Those who want to understand Sharia, this is an excellent review. 45 Pages flew very well for me – Mike Ghouse, World Muslim Congress

Shariah, Law and Islam:
Legalism vs. Value-Orientation

Dr. Mohammad Omar Farooq

Associate Professor of Economics and Finance
Upper Iowa University, USA

October 2006
[**Draft in progress**: Feedback welcome]

Homepage: http://www.globalwebpost.com/farooqm
Email: farooqm@globalwebpost.com

Abstract:

Shariah is a common Islamic term, but widely misunderstood and misinterpreted. A society cannot be without some laws or a legal framework. Since Islam's guidance is in a social context, Islam has some explicit and specifically mandated legal precepts and injunctions. The Qur'an is to serve as the primary and divine source for such guidance. However, Islam is not all law, as life itself can't be defined and dictated in merely legal terms. Historically, legalism emerged as the dominant mode of thinking and approach among Muslims, where form took precedence over substance and spirit. Due to such legalism, the goals and values related to Islamic guidance gradually faded to the background to the extent that Islam has been reduced to a shell of codes, devoid of spirit, substance and dynamism. In this essay, the traditional (mis)understanding of the term Shariah is explored in depth, and the desired value-orientation is contrasted with the prevailing legalism. A set of values and principles derived directly from the Qur'an is also presented.

I. Introduction

Historians often have wondered at the remarkable success of Islam and the Prophet Muhammad in forming a new society. The pace of consolidation of this society and its evolving into one of the greatest of civilizations also has been mind-boggling. An American historian, even with an overt racist bias, acknowledged this fact of history.[1]

> "The rise of Islam is perhaps the most amazing event in human history. Springing from a land and a people previously negligible, Islam spread within a century over half the earth, shattering great empires, overthrowing long established religions, remoulding the souls of races, and building up a whole new world - the world of Islam. …
>
> The closer we examine this development the more extraordinary does it (Islam) appear. The other great religions won their way slowly, by painful struggle, and finally triumphed with the aid of powerful monarchs converted to the new faith. …
>
> Christianity had its Constantine, Buddhism its Asoka, and Zoroastrianism its Cyrus, each lending to his chosen cult the mighty force of secular authority. …
>
> Not so Islam. Arising in a desert land sparsely inhabited by a nomad race previously undistinguished in human annals, sailed forth on its great adventure with the slenderest human backing and against the heaviest material odds. Yet Islam triumphed with seemingly miraculous ease, and a couple of generations saw the Fiery Crescent borne victorious from the Pyrenees to the Himalayas and from the desert of Central Asia to the deserts of Central Africa."[2]

As confrontation and challenge of the existing powers provided the context for the new society to expand the territories under its control, in two other respects, the size of the Muslim community and its influence continued to grow at a rather astonishingly brisk pace. First, representatives of the Muslim community, inspired by the call of Islam to propagate the message to the rest of the world, reached distant parts of the world. Also, the Arabs originally were a trading community, and under Islam, with trade and business considered a virtue and thus emphasized, many Muslims built trade contacts across the lands and seas and even settled in other parts of the world. Indeed, trade and propagation were often inseparable. Second, as the Islamic polity took shape and achieved consolidation and even dominance, people of other faiths and from other

---

[1] A.M. Lothrop Stoddard [1883-1950], a Harvard-educated historian, had racist angle to his thoughts, and was openly anti-immigration. For more, see http://en.wikipedia.org/wiki/Lothrop_Stoddard
[2] Stoddard. *New World of Islam* [London, 1932], p. 1-3

parts of the world often migrated to the broad Islamic polity in search of peace, security and prosperity. The new universalist polity, not racially Arab any more, attracted people from many parts of the world: Bilal (a slave from Abyssinia, now Ethiopia), Salman from Persia, Shoaib from Rome, and so on.

Despite all the ups and downs through internal and external tensions and conflicts, the pluralistic orientation of the Islamic polity continued. The Islamic rule in Spain provides an illustrative example of Islam's ability and success to be pluralistic and dynamic. Three of the greatest personalities of the three Abrahamic faiths relate to this period and environment: Averroes (Ibn Rushd; Islam), Maimonides (Judaism) and Thomas Aquinas (Christianity).

> "Averroes, Maimonides, and Aquinas lived during a time of unprecedented and reciprocal spiritual intellectual and cultural exchange between Islam, Judaism, and Christianity, specially during the so called "Golden Age of Muslim Spain" that continues to inspire, both by its high level of civilization and its tolerance."[3]

The Islamic rule in Spain was an attraction for Europe on account of both economic and intellectual reasons. European scholars and learners used to come to the institutions of higher learning there, which was instrumental later in the renaissance in Europe.

Gradually, the fate of the entire Islamic civilization changed, as the western civilization emerged, and in the confrontation between Muslims and the West, the Muslim world succumbed to the slippery slope of decadence, while the West prevailed as victorious and dominant.

Now the center of human civilization has shifted to the West. While non-Muslims are not generally attracted to migrate to the Muslim world, Muslims from around the world are deeply attracted by the West like a magnet.

Indeed, the more a Muslim-majority country[4] is trying to become Islamic from a traditional perspective through the introduction of *Shariah*, the more the West and others seem to be getting scared or concerned, and even many Muslims of those respective countries are becoming disillusioned and growing impatient or agitated.

> "In the West, the idea of Shariah calls up all the darkest images of Islam: repression of women, physical punishments, stoning and all other such things. It has reached the extent that many Muslim intellectuals do not dare even to refer to the concept for fear of frightening people or arousing suspicion of all of their work by the mere mention of the word."[5]

Does that mean that the notion of *shariah* has lost its relevance or is it better that we avoid it? Not necessarily. Some people would like to banish the word "Jihad" from the vocabulary of Muslims.[6] If we react in that manner, soon others might suggest that we banish Islam too from our vocabulary. Many times a notion can be distorted through misperception, misunderstanding or misuse. In such cases, the solution is not merely to discard a notion or term, but to remove the misunderstanding, clarify the abuses, and ensure that the praxis of faith reasonably and conscientiously conforms to the claimed ideals.

---

[3] Jewish Muslim Christian Symbioses, quoting Jacob Bender, President of "*Reason and Revelation*", author of "*Three Wise Men*", and a film-maker describing the Jewish-Muslim-Christian symbioses

[4] In keeping with the pluralistic norm and heritage of Islam, as exemplified in the Charter of Madinah under the Prophet, instead of identifying a country as a "Muslim country", we should prefer "Muslim-majority country."

[5] Tariq Ramadan. *Western Muslims and the Future of Islam* [Oxford University Press, 2004], P. 31.

[6] Mohammed Ayoob. "Muslims could benefit from banishing the word 'jihad'," Daily Times [October 01, 2006]

"It is true that scholars of law and jurisprudence have almost naturally restricted the meaning to their own field of study, that dictators have used for repressive and cruel purposes, and that the ideal of the Shariah has been most betrayed by Muslims themselves, but his should not prevent us from studying this central notion in the Islamic universe of reference and trying to understand in what ways it has remained fundamental and active in the Muslim consciousness through the ages."[7]

While Islam under the leadership of Prophet Muhammad brought liberation and freedom from human bondage and ushered in scientific, technological, economic and cultural progress as part of a dynamic civilization, the *Shariah* as it is being presented today seems to do (and probably promise more of) just the opposite. Why? In this essay, it is argued that one pivotal problem has to do with some fundamental misunderstanding about Islam and *Shariah*. The notion of *Shariah* has not become irrelevant, but it is now laden with gross misunderstanding and distortion, which must be addressed.

II. *Shariah* vs. Fiqh: Contemporary "Implementation" Undertakings

To better understand and appreciate the problems associated with the usage of the term "Shariah", let us survey some of the prominent national experiments with *Shariah*.

In the post-colonial context, the country that has the deepest and the longest of its background in so-called *Shariah* laws is the Kingdom of Saudi Arabia. With its formative stage beginning in 1750 under Muhammad ibn Saud, and several phases of consolidation and expansion, the Kingdom took its current shape in 1932 under King Abdul Aziz. The country, representing (or occupying the heartland of Islam with two of the holiest places), emerged under the confluence of (a) the struggle of Arabs of that part to seek independence from the Ottoman empire of the non-Arab Turks and (b) the puritanical Wahabi movement that insisted on the laws of the country be governed by *Shariah*. The monarchy and the puritanical religious establishment have worked out a power sharing arrangement, where matters of *Shariah* (narrowly defined, religious laws) are left with the officially organized and supported religious establishment, and the political and other authority are vested in the monarchy, which expects to be undisturbed by the religious establishment. Except a few minor cracks, the power-sharing arrangement has worked out conveniently for the alliance and has proven for the Kingdom to be rather stable so far.

Pakistan, since its independence in 1947, has the dubious distinction of being the first Islamic Republic of modern times. Since then it has become a nuclear power, but has not succeeded in making a transition to any representative form of government on a sustainable basis. Every brief period of civilian government has been interrupted by military coup. During the reign of General Ziaul Huq, who came to power through a coup in 1977, the *Shariah* fervor became strong and soon the country, under dictatorial rule, was treated with a robust dose of *Shariah* laws. Earlier, in 1971, to suppress the result of a democratic election and thwart the legitimate demand and movement for autonomy of East Pakistan, the military of Pakistan committed one of the worst genocides in history against its Bangali population, which included victims from the Muslim majority and Hindu minority.[8]

In 1983 Sudan began its *Shariah* experiment under the military dictator Jafar Numeiri. The Islamic political groups joined hands with the dictator to facilitate implementation of *shariah*. Ever since, the country has been going through waves of instability. Corruption and abuse of power are rampant. The country is currently experiencing a genocide, involving mostly Muslims persecuting Muslims in Darfur. Neither the government has been successful in resolving the problem, nor has it allowed any outside intervention to bring the conflict to an end.

---

[7] Ramadan. op. cit. p. 31.
[8] For details about the genocide in 1971, visit Genocide1971.

At the end of Soviet occupation, Afghanistan became an Islamic Republic and ultimately the Taliban movement assumed power in 1996. During its rule till 2001, when it was removed from power through the invasion by US-led coalition, it tried to implement one of the strictest and harshest version of *shariah*, and earned condemnation of not only the rest of the world, but also its own people felt hostage under the Talibani chokehold. Nigeria, another Muslim-majority country, has seen Islamic resurgence in certain regions, where regional Muslim groups have tried to implement *shariah* in their respective provinces/states.

There is a pattern of these projects of *shariah* implementation. First, in all four cases mentioned above, it is associated with dictatorial, authoritarian or hereditary rule of an individual or a group that is self-imposed on the respective nation. Second, in case of Pakistan and Sudan, *Shariah* has basically meant *hudoo*d punishments, where Islam-prescribed punishments of serious offences, civil and religious, have been meted out in a society, even though rule of law and independent judiciary are not present and corruption/abuse of power of law enforcement institutions is rampant. Pakistan also has implemented one of the most sweeping reforms to bring the economy and finance in compliance with *Shariah* by eliminating interest from the entire system. However, apart from changes in form rather than in substance, the movement toward interest-free economy has not improved the economy and the economic lot of the people.

In case of Saudi Arabia, which claims to have its laws based on *Shariah,* it remains one of the worst violators of human and Islamic rights. There is no independent judiciary or rule of law. There is no constitutional guarantee of any defined rights. Women still cannot drive in the country, even though there is nothing in Islam that prohibits as such. Wealth is concentrated in the hands of a powerful few. The *shariah* laws of the country can be applied to anyone, other than the royal family. One of the basic principles of Islam is that no one – absolutely no one – is above *shariah* or law. Thus, *Shariah* of Saudi Arabia is basically Islam turned on its head.

In case of Afghanistan under the Taliban rule, the strict and harsh interpretation and implementation of *Shariah* was imposed on the people in a draconian manner, which also trivialized Islam by punishing people even for men not keeping beard or women not covering the ankles, and so on. There was neither any due process of law, nor any protection against physical assault or harassment in public by the "virtue"-polices. Of course, the entire Afghanistan experience, including the Taliban rule, which also had a vacuum that attracted non-Afghani Muslims to utilize the country for their own radical agenda, was shaped by both internal and external factors and power plays of international hegemonic interests.

The case of Iran is remarkably different. It has taken the path of representative governance. Indeed, the revolution came about through popular participation and sacrifice of the mass. However, in two respects, Iran is still entrapped in its environment. First, the religious establishment has been given the ultimate constitutional power that is disproportionate for a representative form of governance. The power is too much concentrated in a few "guardian" religious leaders, who have veto power. Though this may be compatible with Shiite legacy of *imamate*, it is serving as a chokehold on the Iranian society. It is important to understand that "revolutionary" fervors can't be a permanent condition. The transition to a normal society must be made. Sloganeering and rhetoric can't be substitutes for ensuring fulfillment of basic needs (and beyond) through adequate economic development. Yet, Iran is definitely in a much better shape for a host of reasons, internal and external. Secondly, there are some laws that are too strict and their implementation too harsh, especially in regard to women, the minorities and the political or religious dissidents. Despite these pitfalls, since Iran has upheld and sustained to date its track of representative form of governance, there is hope that internal dynamics will facilitate the resolution of the pertinent matters in the right direction.

The other notable case is Malaysia, which is unique, in the Muslim world. It is the only Muslim-majority country to date that has successfully broken away from the traditional mold. It has achieved the desired economic progress, without sacrificing its Islamic identity and orientation. It is a model of pluralism in the Muslim world. It is proud of its Islamic identity and root, but does not

promote the rhetoric or signboards of Islam like the *shariah*-enamored countries mentioned earlier. Indeed, Islamic laws and values are taken seriously in Malaysia, without compromising its commitment to pluralism or economic prosperity.

Unfortunately, what is championed or demanded by the Islamic revivalists as *Shariah* and what is criticized and shunned by the West as *Shariah* is not closer to the Malaysian model, but is identified with those other *Shariah*-implementing countries, Saudi Arabia, Pakistan, Sudan, Afghanistan (the Taliban rule), with draconian penal laws and suppression of some of the basic human rights. Indeed, in these countries, *Shariah* has become synonymous not with Islamic values and principles, but almost exclusively with harsh penal laws or ordinances of which the most common victims are people with little or no power in the society. The case of Hudood Ordinance in Pakistan that has resulted in thousands of rape victims – yes, rape victims - ending in up in prison and subject to capital punishment or whipping is illustrative.[9]

That's why a better understanding of the concept of *shariah* is so important, especially in regard to the fact that *shariah*, as mentioned in the Qur'an and Hadith, is much broader and generic than the sense it is commonly used now.

> "If the idea of 'establishing rules' is indeed contained in the notion of *Shariah* (from the root sha-ra-a), this translation does not convey the fullness of the way it is understood, unless its more general and fundamental meaning is referred to: 'the path that leads to the spring.'"[10]

Proper understanding of the notion of *Shariah* is now even more important than ever because the traditional view about *Shariah* is failing to meet Muslims' expectations of Islam to guide them and solve their problems as well as harmfully polarizing the society toward extreme positions.

> "The weakness of the traditional construction of *Shariah* in meeting social expectations stresses the need for a fresh quest for the normative basis. Consequently, Muslim views on the position of *Shariah* in Muslim polity have become increasingly polarized between secularist and traditionalist viewpoints".[11]

III. What is *Shariah*? Perceptions and Misperceptions

Why does the notion of *Shariah* have such a commanding hold among traditional as well as revivalist Muslims, particularly their religious scholars, establishments and movements? Well, historically it has been central to Muslim understanding of the relationship between Islam and law.

> "Law is the primary religious science in Islam. Once committed to Islam, the believer's overriding concern and question is 'What do I do; what is God's will/law?' Law is essentially religious, the concrete expression of God's guidance (*Shariah,* path or law) for humanity. Throughout history, Islamic law has remained central to Muslim identity and practice, for it constitutes the ideal social blueprint for the 'good society.' The Shariah has been a source of law and moral guidance, the basis for both law and ethics. Despite vast cultural differences, Islamic law has provided an underlying sense of identity, a common

---

[9] For pertinent information and analysis of this unislamic and inhuman experience, see Mohammad Omar Farooq. Rape and Hudood Ordinance: Perversions of Justice in the Name of Islam, unpublished essay, May 2006; Asifa Quraishi. "Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective," *Michigan Journal of International Law* [1997, Volume 18, pp. 287-320]; Asma Jahangir and Hina Jilani. *The Hudood Ordinance* [Sang-e-Meel Publications, 2003].

[10] Ramadan, op. cit. p. 31.

[11] Muhammad Khalid Masud. "Muslim Jurists' Quests for the Normative Basis of Shariah," Inaugural lecture at the International Institute for the Study of Islam in the Modern World, Netherlands, 2001.

code of behavior, for Muslim societies. As a result, the role of Islamic law in Muslim society has been and continues to be central issue for the community of believers.

