identity, but they can share in it by understanding and promoting the humanistic aspect. Likewise, Muslims must be reminded of Shariah’s objectives and rationale elements as well. Islam can enrich Shariah in deducing new laws and adjusting them in accordance with the current state of humanity by calling the attention of Muftis to some social, historical and linguistics points.

Third, the gap between Muslims and non-Muslims widens when one or both look at Shariah as black and white. The Muslim has to keep in mind that although Shariah is divine it needs to be interpreted by humans, and comprehended in its formative components. Actually, there is a big need to understand each other instead of judging; understanding is the first vital step toward resolution. Shariah solves a lot of conflicts among communities, connects different relationships, builds a bond and solidarity among isolated peoples, encourages the faithful to moral values, educates the masses, eases life among familiars, and inspires humanity to perseue the truth in everyday life. It can be misused and abused like all other laws; thus a common task is to not allow hate and fear be spread in the name of God.

Fourth, there is a Quramic verse saying that the guided and blessed people are those who listen to everyone and accept the best one (39:17-18). It clearly gives confidence to Muslims to listen to others and to follow the best thought. Verses like this lay a field for dialogue among civilizations and provide Muslims the chance to compare themselves with others and learn from others. There is also a big need to sit down together and try to know each other its potentials and challenges. For example, the penalty for insulting the Prophet in Islam is not limited to Muhammad, but includes Moses and Jesus as well. Muslims are not allowed to profane other faiths (6:108) when they want their own holiness to remain respected. In addition, Islamic law recognizes the difference between insulting and criticizing. All this supports the effort to harmonize Shariah and human rights. In a more radical suggestion, I would like to express my wish that Muslim Muftis deduce new practical principles in Shariah based on new developments in social sciences and human life.

Fifth, except for the Prophets (and the infallible Imams in Shia) there is no unimpeachable individual in Islam. The narrations related to the Prophets are also matters of discussion. So Muslims distinguish between Islam and Muslims, opening the way to criticism. Muslims feel honor and identity with Shariah, but not with all who practice or even preach Shariah. It is usual among them to criticize or question some laws issued in the name of Islam referring constantly to the objectives of Shariah. Discussion of each of the five objectives of Shariah discussed earlier can happen based on common sense. This, in turn, builds a field of communication for human responsibility, peace, progress, safety, happiness, and integrity. Moreover, if Muslims feel that critics are concerned to reduce human suffering, they are welcomed. The big conflict among advocates of human or women’s rights with Muslims emerge when they find that the counterpart aims to deconstruct fundamental values instead of solving an ongoing problem. Reasonably, they are on guard against attacks so it is the responsibility of their counterparts to find a common language. There is only one source of ultimate truth for Muslims and that is God. So, they cannot be empathetic with who appear as the new saviors of humanity, under the guise of human or women rights and democracy. It is the duty of the advocates of these values to show their commitment to reducing human suffering rather than of destroying authority. However, this does preclude the need for both Muslims and Shariah scholars to be open to the needed linguistic and cultural changes in order to improve mutual understanding and cooperation.

Sixth, even though the nature of Islam has some political aspects, it is a global religion trying to connect people to the experience of the holy in their daily life. Muslims are suffering greatly from the
politization of Islam and a politicized approach to the faith. To take a Quranic verse far from its context causes distance among humans and insults their holiness. However, it is the common responsibility of Muslims and non-Muslims to stand for the human aspects of Shariah and not allow non-professionals in Shariah to talk on behalf of Shariah.

I would like to conclude this section with a quotation of al-Afghani, the great ground-breaker of all recent Islamic movements. He said, I have seen Islam in Western countries and Muslims in Islamic regions; indeed, he was admiring Western organization, hard work, honesty, and responsibility. This view includes the insight that secular achievements are admired by Shariah’s objectives; it also concentrates on common human values to work together and make the world safer, peaceful, happy, and connected to the truth.

