Comparative Perspectives on *Shari'ah* in Nigeria

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The Future of *Shari'ah* and the Debate in Northern Nigeria

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INTRODUCTION

Shari'ah does indeed, in my view, have a most important future in Islamic societies and communities for its foundational role in the socialization of children, sanctification of social institutions and relationships, and the shaping and development of those fundamental values that can be translated into general legislation and public policy through the democratic political process. But it does not have a future as a normative system to be enacted and enforced as such by the state as positive law and public policy. That is, whatever is enacted or enforced is not *shari'ah* as such, and should not be described in those terms at all. This paper is a preliminary and tentative inquiry into this delicate *mediation* of the public role of *shari'ah* in present Islamic societies, with special reference to Northern Nigeria. The term 'mediation' is used here to emphasise the need for balancing competing claims, instead of asserting either the categorical fusion of *shari'ah* and the state or its total exclusion from the public domain.

To avoid any confusion, I emphasise from outset that the thesis and argument presented here are proposed **only** for the public role of *shari'ah* (*mu'amalat*), and **not** matters of religious beliefs and worship practices (*'aqidah* and *'ibadat*). The reason for this specification of the subject of my thesis is that the latter matters are not affected by the drastic social, political and economic transformations of the context in which the *mu'amalat* aspects of *shari'ah* have to operate in present Islamic societies. In particular, my focus in this essay is on the actual role of *shari'ah* in the public life of present and future Islamic societies, rather than the study of the subject as a historical phenomenon. In other words, the following analysis assumes that *shari'ah* will continue to have a role in the public life of Islamic

societies, and attempts to clarify and facilitate that role from the particular theoretical perspective explained below.

The main question I am addressing here is how to reconcile the profound and persistent commitment of Muslims to what is commonly known as *shari'ah* with the needs of present and future Islamic societies at home, as well as their need for peaceful and cooperative international relations with other societies. This framing of the question is of course relevant to a wide range of Islamic societies, whether Muslims constitute the majority of the population of a state, or they are a minority asserting the right to have *shari'ah* personal or family law, as is the case in India and Israel, for instance. The specific relevance of this question to the present situation in Northern Nigeria, the occasion for this volume, can further be clarified as follows.

It seems clear to me that the present political situation in Nigeria, especially since the first re-introduction of long-dormant aspects of *shari'ah* by Zamfara State in 1999, clearly indicates a dangerously high degree of confusion, misunderstanding, and suspicion regarding the terms in which the national and regional debate over the implementation of *shari'ah* in twelve Northern states is being conducted.[1] This state of affairs is of course due to a complex web of historical and contextual factors that can be traced to the pre-colonial history of the wider West Africa region, as well as developments in Nigeria since independence, including the civil war of the late 1960s. Without going into a discussion of that broader historical and political context, which is beyond the scope of this essay, I am suggesting here that the present confusion, misunderstanding, and suspicion surrounding *shari'ah* are partly due to the fundamental ambiguity of demands by the Muslims of the Northern Nigerian states which tend to attract negative reactions from Christians and other citizens of Nigeria.

As an observer of this debate over the last four years, from the vantage point of someone who has participated in a similar debate in Sudan, my home country, since the mid 1960s, I believe that the grossly inflated rhetoric and exaggerated demands by many Muslim Nigerians tend to draw a hostile response from Christian Nigerians,

[1] See Ostien, 2002, especially 170-173.

which leads, in turn, to even stronger rhetoric by Muslims, and the vicious cycle of confrontation and recrimination continues. It is therefore critically important, I believe, to clearly define realistic positions on both sides of the debate over the role of *shari'ah* in the public life of *any* state in Nigeria, regardless of the respective percentage of Muslim and non-Muslim citizens. In particular, the positions of both sides must be clearly and publicly stated in terms of the minimum constitutional and political requirements of a united, stable, pluralistic, and democratic country.

To begin with, the fundamental right of Muslims to freedom of religion regarding matters of belief and practice is not in any way whatsoever in question or under any sort of attack. It is also beyond dispute that Muslims also enjoy every possibility of voluntary personal and communal compliance with *shari'ah*. Since we are only concerned with the demands of some of the Muslims of Northern Nigeria that *shari'ah* should be enforced by the state, the question is which aspects of this vast legal and ethical tradition are Muslims demanding should be enforced as a matter of positive state law and official policy? Does this include such aspects of *shari'ah* as the *dhimmah* system, whereby Christian Nigerians will be relegated to the status of second-class citizens in their own country? Will those subscribing to non-scriptural beliefs (commonly known now as Traditional African Religions) who are deemed to be unbelievers by *shari'ah*, not be accepted as legal persons at all, except under the discretionary status of temporary safe conduct (*aman*)? Are Muslims calling for state enforcement of the *shari'ah* law of apostasy (*riddah*), whereby a Muslim who repudiates his or her belief in Islam is subject to the death penalty? Are they calling for the legal prohibition of charging or receiving interest on loans (*riba*), and speculative contracts (*qarar*), thereby outlawing modern banking and insurance contracts? To reiterate: the question is whether the state should enforce these aspects of *shari'ah* as a matter of positive law or official state policy, and not whether Muslim Nigerians are free, for example, to refrain from interest-based banking or insurance contracts.

This fundamental ambiguity in the position of Nigeria's Muslims confronts the country as a whole with a critical dilemma. On the one hand, if Muslims are in fact demanding the total and comprehensive implementation of *shari'ah*, including the aspects mentioned above,

they leave no basis for the equality before the law of those Nigerian citizens who are not Muslims. A demand for the application of the totality of *shari'ah* would be tantamount to an invitation to civil war. On the other hand, if Muslims are not calling for the total and comprehensive implementation of *shari'ah* in this way, they must explain how they choose those parts of *shari'ah* they do want enforced. What basis or criterion do they use to select those aspects of *shari'ah* they want the state to implement, and what justification is there for such selection, from a *shari'ah* point of view? Unless these questions are answered, how can those Nigerians who are not Muslims know the precise extent of what Muslim Nigerians are demanding, and how are they to assess its full implications for their rights as citizens of the same country? If the criterion of selection is either unclear, or unjustified from a *shari'ah* point of view, Christian Nigerians would fairly and reasonably think that Muslims are being tactical by demanding now only what they think they can get, until they are able to demand and get more later on.

The thesis and analysis I present in this essay focuses on such underlying issues, rather than examining such technical questions as whether the Northern states have the constitutional power to extend the application of *shari'ah* in the ways they have done, or discussing the rationale or reasons for the inclusion of such a power in the constitution of 1999.[2] In my view, the issues I am raising are of more fundamental constitutional concern. Without going into the provisions of the Nigerian constitution in detail, it is clear as a matter of basic constitutional doctrine that no state can have the power to enact legislation or implement any policy that violates the fundamental rights of any citizen or group of citizens. Since, as explained below, certain aspects of *shari'ah* are simply inconsistent with basic constitutional government altogether, the enactment of such principles into law, or their adoption as official state policy, is inherently unconstitutional, even if the explicit text of the constitution might seem to indicate otherwise. By addressing such issues, I hope to contribute to the clarification of the terms and implications of the *shari'ah* debate in Nigeria today. However, these

[2] As to which see, for example, Illesanmi, 2001.

issues and reflections clearly apply to a wide range of Islamic societies and communities around the world, now and in the near future.