For the early Muslim community, following the Shariah of God meant obedience to God's continuing revelation and to His Prophet. Issues of worship, family relations, criminal justice, and warfare could be referred to Muhammad for guidance and adjudication. Both Quranic teaching and Prophetic example guided and governed the early Islamic state. With the death of Muhammad, divine revelation ceased; however, the Muslim vocation to follow God's will did not. Knowledge and enforcement of God's law were continuing concerns."[12]

Of course, the above view of *Shariah* and Islamic law is in a more general sense. The practical experience has been quite complex. This is particularly due to the fact that while following God's guidance in the form of laws and codes is binding, God's guidance in its comprehensiveness and definitiveness, as claimed, is not so clear. God's revelation, as contained in the Qur'an, did not come to us as a codified manual of law. These laws require ascertaining and interpretation by fallible human beings.

"The literal meaning of Sharia is 'the road to the watering hole,' the clear, right, or straight path to be followed. In Islam, it came to mean the divinely mandated path, the straight path of Islam, that Muslims were to follow, God's will or law. However, because the Quran does not provide an exhaustive body of laws, the desire to discover and delineate Islamic law in a comprehensive and consistent fashion led to the development of the science of law, or jurisprudence (*fiqh*). *Fiqh,* 'understanding,' is that science or discipline that sought to ascertain, interpret, and apply God's will or guidance (Sharia) as found in the Quran to all aspects of life."[13]

While God's guidance is supposed to lead to a society that reflects better justice, harmony, and balance, why has the experience to date of the countries experimenting with *Shariah* been rather deplorable? It should be noted here that a pivotal aspect of implementation of *Shariah* in the abovementioned four countries is that it has not been done through popular will, but through the authority and sheer force of the ruling junta or dynasty. Thus, it is not accurate to say that the notion carries great weight with the mass.

What happens is that traditional Muslim mass is deeply attached to Islam, and rightly so. However, consistent with human nature, which generally seeks freedom, security, peace, justice and prosperity, the Muslim mass hardly has any problem with Islam, which in essence is dynamic, progressive and balanced. Muslim mass wants Islam, but not as a chokehold on them, and they know in their heart that Islam can't be either against human nature or against their interests and aspirations. Thus, for example, Afghani people have been deeply religious from a traditional perspective. Religion and faith are dear to their hearts. However, even such traditional people found the Taliban rule as an unbearable encroachment on their fundamental human dignity and rights. Pakistan has been an "Islamic Republic" since its inception, as its people is also generally very religious and attached to their faith and tradition. However, the overall society has become greatly secularized, and some sections more than others, especially as a reaction to the fanaticism, aggressiveness and rigidity of the proponents and self-proclaimed guardians/authorities of Islam. There is an undeniable reality that the Muslim mass does not have the appetite for the kind of *shariah* that is being imposed on them from the top, especially by corrupt and power-grabbing dictators and monarchies.

However, it must also be acknowledged that because the Muslim mass has deep attachment to their religion, anything that is presented to them as divine and thus binding upon them makes them psychologically and emotionally vulnerable to acquiescence or even manipulation.

---

[12] John Esposito. *Islam: The Straight Path* [Oxford University Press, 2005], pp. 74-75.
[13] *ibid*. p. 78.

In this context, the notion that *shariah* is divine and immutable has great relevance. If it is divine, then we are to treat the guidance from Allah as sacred, immutable and thus binding upon us. If something is from Allah, then it can't be treated any other way. However, what exactly is divine and what is meant by *shariah*? Once we explore this issue in depth, we find rather striking anomalies and discrepancies.

It is very common to argue that *shariah* is divine and immutable. For a detailed presentation of such common observations, see my survey "What is *Shariah*? - Definition/Description potpourri".

> "The *Shariah* includes both faith and practice. It embraces worship, individual attitude and conduct as well as social norms and laws, whether political, economic, familial, criminal or civil.
>
> It may also sometimes be used to imply, in a more restricted sense, do's and don'ts- the rules and regulations for conduct and behavior. Lastly, it is also used as the equivalent of the Islamic laws.
>
> The *Shariah* is thus nothing less than the divinely ordained way of life for man. To realise the divine will, man must follow the Shariah. To live in Islam is to live according to the Shariah. To give up the Shariah or any part of it knowingly, willfully or deliberately is to give up Islam. A Muslim must therefore do his utmost to observe and to implement the whole of it, wherever and in whatever situation he finds himself. Hence the Muslim insistence, persistence, commitment and passion for it."[14]
>
> "THE ETERNAL AND UNCHANGING
> The *Shariah* is for all times to come, equally valid under all circumstances. The Muslim insistence on the immutability of the *Shariah* is highly puzzling to many people, but any other view would be inconsistent with its basic concept. If it is divinely ordained, it can be changed by a human being only if authorised by God or His Prophet. Those who advise bringing it into line with current thinking recognise this difficulty. Hence they recommend to Muslims that the 'legal' provisions in the Qur'an and the concept of the Prophet as law-giver and ruler should be 'downgraded' .
>
> But, as the manifestation of God's infinite mercy, knowledge and wisdom, the *Shariah* cannot be amended to conform to changing human values and standards: rather, it is the absolute norm to which all human values and conduct must conform; it is the frame to which they must be referred; it is the scale on which they must be weighed.[15]
>
> "Laws are therefore an important and integral part of the *Shariah* and, as we have already noted, it admits of no distinction between its parts: 'to pray' is as valid, enforceable, obligatory and sacred as 'to consult in collective affairs' or to 'prohibit interest' or 'to stone an adulterer'."[16]
>
> "In Arabic, *Shariah* means the clear, well-trodden path to water. Islamically, it is used to refer to the matters of religion that God has legislated for His servants. The linguistic meaning of *Shariah* reverberates in its technical usage: just as water is vital to human life so the clarity and uprightness of *Shariah* is the means of life for souls and minds."[17]

---

[14] Khurram Murad. *Shariah - The Way to God*, excerpted from this link. The author was one of major figures of Jamaat-e-Islami Pakistan, who also lived in the West for a considerable length of time and dedicated his life to better present Islam to the Muslims in the West.
[15] Murad. excerpted from this Link
[16] Murad. excerpted from this Link.
[17] Shaykh Faraz Rabbani. Shariah: The Clear Path [a Sunnipath commentary]

"Finally, when mankind had reached the stage of intellectual maturity and was ready to receive the last message from Allah Subhanahu wa Ta'ala, Islam came with its complete, comprehensive, and eternal *Shariah* (law) for the whole of mankind."[18]

"Therefore, when He issued His law, the *Shariah*, He made it suitable for all times and communities. Otherwise, He would have indicated that this law would be subject to amendment, and would have outlined the procedure for such amendment. What all this means is that no legislative, executive or judicial authority has the power to amend God's law, which must be implemented in full."[19]

"The *Shariah* is the divinely ordained code of behaviour that dictates the way of life for mankind."[20]

"Since the Kingdom [of Saudi Arabia] has adopted Islam, in word, deed and belief, as its mode of life, its society is based on firmly established principles derived from the provisions of divine revelation, which still constitute the cornerstone of Islamic civilization. Its system of government is based on justice, consultation, equality and a desire to ensure the proper application of the Islamic *Shariah* in all its aspects."[21]

"While *shariah* law is sacred and immutable, fiqh is human science."[22]

" ... *Shariah* is just another name of Islam and a pattern of thought and action given by Islam, ... It should also be clear that there are no versions of Islam. It is a *deen* revealed by Allah and a way shown to us by the Prophet (peace be upon him). It is complete code of life and presents solutions to all matters and the problems of life. ... Islam provides clear and unambiguous guidance for life."[23]

"*Shariah* = Islamic Law."[24]

Obviously, the above quotations are more contemporary to our time. One reason for this is that more often than not, people's applied efforts are reflection of their contemporary understanding, regardless of what may have been the formulations of the past. Another, even more important reason, is that the later period of classical Islamic discourse does use the term *Shariah*, but without explicating it, almost assuming that everyone knows and understands what it is and what it entails.

"While the Sharia may be defined in a variety of ways, no definition that seeks to do justice to medieval Muslim thought can do without the key concept of *ahkam*, rendered here as 'categorizations.' The Sharia is, first and foremost, the totality of divine 'categorizations of human acts' (*al-ahkam fi'l af'al, al-ahkam al-'amaliya*). The medieval Muslims were in fact much more concerned with the explication of the concept of a divine categorization of an act than with the explication of the concept of the Sharia as such. Indeed, in many of their most renowned writings one does not find any discussion at all of the latter concept, whereas discussions of the former typically take up many pages.

[18] Yusuf al-Qaradawi. The Lawful and the Prohibited in Islam [available online]; Shaikh al-Qaradawi is one of the leading Islamic scholars and jurists of our time. His works are widely read and respected in the Muslim world. He is also closely involved as one of the primary initiators of the European Council for Fatwa and Research.

[19] Adil Salahi, "Does Islamic Law Need Modification?" Arab News, May 22, 2006.

[20] Jamiatul Ulama. Shariah.

[21] Saudi Embassy document, "Human Rights in Judicial System, 2000" [online document]

[22] Sistersinislam.org. Reforming Family Law in the Muslim World

[23] Khurshid Ahmad. "Implementation of Shariah," translated from Urdu original in Tarjumanul Qur'an Isharat, October 1998; Ahmad is a prominent leader and intellectual of Jamaat-e-Islami Pakistan.

[24] Shariah in Islamic Banking Glossary, Islamicity.com.

Frequently, rather than speaking simply of the Sharia, Muslim scholars would speak of 'Sharia categorizations' (*al-ahkam al-shar'iya*)."[25]

Weiss' observation about not having any discussion about the term *Shariah* in the earliest of renowned writings is in the context of his book based on the work of the eminent jurist al-Amidi. Even though there may not have been any explication of *Shariah* as a notion in the earliest of classical discourse, in our contemporary time, the use of this term is widespread, and below are some of the main points extracted from the above-mentioned definitions/descriptions of *Shariah*.

a) *Shariah* is divine.
b) *Shariah* is immutable.
c) *Shariah* is the same as Islam and it is "complete code of life".
d) *Shariah* is the same as Law; others say it is not.
e) *Shariah* is enforceable [without any distinction between prayer or crimes].
f) *Shariah* [Islam] provides "clear and unambiguous" guidance for life.

This itemized list can be helpful to explore and appreciate the understanding and misunderstanding about *shariah*. Let us analyze each of these separately.

Is *Shariah* "divine"?

Let us first ensure that we understand the word "divine". According to Merriam-Webster Dictionary, the word means: "of, relating to, or proceeding directly from God."[26] Is *shariah* directly from God? The answer to this question depends on how we define the scope of *shariah*. For example, if *shariah* is equivalent to Islamic law (*fiqh*), then it cannot be divine. The reason is indisputably clear: *fiqh* or Islamic law in its totality is <u>mostly</u> human construct. Even though one of the *usul* (source methodologies), the Qur'an, is regarded by Muslims as divine, the other sources – hadith, *ijma* (consensus) and *qiyas* (analogical deductions) – are not divine.

To fully appreciate the relevance of the preceding statement, it is important to understand and acknowledge some essential aspects of each of the three non-divine sources. It is important to know that *ijma*, even if achieved, is a human construct. However, more importantly, there is hardly anything on which there is *ijma*, including even the definition of *ijma*. Many scholars do acknowledge that on most things people claim *ijma* there is no *ijma*.

According to Imam Ibn Taymiyah, "... <u>many problems about which people think that there is *ijma* on them, while in fact there is none. Rather in some cases even the opposite view is correct and is upheld</u>.[27]

Also *ijma* is not a source to derive laws; instead, it is more for validation of a law that is already derived or formulated by others. Some scholars have elevated the status of *ijma* above hadith. And, there are others who have elevated *ijma,* quite unacceptably, above all other sources, including the Qur'an. However, there are also eminent Islamic jurists, such as al-Amidi, one of the leading scholars of *usul al-fiqh*, who had to recognize the "probabilistic" basis of *ijma*.

> "Amidi seems, when all is said and done, to belong to the camp of those who saw the Ijma as functioning as a **probable** indicator of the law, one that could yield nothing more than opinion. True, he seems, on the issue of the authority of the Ijma, to try to straddle the fence between the two camps by affirming the *near* conclusiveness of the supporting Qur'anic and Sunnaic texts, especially the latter. But near conclusiveness is not, from a

[25] Bernard G. Weiss. *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Din al-Amidi* [Salt Lake City, Utah: University of Utah Press, 1992], pp. 1-2.
[26] http://www.m-w.com/dictionary/divine
[27] Taimiya, *Fatawa*, Vol. I, p. 406. Matba Kurdistan-al-Ilmiya, Cairo, 1326 A.H, quoted in Maududi, p. 92.

technical point of view the same thing as conclusiveness, and Amidi finds himself constrained in the end to let the absolute authority of the Ijma rest upon probability. This being the case, he has no choice but to regard <u>the Ijma as actually operating as a probable indicator dependent upon the fallible deliberations of the individual muj</u>tahid."[28]

For *ijma*, please read a duly documented essay of mine "<u>The Doctrine of Ijma': Is there any Consensus</u>."

For much of Islamic laws, *qiyas* has been the most commonly used source. It is acknowledged even by Islamic jurists and scholars that *qiyas* is essentially a method of human reasoning. Of course, the analogical reasoning is applied in connection with something available in the two primary sources: the Qur'an and the Sunnah. However, at the end, it is still a human construct, and thus not divine. It is no wonder that there is hardly any agreement among (or even within) various schools of jurisprudence on many such matters of *shariah*. Thus, most of the output of *qiyas* can't be regarded as divine. For details, please read another duly documented essay of mine "<u>Qiyas (Analogical Reasoning) and Some Problematic Issues in Islamic law</u>."

Even though hadith is regarded as one of the two primary sources, I wanted to deal with it last in this context, because it is one of the most sensitive issues. However, a Muslim is conscientiously duty-bound to approach any such issue in light of the guidance of the Qur'an and the Sunnah in an objective manner. The Qur'an is divine, as we believe that it is direct, verbatim and unadulterated, final revelation from God. However, hadith is not at the same level of the Qur'an. It is important to note that what constitutes authentication of hadith, so that we can separate the *sahih* (authentic or sound) ones and also be able to grade or classify the rest, is a human process. Even the criteria or methodology of authentication is a human enterprise.

Many Muslims might not know that while Sahih al-Bukhari is the most highly regarded collection of the Prophetic narrations (and deservingly so), he did not specify what criteria he used to evaluate a narration and select certain ones for his collection. Indeed, the compilers of the six major collections [*sihah al-sitta*][29] generally have not specified or disclosed their criteria. Other scholars later have attempted to identify what might have been their criteria, in a manner of "reverse engineering."[30]

> "Most of the authors of six principal books of hadith did not describe their criteria in selecting the material, except for a sentence here and there, but it is possible to arrive at some conclusions from their writings. Hazimi and Maqdisi studied the subject. They studied the qualities of narrators whose ahadith have been recorded in those books and tried to find out a general rule. Hazimi says that those scholars had certain criteria in accepting a narrator whose hadith they were going to record in their books."[31]

The collection enterprise itself was undertaken several centuries after the Prophet, involving hundreds of thousands of people. The compilers themselves did not specify the criteria of authentication. Indeed, the list of authentication criteria was not identical among the compilers. That's why, let alone other collections, the two most highly regarded collections, Sahih al-Bukhari and Sahih Muslim, have many hadiths that appear in one, but not in both.

---

[28] Weiss, *op.cit.,* p. 254.
[29] There are differences of opinions about which six exactly are those collections. Inclusion of Sahih al-Bukhari and Sahih Muslim is not disputed. The others that are generally acknowledged are: Abu Dawood, Tirmizi, Nasai, and Ibn Majah.
[30] <u>Reverse engineering</u> means the process of determining how something was constructed by examining only the finished product. Maqdisi was a noted scholar of sixth century AH and contemporary of Ibn Salah.. He wrote *Risalat al-Hafiz Mohammad ibn Tahir al-Maqdisi fi Shurut Kutub al-a'imma al-Sitta*. Muhammad b 'Uthman al-Hazimi is another scholar (d.584/1188), who probed into determining the criteria used by hadith compilers. His book is *Shurut al-A'immah al-Khamsah* (ed. M.Z. al-Kauthari, Cairo, N.D.).
[31] Muhammad Mustafa Azami, *Studies in Hadith Methodology and Literature* [Indianapolis, Indiana: American Trust Publications, 1977], p. 90.

Moreover, hadiths are graded as *sahih* (sound), *hasan* (good), *daif* (weak) and *maudu* (fabricated). While there is a broad agreement on many hadiths that are regarded as *sahih*, there are many about which there is no agreement about their authenticity. Some hadiths are regarded *sahih* by some scholars, while not so by others. Also, Bukhari and Muslim being titled as *Sahih* does not mean that all the hadiths in those collections are *sahih*. Also to be noted is the fact that the authentication methodology of the compilers does not scrutinize a hadith in terms of its *matn* (text), whether the content of any hadith is consistent with the Qur'an, other hadiths, or established historical facts, etc.