**Ideology and the Abuse of Shariah**

The Prophet used to say that there were two professions of the faith within Islam – one related to religion, and one related to politics – and if they both were reformed all his people were reformed and if they all were corrupt all were corrupt. These two groups consist of religious experts (*Fiqh* or *Ulema*) and political leaders (Ibn Abd al-Bir, 1994, 641; Motahhari, 1385, 9:121). Since politics and religion are linked in Islam, it is clear that there is a potential for religion to be abused by those who have a political agenda. Also the Quran condemns pre-Islamic believers for uncritically following their religious leaders (9:31 & 3:64, also see 2:44 & 79; 3:19, 78&187; 9:34). This view maintains that there is always a chance for religious leaders to be corrupted and this greatly afflicts the people. The history of Islam, like that of several other religions, suggests some of these issues. Some have been condemned mostly because of their abuse of Shariah for their personal interest and ambitions. However, I would like to discuss another form of abusing Shariah which is very common in our era. It is the abuse of Shariah by very pious people who are devoted totally to Islam for the sake of God and commit themselves to a process of proving their dedication (*Ikhlas*) to God. The Kharijite sect in early Islam represents this quality. Regarding socio-political features it is known for its ideas of excommunication and immigration. They are very pious and devoted regarding the private aspects of faith which is my main focus here. Many reports highlight

their sincere dedication to God and piety (see, Ibn Abd Rabbuh al-Andulisi, 1983, 2:233; Ali ibn AbiTalib, 2004, 357). Indeed, the core idea of the Kharijites came from this Quranic verse, “the Judgment is only God’s” (6:57) which provides the limits “*Hukm*”, refers to leaving judgment, decision, and command, to God. Kharijites meant that because God makes the decisions, people are not the decision-makers. The idea has survived and appeared many times in the history of Islam, although, Imam Ali, the forth caliph of Sunni and the first Imam of Shia responded to the Kharijites as follows:

*It is* a true statement to which a false meaning is attributed. It is true that the verdict lies with God, but these people say that (the function of) governance is only for God. The fact is that there is no escape for people from the ruler, good or bad. The faithful persons perform (good) acts in their governance while the unfaithful enjoy the (worldly) the benefits of governance. During this rule, God takes the lead. Through the ruler, taxes are collected, enemies are fought, roadways are protected and the rights of the weak are protected from the strong; the virtuous enjoy peace and receive protection from (the oppression of) the wicked.⁶

For these pious people, these points feature these characteristics: the lack of education in Shariah, causes confusion by using, and sometimes, misusing religious ideas and statements, and oversimplifies Islam by reducing it to one aspect or doctrine. However, let me be clear, there is no doubt that they were pious, honest Muslims. Thus, it was said, “one who seeks right but does not find it, is not like one who seeks wrong and finds it.”⁷ However, Ali warned how harmful and unhealthy is this version of Islam when he addressed the Kharijites saying “Certainly you are the most evil of all persons and the vehicle of Satan for hitting the target and misleading the people.”⁸

This historical phenomenon, in fact, points out a hidden spirit and symbol rather than merely a historical fact. This spirit has not disappeared; in fact it continually reappears and is often revived among Muslims. For a while it appears very clear and strong as in the

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⁶ Ali ibn AbiTalib, 2004, 82; also see 182-183.
great Hanafi Mufti Ibn Abidin, who equated Wahhabism with Kharijites (Ibn Abidin, 2003, 6:413). Often it is hidden under various religious trends as Mortaza Motahhari suggests; scripturalism in both Sunni and Shia, during different epochs, is influenced by the Kharijites spirit (Motahhari, 1390, 128-155). Nonetheless, Shariah or Islamic practice is the main focus of scriptural trends for pious Muslims who want to prove their dedication in faith through practice, rather than meditation.