From this perspective, I will argue that the state should not claim, or be accepted by the public as having, the authority to enforce any aspect of *shari'ah* as positive law or official policy. This does not mean that no principles of *shari'ah* can or should be included in the law of the state, or implemented by its administrative organs. Indeed, it is most probable that wherever Muslims constitute the majority or even a significant minority of the population, *shari'ah* principles will influence the law and policy of the state. Rather, my point is that whenever that happens, it should be done as a matter of ordinary legislation or policy of the state, and not in the name of *shari'ah* as such. In view of the various ways in which *shari'ah* will continue to influence state policies and pubic institutions and practice, I refer to this approach as "the religious neutrality of the state." As I will attempt to explain in the next section, this does not mean the total banishment of Islam from the public domain, which is the charge often raised against "secularism," wrongfully in my view. The issue for me is one of mediation of competing claims about the relationship of religion and the state, rather than simplistic categorical separation of the two which is neither possible nor desirable in my view.

This approach is necessary it seems to me because of a basic dilemma. On the one hand, prevalent traditional interpretations of *shari'ah* are profoundly problematic for constitutional governance, political stability and economic development in present Islamic societies. In addition to the well-known problematic aspects of those prevalent interpretations such as discrimination against women and non-Muslims,[3] the nature of *shari'ah* itself precludes its enforcement by the state as positive law or official policy, as I will explain below. On the other hand, the religious commitment of Muslims to some sort of public role for *shari'ah* in their societies makes its total relegation to the so-called private domain neither viable, nor desirable in my view.

One possible response to the first part of this dilemma is the call by the late *Ustadh* Mahmoud Mohamed Taha of Sudan for a paradigm

[3] On those issues see An-Na'im, 1990, 86-91,

shift in *ijtihad* and revision of *usul al-fiqh* (the classical science of understanding the sources of *shari'ah*) in order to reformulate those problematic aspects of *shari'ah*.[4] This approach consists of two parts. First is the premise that there is need for a paradigm shift, and second, the specific methodology for achieving that shift and its outcomes. I remain convinced of the validity of the premise, as well as the legitimacy and viability of the specific methodology proposed by *Ustadh* Mahmoud. But the two can be distinguished, so that one can accept the premise while proposing an alternative methodology than of *Ustadh* Mahmoud, provided it can achieve the same objectives.

But accepting or rejecting that or any other proposed approach does not resolve the question of the public role of *shari'ah* in Islamic societies today, particularly in relation to the state, and regarding international relations. That is, whether or not one believes in the need and a method for re-interpreting *shari'ah* sources does not resolve the issue of the enforcement of such new principles by the state, which is the subject of this essay. In particular, I will argue that the inherent nature of *shari'ah* as necessarily the product of human interpretations of the Qur'an and Sunnah of the Prophet means that whatever formulations one prefers to adopt should not be enforced by the state as such.

From this perspective, I am concerned here with how to mediate between the need for "the religious neutrality of the state," on the one hand, and the legitimate demand of Muslims for the strong influence of Islam in the social and political life of predominantly Islamic societies, on the other. I will begin in the next section of this essay with a brief clarification of the terms *shari'ah* and *fiqh*, to emphasise that human interpretation is integral to any process or method of formulating the religious law of Islam, the divine guidance/commands of God for human beings, whether as individual persons or as whole communities or societies. Next I will challenge the idea of an Islamic state that enforces any interpretation of *shari'ah* as positive law or official policy, as opposed to a state in which Islam influences law and policy in less direct ways as indicated above. The final section is devoted to a tentative discussion of the proposed

[4] See, generally, Taha, 1987 and An-Na'im, 1990.

mediation between the religious neutrality of the state and the influence of Islam in the politics of Islamic societies.

INEVITABILITY OF HUMAN INTERPRETATION, WHETHER OF *SHARI'AH* OR OF FIQH

The main premise of my argument in this section is that what is commonly known among Muslims as *shari'ah*, was in fact the product of a very slow and gradual process of interpretation of various parts of the Qur'an and Sunnah during the first three centuries of Islam. This process was conducted by scholars and jurists who developed and applied the sources or methodology (*usul al-fiqh*) *completely independently* of the state, albeit with due regard to the circumstances and concerns of their communities and political institutions. The deeply contextual nature of that process is illustrated by the fact that al-Shafi'i changed some of his views when he moved from Iraq to Egypt. Moreover, as is to be expected, there was a lot of disagreement among those "founding" scholars on the sources, the methodologies they developed, and the conclusions they drew from their respective interpretative efforts.

These significant differences continue to the present day among Sunni and Shi'a schools of Islamic jurisprudence (*madhahib*), as well as within each school, with serious practical consequences. For example, the Maliki, which prevails in North and West Africa today, is the only one that accepts the pregnancy of an unmarried woman as proof of *zina* (illicit sexual intercourse), which is punishable by stoning to death if the woman was *muhsanah* (having been married before). Thus, a woman can be sentenced to stoning to death on the basis of this "proof" if she happens to live in a place where the Maliki school prevails, like Northern Nigeria, as illustrated by some recent cases. In contrast, under the Hanafi, Shafi'i, Hanbali and Ja'fari (Shi'a) schools, basing a charge of *zina* on such evidence alone is grounds for the other *shari'ah* offence of *ghadhf* (unproved accusation of illicit sexual intercourse). In other words, not only would a woman be acquitted of a charge of *zina* that is based only on her pregnancy, if she happens to live in a place where any of those other schools prevails, but also her accuser can face the serious criminal charge of *ghadhf*.

In current debates about the application of *shari'ah* in the modern context, a distinction is often made between *shari'ah* and *fiqh*, whereby the former is said to be enacted by God while the latter is legal understanding by human beings.[5] While this distinction can be meaningful in contrasting principles or rules that are the product more of speculative thinking than textual sources from the Qur'an and Sunnah, it cannot mean that these divine sources are not subject to human interpretation as well.

> Although the law is of divine provenance, the actual construction of the law is a human activity, and its results represent the law of God *as humanly understood*. Since the law does not descend from heaven ready-made, it is the human understanding of the law – the human *fiqh* [literally meaning understanding] – that must be normative for society.[6]

For our purposes here, therefore, human interpretation of divine sources is always necessary, whether the outcome is called *shari'ah* or *fiqh*. In other words, while *fiqh* principles can be changed more easily when they lack textual support from the Qur'an or Sunnah, disagreement on the meaning and normative significance of those divine sources cannot be avoided.