Thus, while the authentication process and the noble contribution of the hadith scholars have elevated the hadith literature at a much higher level of acceptability and reliability, scholars do recognize that unless *mutawatir* (narrated in exactly similar words through numerous chains, as contrasted with *ahad* - solitary or simply non-*mutawatir*), even *sahih* hadith yields only **probabilistic** or **speculative** knowledge, not certainty. Therefore, hadith literature is a precious treasure for us to benefit from as a complementary source of guidance, but the human input is too high to consider it as a divine source. Since the Qur'an has only a few and most important injunctions covered (and even that, in general terms), and most of the *shariah* (laws and codes) are based on hadith, where hadith is not divine in the sense the Qur'an is, it is important to understand why any claim that *shariah* (in a sense that it is a complete code of life, covering all aspects of life) is simply wrong and untenable. Indeed, anyone who claims that *shariah* – in the sense that it covers the entire spectrum of life for which sacred and binding laws and codes are already laid out – is making an erroneous (or worse!) statement. Such a statement can't be supported from an Islamic viewpoint.

> "The Sharia is ... the totality of divine categorizations of human acts. But these categorizations have not, according to the common Muslim view, been precisely spelled out for the benefit of mankind. True, God has revealed his eternal speech – an attribute inhering in his very essence – to mankind through prophets. But when searches through the repositories of divine revelation, one does not find an abundance of statements of the form 'X is obligatory' (or recommended, disapproved, forbidden, etc.). Instead, one finds a variety of less precise linguistic forms on the basis of which human scholars must ascertain to the best of their ability the divine categorizations and then give precise expression to them. Statements of the form 'X is obligatory' are thus, for the most part, the result of human scholarly effort; they are not themselves given. What *is* given is a plethora of highly interpretable 'indicators' (*adilla)* of the divine categorizations. God in his wisdom has chosen to engage human beings in the toilsome task of ferreting out the categorizations from these indicators, of articulating what he himself has not precisely articulated. In this way he has afforded them greater opportunity for proving their devotion to him and for attaining favor with him."[32]

So, can *shariah* be divine in any particular sense? First, if *shariah* is understood as the Divine Will, as in the words of one of the leading Muslim scholars of our time Khaled Abou El Fadl ("eternal unchanging law <u>as it exists in the mind of God</u>"),[33] yes it can and must be regarded as "eternal", "immutable," "divine," and "infallible." However, we are not enabled to read the "mind of God." God is Eternal, Infallible, and whatever laws exist in his mind are immutable. But that is not the case with us as human beings. Even in regard to the Qur'an, the Book as the final revelation is divine and thus immutable, but our human understanding and interpretation of the Qur'an are not divine or infallible.

Unfortunately, Muslim scholars/jurists rarely offer their thoughts/views/rulings with the relevant disclaimer. Mufti Muhammad Taqi Usmani, who is also one of the most coveted experts in the

---

[32] Weiss, *op.cit*., p. 13.
[33] El Fadl. The Great Theft [San Francisco, CA: Harper, 2004]

field of Islamic finance, is not generally an exception. However, in one of his works, there is a rare candor about the fact that what is human input is not infallible.

> ... it needs to be realized that whereas the laws ordained by Allah and His Prophet are sacred and there is no room for doubts about it, when these laws are codified, that code of law represents human effort, which is not infallible, but susceptible to mistake. The drafting of any law is a very delicate undertaking. All possible situations have to be kept in mind and provided for in words. Since human intelligence, being limited, cannot visualize all kinds of circumstances in advance, there is always the possibility of flaws and weaknesses in any piece of law. The *Hudud* Ordinances are no exception. They may suffer from weak drafting. They may contain some aspects that are in need of review and improvement.[34]

The Qur'an <u>is</u> immutable in the sense that we are not to discard or eliminate any verse of the Qur'an.[35] Any specific and explicit injunction of the Qur'an – in the general sense – is immutable.

For example, fasting is obligatory on any able-bodied adult Muslims. However, there are only a few verses about fasting, without any details, which we learn from the Sunnah, as reflected in hadith. As soon as we go into the details, we see that there are many divergent, and even contradictory narrations, on the basis of which, using *ijma*, *qiyas*, whenever relevant, the scholars have derived further details about the rules. Thus, the disagreements we see among various madhab (schools of fiqh) are the result of the human element in the process of extracting and formulating the rules and laws. In this example, that fasting (sawm) is *fard* (obligatory) is immutable. No one can claim any longer that it is not obligatory on able-bodied Muslims. All other details, not explicitly specified in the Qur'an or established through *mutawatir* hadiths are available on only probabilistic basis. That does not mean that we can't use those details. <u>Indeed, we can and must.</u> However, to claim that anything is "divine", such as *Shariah* (actually, the users of that notion mean Islamic laws)*, while most of which is human construct, is elevating the threshold for acceptability of it to an indefensible level.

The bottom line is: the sense in which *shariah* is commonly used in terms of its scope and equivalence with laws covering the <u>entire</u> spectrum of life, where the details of the laws are derived not necessarily from divine source, but from semi-divine (hadith)[36] and non-divine (*ijma* and *qiyas*) sources, is NOT divine.

There is one other serious negative ramification of treating *Shariah* in its comprehensive legalistic sense as divine. As explained later in this essay based on the works of al-Amidi, a noted scholar of the classical period, *ijtihad*, which constitutes the basis of bulk of Islamic laws in their details yields only **probabilistic** knowledge.[37] Furthermore, as the works of Ibn Khaldun contributed to the repository of knowledge of the humanity in general, inspired by Islam but based on an inductive method, indicates that at certain level, seeking knowledge and understanding can't be limited to merely sacred texts and deduction as a methodology. Another noted Islamic scholar, al-Shatibi [d. 790 AH] applied inductive method to develop better understanding of *Shariah* from the perspective of intent [*maqasid*].[38] Unfortunately, text-oriented deductions from sacred texts gradually led to reductionist legalism.

---

[34] Muhammad Taqi Usmani. "The Islamization of Laws in Pakistan: The Case of Hudud Ordinances," *Muslim World*, Volume 96 Issue 2, pp. 287-304, April 2006, p. 289.

[35] Also, we should not regard any verse in the Qur'an as abrogated, which essentially renders such a verse irrelevant and useless after such abrogation.

[36] In reality, there is no such thing as semi-divine. Either it is divine or non-divine. From that perspective, even hadith should be regarded as a non-divine source. However, since *mutawatir* hadiths are considered at par with the verses in the Qur'an, some room for the "divine" is left.

[37] See note #61 below.

[38] Mohammad Omar Farooq. "Islamic Fiqh and the Lack of Empirical Foundation" unpublished essay, June 2006.

Is *Shariah* immutable?

Once again, one must define *Shariah* to properly answer this question. If *Shariah* is used in the common sense as it is used, and as being promoted by various Islamic movements and certain countries that attempted (or are attempting) to "implement" *Shariah*, it is definitely not immutable. Indeed, according to Maududi, one of the leading Islamic personalities of twentieth century, *deen* (Islam in the generic sense of submission to our Creator God) is immutable, as it has been constant throughout human history. However, *shariah* is not immutable, as there have been variations in *shariah* under different messengers, such as Moses, Jesus and Muhammad (p).

> "Now I shall tell you what *Shariah* is. The meaning of *Shariah* is mode and path. When you have acknowledged God as your sovereign and accepted His servitude and have also admitted that the Messenger is the tangible ruler holding authority on His behalf and that the Book has been sent by Him, it will mean you have entered *Deen*. ... After this, the mode in which you have to serve God and the path you have to traverse in order to obey Him, is called *Shariah*. This mode and path has been indicated by God through His Messenger who alone teaches the method of worshipping the Master and the way to become pure and clean. The Messenger shows us the path of righteousness and piety, the manner in which rights are discharged, the method of carrying on transactions and dealings with fellow-beings and the mode of leading one's life. But the difference is this that while *Deen* always was, has been, and is still one and the same, numerous *Shariah*s came, many were cancelled, several were changed but these alterations did not change the *Deen*. The *Deen* of Noah was the same as that of Abraham, Moses, Jesus, Shuaib, Saleh, Hud and Muhammad (peace be on them) but the *Shariah*s of these Prophets varied from each other to some extent. The modes of saying prayer and observing fast were of one kind with one prophet and of another kind with the other. Injunctions about Halal and Haram, rules of cleanliness and codes of marriage, divorce and inheritance somewhat differed from one *Shariah* to another. In spite of this, all were Muslims---the followers of Noah, the followers of Abraham, the followers of Jesus and those of Moses, and we too are all Muslims because *Deen* is one and the same for all. This shows that *Deen* is unaffected by differences is the rules of *Shariah*. *Deen* remains one though modes of following it differ."[39]

The above view is consistent with the Qur'an.

> The same religion [*deen*] has He established for you as that which He enjoined on Noah - the which We have sent by inspiration to thee - and that which We enjoined on Abraham, Moses, and Jesus: Namely, that ye should remain steadfast in religion, and make no divisions therein: to those who worship other things than Allah, hard is the (way) to which you call them. Allah chooses to Himself those whom He pleases, and guides to Himself those who turn (to Him). [42/ash-Shura/13]

Thus, often when we come across assertions that *Shariah* is immutable or eternal, it is nothing but vacuous, emotional, unscrupulous and indefensible statements. This understanding is reflected in the historical development of *Shariah* or Islamic law as a rigid body of theological dogmas and legal codes.

> "By the tenth century, the basic development of Islamic law was completed. The general consensus *(ijma)* of Muslim jurists was that Islamic law (Islam's way of life) had been satisfactorily and comprehensively delineated in its essential principles, and preserved in the regulations of the law books or legal manuals produced by the law schools. This attitude led many to conclude that individual, independent interpretation *(iitihad)* of the law was no longer necessary or desirable. Instead, Muslims were simply to follow or

---

[39] "Let us be Muslims," online document.

imitate *(taqlid)* the past, God's law as elaborated by the early jurists. Jurists were no longer to seek new solutions or produce new regulations and law books but instead study the established legal manuals and write their commentaries. <u>Islamic law, the product of an essentially dynamic and creative process, now tended to become fixed and institutionalized</u>. While individual scholars like Ibn Taymiyya (d. 1328) and al-Suyuti (d. 1505) demurred, <u>the majority position resulted in traditional belief prohibiting substantive legal development</u>. This is commonly referred to as the closing of the gate or door of *iitihad.* <u>Belief that the work of the law schools had definitively resulted in the transformation of the Sharia into a legal blueprint for society reinforced the sacrosanct nature of the tradition;</u> change or innovation came to be viewed as an unwarranted deviation *(bida)* from established sacred norms. To be accused of innovation-deviation from the law and practice of the community-was equivalent to the charge of heresy in Christianity.[40]

While a good part of the traditional Islamic segment has elevated *Shariah* in general to a sacrosanct level and understood and treated it as immutable, many Islamic jurists also have recognized the principle that a vast portion of *Shariah* is changeable subject to time and place. This principle is: "Rulings change according to time and place."[41] Indeed, some Islamic jurists and scholars, even parallel to the regime of *taqlid*, have always continued the legacy of *ijtihad* in their pursuit of keeping the laws and codes relevant to the contemporary times. Islamic jurists of our contemporary times, who are in tune with the modern challenges, are also trying diligently to bridge the gap between the laws and the reality, where immutability at the broader or detailed level simply can't be considered tenable. Indeed, the dynamism of Islamic law has been the hallmark of even the period of the companions of the Prophet. At the level of applied details, the *sunnah* is not immutability, but just the opposite. Ibn Qayyim shares an illuminating perspective on this important matter.

> "Omar ibn al-Khattab judged [in a case in which] a woman died and left her husband, her mother, two full brothers and two half brothers from her father, and decided to distribute the third of her inheritance between all the full as well as half brothers. A man said to him [i.e., to Omar] 'you did not do the same in the year so and so.' Omar replied: 'that [decision] was according to what we had judged then and this [decision] is according to what we are judging today."[42]

Is *Shariah* the same as Islam and is it a "complete code of life"?

Based on what is already presented here, *Shariah* is not the same as Islam. Interestingly, the comment "*Shariah* is just another name of Islam," is by Khurshid Ahmad, one of the protégés of Maulana Maududi. The latter had a different view, as explained above. According to Maududi, the *Deen* [Islam] has been constant for all people; however, *Shariah* has not been. Thus, in this statement, Khurshid Ahmad is either disagreeing with Maududi, or it is just one of those emotional rhetoric without being adequately careful in one's articulation.

Is *Shariah* a "complete code of life?" Once again, it is important to first determine what such statements mean.

---

[40] Esposito, op. cit., p. 84.
[41] "*taghaiyur al-Ahkam bitaghaiyur al-zaman wa al-makan*". See Ibn Qayyim al-Jawzi, I'lam al-Muwaqqi'in an Rabb al-'alamin, Al-Maktabah al-Asriyyah, Beirut, 1987, Vol. 3, pp. 14-70, quoted in Mahdi Zahraa. "Characteristic Features of Islamic Law: Perceptions and Misconceptions," *Arab Law Quarterly*, Volume 15, Number 2, 2000, pp. 168-196.
[42] Ibn Qayyim al-Jawziya. op. cit. Vol. 1, pp. 110-111, quoted in Mahdi Zahraa, op. cit., p. 184.

"Islam establishes a clear system of worship, civil rights, laws of marriage and divorce, laws of inheritance, code of behavior, what not to drink, what to wear, and what not to wear, how to worship God, how to govern, the laws of war and peace, when to go to war, when to make peace, the law of economics, and the laws of buying and selling. Islam is a complete code of life."[43]

"There are two major reasons as to why Islam becomes an easy target for the western media when compared to other religions. The first reason is that Islam provides a complete code of life and it is for this reason that every action of a Muslim is attributed to his religion."[44]

"During the seventies, Islamic Development Bank (IDB) and a number of Islamic banks at national levels were established in the Islamic world. At home, the Islamic groups were vigorously working for adoption of Islam as the complete code of life."[45]

"Islam is a complete code of life and its implications are expanded to all walks of life. It is a belief, a tradition, acts of worship, as well as a code of socio-economic and political activities to ensure peace and socio-economic justice for the Muslims and non-Muslims alike."[46]

"The distinguishing factors in the Muslim context are (a) the frequent resort to religion as self-evidently valid premises for (usually discriminatory) laws, and (b) the symbiotic relationship the religion of Islam has developed with Muslim jurisprudence. This relationship is exemplified by the common and frequent assertion by Muslims that "Islam is a complete code of life" to suggest that all legal matters have already been determined by religion. Clearly neither the basic text of Islam, the Qur'an, nor even the hadith (practices and traditions of the Prophet) are legal codes, though prescribed in both are suggested codes of behavior. As one of the most important disciplines to emerge in Islamic scholarship, however, jurisprudence has dominated Islamic scholarship to the point that today a well known Muslim scholar, Syed Hossein Nasr, can assert 'The Shariah is the Divine Law by virtue of accepting which a person becomes a Muslim. Only he who accepts the injunctions of Shariah as binding upon him is a Muslim.'"[47]

What stands out from the above statements about Islam being a "complete code of life" is that Islam has guidance for the entire spectrum of life and, in some cases, it is implied that there is already ready (or easily and quickly deducible) solutions for every issue, situation, or problem human beings might encounter. Another implication is that since Islam is a self-contained, self-sufficient way of life, Muslims must not turn to any other source for guidance or solutions.

"As Islamic law is a comprehensive and interrelated unit, the application of its various branches is subject to a single standards, i.e. Islamic law does not accept the application of different sets of standards to its different branches."[48]

It should be pointed out that life *is* an integrated whole and therefore in dealing with the issues and problems of life in an integrated fashion, the notion of "complete code of life" is very appealing, as people can't simply borrow capitalism for the economy, democracy for politics, nationalism for galvanizing a society, etc. as interchangeable components to come up with our

[43] "A Complete Code of Life," from Muhammad Al Alkhuli. "The Need for Islam"

[44] Anil Khan Luni. "Islam in the eyes of western media," Pak Tribune, September 22, 2006.

[45] Md. Abdul Awwal Sarker. "Islamic Banking in Bangladesh: Performance, Problems & Prospects," *International Journal of Islamic Financial Services*, Vol. 1 No.3, October-December 1999, pp. 12-28.

[46] Qazi Hussain Ahmed. "Islam & Poltics "; He is the current *amir* (leader) of Jamaat-e-Islami.

[47] Farida Shaheed. "Controlled or Autonomous: Identity and the Experience of the Network Women Living Under Muslim Laws," July 1994.

[48] Mahdi Zahraa, op. cit., p. 170

own cocktail ideology or system.[49] For the sake of consistency and balance, Islam does provide the essential guidance to deal with life as an integrated whole. However, to stretch it that Islam is an already formulated manual for every problem or issue Muslims or people may encounter is simply not correct.

Another implication, though often not stated, is that all the problems and issues are already identified and the solutions are also specified in the textual sources or have been worked out by the scholars. From this perspective, there is neither any need nor any relevance of learning anything from others. All the social, economic, educational, political problems, or whatever problem (except scientific, technological, engineering type) one can conceive of, only thing one needs to do is turn to the primary Islamic texts (the Qur'an and hadith), or the books of scholars and jurists, or just contact any fatwa council or hotline, and the solution would be available.