Given that, there is now a sharp turning back to this abuse of Shariah in current Islam which affects both Muslims and non-Muslims across the world. It is part of Western life to be shocked by the news relating to Shariah. The rise of extremist movements among Muslims worldwide who claim to be practicing Shariah has spread from the Middle East to East Asia and Northern Africa, and more and more to the western world. The Taliban in Afghanistan and Pakistan, Daesh (ISIS) in Syria and Iraq, Boko Haram in Nigeria, and the recent imposition of the Shariah penal code by the government of Brunei all feed the abuse of Shariah. Their ideas are backed with several sacred quotations and laws taken from the Quran and Sunnah. Many political games, economic interests and regional circumstances play roles in creating such groups, but here I am focusing on internal aspects. One cannot ignore the potential of Shariah to be misunderstood and abused.

What is this potential and how can it be counteracted? In fact, being connected with daily and petty affairs plays the role of a double edged sword for Shariah; it is useful to connect each single moment of life with the clear will of God but it is also harmful to reduce Shariah as a means to justify socio-political affairs of Muslims. The big responsibility of Muslim scholars is to clarify Shariah to such an extent that it is effectively prevented from being misused. They need to stand for a justified use of Shariah. When Shariah is reduced to a socio-political ideology it is a radical shift away from its objectives and a big abuse. Shariah is a guide to the water of life, inner and outer peace through free will and spiritual self-consciousness and not a map or plan for limiting free will or engineering society. Although Shariah divides people into faithful and unfaithful it recognizes the human dignity of all by addressing all with “O people” instead of merely “O faithful.”

In reducing Shariah to ideology, faith changes to a restricted regulation for political aims which divide people into two groups: on one side are those who are in the camp of ideology and the other side is anyone who doesn’t share that ideology thus creating enemies. Ideology is directed to practice while the Shariah is directed to awareness and meditation. This is why intellect and maturity are the primary conditions for discussing Shariah. Since ideologues greatly desire to immediately implement practice, they ignore the contemplation of faith. They turn what should be a source of peace, love, and faith, into a device of hatred and violence. Shariah always encourages the faithful to attempt to get closer to God. When faithful pray or fast, or perform any kind of worship, they must make an intention that they are doing this in order to get closer to God (Niyahat Qurban Ilallah).

The ideologues, in contrast, think they already reached the truth. Since a religious ideology is focused on implication, the primary problem of the absence of methodic and scholarly study, work, and investigation emerges. Many times the ideologues selectively choose Quranic verses, occasional Hadiths, quotations from a rightful Caliph, and ideas of Muslim scholars merely to justify their plan of social engineering. They are used to supporting their beliefs, but in doing so they ignore the context and turn it into a statement which is no longer from the Quran or Hadith. Such statements are taken out of context and out of history and eliminate any analysis. Instead of the Quran informing practice, practice informs the Quran. Like an aggressive army who picks selected things from a specific area, the ‘ideological’ Shariah is picky and committed to non-Islamic presuppositions. The ideologues simply place some religious concepts in their pockets and use them to accuse others and justify themselves. To have an idea which fosters rapid implementation, religious ideologues have no time to contemplate the history of Islamic civilization and intellectual scholarship. This sort of thing makes them confused. Reducing

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8 I personally prefer “faithful” to “belief” in translation of “Iman” because “Belief” equates Arabic term “A-q-d”; the point is faith (Iman) mostly refers to a flexible and sophisticated trust while the “belief” (ilqad) refers to restricted and tight clinging.
Shariah to ideology leads to the oversimplification and disparagement of Islam.

Oversimplifying Islam through ideological Shariah has three aspects: over-highlighting some aspects of Shariah at expense of other parts (it makes Shariah a cartoon); deducing Shariah law out of its institutionalized models (five schools which have passed many historical examinations); and separating Shariah from other scholarship in Islam. An example of the first aspect is how some Muslims simplify Islam to the simplest form of just pure enthusiasm and passion. Shariah, in this thought, is nothing but Jihad. For example, when I was serving as a dean of a university, I was shocked when I learned from a chief officer of police in Farah, Afghanistan, who fought against Taliban that many Taliban who, fighting under name of Islam and performing Jihad, did not know even basic Islamic prayers. These ideologues make harsh protests against some insult to the Prophet Muhammad but not regarding Jesus and Moses who are considered protected under the same Shariah law. The ideological Shariah overlooks the history of Islam and its intellectual journey. Lack of historical knowledge leads to separation of facts and to an unhealthy level of self-confidence. All Islamic scholars can agree that Quranic verses were revealed to the Prophet connected to specific conditions, events and times. Inferring a universal rule from a particular fact requires skill and knowledge that is related to history. Islam encourages building self-confidence by learning from others and being open to other proposed arguments and perspectives (39:17-18).