This point was so clear to the founding scholars of *shari'ah* that they strongly resisted imposing their views through state authority, even at the risk of torture and imprisonment. In fact, none of the founding scholars of the major Sunni schools held any judicial or other official office, except Abu Yusuf of the Hanafi School who held the position of Chief Judge under the Abbasid Caliphate. Instead, those scholars accepted diversity of opinion as a healthy and creative feature of their work, while seeking to enhance consensus among themselves and their communities. Thus, every single principle of *shari'ah* (not only *fiqh*) became established through *ijma'* (consensus) and voluntary compliance by Muslims at large, and never through an institutional authority, whether official or non-official. There was

[5] Weiss, 1998, 120.
[6] Ibid, 116.

never a council or formal meeting, even among scholars privately convened, where various views of *shari'ah* principles were debated in order to recognise some and reject others once and for all. Instead, the validity and binding authority of any *shari'ah* principle or rule was always the product of the free and unfettered choice of generations of Muslim scholars and communities, over a long period of time.

It is also relevant to note that voluntary and inter-generational *ijma'* among Muslims at large is in fact the fundamental foundation of all sources and techniques of *shari'ah*, past, present and future. In standard manuals, and according to the common knowledge of Muslims in general, the sources of *shari'ah* are said to be the Qur'an, Sunnah, *ijtihad* (juridical reasoning), *ijma'* and *qiyas* (reasoning by analogy to previously established rulings on a similar matter). But in fact, all of these sources, and their priority and application, are the product of *ijma'*. Even the text of the Qur'an is known and accepted as such by virtue of the consensus of generations of Muslims since the time of the Prophet. The collection and recording of Sunnah into authoritative compilations (known as *sihah* or reliable books like those by Muslim and Bukhari) happened through voluntary consensus among many generations of Muslims. The possibility of *ijtihad* and *qiyas*, and the legitimacy of their implementation to produce specific principles of *shari'ah* or *fiqh*, are also the product of *ijma'* of Muslims at large. The development and survival of different schools of thought, and extinction of others, was also the product of *ijma'*. For example, the views of Abu Hanifa or Malik evolved into separate and successful *madhahib* only because generations of Muslims accepted and implemented them by their own free choice. The development of *usul al-fiqh*, and its systematic compilation by al-Shafi'i, as well as his own school of jurisprudence, survived and became established by virtue of *ijma'*.

It is true that there have always been clear difficulties with the principle and process of *ijma'*. To begin with, how is the field or subject upon which *ijma'* may operate to be decided, and by whom? Some Muslims maintain that certain matters are so settled by the direct and categorical text of the Qur'an or Sunnah that there is no question of competing human interpretations that can be adjudicated though *ijma'* (*la ijtihad fi ma fihi nass*, that there can be no *ijtihad* in any matter governed by a categorical text of scripture). What those who

hold this view fail to appreciate, is that even the opinion that a given matter is governed by categorical text is itself already a product of human judgment, authoritative only to the extent that it itself is supported by the *ijma'* of those who hold the same opinion. And then there is the question of whose *ijma'* makes an interpretation binding. Some have wanted to confine the binding force of *ijma'* to consensus among a select group of jurists; questions facing those who hold this view include how to agree on the criteria for identifying the jurists whose *ijma'* is binding, and how to identify and verify their opinions. If one is to say that the authority of *ijma'* is to come from the consensus of the Muslim community at large, the question still remains how to determine and verify that this has happened on any matter. Whether the consensus is supposed to be of a select group of jurists or of the community at large, why should the view of one generation bind subsequent generations?

Moreover, whatever solutions one may find for such methodological and practical difficulties will, again, always themselves be the product of human judgment and voluntary choice. Thus, the very idea of *shari'ah*, its sources and content, are inherently and permanently embedded in human understanding; and this necessarily means both the inevitability of differences of opinion and the possibility of error, whether among scholars or the community in general. Any conceivable view of *shari'ah* could not have been established, and cannot remain authoritative into the future, except through *ijma'*, which is necessarily the product of human judgment and voluntary acceptance of countless generations of Muslims, and not of some institutional authority that has the prerogative power to define religious doctrine for the community of believers.

For our purposes here in particular, the profoundly decentralised, voluntary, and inter-generational nature of any understanding or knowledge of *shari'ah* make it inherently incompatible with any notion of institutional enactment or enforcement. *Shari'ah* is binding on Muslims as a matter of religious belief, and one cannot be bound in one's belief by what he or she does not personally accept as a valid interpretation of relevant texts of the Qur'an and Sunnah through application of other sources and techniques of *shari'ah*. Given the diversity of opinions among Muslim jurists, whatever the authorities in control of any state may elect to enforce as *shari'ah* through

positive law or official policy, is bound to be objectionable to some Muslims or other as a matter of personal religious conviction. In other words, the alleged enforcement of *shari'ah* by the state inevitability entails the violation of the fundamental freedom of religion for Muslims themselves, in addition to whatever other objections may be raised against particular principles, as outlined below.

The basic conclusion of this section is the inevitability of *human agency* in the interpretation of all religious texts, the Qur'an and Sunnah in the case of Islam. I use the term 'human agency' here to indicate that human beings are the primary agents of social change, for both good and bad, without denying the impact of cultural, structural, environmental and other factors. My use of this term also takes due account of religious or other motivations people may have in acting or refraining from action, and is not meant to suggest that all human beings are equally able and willing to play a proactive role in religious discourse. This usage is also consistent with the religious belief of Muslims that God is the ultimate creator and actor in the world, because God always acts through human beings through their apparently autonomous wills and in their respective contexts, rather than by direct "divine" intervention. To emphasise the role of human agency is – without disputing or undermining the belief that God is the ultimate creator – to call on people to take responsibility for the relevance and meaning of their religious beliefs to their own lives, instead of perceiving themselves as passive objects of manipulation by forces beyond their control.

It is clear to me, moreover, that the human agency of some actors not only tends to diminish the social and political "space" in which the human agency of others may operate freely, but also that the outcome of the agency of every actor is likely to be objectionable from some point of view or another. Yet, for the human agency of some people to counter the negative manifestations of the agency of others, the space for religious, social and political dissent and disagreement must be maintained as free and as open as is humanly possible. That is why I am particularly concerned about the dangers of allowing the coercive powers of the state to be used, or rather abused, to the advantage of some religious views or against others. Moreover, the tendency of Islamic discourse to cast every difference

of opinion over *shari'ah* into charges of apostasy and heresy makes it imperative to avoid allowing political differences to assume a religious dimension. I will therefore devote the next two sections to a discussion of issues of the nature of the state and the dangers of the political use of charges of apostasy or heresy.