The reality is not so. One has to wonder as to why the condition of the Muslim world is so miserable and deplorable, if both problems and solutions are known or easily deducible. A fundamental pitfall of Muslim thought has been text-orientation.[50] If we want to understand how God originated his creation, we are not supposed to turn to and bury our head in the books. It is the command of God: "Say: '<u>Travel</u> through the earth and <u>see</u> how Allah did originate creation; so will Allah produce a later creation; for Allah has power over all things'" [29/al-Ankaboot: 20] The commandment is not "read the sacred or the right books", but to "travel ... and see". However, our so-called *Shariah* scholars kept us glued to the texts, while the world of science moved on, leaving us way behind. If we are to understand and appreciate the power and glory of God as reflected in the nature, we are not merely supposed to be book oriented. Instead, we are commanded to look up (explore) the sky/space.

> "[Hallowed be] He who has created seven heavens in full harmony with one another: no fault will you see in the creation of the Most Gracious. And <u>turn your vision</u> [upon it] once more: can you see any flaw?
>
> Yea, turn your vision [upon it] again and yet again: [and every time] thy vision will fall back upon thee, dazzled and truly defeated…" [67/al-Mulk/3-4]

Well, once again, as we became more *Shariah*-oriented, we did not listen to the command of God. Instead, we buried our heads in books. We read more books and wrote more books about earlier books. The result is predictable. Now we are blissfully (?) living our life supposedly guided by the "complete code of life", while using all those guidance, we are essentially going nowhere. Indeed, those countries that have been promoting *Shariah* in its commonly (mis)understood sense are now facing unrest and lack of confidence from their own people. It is a fundamental problem with our mindset.[51]

In this context, the problem lies with the static understanding of Islam, where the textual sources and its experts/scholars are regarded as a "dictionary" of solution. Just as one looks up words in dictionaries, people should just open the right page and look up what they need, as all the words

---

[49] Examples of such cocktails include: Mujibbad (Mujibism - the tenets of Sheikh Mujibur Rahman, the assassinated leader and prime minister of Bangladesh - nationalism, socialism, secularism. and democracy). See Country Report: Bangladesh, p. 3; Libyan dictator Muammar Qaddafi' Green Book representing his ideology, which includes the following tenets: "authority of the people", socialism and "social basis of the third universal theory". In another variation, his ideology is often described as Islamic socialism. Indonesia's late Sukarno's Pancasila: Nationalism, Internationalism ('one nation sovereign amongst equals'), Representative democracy (all significant groups represented), Social Justice (Marxist influenced), Theism (with a secular bent).

[50] Mohammad Omar Farooq. "Islamic Fiqh (Law) and the Neglected Empirical Foundation," unpublished essay, July 2006.

[51] Mohammad Omar Farooq. "Mind-Building: A Neglected Dimension of the Prophetic Heritage," The Message International, June 2000.

one may need are already there. In reality, Islam is not like a dictionary; rather, it is like an alphabet. Many words are already available to be looked up from the dictionary. But also there are many words that need to be constructed or formed based on the alphabet. When Islam as a "complete code of life" is understood in the sense of dictionary, the result would be predictable that we will be fossilized as we are in the past frames of history. When we understand "complete code of life" in the sense of alphabet (essential principles or building blocks), we can have a dynamic approach and outcome to deal with our issues and challenges as they unfold. From that perspective, yes, the Qur'an can be the source for the essential guidance for the solutions we seek. As Shatibi explained:

> "... experience shows that every 'alim who has resorted to the Qur'an in search of the solution to a problem has found in the Qur'an a principle that has provide him with some guidance on the subject."[52]

Is *Shariah* the same as Law?

As already cited earlier, one of the most common confusions about *Shariah* is that it is considered synonymous with "law" and in that sense, no distinction is maintained between *Shariah* and *fiqh*. Just as one of the sources put this in an equation form (*Shariah* = Islamic Law), the underlying misunderstanding and misperception are quite widespread.

> "Under the rules of Islamic Law (Sharia), companies are divided into two main classes: ..."[53]

> "At HSBC, we constantly strive to provide financial solutions that meet the requirements of our customers around the world. HSBC Amanah offers Islamic banking solutions which combine our financial expertise with your enduring values. Now customers can experience the global coverage and convenience of banking with HSBC without compromising the principles of the *Shariah* (Islamic law)."[54]

> "The term *Shariah* refers to Islamic law as revealed in the Qur'an and through the example of the Prophet Muhammad (peace be upon him)."[55]

> "Sheikh Taqi Usmani is considered the pioneer in his field and heads the *Shariah* (Islamic law) boards of banks such as HSBC and CitiBank."[56]

> "*fiqh:* lit. understanding or perceptiveness; the science of the divine law, the sum of man's knowledge of the Shari'a, Islamic law or jurisprudence"[57]

This equation between *Shariah* and Islamic law constitutes one of the most profound confusions about Islam, as some people are trying to implement Islam on the basis of this confusion. If *Shariah* pertains to the entire spectrum of life, then it is not all law. For example, matters pertaining to ablution, prayer, fasting, etc. are not all matters of law. Turning every aspect of Islamic guidance into laws is simply inconsistent with Islam.

> "Generally, when scholars in the field of Islamic studies speak of 'Islamic law,' it is presumed that they are talking about what is called in Arabic *al-shari'a*, or *al-shar'a*.

---

[52] Mohammad Hashim Kamali. Principles of Islamic Jurisprudence. 3rd. ed. [London: Islamic Texts Society, 2003] quoting Abu Ishaq al-Shatibi, al-Muwafaqat fi Usul al-Ahkam, III, 219.
[53] "Companies in Islamic (Shariah) Law," Gulf-Law.com
[54] FAQs about Islamic Banking, HSBC-Amanah
[55] Lender's Shariah Advisors. Islamicmortages.co.uk.
[56] "Islamic solution to ending third world debt." Event announcement introducing Mufti Muhammad Taqi Usmani.
[57] Sherman Jackson (Abdul Hakim). Sources of Islamic Law.

Indeed, they frequently speak simply of 'the *Shari'a*,' or use the terms 'Islamic law' and 'the Shari'a' interchangeably. However, it is something of an oversimplification to equate *Shari'ah* with law. The Shari'a may indeed be said to *contain* law, but one must also recognize that it embraces elements and aspects that are not, strictly speaking, law."[58]

Indeed, that Islam is much broader and that *Shariah* is not just law are clear from the Qur'an.

"Thus we put you on the (right) Way of Religion [i.e. *shariatim min al-amr*]: so follow that (Way), and follow not the desires of those who know not." [45/al-Jathiya/18]

Interestingly, this is the only place in the Qur'an where the exact word *Shariah* has been used and it is in a generic sense, much broader than law. Moreover, this is a verse from Meccan period, when there were neither laws or codes nor obligatory rituals. Abdullah Yusuf Ali clarifies in his Commentary:

"*Shariah* is best translated the 'right Way of Religion', which is wider than the mere formal rites and legal provisions, which mostly came in the Medina period, long after this Meccan verse had been revealed."[59]

The clarification of Umar Ibn Abdul Aziz in a letter to Adi bin Adi is illuminating, because he even distinguished shara'ii from *faraid*, *hudood* and *sunnah*. He did not use the exact word *Shariah*, but obviously he did not lump up all those aspects under one label of *Shariah*.

"Umah bin Abdul Aziz wrote to Adi bin Adi, 'Belief includes *faraid* (enjoined duties), *shara'ii* (laws), hudood and sunna. And whoever follows all of them has complete belief and whoever does not follow them completely, his belief is incomplete."[60]

Imam Shatibi [790 AH] did not equate Shariah with Islamic law.

"Imam Shatiby, a Maliki jurist, in his *magnum opus, al-Muwaffaqat fi Ushul al-Shariah,* elaborates about the general framework of Sharia. He contends that within Sharia there are variants that should be understood comprehensively among others: law, ultimate goal of Sharia, textual justification (*dalil)*, and ijtihad. It means that sharia should not be understood just as a law. ..."[61]

Indeed, as Lily Zakiyah Munir, a leading Indonesian Muslim human rights activist and Islamic scholar, explains, the Qur'an itself is not a manual of law.

"The Qur'an calls itself *al-huda,* or guidance, not a code of law. Out of over 6200 ayat, less than one tenth relate to law and jurisprudence, while the remainder concerned with matters of belief and morality, the five pillars of the faith and a variety of other themes. Its ideas of economic and social justice, including its legal contents, are on the whole subsidiary to its religious call. There are close to 350 legal *ayat* in the Qur'an, most of which were revealed in response to problems that were actually encountered. Some were revealed with the aim of repealing objectionable customs such as infanticide, usury, gambling and unlimited polygamy. Others laid down penalties with which to enforce the reforms that the Qur'an had introduced. But on the whole, the Qur'an confirmed and

---

[58] Bernard Weiss, *op. cit.*, p. 1
[59] Abdullah Yusuf Ali. The Holy Qur'an: Text, Translation and Commentary [New York: Tahrike Tarsile Qur'an] Footnote: # 4756.
[60] Sahih al-Bukhari, Vol. I, Kitab al-Iman, Chapter I, p. 15 (trans. by Muhammad Muhsin Khan).
[61] Lily Zakiyah Munir. "General Introduction to Islamic Law," p. 4; online document from Law and Finance Institutional Partnership, Indonesia.

upheld the existing customs and institutions of Arab society and only introduced changes that were deemed necessary."[62]

Despite the fact that legal verses constitute a rather small portion of the Qur'an, often legalism reduces the Qur'an to laws.

> "It is not surprising that *fiqh* is often viewed as representation of the religion itself. The role of *fiqh*, therefore, changes up and down in line with the inclining and declining role of the religion in the state. In countries imposing formal sharia, *fiqh* has a big authority in regulating human life as individuals, as part of the society, and in their relation with God. On the contrary, in a secular country *fiqh* is internalized more as regulating human relation with God.
>
> *Fiqh* is often mixed up and confused with sharia. The latter is comprehensive, the Way ordained by God, embracing all from moral and ethical values, theology, spiritual aspiration, to formal ritual worships. ... it is clear that *fiqh* is actually a part of *sharia*."[63]

Anyone who believes that God is the Most Merciful and the Most Gracious and he has sent us guidance to benefit from would like to receive maximum benefit from the guidance. However, turning everything into a matter of law unacceptably adds a level of burdensome rigidity to life that is not consistent with *fitra* (innate human nature). That's why the Qur'an asks the believers to focus on avoiding the big sins [*kabair*]. That does not mean that people should take other sins lightly, but everything is not a matter of law.

> "If you (but) eschew the most heinous of the things which you are forbidden to do, We shall expel out of you all the evil in you, and admit you to a Gate of great honor." [4/an-Nisa'a/31]
>
> "Narrated Abu Hurairah: The Prophet (p), "Leave me as I leave you, for the people who were before you were ruined because of their questions and their differences over their prophets. So, if I forbid you to do something, then keep away from it. And if I order you to do something, then do of it **as much as you can**." [Sahih al-Bukhari, Vol. 9, #391].

Does that sound like everything of life is a matter of law? Is the notion of law compatible with doing "as much as you can"?

> Narrated Abu Huraira: The Prophet said, "Religion is very easy and whoever overburdens himself in his religion will not be able to continue in that way. So you should not be extremists, but try to be near to perfection and receive the good tidings that you will be rewarded; and gain strength by worshipping in the mornings, the nights." [Sahih al-Bukhari, Vol. 2, #38]

Indeed, the Qur'an exhorts us to take lesson from the Children of Israel, because they turned the God's guidance into legalism and ritualism.

> "The Jewish nation was in the grip of legalism and ritualism. Their superabundant ordinances, in the words of the Qur'an, had become halters and shackles hindering a healthy development of moral as well as physical life."[64]

Indeed, reducing Islam or Shariah to merely *fiqh* or Islamic law has serious ramifications, as observed in the context of those countries trying to "implement" the Shariah in its narrow, legalistic sense.

---

[62] Munir, op. cit., p. 8.
[63] Munir, op. cit., p. 11.
[64] Khalifa Abdul Hakim. "Law and Islam".

"The comprehensive sharia is often narrowly understood, just as *fiqh*. Demands for formal sharia in several regions in Indonesia, for example, in reality is no more than the application of *fiqh*. When formal sharia has been agreed upon, the first action taken is to impose the obligation to wear head scarf *(jilbab)* for women, flogging, or hand chopping, and other rules that can be explicitly found in the texts. More significant problems detrimental to the lives of the majority like corruption, women trafficking, or business monopolies are not viewed as part of sharia just because these issues are not found in the texts.

This misconception has a significant effect to the way Muslims internalize the religion. When Islam is represented as sharia and sharia is understood just as formal rules, consequently, Islam is internalized just as a formal dogma. Physical dimension of the religion is prioritized over its spirituality. Pillars of Islam like prayer *(salat),* fasting *(saum),* alms *(zakat),* or *haj* are also reduced to mean just as ritual worships. During the Prophet's life these teachings had the power as a social movement with effect for social transformation. The dominant textual approach to Islam has restricted the religion's power and scope, because texts cannot respond directly to the prevalent problems faced by Muslims such as modern sophisticated crimes and corruption.

Fiqh or *shariah* understood just as *fiqh* is not the whole of Islam itself."[65]

One source of confusion, unfortunately added by Muslims themselves, is recognizing the comprehensive nature of life and Islamic teaching, the implementation is not merely by an external authority. Much of what we apply as *Shariah* is at our personal levels.

"In Europe and in North America, as soon as one pronounces the *shahada*, as soon as one 'is Muslim' and tries to remain so by practicing the daily prayers, giving alms, and fasting, for example, or even simply by trying to respect Muslim ethics, one is already in the process of applying the *Sharia,* not in any peripheral way but in its most essential aspects.

This practice and moral awareness are the source and heart of the Sharia, which is personal, faithful commitment. Beyond that, the Way itself exerts its own influence more comprehensively, with regard to the guidance of existence, even if not in the same way, and we must mention this essential factor here, with respect to the methodologies, norms and details of application of various regulations. This characteristic of Islam is contained within the concept of *shumuliyat* al Islam, 'the comprehensive character of Islamic teaching.'"[66]

Is *Shariah* enforceable (in its full spectrum)?

When one hears about "implementation of *shariah*," it is usually in the sense of laws that are enforceable. Indeed, the most immediate manifestation of such implementation is "enforcement" of penal codes pertaining to Hudood, specific punishments prescribed for certain offenses (murder, adultery, theft, etc.). As explained here already, the "*shariah* = Islamic Law" equation is erroneous, because Islam in its comprehensiveness of guidance covers not just laws, but also values, principles, rituals, etc. Not all aspects of Islam are enforceable by any worldly authority.

Readers might recall the statement of Khurram Murad cited earlier: "Laws are therefore an important and integral part of the *Shariah* and, as we have already noted, it admits of no distinction between its parts: 'to pray' is as valid, enforceable, obligatory and sacred as 'to consult in collective affairs' or to 'prohibit interest' or 'to stone an adulterer.'"

---

[65] Munir, op. cit. p. 12.
[66] Ramadan, op. cit., p. 33.

This is a grossly erroneous notion about Islam. Yes, since Muslims are to live in a society, there would be laws and the primary source of these laws would be the Qur'an and Sunnah, but life is more than legal precepts. In somewhat uncharacteristic and rare fashion, Mufti Muhammad Taqi Usmani, a well known contemporary jurist remarks:

> "Besides providing legal means for discipline, Islam also provides non-legal teachings for the reform of society, which greatly help in curbing crimes. This implies that an Islamic state cannot absolve itself of its duties by just enforcing the *hudud* ; it is also responsible for creating an atmosphere that discourages the incidence of crime in the first place."[67]

Of course, not all this "creating an atmosphere" involves "enforcement. Indeed, Hudood deals with transgressions. What about the duties or obligations? One might like to ask Murad as to what would be the punishment of a Muslim who refuses to pray? Well, Murad wasn't saying anything on his own, because some Islamic jurists have made it unlawful (and punishable) if a Muslim does not pray or refuses to pray.

> "In an Islamic state, Taarik as-Salaat (intentionally avoiding prayers) will be asked to explain why is he doing it? If he persists in his habit of not praying then Imam Malik and Shafi'i say that he should be killed. Imam Abu Hanifa says that he should be warned of dire consequences first, then imprisoned if he continues not to pray until he makes *taubah* or dies in the prison."[68]

Apparently, the constitution of Mauritania, an Islamic Republic, has provision for capital punishment for any Muslim who refuses to pray.

> "If a Muslim is found guilty of the crime of apostasy, either through words or through actions, he will be asked to repent during a three day period. If he has not repented within this time limit, he will be sentenced to death as an apostate and his property will be seized by the Revenue office. Every Muslim who refuses to pray will be asked to comply

---

[67] Usmani, op. cit., p. 288.

[68] *Fatawa Rahimiya*, V. 1, p.147. For more about the traditional perspective on this subject of *Taarik as-Salat*, see Shaykh Muhammad ibn-Saalih Uthaymeen, "The Ruling regarding one who abandons salaat," [online document]. Shaykh Uthaymeen quotes Ibn Hanbal as following: "He who abandons salaat is a kaafir (a disbeliever) with kufr that ejects him outside the fold (of Islam), deserving of execution if he did not repent or perform salaat." The author did not provide citation for the quotes from Ibn Hanbal's or other imams. It is also mentioned that Abu Hanifah, al-Shafi'i and Malik differed with Ibn Hanbal in that such a person is a *fasiq* (sinner), but not a *kafir* (disbeliever). Furthermore, the latter three differed among themselves about the punishment. According to Al-Shafi'i and Malik, such a person should be killed, while Abu Hanifa held that he should be advised, but not killed.