Muslims who lack an historical and dialogical approach will not only lose a great asset and scholarly method, but easily can fall into totalitarianism. Regarding the third aspect, unfortunately many Muslim traditional jurists, with Shariah-law backgrounds, belittle Islamic Philosophy and Sufism accusing them of not being integral and original parts of Islam. On the one hand, Sufis and Philosophers often degrade Islamic jurisprudence and Shariah-law, claiming Shariah law is a secondary and superficial part of Islam which is far from the spirit of Islam. On the other hand, jurists focus on the outer aspect of Islam and Sufis as well as Philosophers concentrate on the inner aspect of Islam. Both groups invalidate secular investigations and fail to see the human rationality of the other side. Sufism and Islamic Philosophy acknowledge rationality and secular discovery through Hermeneutics (in the Islamic context, Ta’wil) as the Islamic Shariah does through the Principles of Jurisprudence (Usool-e Fiqh) which emphasizes Common Sense and Mores (Urf). However, both groups by disrespecting the richness of each branch of knowledge reduces Islam to their interests; the former reduces faith to restricted law and Revelation to literal text while the latter reduces it to transcendental and supernatural realms; therefore, from two opposite extremes they provide the same result – superstition. Recently, new religious thinkers have joined this debate and belittle both of these groups based on their reductionist methods. In the Islamist reading they simplify Islam to their political ideology.

Moreover, in the reformist and liberal interpretations they have tried in vain to apply the developments that occurred overtime in Christianity to Islam without respect for the unique historical and cultural context. They think of Islam without Shariah law which is not Islam anymore. Finally, in the worst form – the Salafi version, they freeze Islam to a literal interpretation limited to the first generations from the time of the Prophet Muhammad. Sadly, all of the above mentioned groups consider themselves the purist form of Islam and view the others as bastardizations. All these approaches forget that the only permanent Islamic miracle of the Prophet is a book, the Quran. Having a written book as the miracle and bedrock of faith presupposes and promotes education, dialogue and co-understanding as both a way of faith and life. All of these, education, dialogue and co-understanding, occur also in a secular way, because the sacred way or has no particular suggestion or they are too limited to believers.

To overcome this abuse of Shariah, first and foremost Muslims must present a clear definition of Islamic faith which associates piety with rational understanding as it appeared in emerging theology in Islam. Second they have to consider faith within its various aspects; I mean as much as Shariah is part of Islamic faith, so are ethics, spirituality, theology and philosophy as well. Reducing Islam to Shariah which is associated with many daily affairs is making a cartoon of Islam. Moreover, the interpretation of Shariah must be done by scholars who have proven already their expertise in the field through clear process of study, research and teachings. There is a great need shifting from popularity to skillfulness in Shariah. As long as Islam is not reducible to Shariah aspect, the Shariah law is not
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Sins related to people. Traditionally in Islam Haq al-Nas (the right of peoples) is more significant than the Haq Allah (the right of God); a Muslim who violates people is worse than a Muslim who violates God. In contrast the extremists neglect reason, people and achievements throughout the history of Islamic civilization because in their belief these things violate God’s revelation. This is why these groups do not recognize philosophy, Sufism, and even rational ethics in an Islamic context as respectful achievements. However, turning toward human values based on Shariah advice can make a great contribution to peaceful Islam and illustrate how violent Islam is abusing Shariah.