THE ILLUSION OF AN ISLAMIC STATE TO ENFORCE *SHARI'AH*

The main problem with the idea of an Islamic state that can enforce *shari'ah* as positive law or official policy is that, in view of the inherent subjectivity and consequent diversity of all interpretations of the Qur'an and Sunnah, such an effort will necessarily rely on the specific interpretation accepted by those in political power, to the exclusion of other interpretations which would be equally valid for other believers. In other words, the impossibility of the enforcement of *shari'ah* by the state is due to the nature of *shari'ah* as a religious normative system, and nature of the state as a political institution. Yet, the paradox persists: On the one hand, Muslims not only continue to aspire, in theory at any rate, to the illusion of a pure Islamic state in which *shari'ah* is enforced as the only law, but many of them even regard opposition to the idea of an Islamic state as tantamount to apostasy – a capital crime punishable by death. On the other hand, the vast majority of post-colonial Islamic societies have in fact avoided the enactment of *shari'ah* as the legal system and basis of public policy in their own independent states, and the very few countries that have tried it, like Iran, Pakistan, and Sudan, are encountering severe problems in making it work in practice. In sum, Islamic societies seem neither willing to abandon the illusion that *shari'ah* could and should be the only law under which they live; nor are they willing – or able – to actually implement it through the institutions of the state as such.

This paradox can be mediated, it seems to me, by providing an Islamic rationale for the religious neutrality of the state, whereby *shari'ah* can play a positive role in the public domain, without being enforced by the state as positive law and public policy. Since the religious neutrality of the state and its institutional separation from religious authority is commonly called "secularism," and viewed with

hostility by many Muslims, my argument must include a rebuttal of what I believe are misconceived objections to this concept.

In support of this proposition, I would first emphasise that the states that have ruled over Muslims throughout history have always in fact been secular, and could not have been otherwise. Secularism should be understood as a particular type of deeply contextual relationship between religion and the state, varying from one setting to another, that enables the state to claim religious legitimacy without enabling it to appropriate religious authority as such.

The second argument against the fallacy of an Islamic state that purports to enforce *shari'ah* as positive law is that it is more damaging than a secular state for the freedom of religion and integrity of religious experience of Muslim as well as non-Muslim citizens of the state. To begin with, while Muslims have always continued to aspire to the model of the Prophet's state in Medina (622-632 CE), it is clear that that experience can neither be repeated, nor logically compared to any other period in Islamic history or the future of Islamic societies. In addition to the extraordinary fact of the actual existence of the Prophet, who continued to receive and explain revelation throughout that period of time and to exercise his personal charisma and moral leadership, the state in Medina consisted of close-knit tribal communities of highly motivated new converts who lived within an extremely limited space. In other words, the state of Medina was based more on the moral authority of the Prophet and of social conformity within a small, close-knit community than on the coercive power of the state as in other human societies. The model of the Prophet's state in Medina cannot be applied in the present context of any Islamic society because it was a unique phenomenon that ended with his death.

Regarding the rest of Islamic history, it is also clear that the Islamic legitimacy of the state has always been a cause of conflict and civil war since the death of the Prophet Muhammad in 632. The majority of Sunni Muslims believe that the reigns of the first four Caliphs of Medina (the seat of the first state in western Arabia) continued the ideal Islamic state and community of the time of the Prophet. But according to Shi'a Muslims, the first three of the Medina Caliphs were illegitimate usurpers of the position to which only Ali (the Prophet's cousin, who became the fourth Caliph of

Medina) and his decedents from Fatima (the Prophet's only surviving child) were rightly entitled. Throughout his reign as the fourth Caliph (656-61), Ali was locked in bitter civil war against the Umayyad clan and other factions, including some of his own supporters, known as al-Kawarij (the breakaway group), who condemned him for accepting mediation with the Umayyad. Upon Ali's assassination by one of al-Kawarij in 661, the Umayyad clan established a monarchy that ruled the expanding Muslim Empire from Damascus, Syria, until 750. The Abbasid launched their successful challenge to the Umayyad dynasty in the name of Islamic legitimacy, but the Abbasid state (750-1258) was also a monarchy that ruled from Baghdad, Iraq, more in accordance with political expediency than *shari'ah* principles. The same has been true of the other states of various seizes and durations that have ruled Islamic societies ever since: from Spain, North and West Africa, and Central Asia to India, including the Ottoman Empire that was finally abolished in 1923-24.

The tension between Islamic legitimacy and political expediency was usually mediated at different phases of history through mutual accommodation between *al-umara* (rulers) and *al-ulama* (scholars of *shari'ah*) whereby the former acknowledged the theoretical supremacy of *shari'ah* and the latter conceded the practical political authority of the rulers. Occasionally, some rulers professed commitment to more rigorous implementation of *shari'ah*, as happened during the early Abbasid dynasty, the Ibadi Khariji kingdom of Tlemsen, Morocco (761-909), the Almoravids in Morocco and Spain (1056-1147), and the Isma'ili Shi'a Fatimati dynasty in parts of North Africa (969-1171). It is difficult to assess the scope and efficacy of those episodes of *shari'ah* application because of the lack of independent and sufficiently detailed historical sources. But it is reasonable to assume that the highly decentralised nature of the state and of the administration of justice at those times in history would not have permitted the sort of systematic and comprehensive application of *shari'ah* as is demanded or expected by the Muslims of the Northern Nigeria in the modern context.

One of the basic difficulties that has frustrated efforts to establish a state that can effectively implement *shari'ah* has been the lack of political and legal institutions to ensure compliance by the state itself, and its officials, with the demands *shari'ah* makes on them. While the

ulama were supposed to be the guardians of *shari'ah*, they had no resort except appealing to the moral and religious sentiments of the rulers. Another factor was that the *ulama* were too concerned with safeguarding the unity of their communities, and the maintenance of peace and public order, to forcefully press their demands on rulers, especially in times of internal strife and external threat. The few scholars who expressly addressed constitutional and legal matters, like al-Mawardi (died 1058) in *Al-Ahkam al-Sultaniyyah* (Principles of Government), and Ibn Taimiyyah (died in 1328) in *al-Siyasah al-Shar'iyyah* (Islamic Public Policy), confined themselves to elaborations of what *ought* to happen, in the form of advice to the ruler, without addressing what should happen when the ruler fail to comply with the application of *shari'ah* as an obligation of the state. Consequently, those episodes of aspirations to an ideal state that would faithfully and impartially implement *shari'ah* as a total way of life were continuously frustrated by such mundane factors as political expediency and security concerns. When the balance tilted too much in favour of the latter, however, the intensity of demands for the application of *shari'ah* would rise, usually as a local or regional movement that might succeed in seizing power for a brief period of time, as illustrated by the rare examples cited above.

It seems clear to me from this brief review that the states that have ruled over Muslims throughout their history have been secular, in the sense of a mutual accommodation between *al-umara* (rulers) and *al-ulama* (scholars of *shari'ah*). In particular, the difficulties those states had in enforcing *shari'ah* were due to the inherent nature of *shari'ah* itself, and could not be overcome over time. Neither *al-umara* nor *al-ulama* could combine the two functions of exercising coercive political authority and being the scholarly guardians of *shari'ah* at the same time. In other words, there is no historical precedent for a so-called "Islamic state" in Islamic history, and the model will be even more unworkable in the future, partly because of the inherent nature of *shari'ah* as a religious normative system.