As Salat is one of the five pillars of Islam, abandoning it is a most serious matter. Indeed, to be a Muslim (by choice and affirmation – *shahadah*) and not to pray does not make any sense. No other ritual has been emphasized in the Qur'an as much as salat. The Prophetic narrations are also clearly emphatic. Yet, is the punishment (ranging imprisonment to execution) clearly specified in the Qur'an or Sunnah? It is not so. Scholars have drawn conclusion from certain Qur'anic verses and from certain hadith. However, all such conclusions pertaining to this particular issue is interpretive at best. Of course, neither the author Shaykh Uthaymeen nor the authorities he cited deal with the question as to for Allah what would be the value and relevance of such a person's prayer under compulsion or threat of punishment. Is the prayer for Allah or for us, the fellow human beings? If prayer is for Allah, does he really want prayer from someone, who has been compelled by the society? Also, it is interesting to note that the Shaykh Uthaymeen draws the conclusion that abandoning salat is kufr, but abandoning zakat is not, and as such the punishment in regard to abandoning salat or zakat is different. Indeed, abandonment of zakat should be a more serious offence against society, because, while salat is a worship involving relationship between a human being and God, zakat involves rights of other human beings in our wealth.

with the obligation to pray within the prescribed time limit. If he persists in his refusal, he will be punished by death."[69]

However, is there anything in the Qur'an that justifies or sanctions such punishment for even refusal to pray? Does it really make any sense to force someone to pray? Does God want prayer and worship from such people under compulsion?

> If it had been thy Lord's will, they would all have believed,- all who are on earth! Will you then compel mankind, against their will, to believe! [10/Yunus/99]

> Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah has grasped the Most Trustworthy [2/al-Baqarah/256]

Is God really interested in enforcing even prayer and fasting by turning a society into a police state? Is that what is indicated by the preceding two verses that disavow any compulsion in religion? Indeed, in other places, the Qur'an is more categorical that, let alone being an enforcer, the Prophet is not even a watcher.

> "[O Prophet!] You are not one to manage (men's) affairs." [88/al-Ghashiyah/22]

> "Your duty is to convey the Message; ..." [3/Ale Imran/20]

> "Obey Allah, and obey the Messenger, and beware (of evil): if ye do turn back, know ye that it is Our Messenger's duty to proclaim (the message) in the clearest manner." [5/al-Maidah/92]

> "The Messenger's duty is but to proclaim (the message)." [5/al-Maidah/92]

> "thy duty is to make (the Message) reach them: it is our part to call them to account." [13/al-Raad/40]

> "The worshippers of false gods say: "If Allah had so willed, we should not have worshipped aught but Him - neither we nor our fathers,- nor should we have prescribed prohibitions other than His." So did those who went before them. But what is the mission of apostles but to preach the Clear Message?" [16/an-Nahl/35]

> "Obey Allah, and obey the Messenger. but if ye turn away, he is only responsible for the duty placed on him and ye for that placed on you. If ye obey him, ye shall be on right guidance. The Messenger's duty is only to preach the clear (Message). [24/an-Nur/54] "

> "If then they run away, We have not sent thee as a guard over them. Thy duty is but to convey (the Message). " [42/ash-Shura/48]

There are even more verses repeating the same reminder to the Prophet.[70] One can't but ponder (and ponder hard) as to why God has reminded so repeatedly this particular matter? And, is the lesson of these verses unclear or ambiguous? If the Prophet's mission is no more than conveying the message, or that he is not manager (*musaitir*) over our affairs, then is our duty as his followers any greater or broader?

Does that mean that Islam does not have anything to enforce? Does it mean that at the social or collective level, Muslims are not held accountable for anything in this world or no authority has

---

[69] "Apostasy in Islam," ReligiousTolerance.org; I haven't been able to independently confirm the article #306 from the Constitution of Islamic Republic of Mauritania, as it does not seem to be available online in its entirety. Also see, Strategic Resource Group.
[70] Also, see 16/an-Nahl/82, 29/al-Ankabut/18, 36/Ya-Sin/17, 64/al-Taghabun/12.

any regulatory or supervisory role? Indeed not. Quite the contrary, any normal, functioning society would have laws, and laws are meaningless if it has no enforceability. However, the issue of enforcement primarily pertains to areas involving mutual rights of each other in this world. For example, zakat is not just a worship of God, it is also related to a right of the poor over those on whom zakat is due. A society respectful of Islam would enforce the obligation to pay zakat. Similarly, murder, assault, adultery, gambling, alcohol, etc. are many areas that have social implications and there would be laws to enforce in this regard. However, there are also broad areas, especially pertaining to personal matters, including ritual worship of God, that are not within the scope of enforceability with any penal codes. That would be contradicting the above-mentioned verses about the mission of the Prophet, and constitute turning Islam on its head. Such a tendency or misunderstanding is unfortunate, but it is widespread and prominently reflected in the minds of the contemporary jurists or body of jurists. Consider the following statement of Islamic Fiqh Academy based in Jeddah, Saudi Arabia.

> Resolution N48 (10/5): Concerning <u>Enforcement</u> of Sharia Rules:
> "<u>The prime duty of the authority in charge of Muslims affairs is to enforce Shari'a</u>. The Council URGES the Governments of all Islamic countries to implement the Islamic Shari'a and conform fully, entirely and lastly to it in all fields of life. The Council CALLS UPON the Muslim countries, individuals, peoples and states, to conform to the requirements of the religion of God and enforce Shari'a, since this religions is a belief as well as a legal system, a code of conduct and a way of life."[71]

Quite remarkably, these jurists understand Shariah only in terms of enforcement and it is not surprising that it has bred and fostered a general legalistic attitude and understanding about Islam among Muslims.

Much of the problems associated with implementation of *shariah* are related to an enforcement-mentality that goes beyond the normal or acceptable realm of enforcement. When a society is turned into a police state and the public authorities become coercive in implementation of laws that are not within the naturally acceptable domain, such societies cannot sustain in the long run. Taliban approach was illustrative of the enforcement-mentality, and they made the life of their own people miserable. Afghan people do understand the American motive and interest, but how many Afghanis want the return of the Talibans?

Does *Shariah* provide "clear and unambiguous" guidance for the entire spectrum of life?

An answer to this question in affirmative would be more comforting, but unfortunately, that is not the case. One of the reasons some believers are too eager to "implement" *shariah* is because they believe that definitive, authoritative and effective solutions to all pertinent problems are already available in Islam like a manual of solutions. This is a very simplistic view, not in accord with the reality.

What Qur'an offers are wisdom, exhortation, reflections about the past, as well as do's and don'ts in some key areas. In matters of injunction, the Qur'an is explicit and categorical. However, its implementation is not as easy as one might think, unless one uses a straightjacket approach that often leads to results contrary to the intent of Islam

Consider the following examples. The Hudood Laws in Pakistan, promulgated under a military dictator, have caused many female victims of rape to be imprisoned and incarcerated. Imagine, thousands of women being imprisoned or prosecuted under *shariah* law, even though they were rape victims.[72] How can such perversion be even possible? A common incidence in many Muslim

---

[71] Islamic Fiqh Academy. <u>Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000</u> [2000], pp. 96-97, available online.
[72] Mohammad Omar Farooq. "<u>Rape and Hudood Ordinance: Perversions of Justice in the Name of Islam,</u>" unpublished essay, May 2006.

societies is that a man, unilaterally and without being required to provide any reason, divorces his wife through instant triple-talaq, and the wife is out of the house. The process of divorce as prescribed by the Qur'an is wise, balanced and sensitive to factors pertaining to both spouses. However, *shariah* (confused with Islamic laws) has validated the unislamic practices in divorce. Of course, instant triple-talaqs is contrary to the Qur'an and there is no sanction for it from the Prophet. Yet, Islamic laws, or at least some schools, have validated it.

Witness is required in Islam for many situations in life. However, about the requirement of a witness in terms of qualification and context, there are broad disagreements. *Riba* (usually equated with interest) is categorically prohibited in the Qur'an. However, if one considers the hadiths about the six commodities, one can't be but amazed at the amazing divergences in juristic opinions that are often irreconcilable.[73]

Have we settled how to determine the beginning or end of Ramadan? Even after fourteen centuries, have we come to an agreement as to how many units of prayer for Tarawih in Ramadan? Even a single school of thought has so much difference of opinions. Just look up Hidaya, one of the most authoritative texts of Hanafi jurisprudence. It is based on primarily the opinions of the three elders of the school, Imam Abu Hanifah and his two disciples Muhammad and Abu Yusuf. One can't but be surprised to see how much difference existed among just three of these jurists within their own school.[74]

One of the reasons why there has been a continuing need for *ijtihad* is because <u>all</u> the answers/solutions to <u>all</u> the questions/problems are not already identified or worked out, let alone clearly and unambiguously. In Islamic jurisprudence (*usul al-fiqh*) it is recognized that that, even though *ijtihad* is an effort based on divine guidance and other secondary sources, the knowledge derived is probabilistic. I will cite here works from two well known sources: Abu al-Husayn Ali otherwise known as al-Amidi (d. 631 AH) and Mohammad bn Ali Al-Shawkani (d. 1255 AH). Al-Amidi's was one of the great scholars from among the *mutakallimun* and his book is based on four earlier major works on usul al-Fiqh: al-'Ahd, Al-Mu'tamad, al-Burhan and al-Mustasfa. Muhammad bin Ali al-Shawkani is from a much later generation, but his work, especially *Nayl al-Awtar*, has earned great reputation among all the four schools of jurisprudence. According to al-Amidi and al-Shawkani, *ijtihad* can be understood as the overall exertion of a jurist in order to infer or deduce, with <u>a degree of probability</u>, the rules of *shariah* from their detailed evidence (*dalil; pl. adillah*) in the sources.[75]

Unfortunately, as much as we would like to have everything clear, definitive and authoritative, the reality is not so. However, when we still insist on authoritativeness and on the basis of our presumed authoritativeness, we want to "implement" a scheme for the people, things can get rough. Islam should be clear and simple, and in its basic injunctions and prescriptions Islam <u>is</u> clear and unambiguous. However, one won't get that from *shariah* in the sense of comprehensive Islamic laws with hair-splitting details.

Since the vast corpus of Islamic laws are based on *ijtihad*, based on juristic exertions to "infer or deduce, with a degree of probability," it is no wonder that there is a wide range of disagreements at the inter-madhab as well as intra-madhab level.[76] Thus, readers can decide for themselves whether any sweeping, unqualified or immodest claim - in all its comprehensiveness, *shariah* offers "clear and unambiguous" guidance - is Islamically defensible.

---

[73] Mohammad Omar Farooq. <u>Riba, Interest and Six Hadiths: Do we have a Definition or a Conundrum?</u>, unpublished essay, June 2006. Also see, <u>The Riba-Interest Equivalence: Is There Any *Ijma* (Consensus)?</u>, unpublished essay, June 2006.

[74] See for yourself a collection I have put together based on Hidaya. <u>How much agreement/disagreement even within one school of Fiqh</u>?

[75]Al-Amidi. *al-Ihkam fi Usul al-Ahkam*, Vol. IV, p. 162; Shawkani, Irshad, p. 250.]

[76] Most people are familiar with the disagreements (ikhtilaf) at the inter-madhab level. For intra-madhab level, for example, see note #60 above.

IV. Legalism and its implications

Religions are in general vulnerable to legalism and other religions also have had to contend with it.

> "Religions in general and Christianity in particular have seemingly forever waged warfare with ideologies (-ism's) from without, ranging from Gnosticism to communism and beyond. More persistent threats, perhaps, come from what I call 'ism's within.' One of those is legalism.

> Legalism, at one time or another, in one form or another, seems to blight every major faith. One essential function of any religion is to provide a code of conduct. Legalism attempts to solve this need by specifying, in great detail, just what behaviors (and prohibitions) are required of the individual."[77]

Indeed, one of the essential aspects of Christianity, as reflected in the struggle of Jesus, was the legalism to which the followers of Moses fell victim. Jesus directed the sharpest of his criticism against the dehumanized legalism of the Pharisees, as law must not be delinked from its underlying spirit.

> "Woe to you, teachers of the law and Pharisees, you hypocrites! You give a tenth of your spices—mint, dill and cumin. But you have neglected the more important matters of the law—justice, mercy and faithfulness. You should have practiced the latter, without neglecting the former." [Matthew 23:23]

Jesus' denunciation of the Pharisees was not directed against law in general, but against legalism. Unfortunately, Christianity modulated to the other extreme by freeing itself virtually from all laws, even though Jesus himself affirmed that he did not come to break the laws, but to fulfill.[78]

Islam also does not shun law or legal matters in general, because a society can't thrive or even function without an effective legal system. However, laws should not be considered in isolation, as those should be rooted in and connected to the human consciousness and conscience. That's why Islam does provide some legal injunctions and a guiding framework for meeting the legal needs of a healthy and dynamic society. But at the same time, it also categorically reminds people that they must not lose sight of the underlying spirit and sense of purpose.

> "It is not righteousness that ye turn your faces Towards east or West; but it is righteousness- to believe in Allah and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity; to fulfill the contracts which ye have made; and to be firm and patient, in pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the Allah-fearing." [2/al-Baqarah/177]

After the extremism of Judaic legalism and the Christian abandonment of law, the Prophet Muhammad brought back the same essential message God has revealed from the beginning of humanity, with strong emphasis on moderation and balance.

---

[77] Richard Kahoe. "Taking a Look at Legalism," Mainstream Messenger, Vol. 3, No. 2, April 2000
[78] "Do not think that I have come to abolish the Law of the Prophets; I have not come to abolish them but to fulfill them." New Testament, Matthew 5:17.

"Thus, have We made of you an Ummat justly balanced (*ummatan wasat*), that ye might be witnesses over the nations, and the Messenger a witness over yourselves; and We appointed the Qibla to which thou wast used, only to test those who followed the Messenger from those who would turn on their heels (From the Faith). Indeed it was (A change) momentous, except to those guided by Allah. And never would Allah Make your faith of no effect. For Allah is to all people Most surely full of kindness, Most Merciful." [2/al-Baqarah/143]

That's what became the primary merit and attraction of Islam. Islam was and is simple and easy. That's what one learns from the Qur'an and the Prophet.

" ... Allah intends every facility for you; He does not want to put to difficulties." [2/al-Baqarah/185]

"God desires to lighten things for you, for the human being has been created weak." [94/an-Nisa/28].

To keep things easy and simple for people was one of the important concerns of the Prophet.

"Narrated Anas bin Malik: The Prophet said, "Facilitate things to people (concerning religious matters), and do not make it hard for them and give them good tidings and do not make them run away (from Islam)." [Sahih al-Bukhari, Volume 1, Book 3, #69]

Muslims, who were only two concerned about doing things right, were assured by the Prophet to take it easy.

Narrated 'Abdullah bin 'Amr bin Al-As: While the Prophet was delivering a sermon on the Day of Nahr (i.e., 10th Dhul-Hijja-Day of slaughtering the sacrifice), a man got up saying, "I thought, O Allah's Apostle, such-and-such a thing was to be done before such-and-such a thing." Another man got up, saying, "O Allah's Apostle! As regards these three (acts of Hajj), thought so-and-so." The Prophet said, "Do, and there is no harm," concerning all those matters on that day. And so, on that day, whatever question he was asked, he said, "Do it, do it, and there is no harm therein." [Sahih al-Bukhari, Volume 8, Book 78, #658]

Here is an illuminating case of implementing *shariah* or Islamic Law, in humane way, whenever possible.

Narrated Abu Huraira: A man came to the Prophet and said, "I have been ruined for I have had sexual relation with my wife in Ramadan (while I was fasting)" The Prophet said (to him), "Manumit a slave." The man said, " I cannot afford that." The Prophet said, "(Then) fast for two successive months continuously". The man said, "I cannot do that." The Prophet said, "(Then) feed sixty poor persons." The man said, "I have nothing (to feed them with)." Then a big basket full of dates was brought to the Prophet. The Prophet said, "Where is the questioner? Go and give this in charity." The man said, "(Shall I give this in charity) to a poorer person than I? By Allah, there is no family in between these two mountains (of Medina) who are poorer than we." The Prophet then smiled till his premolar teeth became visible, and said, "Then (feed) your (family with it). [Sahih al-Bukhari, Volume 8, Book 73, #110]

Imagine, fasting is *fard* (obligatory) and having sex is one of the worst ways of violating the sanctity of fasting. How was the Islamic law enforced here? Of course, one should not trivialize the whole matter by thinking that the Prophet treated every possible transgression in this way of

leniency. However, notably, here the transgression was against God. It was not something that required "enforcement". Some kaffarah (compensation) was recommended by the Prophet. But such recommendation was not oblivious to the pertinent human considerations.