Concluding Points

Shariah attempts to illustrate a unique harmony and association between the sacred and the secular in Islam; the sanctification of the human effort and the secularization of divine regulations. What is reached by a rational process (Jihad) is also a divine law because it happened within a divine field dealing with divine regulations. It does not disrespect humans before a transcendental God and does not neglect God by respecting human limitation and weakness. Indeed it suggests a distinctive attempt to enlarge the human perspective but not diminish God’s position. The approach glorifies God but does not ignore humans. God’s revelation and words are limited, but human reason, needs, efforts and sufferings are unlimited; God and humans, thus, take care of each other as primary and secondary, branching out, to and from guiding principles.

There are different definitions of secularism. Here, I will refer to two to make clear what I mean by a mixture of secular and sacred issues in Islamic law: first and positive, make an idea or decision based on pure rationality and second and negative, make a judgment regardless of religious preference. Doubtless, elements like ‘rational independence’ and the objectives of Shariah highlight the link between first meaning of secularism and Islamic law, and like Urf and Masalih Mursalah bring to light the connection between the second meaning and Islam. Moreover, the personal background, educational climate, theological and philosophical interests, and the presupposed propositions of Mujtahid/Mufti play such a major role that Muslims used to say, the Fatwa of a rustic has a smell of the village and the Fatwa of an urban setting has a smell of the city; in other words, an
Arab’s Fatwa has an Arabic flavor, and a non-Arab Fatwa, has a non-Arab (Ajam) flavor.

In addition, regarding the outcome of Ijtihad two extreme ideas among scholars of Shariah emerged: Takhteja (possibly wrong) and Taswib (completely right). The former concept states that the Mujahid, in the process of deducing Shariah law, might reach a wrong idea but he is still rewarded by God because of his scholarly struggle. The latter idea holds that the Mujahid always reaches the right conclusion because the divine commands do not determine anything insofar as God considers a scholarly Fatwa, with its diversity, as His own command. The point is that both ideas recognize human effort to reach divine law and consider the outcome valid before God, no matter what it is. This point, then, consists of two truly significant aspects: recognition of diversity in Islamic law as well as recognition of the human aspect which, without doubt, is affected by the Mujahid’s knowledge, skills, and circumstances. From two opposite poles, they come to the same core: humanizing Shariah and making room for pluralism.

As our body, soul, thought, emotions and decisions are linked together; Islamic law does not examine the human as an isolated being and in a separated situation; rather it considers context. Accordingly, humans cannot be treated as temporary beings regarding legislation. The law reminds us to regard different aspects of humanity in legislation. Also, the five categories of Islamic regulation, from obligatory (Wajib) to not-allowed (Harani), connects each single moment of life to God in various forms. It breaks the mold of white/black categories in the eyes of the faithful – to not see each issue as either obligation or freedom, allowed or not-allowed. It thus helps the faithful to exercise a variety of options including: what is forbidden, not-preferred, allowed, preferred, or obligated.

To conclude, one needs to: (1) interpret Shariah law in terms of new developments in the philosophical and social sciences; (2) locate Shariah in the intersection with other Islamic intellectual traditions including Sufism and Philosophy; (3) put the objectives of Shariah, in a broader field, at the center of Islamic ethics; (4) learn from the historical experiences of Shariah to reach an updated form; (5) reread the potential shifts within classical Islamic law like Aqamam Inzail (confirmed laws which were affirmed by the Prophet to support local traditions, instead of initiating new laws); and (6) update the meaning of Ijtihad to explore new hermeneutical directions and aspirations. All these efforts happen through human rationality, with all the limitations, but with the hope and perspective of serving humanity; all are recognized in Shariah. However, it is clear that a significant number of Islamic jurisprudence scholars fail to understand and apply principles such as the above. In summary, we can say that it is not exactly the secularization of Shariah that is sought but, rather, the exploration and exercise of the hidden secular power to enrich both humanity and Shariah. This is the true meaning of Louis Massignon’s insight about the Islamic system when he described it as “une theocratie laique egalitare” (a secular egalitarian theocracy).

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The Secular and the Sacred
Complementary and/or Conflictual?

Edited by
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