The idea of an Islamic state is conceptually incoherent, and practically very dangerous for the integrity of the religious experience of Muslims themselves, in addition to its serious violations of the rights of women and non-Muslims, which are not addressed here. The idea is incoherent in that a state is necessarily a political

institution, and not a natural person who is capable of belief in Islam or any other religion. In other words, 'Islamic' may be used to refer to states where Muslims constitute a clear majority of the population, but the adjective 'Islamic' logically applies to a people, rather than to a state as a political institution. The fact that a state calls itself Islamic by proclaiming Islam to be the state religion, or alleging that it is making *shari'ah* a formal source of legislation does not accurately reflect an Islamic quality of the state itself as a political institution. Unless one is willing to accept every claim by a state to be Islamic, the question becomes one of who has the authority to determine the quality of being Islamic, and according to which criteria. Thus, neither is Saudi Arabia likely to accept the claim of the present government of Iran that it is an "Islamic" republic, nor is Iran likely to accept that the Saudi monarchy can ever be "Islamic," regardless of its claim to enforce *shari'ah* as the sole legal system of the land.

Finally, it is clear that the forms of political and social organisation by which all Muslims live today, and the types of economies they have to operate and depend on for their survival, make even the much more recent history of the Ottoman and Mughal imperial states of the Middle East and India too alien to be revived or resurrected in the present post-colonial world of global economic and political interdependence and integration. Accordingly, claims to establish an Islamic state to enforce *shari'ah* today are dangerously naive, if not cynical and manipulative. Yet, as noted earlier, opposing this unprecedented and untenable notion is routinely construed as tantamount to apostasy in Islamic discourse throughout the region. As I will attempt to show in the next section, the tendency to intimidate and suppress dissent that is characteristic of public debates around the idea of an Islamic state or enforcement of *shari'ah* is inherent to the discourse itself. This profoundly problematic tendency makes it even more urgent to repudiate the illusion of an Islamic state and claims of the enforcement of *shari'ah* by the state. Such claims undermine the protection of critically important fundamental rights, and in the process render national constitutional governance, political stability and economic development increasingly untenable.

ISLAMIC DISCOURSE AND THE PROSPECTS OF CONSTITUTIONALISM

The main point I wish to make in this section is that the inherent nature and terms of Islamic discourse around the enforcement of *shari'ah* by the state has far reaching negative consequences for the prospects of constitutionalism, stability and development in the whole country. Throughout Islamic history, up to the present in Northern Nigeria for instance, the debate around the enforcement of *shari'ah* has always tended to be cast in absolute terms of religious salvation and paradise for those who are "right" versus apostasy and eternal hell for those who are "wrong." But the problem is that such absolute terms are not only inherent to the subject itself, but also seriously detrimental to the possibilities of civic participation in public affairs, for Muslim and non-Muslim citizens alike. When the stakes are cast in terms of either fulfilling or frustrating God's will for humanity, the consequences of being right or wrong will necessarily be equally absolute. The main problem from the perspective of this essay is the threat to the fundamental rights of all citizens is much more serious when such judgments are being made in the name of the state, with its enormous and far-reaching coercive powers. In the final analysis, the idea of the protection of the constitutional rights of political and religious dissidents, indeed all who disagree with the government of the day, itself becomes an untenable heresy.[7]

The irony is that, like the idea of an Islamic state or formal enforcement of *shari'ah* by the state discussed in the preceding section, the concept of apostasy and related notions are profoundly problematic from an Islamic perspective. In addition to its incompatibility with individual religious liberty, there are two objections to the notion of apostasy in Islamic jurisprudence itself, namely, the vagueness and fluidity of the concept, and the ambiguity of the basis for its legal consequences as a capital crime. The vagueness and fluidity of the concept of apostasy relate to its

[7] This does not of course address other reasons for the suppression of political dissent, as happens under dictatorial or authoritarian regimes. But I believe that denying such regimes any religious pretext or justification for their policies is necessary for sustainable constitutionalism and protection of human rights in Islamic societies today.

definition and punishment, as well as its close association with several equally problematic related concepts in Islamic jurisprudence, such as unbelief (*kufr*) blasphemy (*sabb al-rasul*), heresy (*zandaqah*), and hypocrisy (*nifaq*).

The Arabic word *riddah*, commonly translated as apostasy, literally means to 'turn back', and *murtadd*, the active participle from *irtadda*, means one who turns back. In Islamic jurisprudence, *riddah* is understood to be reverting from the religion of Islam to *kufr* (unbelief) whether intentionally or by necessary implication.[8] In addition to an open repudiation of his or her belief in Islam, apostasy is said to apply whenever a person is deemed to have reverted from Islam, by an intentional or blasphemous act or utterance, whether or not it was said mockingly, out of stubbornness, or out of conviction.

An obvious problem with the notion of apostasy is that, while the Qur'an repeatedly condemns apostasy as a religious sin, it does not provide any punishment for it in this life, as can be seen in verses 2:217, 4:90, 5:54 and 59, 16:108, and 47:25.[9] In fact, the Qur'an clearly contemplates situations where an apostate continues to live among the Muslim community, rather than being put to death. For example, verse 4:137 of the Qur'an can be translated as follows: "Those who believed, then disbelieved, then believed, and then disbelieved [once more] and became more unbelieving; God will not forgive them or guide them to the righteous pathway." Nevertheless, classical Islamic jurisprudence imposes the death penalty on the basis of some Sunnah reports; other negative legal consequences also follow, for instance, concerning inheritance. According to one report, the Prophet said that "the life of a fellow Muslim should never be taken except these three: an adulterer, a murderer, or one who abandons Islam after having embraced it."

Since apostasy means to be openly reverting to disbelief in Islam after having freely embraced it, an obvious association is with disbelief (*kufr*) – open and complete rejection of the message of Islam itself. Although it repeatedly speaks of belief and disbelief, and

[8] The following review of classical Islamic jurisprudence of apostasy is based on Ibn Rushd, vol. 2, n.d., and Nu`man Abd al-Razid al-Samar`i, 1968. In English see Rahman, 1972.

[9] The Qur'an is cited here by giving the number of the chapter (*surah*), followed by the number of the verse (*ayah*).

related terms, the Qur'an does not provide clear guidance on what these terms mean beyond the basic sense of either accepting or rejecting the confession of the faith – that "There is no God but God, and Muhammad is his messenger." For example, the Qur'an frequently links belief to performing worship rituals like prayer and fasting during the month of Ramadan and doing good deeds, but does not say what should happen to those who fail to live up to these obligations other than punishment in the afterlife. Moreover, the Qur'an does not expressly state the consequences of questioning the precise meaning of the confession of the faith itself. For instance, what does it mean to affirm that "There is no God but God"? What do believers know, or what should they know, about God? What are the imperative consequences of belief in the unity of God for the personal practice or behaviour of Muslims, whether at the private personal level or in relation to public socio-economic and political institutions and processes? Who has the authority to adjudicate the inevitable disagreements about these and other matters after the death of Prophet, and how?