Unfortunately, this kind of Sunnah of the Prophet had to yield to hair-splitting legalism combined with enforcement mentality, even where enforcement might not be warranted. Over the centuries since the time of the Prophet, Muslim society developed a tendency toward legalism, where everything tends to be reduced to black and white, right and wrong, permissible and impermissible. Also, nothing is considered outside the law or enforcement. While the emergence of various *madhabs* (schools of jurisprudence), arguably, has beneficial aspects, one important consequence of such legalism was to have the Muslim society splintered into many schools (*madhab*s) and other offshoot groups (*firqah*) that sometime even engage in *takfir* (religious denunciations) against each other.

As Muqtedar Khan argues the Islam that is much broader suffered a legalistic reductionism:

> "The Islamic intellectual tradition—which includes Islamic legal thought (*Usul al-fiqh* and *fiqh*), theology (*Kalam*), mysticism (*Tasawwuf*) and philosophy (*falsafa*)—is one of the most developed and profound traditions of human knowledge. In the area of political philosophy, however, this intellectual heritage remains strikingly underdeveloped. One of the reasons for this lacuna is the 'colonial' tendency of Islamic legal thought. Many Islamic jurists simply equate Islam with Islamic law (*Shariah*) and privilege the study of the latter. As a result we have only episodic exploration of the idea of a polity in Islam. Hundreds of Islamic schools and universities now produce hundreds of thousands of Islamic legal scholars but hardly any produce political theorists or philosophers. With some rare exceptions, this intellectual poverty has reduced Islamic thought to the status of a medieval legal tradition."[79]

The legalistic tradition has now become entrenched, with such a tight grip on the puritanical mentality that it has sapped virtually all the dynamism of Islam. Yahya Emerick, an American Muslim and prolific author, offers an illuminating perspective on this profound challenge.

> "When you read their books or magazines, you find everything they say about Islam is in terms of correct/incorrect. (Such and such is not correct belief, etc...) It is admirable, of course, to be interested in the truth, but in their approach there is no life, no love, no spirituality. It's all about legalism such as the legalism of the Jews at the time of Prophet 'Esa. Hence, the recently coined condition of 'Salafee Burn-out' whereby people drop out of this movement after their heart has been completely drained of all spirituality."[80]

How do religious scholars in Saudi Arabia issue fatwa against celebrating the birthday of the Prophet (miladunnabi), but they are muted about monarchy, which is inconsistent with Islam? How do the weak and powerless get the *shariah* treatment for petty theft in Pakistan, while those who are powerful in the society can get away with just about anything? Why someone ordinary indulging in intoxicants get prosecuted, while it is all too well known that the rich, famous and elites regularly indulge in the "finer things" of life? Indeed, one the custodians of the Holy Places of Islam was all too well known as a playboy. How are women most often charged with adultery and sometimes punished, but men are rarely punished? How does Islamic law recognize that men have unconditional, unconstrained and unilateral privilege to pronounce divorce, but women have no reciprocal right, even though the Qur'an does mention about reciprocity in rights and duties?[81]

---

[79] Muqtedar Khan. "The Tyranny of Legalism," Boston Review, April/May 2003.
[80] Yahya Emerick. "The Fight for the Soul of Islam in America,"
[81] "...but, in accordance with justice, the rights of the wives (with regard to their husbands) are EQUAL to the (husbands;) rights with regard to them, although men have precedence over them (in this respect). And God is almighty wise. [2/al-Baqarah/228]

The answer to the abovementioned questions lies at least partially in legalism: strict, literal, or excessive conformity to the law or to a religious or moral code. It can also be understood as an improper fixation on laws or codes of conduct, or legal ideas, without appropriately balancing the mercy and grace of God in pursuit of salvation. In the history of Islam, legalism led to hair-splitting tendency in regard to even the minutest details of life. For example, in Hanafi and Shafi'i school '*wajib*' [required] is not defined the same way. Hanafi school makes a technical distinction between *fard* [obligatory] and '*wajib*' [required], while in Shafi'i school, there is no distinction between the two. Thus, for considering *witr* prayer '*wajib*', a Shafi'i scholar hurled the fatwa of '*kufr*' against Imam Abu Hanifah, because the scholar thought that Hanifah has elevated '*witr*' to an obligatory level, which, of course, Hanifah did not.[82] This was an extreme case, but emphasizing even minutest details and fostering a state of anxiety in the minds of people about whether they are being "perfect" in their worship and in everything else are among the hallmarks of legalistic mindset. Islam, of course, does not teach or demand robotic perfection; instead, it approaches human beings as fallible, imperfect creatures.

> "Had human beings not committed any sin, He would have replaced this species with another species that would commit sin so that He could forgive them." [Sahih Muslim, #6621]

Of course, this is not a license or encouragement to sin. Rather, it is merely the positive acknowledgement of human frailty and imperfection. Legalistic mindset and approach are not consistent with the human nature.

Legalism suffers from legalistic reductionism. Everything is viewed from a legal perspective. Legalism fosters hair-splitting tendency. Legalism creates an environment, where people are constantly anxious about being improper, even though the Prophet has clearly and emphatically warned against it.

> "RUINED are those who indulge in hair-splitting" [Sahih Muslim; Vol. 4, #6450]

> "A person who would be thoroughly scrutinized (on the Day of Judgment by Allah) is ruined." [Hadhrat Aisha, Sahih Muslim, #6874]

But more importantly, legalism makes people self-righteous on one hand, while judgmental about their fellow human beings, on the other. However, God is the ultimate Judge and he his very jealous about anyone attempting to sit at his seat of judgment.

> Narrated Abu Hurayrah: I heard the Apostle of Allah (p) say: There were two men among Banu Isra'il, who were striving for the same goal. One of them would commit sin and the other would strive to do his best in the world. The man who exerted himself in worship continued to see the other in sin.

> He would say: Refrain from it. One day he found him in sin and said to him: Refrain from it.

> He said: Leave me alone with my Lord. Have you been sent as a watchman over me? He said: I swear by Allah, Allah will not forgive you, nor will he admit you to Paradise. Then their souls were taken back (by Allah), and they met together with the Lord of the worlds.

---

[82] For details with reference, see Mohammad Omar Farooq. "Religious denunciations and Takfir: Isn't there enough to go around?" unpublished essay, November 2005.

He (Allah) said to this man who had striven hard in worship; Had you knowledge about Me or had you power over that which I had in My hand? He said to the man who sinned: Go and enter Paradise by My mercy. He said about the other: Take him to Hell.

Abu Hurayrah said: By Him in Whose hand my soul is, he spoke a word by which this world and the next world of his were destroyed. [Sunan Abu Dawud, Kitab al-Adab, #4883]

At another level, legalism shifts attention away from values and principles that represent the essence of Islam. Legalism also reflects preoccupation with the laws and codes, often delinked from their purpose and spirit, which leads to overemphasizing form over substance or ritual over the values and consciousness underlying those rituals.

In the very name of the Prophet, the legalists forgot or ignored that :

"Verily Allah does not look to your appearance or wealth, but he looks to your hearts and your deeds." [Sahih Muslim, Vol. 4, #6221]

Another major problem with legalism is that, due to preoccupation with hair-splitting details, everything becomes important, without any prioritization. As human nature cannot be preoccupied with everything and at the same time, focus on the details causes the attention to shift away from the larger picture. In a legalistic environment, ultimately, everything does not remain important. Instead, people become preoccupied with smaller matter or petty details, while bigger matters get neglected. The underlying connection with the larger mosaic of life gets severed. The Qur'an clearly educates us about the hierarchy of priorities [4/an-Nisa'a/31].

In such an environment, one may observe the preoccupation with straightening the lines in congregational prayers, and the whole arrangement appears like military-type discipline. Yet, as soon as such faithfuls step outside the mosque, they forget about the value of discipline and organization, as reflected in the traffic behavior in the streets of many Muslim-majority countries. One may observe the common faithfuls' meticulous attention to *taharat* (cleanliness), but that's only in the religious context. The same people who take extra time to make sure that some water reaches the nook and cranny of every designated part, including the inside of nostrils, hardly pay any attention to the way garbage is disposed, and scattered everywhere, without any regard to health concerns. One may observe the attention paid to following the Imam, where the prayer leader must be followed, in every possible way. Even to prostrate or raising one's head before him may annul one's prayer. The specific position of each school of course varies. Anyone imposing himself as an Imam stands repudiated from the Islamic viewpoint. However, when bigger imams (leaders) impose themselves as dictators, monarchs, military juntas, the same people and their religious leaders generally have no problem with that.

Recently in India Muslim women broke away from the male-dominated All India Muslim Personal Law Board and set up their own Board.[83] Muslim women are finding that legalism combined with male-dominance has created a fundamental insensitivity toward women's rights and concerns. Many women, better educated, are rediscovering Islam and revolting against male-dominated, legalism that they now know are not necessarily sanctioned by Islam.

Influenced by legalism, interest-free financial institutions are cropping up everywhere. From the legalistic perspective, it is being argued that interest is *haram* (prohibited), and an important rationale for such prohibition is that it is unjust and exploitative. However, the concern of such institutions about exploitation is merely rhetorical, as the new institutions are becoming too cozy in an exploitative environment about which these institutions are muted.[84] Thus, there is

---

[83] "Muslim women form their own personal law board," Deccan Herald, February 03, 2005.

[84] Mohammad Omar Farooq. Exploitation, Profit and The Riba-Interest Reductionism [unpublished essay, June 2006.

movement to meet the legal requirements from an orthodox perspective, but there is hardly any progress in addressing the widespread problem of poverty, destitution, and exploitation in the broader society.

The burden of legalism, enshrined in the misunderstanding and misinterpretation of *shariah*, what Muqtedar Khan calls "the tyranny of legalism," has become overwhelming for the Muslim society.

In addition to legalism, Islam has also become a victim of theology-orientation, where exclusionary purity of creeds and dogmas has robbed the soul of Islam. Whatever we believe in should be with sincerity and purity and our worship and practice (*amal*) should be based on the Qur'an and the Prophetic examples. However, there is a difference between correctness of creed and dogma on one hand and Puritanism on the other. Khaled Abou El Khaled explains the nature and impact of such Puritanism, which also predictably leads to legalism:

> "The theologically based attitudes of these Muslim puritans are fundamentally at odds not only with a Western way of life but also with the very idea of an international society or the notion of universal values. They display an intolerant exclusiveness and a belligerent supremacy vis-à-vis the other. According to their theologies, Islam is the only way of life, and must be pursued regardless of its impact on the rights and well-being of others. The straight-path (*al-sirat al-mustaqim*) is fixed, they say, by a system of divine laws (*shari'a*) that trump any moral considerations or ethical values that are not fully codified in the law. God is manifested through a set of determinate legal commands that specify the right way to act in virtually all circumstances. The sole purpose of human life on earth is to realize the divine manifestation by dutifully and faithfully implementing God's law. Morality itself begins and ends in the mechanics and technicalities of Islamic law (though different schools of Islamic law understand the content of those laws differently).
>
> A life devoted to compliance with this legal code is considered inherently superior to all others, and the followers of any other way are considered either infidels (*kuffar*), hypocrites (*munafiqun*), or iniquitous (*fasiqun*). Anchored in the security and assuredness of a determinable law, it becomes fairly easy to differentiate between the rightly-guided and the misguided. The rightly-guided obey the law; the misguided either deny, attempt to dilute, or argue about the law. Naturally, the rightly-guided are superior because they have God on their side. The Muslim puritans imagine that God's perfection and immutability are fully attainable on earth—as if God's perfection has been deposited in the divine law, and by giving effect to this law, we could create a social order that mirrors divine truth."[85]

Such projection of God's divinity, as related to the perfection and immutability of his guidance, to the human level makes us forget that God is Divine and Perfect, but we are not. We must be sincerely and diligently committed at the personal and the collective level to best realize the spirit of God's guidance. Yet, this world is not to be a place of perfection in regard to our connection with God. Indeed, that imperfection is reflected in the very story of the first human soul and the first parents of humanity of Adam and Eve. Imperfection is our human nature and God reminds us that he does not expect from us perfection and sinlessness. Rather, he is the Most Forgiving (al-Gafur) and Oft-Returning (al-Tawwab), who desires that we will try not to err or sin, but if we fail, we return to our Forbearing Lord, sincerely acknowledge our failure and seek forgiveness. What would Islam based on theology-orientation and legalism would say if someone exclaims: "O Allah! You are my servant and I am your Lord!"? Let me not elaborate that here, because I have offered my reflection on this in a separate essay, which the readers might find illuminating and uplifting.[86]

---

[85] Khaled Abou El Fadl. Place of Tolerance in Islam [Boston, MA: Beacon Press, 2002], Fadl, pp. 4-5.

[86] Mohammad Omar Farooq. "O Allah! You are My Servant and I am Your Lord," Islamicity, May 26, 2003.

Even though Islam's message is of liberation, we are hostage of both external and internal factors. Islam's message of moderation and balance has been subverted by theological dogmatism, hair-splitting extremism and enforcement-mentality. This requires a fundamental shift from legalism to a better balance with a value-orientation.

V. Value-orientation

A society's real character is a reflection of, first and foremost, its values and principles. A legal system and environment also reflect the values and principles a society upholds. To place laws above, or delink from, values leads to legalism like putting cart before the horse. The Islamic experience is a testimony to this fact. The Qur'anic revelation in the pre-Madinah period hardly saw any law or code. Rather those were exhortation and guidance to prepare a community with a set of creeds, values and principles that lay its foundation. Details about rituals, laws about society and economy, or commandments pertaining to dos and don'ts came about primarily in Madinah period, when a polity was already established and the community was prepared for an organized society with its unique legal framework and codes.

The Qur'an specified a few legal injunctions and offered a lot more as guidance. The Prophet, during his exemplary life, put the Qur'anic guidance into action. He provided details as to how to best realize the goals of those laws, injunctions and codes. The viability and true strength of that society did not lie in the enforcement of laws and codes in every aspect of life. Rather, it was a value system, nurtured by God-consciousness, which internally motivated people to seek and value guidance from God and mould their lives accordingly. After all the Qur'an informs us human nature is fundamentally shaped by self-interest.[87]

> "If ye do good, ye do good for your own souls, and if ye do evil, it is for them (in like manner)." [17/al-Isra'/7]

The law of Islam includes extremely harsh punishment for adultery. However, even the punishment by death itself can't be considered a real deterrence, where people care little to take or give life. Indeed, the threshold of prosecuting any case of adultery is such that any such prosecution is virtually impossible. No wonder that there was no case during the Prophet's lifetime, where any Muslim accused by others or by the state was convicted and punished according to the law. However, there are some cases, where a remorseful adulterer sought out the punishment, because Islam teaches that anyone who repents in this world and punished, if warranted, would not only not be punished in the life hereafter, but also that their repentance would elevate their status and honor with God.[88]

As the appropriate value-orientation was facilitated by the Prophet, there were laws, but no legalism. When law took the form of legalism, the details of the Islamic laws (which were deduced by fallible human beings) are now such that poor and powerless women in particular are becoming victims of injustice in the name of Islam and *shariah*.[89] The concerns of the Hudood Laws in Pakistan does not include justice, but obedience to and implementation of laws that are grounded in divine revelation but only at the essential level. At the level of details, those laws are essentially a human construct. Moreover, implementation of such laws at the hands of insensitive and all-too-fallible human beings, who neither understand nor appreciate even rule of law and

---

[87] Mohammad Omar Farooq, "Self-Interest, Homo Islamicus and Some Behavioral Assumptions in Islamic Economics and Finance," Unpublished essay, September 2006.
[88] See Sahih Muslim, Kitab al-Hudud, #4205, #4207. There were some other cases, where some Jews brought cases of adultery against some fellow Jews, and they were stoned to death in accordance with the Jewish laws. See Sahih al-Bukhari, Volume 2, Book 23, #413.
[89] Mohammad Omar Farooq. "Rape and Hudood Ordinance: Perversions of Justice in the Name of Islam," unpublished essay, May 2006.

that these rules, laws, codes are for human beings, not the other way around, can be a tragic experience.

Yahya Emerick rightly observes:

> "Muslims have lost touch, generally, with the noble qualities of Islam, qualities such as compassion, understanding, tolerance and progressiveness (from within an Islamic framework, of course). We have become like the Bani Isra'il: steeped in legalism, harshness and intolerance. In the same way that Prophet Jesus was sent to breath new life into them, we must learn to reinvigorate ourselves."[90]

If *Shariah* has both divine (the Qur'an) and non-divine (*hadith, ijma, qiyas*, etc.) as its source and foundation, and the non-divine content is overwhelmingly and disproportionately more, can we or should we describe *shariah* as divine? The view of a well known female Muslim scholar Riffat Hassan's view is as following.

> "Not surprisingly, then, most Muslims cannot conceive of being Muslim without adhering to Muslim laws as they know these while remaining ignorant of how these may have been derived or formulated. In the meantime, elevating the *shariah* to the level of divinity renders it beyond challenge for the average Muslim. Refuting the divinity of *shariah*, a feminist theologian asserts:
>
> Being a Muslim is dependent essentially only upon one belief: belief in Allah, universal creator and sustainer who sends revelation for the guidance of humanity. Believing in Allah and Allah's revelation to and through the Prophet Muhammad, preserved in the Qur'an is, however, not identical with accepting the *Shariah* as binding upon oneself...the assertion that one is a Muslim only if one accepts the `*Shariah*' as binding on oneself, and, further, that the *Shariah* is divine, transcendent and eternal, can be seriously questioned (and, in my opinion should be)."[91]

So, if *shariah* in general or in its totality isn't divine, how do we describe and understand it? Here are some suggestions.