It is clear that the Qur'an leaves Muslims to struggle with all these issues for themselves, with whatever guidance they can draw from the Sunnah of the Prophet, which also has its own uncertainties and ambiguities. The consequent major differences among Islamic scholars include the role that actions or deeds (*amal*) play in the definition of belief (*iman*). Whereas some scholars were willing to accept as sufficient an apparent confession of the faith for a person to be considered a Muslim, others insisted that professed belief must be expressed in specific action or deeds. For those who hold the latter view, the question becomes what to do about people who claim to be Muslims but fail to act accordingly. But then, who decides whether or not a person has acted according to the requirements of the faith, and what consequences should follow from such a determination? These debates and their violent manifestations have raged from the times of the al-Khawarij during the civil wars of the seventh century, to the arguments about the status of the Ahmadiyya in Pakistan since 1950s, to Usama bin Ladin's call today to vindicate belief in Islam by any means possible, including international terrorism. As already noted, the field is further complicated by ambiguities and disagreements about other concepts, including the following.

Blasphemy is the use of foul language primarily about the Prophet Muhammad, known as insulting the Prophet (*sabb al-rasul*), God, or any of the angels or prophets, and is punishable by death. At a later stage, this offence was extended to cover using foul language against the Companions of the Prophet. This extension was probably intended to penalise some dissidents among Muslims, like al-Khawarij and Shi'a, who were reviling leading figures of the early Muslim community in the context of the civil wars of the seventh and early eighth centuries. The punishment for blasphemy appears to be based on certain incidents in the lifetime of the Prophet, as there is no clear Qur'anic instruction on the matter. Even when the Qur'an uses the term *sabb*, as in 6:108, it only commands Muslims not to revile the deities of non-Muslims lest they revile God, but without any reference to punishment in this life. However, during the time of the Prophet, some Muslims killed a number of non-Muslims who reviled the Prophet. Since all those killed in these incidents were among the staunchest opponents of Islam, and some of them had fabricated certain stories about the Prophet, as well as about the Muslim community in general, it is difficult to identify the precise reason used to justify killing them. But it is clear that neither the Qur'an nor the Prophet declare the existence of an offence called 'blasphemy' or a specific punishment for it.

The term 'heresy' (*zandaqah*) is applied in classical Islamic jurisprudence to a heretic, whose teachings become a danger to the state, thereby rendering him liable to the death penalty. However, the term and its derivatives do not appear in the Qur'an at all, and seem to have come into Arabic from Persian.[10] This term was apparently used for the first time in connection with the execution of Ja'd bin Dirham in 742 – more than a century after the Prophet's death. "In practice, the polemics of the conservatives describe as a *zindik* (one who is guilty of *zandaqah*) anyone whose external profession of Islam seems to them to be not sufficiently sincere."[11] Yet, instead of agreement among scholars on a general definition of these terms, one finds a variety of views about the type of conduct that constitutes *zandaqah*, or makes a person a *zindiq*. According to one view, for

[10] See the article "*Zindik*" in Gibb and Kramers, 1991, 659.
[11] Ibid.

instance, a *zindiq* is a person who outwardly pretends to be a Muslim while inwardly adhering to his former religion.

Assuming that one accepts this definition, the question then becomes how the fact of *zandaqah* is to be known or proved in specific cases? Some scholars were prepared to infer it from the accused's advocation of indulgence in various acts that are prohibited in Islam, such as *zina* or drinking wine. The ambiguity of the concept appears to have been both caused by, and grossly abused in the context of, the large-scale conversion of people to Islam following the Muslim conquests of the first two centuries of Islamic history. In other words, the emergence and expansion of this concept may have been prompted by fears of infiltration of the Muslim community and state by non-Muslims who may have been using Islam for personal gain or to escape discrimination. But the vagueness of the concept and the difficulty of proving its application in specific cases also permitted its abuse for political ends by rulers, and even by some scholars against their theological or intellectual rivals. Yet, a clear definition is critical for distinguishing it from apostasy since some scholars, of the Hanafi and Maliki schools in particular, would not grant a *zindiq* a chance to repent, as they would an apostate.

The third term associated with apostasy is hypocrisy (*nifaq*), referring to those who openly profess belief in Islam, while harbouring disbelief. Again, while the Qur'an repeatedly condemns such hypocrisy (2:8-10), promises hypocrites punishment in hell in the afterlife (9:68), and warns the Muslim community against the dangers of having hypocrites in their mist (2:8-10, 9:68) it does not prescribe any punishment in this life. In verse 9:73, the Prophet is commanded to engage in *jihad* against the hypocrites and unbelievers, but that cannot mean imposing criminal punishment as such, since punishment can be executed only within the jurisdiction of a stable and effective state, away from the context of *jihad*. Nevertheless, Muslim scholars, especially of the Hanafi and Maliki schools, decided to impose the death penalty on a *zindiq* as a hypocrite who professes Islam but secretly holds contrary belief.

As this brief review clearly shows, there has always been a substantial degree of confusion and fluidity in these concepts and in how they were to be defined, as well as uncertainty about the basis of imposing criminal punishment on those "convicted" of holding such

beliefs. Since the Qur'an neither defined these concepts in legal terms, nor imposed a punishment for any of them in this life, the Muslim communities could have chosen simply to view them as matters of freedom of conscience, instead of punishing them as capital crimes. Indeed, the Prophet himself set an example for that by refusing to question the beliefs of anyone who claimed to profess Islam as a religion. Yet, those purported offences and their punishment became entrenched in classical Islamic jurisprudence, probably for political reasons disguised with an alleged religious rationale.

The general conclusion here is that these notions are totally inconsistent with the fundamental human right of freedom of thought, conscience, and religion – a right entrenched in the constitutions of the vast majority of the countries in the world today. But the more specific conclusion for my thesis and analysis about the future of *shari'ah* is that such confused and arbitrary charges are the unavoidable result of mixing issues of private religious belief with public constitutional and political questions. If such charges are available as part of enforceable law, it is totally unrealistic to expect politicians to refrain from making them when they find it expedient to do so in order to suppress political opposition. Even the risk of that happening will greatly inhibit the excise of the critical freedoms of opinion, expression, and association in the political realm, to the detriment of the essence of constitutional governance, political stability, and economic development in the country. In other words, the enforcement of *shari'ah* by the state will necessarily and inevitability result in serious damage to the political and economic health of any modern society, doing damage far beyond the immediate scope of the field in which it is supposed to apply.

MEDIATION OF THE RELIGIOUS NEUTRALITY OF THE STATE AND A PUBLIC ROLE FOR ISLAM

Yet, I am calling for a mediation of the public role of *shari'ah*, rather than for its total and immediate relegation to the so-called exclusively private domain. This qualification is critically important because opposition to the enforcement of *shari'ah* by the state is immediately equated by many Muslims with a call for "secularism," which is

regarded with extreme hostility as anti-religious, or at least as a Western colonial imposition. It is therefore necessary for the political viability of what I am calling for to attempt to clarify the confusion around the term 'secularism' in order to avoid the negative connotations associated with that term.

Etymologically, the word 'secular' derives from the Latin word *saeculum*, meaning "great span of time" or more closely "spirit of the age." Later, the word came to mean "of this world", implying more than one world, eventually translating into a concept of the secular and the religious derived from the idea of the temporal and the spiritual.[12] The term also evolved in the European context from "secularisation" as privatisation of church lands, to "secularisation" of politics and later of art and economics.[13] This line of development is reflected in the Webster's dictionary definition of the word 'secularism' as "indifference to or rejection or exclusion of religion or religious considerations."[14] Another definition sees it as "the doctrine that morality should be based solely on regard to the well-being of mankind in the present life, to the exclusion of all considerations drawn from belief in God or in a future state."[15] Shiner identified and distinguished between five definitions of secularism as (1) decline of religion, (2) conformity to the present world, (3) disengagement/differentiation of society from religion, including separation of church and state, (4) transposition of religious beliefs and institutions (shift from divine sources of power to human capability and creation), and (5) desacralisation of the world and subsequent sacralisation of rationality.[16]

From my perspective, all these views are simply reflections of how the concept has evolved in various European and North American settings, each in its own way. Secularism is in fact a "multidimensional concept,"[17] reflecting elements of the historical, political, social, and economic landscape of a particular nation. In the United States, it has come to mean a purported "wall of separation

[12] Engineer and Mehta, 1998, 25.
[13] Mcleod, 2000, 1.
[14] *Merriam-Webster's Collegiate Dictionary*, 10th edition, 1994.
[15] Engineer and Mehta, 1998, 2.
[16] Shiner, 1967, 215.
[17] Engineer and Mehta, 1998, 25.

between church and state." Mexican secularism requires such a strict separation of religion and politics that priests are not allowed to vote. In the "secular" Republic of Ireland, the Catholic Church wields so much power politically that abortion is still illegal on the grounds that it violates Church doctrine. France's unique secularism is defined as a rigidly guarded separation of religion and the state. Essentially, "each country has its own specificity as far as the concept of secularism is concerned. This specificity depends on its historical evolution as well as on contemporary social conditions."[18]

I would therefore define secularism as a principle of public policy that seeks to secure the institutional separation of religion and the state, while acknowledging and seeking to mediate the unavoidable and desirable interaction of religion and politics. Given the nature of *shari'ah*, as a comprehensive normative system, and the persistent commitment of Muslims to its implementation, secularism in the Islamic context should seek to mediate the public role of *shari'ah*, rather than attempt simply to relegate it to the private domain. In other words, secularism for Islamic societies must account for the religious dimension of the lives of local communities, instead of being seen as an effort to impose preconceived notions of what the term "must mean."

In this light, it is therefore misleading to speak of complete separation or total union of any religion and the state.[19] Any state is conceived and operated by human beings whose religious or philosophical beliefs will necessarily be reflected in their thinking and behaviour. Total separation between religion and the state is not possible, or desirable in my view, because of the impossibility of separating religion from politics. How can one prevent people from acting politically according to their religious or other beliefs? Even if such a demand is made, how can one monitor its application in practice, while maintaining the integrity and legitimacy of the political process itself? At the same time, however, one must address the question whether secularism, as a principle of public policy for organising the relationships between religion and the apparatus of the state, including politics, in a specific context, is compatible with *any*

[18] Ibid, 202.
[19] An-Na'im, 2000, 37-39.

relationship, or does it have to have certain minimum requirements? Do some forms of this relationship achieve more optimal synergy and interdependence among religion, human rights and secularism than others do?

If it is true that the relationship between religion and the state should not be one of either complete fusion or categorical separation, then one would expect a continuum of "secularisms" between these two extremes. Drawing on the premise that secularism is indeed dynamic and deeply contextual, a study that examined the relationship between religion and the state in the United States, The Netherlands, Australia, England and Germany, concluded that a minimum requirement for a positive relationship between religion and the state is that people are neither advantaged or disadvantaged by their adherence to any religious or other faith or belief, or none at all.[20] The state should be neutral, and neither favour nor disfavour one particular religious tradition over another.[21] The problem with this clearly necessary requirement is that no public policy is ever completely neutral because of the unavoidable relationship between religion and politics.

To summarise and frame the issue: In view of the nature of *shari'ah*, as historically understood by Muslims, the modern territorial state should neither seek to enforce it as positive law and public policy, nor claim to interpret *shari'ah* doctrine and principle for its Muslim citizens. At the same time, the organic relationship between *shari'ah* and the culture and politics of each Muslim society mean that *shari'ah* principles will remain relevant to varying degrees to matters of public policy and legislation. That is, as *shari'ah* principles will continue to strongly influence the moral sensibilities of Muslims from early childhood, those principles are bound to find expression in the public policy of their state, and rightly so. It is simply not possible, and not desirable in my view, to attempt to prevent *shari'ah* from influencing the political and public behaviour of Muslims. But that cannot mean the direct enforcement of *shari'ah* principles as such through the official institutions of the state for the reasons stated in

[20] Mosma and Soper, 1997, 208-209.
[21] Ibid, 209.

the preceding section. In other words, what is problematic is for *shari'ah* principles *as such* to be enforced as positive law, but the ethical principles and values of religion are indeed necessary for the proper functioning of society at large.

The underlying tension therefore relates to how people can excise free democratic choice in accordance with their own religious or other beliefs, while ensuring the neutrality of the state. As I see it, the answer lies in transforming people's understanding of *shari'ah* so that their free democratic choices are still respectful of the principles of constitutional democratic government, and of the full rights of other human beings everywhere. That is, Muslims must interpret *shari'ah* in ways that do not confront them with a choice between fidelity to their religion, on the one hand, and upholding the principles of constitutionalism and peaceful coexistence with non-Muslim citizens on the other, in the interest of the stability and development of their own country. To this end, I am calling for significant reform to reformulate problematic interpretations of *shari'ah* through an Islamic methodology that is both sufficient and acceptable. The proposed methodology has to be sufficient in the sense of achieving the necessary degree of change in popular interpretations of *shari'ah*. But a good methodology is not much useful if Muslims are not willing to accept and implement it in practice.

The dilemma facing the proponents of reform in Islamic societies today is whether to seek their objectives through the existing corpus and methodology of classical Islamic jurisprudence, or to attempt to avoid the limitations of that approach by bringing in such European and North American notions as secularism and separation of religion and the state. While the vast majority of Islamic societies today are struggling with the first approach, several have attempted varying forms or degrees of the second, with Turkey being the most extreme example of authoritarian imposition of European secularism by the state under the ideology of Mustafa Kamal Ataturk and his successors. By briefly explaining the limitations of both approaches in the following remarks, I am suggesting the need for a comprehensive theory of Islamic reform that can contribute to mediating that basic dilemma by questioning the underlying assumptions of a dichotomy between the religious and the secular. Such a theory is necessary, I believe, for reformulating the structure

and methodology of classical Islamic jurisprudence in order to make it more relevant and useful in the modern context of Islamic societies.