Shariah is often referred to as Islamic law, but this is wrong, as only a small part is irrefutably based upon the core Islamic text, the Koran. A correct designation is 'Muslim Law' (i.e. the law system of the Muslims), or 'Islam-inspired', 'Islam-derived,' or even 'the law system of Muslims.'[92]

So, what are some of the essential values that Muslims must uphold and integrate into their thought process, culture and legal framework?

- **Fundamental human dignity (each human as a person, not an object**

Each human being is a person, not an object. Slavery becomes possible only when human beings are regarded as objects that can be owned and traded.[93] The same kind of thought makes legalistic views to treat or regard *mahr* (dowry) as a "price" in a trade.[94] God has sanctified each one of us at the human level, and Muslims should be at the forefront in upholding the fundamental human dignity.

---

[90] Yahya Emerick. "Some Advice for the Muslims in the West."
[91] Farida Shaheed. "Controlled or Autonomous: Identity and the Experience of the Network Women Living Under Muslim Laws," July 1994, quoting Riffat Hassan.
[92] Encyclopedia of the Orient. http://i-cias.com/e.o/sharia.htm
[93] Mohammad Omar Farooq. "Fundamental Human Dignity and The Mathematics of Slavery," Unpublished essay, June 2006.
[94] Mohammad Omar Farooq. "*Qiyas (Analogical Reasoning) and Some Problematic Issues in Islamic law*," unpublished essay, June 2006; see the section on "Marriage, Contract and Sale."

>"O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women;- reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah ever watches over you." [4/an-Nisa/1]

>A person asked, O Prophet of God (p), whose Islam is excellent or the best (*afdal*)? He replied: "From whose tongue and hands **the people** (*an-nas*: irrespective of Muslims or non-Muslims) **are safe**." *[Musnad-i-Ahmad, #6762; narrated by Abdullah ibn Amr]*

- **Justice**

  Islam's emphasis on justice (fairness) is unequivocal. It sets a standard that is much higher compared to any other ideology or religion, as it asks its adherents to stand forth for justice even if that means being against oneself.

  >"O ye who believe! stand out firmly for justice, as witnesses to Allah, <u>even as against yourselves</u>, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well acquainted with all that ye do. [4/an-Nisa/135]

  Except in matters pertaining to ritual worship, in any matter affecting the life, honor and property of people, a law or code must explain how it is just and how justice is served through that code. A code simply can't say that the widow of a missing husband must wait at least four, ten or an indefinite number of years. It must also explain how such a law or requirement is just, especially considering the interest of the wife.

  Also, generally, we must not consider justice as relative, as some religious scholars have erroneously argued.[95]

- **Equality (and non-discrimination)**

  Whether in terms Muslims and non-Muslims or male or female, the value-oriented norm of Islam is equality. In this world, as human beings we are all equal, especially in terms of our rights pertaining to life, honor and property. Whatever good or virtue Muslims must have in this world is to be rewarded by Allah in the life hereafter. At the human level, we must regard each other as equal.

  In two areas, the issue of equality is particularly important: gender and Muslim/non-Muslim relationship. For example, in case of divorce, the Qur'an teaches:

  >"...but, in accordance with justice, the rights of the wives (with regard to their husbands) are equal (*mithl*) to the (husbands;) rights with regard to them, although men have <u>a degree (of advantage)</u> over them (in this respect). And God is almighty wise." [2/al-Baqarah/228]

  The above verse states that the rights of men and women in this context are equal or reciprocal. That's the Islamic norm. However, the so-called *shariah*, as exemplified in Islamic laws, has taken inequality as the norm, and gradually, the matter of men's precedence in this respect has completely supplanted the norm. Instead, in regard to divorce, Islamic law has accorded, not a degree, but virtually unconditional, unrestrained, and exclusive advantage to men.

---

[95] Mohammad Omar Farooq. Exploitation, Profit and The Riba-Interest Reductionism, unpublished essay, June 2006.

From the Qur'anic perspective, gender relationship is essentially based on mutual guardianship (*wilayat*).

> "The believers, men and women, are AWLIYA (protectors, guardians, patrons), one of another; they enjoin what is Ma'roof and forbid what is Munkar; they observe regular prayers, practise regular charity, and obey God and His Apostle. On them will God pour His mercy, for God is Exalted in power, Wise." [9/al-Tauba/71][96]

In regard to life, regardless of their religious background, it should be treated in a humanity-oriented manner.

> "On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land, it would be as if he slew the whole people; and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our Apostles with clear signs, yet, even after that, many of them continued to commit excesses in the land." [5/al-Maidah/32]

If the above verse has any meaning and relevance in the context of justice, then, in regard to life, there should be no discrimination. In case of murder, the punishment of a Muslim murdering a non-Muslim cannot be less than the punishment of a non-Muslim murdering a Muslim.

- **Freedom**

This is one of the pivotal aspects of value-orientation. The edifice of Islam is based on free choice, not coercion. If Islam is to become relevant once again, we have to recognize the foundation of free choice as we embrace Islam. Coercion may gain cursory compliance, but can never win the hearts of people who will disavow such cursory compliance at the very first opportunity. When the Prophet Muhammad and his nascent community were under persecution, Allah emphatically reminded the Prophet to cherish that freedom. No one has any right to take away such fundamental right to choice and freedom [subject to other parameters of any healthy and functional society].

> "I do call to witness this City;
> And thou are a FREE PERSON (Hillun) of this City;-
> And (the mystic ties of) parent and child;-
> Verily We have created man into toil and struggle. [90:al-Balad/1-4]

a. All aspects of Islam are essentially applicable to the adults who are free to choose. Thus, our effort to culturalize Islam, that is, expecting our children and younger generation to *automatically* be Muslims, is preposterous and inconsistent with Islam.[97] If I believe in Islam, I will try to practice and follow it the best I can. I will try to be an example for others and especially for my own children; I will help my children understand Islam as they grow up, and I will help them understand why making choices are important, and the consequences of our choices. But it would not be appropriate for them to either dogmatically or blindly accept faith. They must affirm their own identity. That is why the first pillar of Islam is *Shahadat* (public affirmation or declaration), which we have rendered irrelevant and, as a consequence, Islam as a way of life is no longer dynamic for us.

---

[96] Mohammad Omar Farooq. "A Cyber-discussion on Gender Equality".

[97] Even a Prophet's children or family member do not automatically be or remain a Muslim. It is the their own choice as adults. That's the teaching of Islam. See the story of the Prophet Nuh and his son and wife. [11/Hud/42-47; 66/al-Tahrim/10] and wife of the Prophet Lut. [11/Hud/81; 15/al-Hijr/59-60]

When the children grow up and make choice not to our liking we must respect it, try to improve our guidance of them, and have faith in them. But every adult person of either gender must make his/her own choice. If such a choice is made freely and spontaneously, then the true message of Islam will be manifest and Islam may once again revolutionize the world. Also, instead of showing antagonism and rejection if one of our children makes a wrong choice, we need to show them greater love and empathy. That might be the only pathway for them to make amends; antagonism and rejection, on the other hand, would seal the door to such pathway for good. These issues pertains to the legal domain in the sense that from a legalistic and judgmental perspective the issue of someone being born in a Muslim family and later giving up Islam is dealt with by the traditional Islamic laws under apostasy, which carries *hadd* punishment. However, as we have already explained above that such should not be the case. In keeping with Islamic principles and values, this area is not a matter of law or enforcement.

b. Another topic where the issue of freedom and coercion has special relevance is the case of women in general and marriage in particular.

Women must be regarded and treated as full and independent humans. They would stand before Allah and be accountable as full humans. This also requires a better understanding of gender relationship in Islam. Women, as adults, are not to be dependent on men. A life of marriage is not a life of servitude. It is a relationship of mutual guardianship (*awliya* of each other; 9/al-Tauba/71) Islamic dependence should be mutual. Some western models suggest a push for such independence that women don't need men, and vice versa. This is an extremism for which the western societies are already beginning to pay high prices, as broken families are taking heavy tolls on children, causing them to suffer from alienation and depression as well as increasing violence and other social ills. In contrast, the prevailing mode of Muslim societies is that women are not treated or allowed to develop as full human beings. Muslim men - and these days the Islamic scholarship is an exclusive domain of men - have become the sole arbiter of the lives of Muslim women. True Islam necessitates that women achieve the qualification of jurisprudents, establish themselves as scholars and policy-makers, and have their due share as part of *Shura* (consultation) to shape Islamic thought and guidance pertaining to all aspects of life.[98]

To address a specific topic, among many Muslims it has become customary to force a specific bride or groom on their children. The brides are usually more vulnerable to family impositions and

---

[98] A fundamental Islamic principle is that those whose lives are affected by a decision should be based on an appropriate level of input and representation of the affected parties. Even in case of Ibrahim in his devotion to God's commandment to sacrifice what was the dearest to him (his first son), Ibrahim asks his son for his input. "He [Ibrahim] said: 'O my son! I see in vision that I offer you in sacrifice. Now see what is your view? ...'" [37/al-Saffat/102] Even as a prophet, Muhammad involved the community in deciding about the strategy during the Battle of Uhud. The consequence of the decision must not be held against such required process of consultation and representation. Muslim women were also participants in the Allegiance of Ridwan to the Prophet. It is mind boggling to even tolerate the absence of Muslim women in all those juristic and shariah related matters that affect them. Of course, they should be part of the juristic discourse at all levels, including the very highest level of *ijtihad*. Muslims should find this absence of women a serious violation of the Qur'anic view about women being men's mutual *awliya* (guardian). Any such juristic positions (opinions, fatwa, rulings) should be regarded as deficient by default. Another word, any juristic views or positions pertaining to women from the men-exclusive jurist club should by default be considered deficient, unless proven otherwise and incontrovertibly. As far as the general juristic discourse, we still must acknowledge that one half of the mutual *awliya* are absent, which must have some effect in creating some imbalance and deficiency. Gradually, such deficiency must be remedied, not as our generosity to the women, but for our own benefit and wholeness of the society. Just the generation of the companions of the Prophet we revere wouldn't have been as such without Hadrat Aishah, Umm Salamah and other as participants in the full spectrum, including as mentors, guides, teachers and jurists, the same is true for all time. For a balanced community, men and women must play their role as mutual *awliya*, including in the field of knowledge, scholarship and jurisprudence. And, of course, that would be in better keeping with the guidance of Islam. For more, see Mohammad Omar Farooq. "Women Scholars of Islam: They Must Bloom Again," Monthly Message International [August-September 2003].

coercions. This is unIslamic. Yes, Islam prefers family involvement, particularly of parents, in a marriage decision, but that is a matter of consultation. The best marriages are those that come about with mutual consultation and agreement of the bride/groom and their respective parents (or guardian). However, there is an Islamic limit. The final decision regarding any marriage decisively rests with the bride and groom. Any coercion in this regard is unIslamic and invalid. If parents understand their domain of rights and duties, and so do the children, then much of the related problems and tensions can be avoided. It is imperative, therefore, to educate both parents and children of their respective rights and duties. Adequately clarified pertinent laws need to complement such education. Traditional Islamic laws place an overemphasis on the rights of the parents to involve in such decisions, which often has caused a great deal of friction, tension and worse at the family level. More importantly, in many cases, younger generations often have felt alienated from Islam, even though it is not Islam, but the traditional Islamic laws that usually causes such alienation.

c. Probably the biggest and broadest areas related to choice and coercion involve the role of the state. In light of the experience with Islamic law and their wrongful application, many Muslims as well as non-Muslims now have tremendous reservation about Islamic laws, or mixing political power with religious authorities. The pertinent issues need to be examined and taken into consideration with empathy and sensitivity. Many Muslims and non-Muslims who are afraid of a "religious" or theocratic state may have good reasons to fear; not necessarily that they harbor an ill or prejudiced attitude toward Islam (admittedly, some may or actually have ill or prejudiced attitude). Without properly addressing those issues, it would be impossible to persuade them in favor of Islam (before an Islamic society is established) and maintain the bond between Islam and people at a dynamic level (after such a society is established).

The experience of those countries trying to implement *shariah*, as discussed earlier in this essay, is playing a very important role in shaping the attitude of a lot of people toward Islam. As already discussed above, Islam is NOT a police state and, as such, NOT to be pushed down anyone's throat: that stands patently against Islam. In some cases, particularly in the context of Talibani Afghanistan, even enemies of Islam could not do any better in alienating Muslims from Islam, let alone non-Muslims.

Islam envisions authority or government that is constitutional, participatory and accountable to people. Under normal and mature condition, an Islamic government would use the least power, authority and coercion. An Islamic authority does have executive power, but must use it judiciously and under the rule of law and constitutional restraints. Islam has already limited such authority in a balanced manner. Unfortunately, there does not seem to be adequate appreciation of this among Muslims, let alone non-Muslims. The government in an Islamic society does not pry into people's lives: no "religious police" in Islam! It does not fill up jails with those who do not pray or fast, does not beat a lady who does not wear a scarf or some strands of whose hair are exposed. If the government makes people do these because of the power and authority of government, then how much is the persuasive value and attraction of Islam? How is it then that the "Truth stands out clear from Error"? [2/al-Baqarah/256] Sooner or later, such coercive actions would be undone challenged by those who are coerced.

Yes, in a nascent society based on Islam, like in any society in its formative stage, some authoritative power to shape the values and norms of the society is indispensable. For example, in a drug-infested society, there might be sterner action or exercise of power against the drug-traders. But such power cannot be abusive, for example, to suppress the political opposition; otherwise, it would simply be counter-productive.

d. People should be allowed to choose their faith. If someone wants to choose another faith, Islam should not get in the way. It is a gross misunderstanding and distortion of Islam that a person giving up the faith in Islam needs to be punished.

> "If it had been thy Lord's will, they would all have believed,- all who are on earth! Will you then compel mankind, against their will, to believe!" [10/Yunus/99]

Also, there needs to be fresh articulation of the rights of non-Muslims in an Islamic society. Both at the time of the Prophet Muhammad (s) as well as after him, there were many non-Muslims who desired to migrate and live in that society. We have to understand why. An Islamic society is a pluralistic society. Traditional viewpoints on issues such as Jizya, political participation and right to hold office, need to be re-examined.

> "... if we value freedom, it can't be just for us. We have to value freedom for others too, even though sometime we may find certain ideology, religion or philosophy utterly disagreeable. At the very first sign of someone criticizing or vilifying Islam, we can't demand such person's head or try to drive him or her out of our neighborhood or of this planet.
>
> As Muslims need to recognize the importance of freedom, and struggle for it at all levels, they also need to recognize the challenge of conceiving a model of a society where not merely the freedom of Muslims becomes an exclusive concern, but also the freedom of others."[99]

The bottom line is that Islam is based on the paradigm of choice and freedom, not coercion or autocracy. Those who coercively push for their version act inconsistent with this fundamental value of Islam and are contradicted by this key verse in the Qur'an. Furthermore, Muslims have a major challenge[100] to reshape their society that meets this value of freedom and choice appropriately balancing with the overall standard and norms of Islam. [101]

- **Universal moral values (*ma'ruf*)**

> "You are the best of peoples, evolved for mankind (an-nas), enjoining what is *ma'ruf*, forbidding what is *munkar*, and believing in Allah. If only the People of the Book had faith, it were best for them: among them are some who have faith, but most of them are perverted transgressors." [3/ale Imran/110]

The Qur'anic call toward *ma'ruf* and away from *munkar* relates to moral values in an universal sense. Both *ma'ruf* and *munkar* have a broad range of meaning and a clear understanding of these two concepts is critical to a Muslim's life.

Ma'ruf means well known; universally accepted; generally recognized; that which is good, beneficial, right. *Munkar* means wrong; abominable; disagreeable; denied, not recognized, rejected; evil; atrocity.

Islamic shariah represents the *ma'ruf* and *munkar*, because it incorporates what is universally recognized as good and right and rejects what is universally recognized as evil and wrong. For example, no society considers stealing or lying to be good and right, even though people may practice those acts. Every society considers honesty to be a virtue, even though some people are dishonest. Calling mankind to *ma'ruf* and away from *munkar* thus represents the universal nature of Islam.

Muslim Ummah does not exist for its own sake. It has a definite mission, a divinely ordained

---

[99] Please read Mohammad Omar Farooq. Islam and Freedom, a Jumuah Khutba.
[100] Mohammad Omar Farooq. Fundamental Challenges facing the Muslims [unpublished essay, 2000]
[101] Mohammad Omar Farooq. "Freedom and Choice: The First-Order Condition of Islam," Islamic Horizons, July-August 2006.

service to render to humankind. As Abdullah Yusuf Ali, a well known commentator on the Qur'an explains:

"The logical conclusion to the evolution of religious history is a non-sectarian, non-racial, non-doctrinal, universal religion which Islam claims to be. For Islam is just submission to the will of God.

This implies (1) faith, (2) doing right, being an example to others to do right, and having the power to see that right prevails, (3) eschewing wrong, being an example to others to eschew wrong, and having the power to see that wrong and injustice are defeated. Islam (the author probably meant Muslim Ummah) therefore lives, not for itself, but for mankind."[102]

Unfortunately, this sense of universality has been lost in the way Islam, under the influence of puritanical fundamentalism, is now portrayed and conveyed to the humanity. As Khaled Abou El Fadl reflects:

"The puritans construct their exclusionary and intolerant theology by reading Qur'anic verses in isolation, as if the meaning of the verses were transparent—as if moral ideas and historical context were irrelevant to their interpretation. In fact, however, it is impossible to analyze these and other verses except in light of the overall moral thrust of the Qur'anic message. The Qur'an itself refers to general moral imperative such as mercy, justice, kindness, or good ness. The Qur'an does not clearly define any of these categories , but presumes a certain amount of moral probity on part of the reader. For instance, the Qur'an persistently commands Muslims enjoin the good. The word used for 'the good' is *ma'ruf*, which means that which is commonly known to be good. Goodness, in the Qur'anic discourse, is part of what one may call a lived reality—it is the product of human experience, and constructed normative understandings."[103]

This kind of exclusionary mentality not only stands in the way of witnessing Islam as the essential truth in its universal dimension, but also it alienates the rest of world with a negative understanding about and attitude toward Islam and Muslims. The emphasis of *ma'ruf* does not mean that there are no special or distinctive aspects of Islam in an applied sense. However, the focus of Muslims should have been appropriately balanced with the universalistic dimension, which would have enabled the humanity to appreciate the fact that Islam is not a new religion, but it is the same essential truth and message as brought about by all the prophets, including Abraham, Moses, and Jesus (peace be upon them all).

- **Humanity-orientation and Global Belonging**

You are the best of peoples, **evolved for mankind (an-nas),** enjoining what is right, forbidding what is wrong, and believing in Allah. If only the People of the Book had faith, it were best for them: among them are some who have faith, but most of them are perverted transgressors. [3/ale Imran/110]

O mankind (al-Nas)! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women;- reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah ever watches over you. [4/al-Nisa/1]

---

[102] Abdullah Yusuf Ali, The Holy Qur'an: Text, Translation, and Commentary; explanatory note #434.
[103] Khaled Abou El Fadl. op. cit., pp. 14-15.

At one level we belong to a family. At another level we belong to a nation or country. At another level we belong to the Muslim Ummah. At yet another level we belong to the humanity. None of these senses of belonging necessarily needs to conflict with each other. Our family and nation are often not our choices; we are born into it. We belong to our family and the circle of relatives through biological and other bonds. Belonging to a nation is becoming more fluid with greater mobility of people throughout the world. Yet, without any conflict, we can often maintain our attachment to the part of the world we are from, while maintain our loyalty to the place of our choice of permanent residence.

As Muslims, we also develop and feel a special bond with our global Muslim community, the Muslim Ummah. As our Islamic identity should be by our choice, not by lineage, this sense and level of belonging is of central importance. However, even this level of belonging should not conflict with our spirit of belonging to the humanity. It is through this spirit of belonging that we realize the meaning of "evolved fro mankind."

The achievements of humanity and the joy humanity are not isolated from us, we have a share in it. We must rejoice only in good things that happen to or with Muslims. We must not succumb to the sense of estrangement that by default we view the rest of the world as "the other." We must not also feel pain and agony at the suffering of Muslims. We must be in tune with the pain and suffering of the humanity.

Our concern and activism must not be limited to those situations where Muslims are victims. We must also empathize with the rest of the humanity. As Kazi Nazrul Islam, the Rebel Poet and the voice and beacon of global belonging,[104] wrote:

> "... To be able to feel the pain of others is the real feeling of noble pain. One can't find any selfish motive or goal behind the feeling of pain of those who suffer so. This is so, because, it's that agony the experience of which lets one identify himself with it, rendering him in tune with the true nature of soul. There is a deep sense of joy at feeling the sadness of others; it's like a beautiful, long stretch of fountain on the bed of our living heart.
>
> It is the same agony the divine messengers have experienced in the deepest of their heart in tune with the humanity. Words can't express this sorrow. It's the same pursuit that renders divinity upon humans. It is in the utmost sincerity of this sorrow lies the tranquil peace of sacrifice. One finds the touchstone of joy and happiness in this orchard of perennial agony. . . .
>
> When, through our own agony and suffering, we can embrace the pain and agony of the world as ours, only then our soul soar to nobility - its frontiers are extended. We, then, come to know the truth, to experience the beauty: and that's why then we truly feel the joy in sacrifice; we can then cry for others and offer even our lives for the sake of all those who are in sadness, pain, agony, and suffering."[105]

Our laws must not unnecessarily foster mutual estrangement. Instead, imbued with the spirit of global belonging, we must seek common ground for good common causes. Muslims should be at the forefront of fostering the spirit of global-belonging. Of course, there are icons from all

---

[104] Mohammad Omar Farooq. "The Spirit of Global Belonging: Perspectives from Some Humanity-Oriented Icons," unpublished essay, September 2006.
[105] These are excerpts from a prose of Nazrul "Jibon Biggan" (The Science of Life: the nobility of pain and suffering) in Nazrul Rochonaboli, 1996 ed., Bangla Academy, Vol. 4, pp. 7-8.

background that can be inspiring icons.[106]

- **Seeking common ground for good common causes**

> "Say: 'O people of the Book! come to common terms as between us and you: that we worship none but God; that we associate no partners with Him; that we erect not, from among ourselves, lords and patrons other than God.' If then they turn back, say: 'Bear witness that we (at least) are Muslims (bowing to God's Will).'" [3/Ale Imran/64]

It is a common human tendency to emphasize and exaggerate differences more than commonness. Muslims are no exception. Islam invites people to the pristine truth. It delivers the good news and warns about the bad news. However, whenever appropriate and possible, it also seeks to identify and build on common grounds. This is what made the Islamic society of Madinah under the leadership of Prophet (p) possible. Islam presents the choice to people about the truth and falsehood, right and wrong, virtue and vice. Let people make their choice. However, Islam does teach its adherents to seek common grounds for the betterment of human society, particularly based on enjoining the *Ma'roof* and forbidding the Munkar.[107]

> "...help (cooperate) one another in matters of *Birr* and Taqwa; and do not help (cooperate) in *Ithm* (sin) and transgression...." [5/al-Maida/2][108]

- **Rejection of violence as normal**

In Islam peace and non-aggression are the norms. Islam doesn't proscribe violence in the way Christianity (of idealism, not of reality) would suggest. However, it is any violence is only in one's defense, without initiating it, without any excesses, and subject to some strict guidelines as part of the rule of law. Otherwise, Muslims are never to engage in violence, especially in a vigilante manner.

> "Let there be no hostility except to those who practice oppression." [2/al-Baqara/193]

> To those against whom war is made, permission is given (to fight), because they are wronged;- and verily, Allah is most powerful for their aid; ...

> (They are) those who have been expelled from their homes in defiance of right,- (for no cause) except that they say, "our Lord is Allah". Did not Allah check one set of people by means of another, there would surely have been pulled down monasteries, churches, synagogues, and mosques, in which the name of Allah is commemorated in abundant measure. Allah will certainly aid those who aid his (cause);- for verily Allah is full of Strength, Exalted in Might, (able to enforce His Will). [22/al-Hajj/39-40]

> "Fight in the Way of God against those who fight you, but do not go beyond the limits. God does not love those who go beyond the limits. [2/al-Baqara/190]

---

[106] Mohammad Omar Farooq. "The Spirit of Global-Belonging: Perspectives from some Humanity-oriented Icons," [unpublished essay, September 2006]

[107] Mohammad Omar Farooq. "The GOLDEN Standard: It's not uncommon," comments published in a forum.

[108] Due to some numbering issue with Surah al-Mai'da, in some texts, this verse might be #3, instead of #2.

>"But if the enemy inclines towards peace, you (also) incline towards peace, and trust in Allah." [8/al-anfal: 61].

It is interesting that Muslims did not any permission to even reciprocate any violence, when they were oppressed, downtrodden and persecuted. That still is the Islamic norm. Later, permission were granted to reciprocate in self-defense, but without initiating any aggression or excess.

- **Non-Judgmental**

As Allah's judgment will be in place in the life hereafter, it is important that judgments should be deferred to Allah alone and we should not be judgmental in regard to our fellow human beings.

>"That is because when Allah alone was called upon, you disbelieved, and when associates were given to Him, you believed; so judgment belongs to Allah, the High, the Great." [40/al-Ghafir/12]

This is important in the context of our dogma and attitude that we already <u>know</u> in this world as to who (as a group) are not going to heaven. It is correct that we believe in Islam because we embrace it as the truth. Yet, judgment is for Allah alone and there are verses that are indicative that Allah's Judgment might not be exclusive.

>Those who believe (in the Qur'an), and those who follow the Jewish (scriptures), and the Christians and the Sabians,- any who believe in Allah and the Last Day, and work righteousness, shall have their reward with their Lord; **on them shall be no fear, nor shall they grieve**. [2/al-Baqara/62][109]

What does it mean that "on them shall be no fear, nor shall they grieve"? If there were any additional conditions for salvation – the most important thing – why would those conditions be specified in the Qur'an and right in this verse? Did Allah change his mind later? Why would it be left ambiguous? Why such matter would be left to hadith? Yet, these are theological issues, and we should not be too dogmatic about such matters one way or another. We do believe that Islam is truth and we believe in the Prophet Muhammad as the last messenger. However, we should not be judgmental about this matter. Such judgmentalism unduly alienates others, and it makes us either arrogant or self-gratified, thinking that heaven for us exclusively.

As Khaled Abou El Fadl explains:

>"Although the Qur'an clearly claims that Islam is the divine truth, and demands belief in Muhammad as the final messenger in a long line of Abrahamic prophets, it does not completely exclude the possibility that there might be other paths to salvation. The Qur'an insists on God's unfettered discretion to accept in His mercy whomever He wishes. In a rather remarkable set of passages that, again, have not been adequately theorized by Muslim theologians, the Qur'an recognizes the legitimate multiplicity of religious convictions and laws."[110]

- **Rule of law**

The essences of rule of law are several: The essences of rule of law are several: (a) Equality of everyone before the law and no one is above the law, where laws are based on objective, accessible rules; (b) Judiciary is independent; (c) Enforcement of law is civil and non-partisan;

---

[109] Also, see 5/al-Maidah/69, 22/al-Hajj/17.
[110] El Fadl, op.cit. p. 17.

and (d) Conflict resolution occurs through the legal system and/or the political system without violence of the citizens.

Even the Prophet was not above the law. *Shariah* is perverted at its root or core, when some people are above the law, like a dictator, a monarch/king, or a military junta. *Shariah*'s implementation cannot be considered Islamic, except under rule of law in accordance with Islam.

> "Say: I would, if I disobeyed my Lord, indeed have fear of the penalty of a Mighty Day." [6/al-An'am/15]

> "O ye who believe! stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear Allah. For Allah is well-acquainted with all that ye do." [5/al-Maida/8]

> 'A'isha reported that the Quraish had been anxious about the Makhzumi woman who had committed theft, and said: Who will speak to Allah's Messenger (pbuh) about her? They said: Who dare it, but Usama, the loved one of Allah's Messenger (pbuh)? So Usama spoke to him. Thereupon Allah's Messenger (pbuh) said: Do you intercede regarding one of the punishments prescribed by Allah? He then stood up and addressed (people) saying: O people, those who have gone before you were destroyed, because if any one of high rank committed theft amongst them, they spared him; and it anyone of low rank committed theft, they inflicted the prescribed punishment upon him. By Allah, if Fatima, daughter of Muhammad, were to steal, I would have her hand cut off. [Sahih Muslim, #4187]

- **Representation and participation**

> "... that which is with God is better and more lasting for ... those who hearken to their Rabb, and establish regular prayer, who (conduct) their affairs by MUTUAL CONSULTATION, who spend out of what We bestow upon them for sustenance." [42/al-Shura/38]

Consultation or *shura* is a vital process and institution in Islam. The relationships in Islam at different levels are based on consultation, not coercion or imposition. Thus, the concept of governance, administration and leadership is participatory - meaning that those who are affected by the decision are to be duly consulted. Islamic form of governance is participatory and accountable.[111]

- **Emphasis on the substance over form**

> "It is not righteousness that ye turn your faces Towards east or West; but it is righteousness- to believe in Allah and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity; to fulfill the contracts which ye have made; and to be firm and patient, in pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the Allah-fearing." [2/al-Baqarah/177]

> The Prophet said: "Verily Allah does not look to your appearance or wealth, but he looks

---

[111] Mohammad Omar Farooq. "Islam and Democracy: Perceptions and Misperceptions," Message International, May 2002; and the segment on governance in Fundamental Challenges Facing the Muslims (unpublished).

to your hearts and your deeds." [Sahih Muslim, Vol. 4, #6221]

- **Embracing life-experience as part of our collective learning curve**

    Contrary to the orthodox understanding and approach, Islam does not ask us to be exclusively text-oriented. In understanding this world, in many ways, it wants us to benefit from the experience of life. It commands us to travel to see and learn about the history. It asks us to observe, think and reflect, not just burying our heads in the sacred books, but also to utilize our eyes and ears.

    > "Many were the Ways of Life that have passed away before you: travel through the earth, and see what was the end of those who rejected Truth." [3/ale Imran/137]

    Islam is not for just compliant, mimicking minds. Rather it is for observing, inquiring and thinking minds.

    > "Is it not a guidance for them (to observe) how many generations We destroyed before them, amid whose dwelling places they do walk? Lo! therein verily are portents! Will they not then heed?" [32/al-Sajdah/26]

    > "Behold! Abraham said: 'My Rabb! Show me, how you give life to the dead.' He said: 'Do you not then believe?' He said: 'Yes! but to satisfy my own understanding.' He said: 'Take four birds, tame the to turn to you; put a portion of them on every hill, and call to them; they will come to you (flying) with speed. Then know that God is Exalted in Power, Wise.'" [2/al-Baqara/260]

    > "Do they not reflect in their own minds? Not but for just ends and for a term appointed, did Allah create the heavens and the earth, and all between them: yet are there truly many among men who deny the meeting with their Lord (at the Resurrection)!" [30/ar-Rum/8]

    > "Do they not travel through the land, so that their hearts (and minds) may thus learn wisdom and their ears may thus learn to hear? Truly it is not their eyes that are blind, but their hearts which are in their breasts." [22/al-Hajj/46]

It is not an exhaustive list. The abovementioned values or principles are based directly on the Qur'an. These values and principles should be important parameters in deriving or establishing laws in light of non-Qur'anic sources. When the non-Qur'anic sources, including hadith, conflict with these clear principles of the Qur'an (and as the model, the life of the Prophet can't be contradictory to the Qur'an), these principles must be given precedence. Furthermore, laws and codes, as needed, must not be approached in an atomistic manner. Since these principles are Qur'anic principles, our laws and codes must not violate or compromise such principles, without compelling evidence to the contrary.

VI. Conclusion

Every society, to be functional, needs laws. However, laws must be based on certain essential values as articulated above and derived directly from the Qur'an,[112] and having laws and a legal framework must not lead to dehumanized legalism. Since *shariah* is erroneously equated with laws, it is important to understand and acknowledge that, except in the limited aspects of the Qur'an-specified injunctions and *hudood* (punishments), *shariah* is essentially a human construct. Therefore, in general, it can't be labeled, understood or regarded as "eternal", "divine" or

---

[112] If a value or principle is important enough, God must have included it in the Qur'an.

"immutable." Such notion stands contradicted by the Qur'an, the Prophetic legacy and the practice of (or the recognition of the need for) continuous *ijtihad*.

If *shariah* is understood as the Divine Will "as it exists in the mind of God", then it is divine, immutable and infallible. However, then we can't use the expression *shariah* as synonymous with fiqh or Islamic law. We can't have it both ways. As argued and explained in this essay, the proper understanding of *shariah* is as "divine will", instead of laws and codes that are primarily human constructs, even if informed by or rooted in a divine source, such as the Qur'an. Reducing *shariah* to the level of law or code is simply untenable. It not only misrepresents Islam, but also serves as the feeder for legalistic tendencies that have become now entrenched and robbed Islam of its vitality and dynamism in guiding us in this world in a problem-solving manner.

Proper understanding of *shariah*, from the Islamic perspective, is important not merely for theological reasons, but also to restore and reclaim the dynamism that enables Muslims under the leadership and guidance of the Prophet to lay the foundation of a great community, leading to a vibrant society and civilization, worshipping God and serving the humanity in His path.

Through self-critical discourse, creative and constructive intellectual rejuvenation, moral and religious clarity that is simple and unambiguous, dynamic problem-solving approach, and value-orientation rooted in the Qur'an and inspired and guided by the Prophetic legacy, Muslims can better fulfill their duty to themselves, to the humanity and above all to their Benevolent Creator.