The basic limitation of reform within the framework of what is known as classical Islamic jurisprudence is that it cannot achieve the necessary degree of change in some of the most basic issues, like the abolition of the notion of apostasy and related concepts. Classical Islamic jurisprudence cannot achieve the desired degree of reform because of the limitations of its own methodology, *usul al-fiqh*, which does not permit changing any rule of *shari'ah* that is based on an explicit and categorical text of Qur'an or Sunnah.[22] As noted earlier, while the Qur'an strongly condemns apostasy, without providing a specific punishment for it in this life, the Sunnah has been cited as the basis of such punishment. To abolish the criminal punishment of apostasy through secular law and policy, without some form of Islamic justification, will neither redress the civil (family law) consequences nor their inhibiting power in Islamic discourse.

At the same time, an assertion of separation of Islam and the state is unlikely to be accepted by Muslims unless it is presented with an Islamic rationale or justification. Otherwise, such a separation will have to be imposed on the community, which means the negation of the objectives of democratisation and protection of fundamental human rights, which are usually cited as the justification of such imposition. The negative consequences of authoritarian imposition of secularism can be seen in the case of Turkey, where the secularisation of the state continues to be enforced by the army since it was imposed by Ataturk in the 1920s. Moreover, even if *shari'ah* is not enforced by the state as such, it will still be influential in shaping law and policy through the political processes of the country. For instance, as long as Muslims believe apostasy to be a capital crime, they will probably continue to act on that belief by supporting political leaders who will enact laws to that effect. In other words, secularisation in the formal sense of separation of Islam and the state will not be enough without a transformation of the content of *shari'ah*, as it is known and accepted by Muslims.

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[22] See, generally, An-Na'im, 1990, especially chapter 4.

It is therefore critical, in my view, to combine these two approaches by clarifying the relationship between Islam and the state, while at the same time seeking to achieve fundamental reform of certain aspects of *shari'ah* because of its powerful influence on Muslims everywhere, even when it is not enforced by the state as such. My argument for the first part of this combination is that the idea of an Islamic state to enforce *shari'ah* as positive law is conceptually untenable and practically counter-productive from an Islamic point of view. This idea is untenable because once principles of *shari'ah* are enacted as positive law of a state, they cease to be the religious law of Islam and become the political will of that state. Moreover, allowing the state to invoke such Islamic sanctity for its policies will violate the freedom of religion of Muslims as well as non-Muslims.

The possibility of drastic reform of the content of *shari'ah*, even as a religious normative system, requires the fundamental reformation of *usul al-fiqh*, as emphasised earlier. This reformation is both necessary and possible because every interpretation of the Qur'an and Sunnah, in the past, present, or future, is necessarily a product of the historical context of the Muslim society of that time and place. One possible approach is the one proposed by *Ustadh* Mahmoud Mohamed Taha, cited at the beginning of this essay. In his view, given the radical transformation of the political, social, and economic context of Islamic societies today, as compared to what used to prevail when traditional understandings of *shari'ah* were developed, the methodology of interpretation must respond to these present realities to produce modernist formulations of *shari'ah*. Re-examining the rationale for enacting certain passages of the Qur'an and Sunnah into *shari'ah* principles, and for de-emphasising others as inapplicable in the context of early Islamic societies can do this, for example. Once it is appreciated that the selection of which passages should be emphasised and which downplayed was made by human beings, rather than decreed by direct divine command, it becomes possible to reconsider the question of which texts are to be enacted today, and which are to be de-emphasised in the present context. But other approaches are certainly possible, like those which focus on the underlying purposes or objectives of *shari'ah* over strict interpretation

of the scriptural texts,[23] though one might question whether they will go far enough.

However, there is also a political or contextual dimension to this internal theological debate. A reformer's ability to gain the confidence of a constituency, and authority among its members, depends on his or her understanding of all the complexity of their history and immediate context, concerns, and aspirations. Therefore, in addition to the availability of a credible theological methodology for reform, one must still appreciate the political consequences of whose interests are undermined or promoted by one interpretation or another. The more the political and/or religious elite of a society feel threatened by internal or external forces and factors, the more they become entrenched in their conservative views for fear of losing their power and privilege. Other considerations include how personal or psychological, as well as broader political, economic, and sociological factors influence people's understanding (or willingness or ability to understand) the Qur'an and Sunnah in one way or another.

One should also appreciate the influence of broader geo-political or security concerns on a community's ability or willingness to be open to challenge to its basic moral and metaphysical precepts. That is, are such concerns likely to make the community more defensive and conservative, or to help in overcoming the defensiveness and conservatism of these elites? The state has a critical role in these processes, not only by itself refraining from purporting to enforce *shari'ah* as such, but also through the educational system, and by promoting critical thinking in the media and in general securing the political and social "space" for dissent and free debate. But the state itself, and the international community at large, can also be part of the problem. The required political and social liberalisation may appear to be, or in fact be, threatening for the elite who control the state, even when they claim to be secular in their political orientation, as can be seen in such countries as Egypt and Syria. Other states may also be supportive of oppressive regimes in Islamic countries, or pursue hostile foreign policy objectives that provoke conservatism and defensiveness in Islamic societies, instead of the confidence and sense

[23] See, generally, Baderin, 2003.

of security that would encourage internal political and social liberalisation.

Thus, especially in the aftermath of the invasion and colonisation of Iraq by the United States, with the support of the United Kingdom, the previous colonial power of the region, it is critical to show that the proposed conception of the religious neutrality of the state is not a Western imposition of secularism on Islamic societies. Indeed, my argument is that secularism cannot be imposed by external powers: it can only evolve out of the actual historical experiences and practical circumstances of each society, consistently with its own religious beliefs and cultural values. The Islamic argument for secularism I am trying to develop and substantiate is unlikely to be accepted unless it is also able to account for the political and security apprehensions of Islamic societies about Western hegemony and economic globalisation.

To conclude on the debate in Northern Nigeria over the enforcement of *shari'ah* by the state, I would first recall my opening remarks about the imperative importance of clarifying the terms of the debate itself. Since it is the Muslims of the Northern Nigerian states who are taking this initiative, they should begin by clarifying the precise terms of their demands, and consider the implications for the unity and stability of the country as a whole. Once they do that, I am sure they will realise and appreciate the need for the religious neutrality of the state, regardless of whether they would accept the term 'secularism' to describe the outcome. One would also hope for non-Muslim Nigerians throughout the country to appreciate the underlying concerns and aspirations of Muslim citizens. As emphasised above, the political dimensions of the process are as important as its theological or legal aspects. It may therefore be difficult for Nigerian Muslims to initiate their own internal discourse, or to begin to transform their interpretation of *shari'ah*, or the relationship between Islam and the state, without strong and sustained support by non-Muslim Nigerians too.

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