The relationship between shari'a, ethics and public life

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This article explores the contested nature of shari'a, 'Islamic law', across different Muslim groups, seeks to clarify its relationship to ethics, and reflects on different conceptions of the relationship between shari'a and public life.

Getting our bearings

A cursory reading of Professor Mona Siddiqui's recently published autobiography – *My Way: A Muslim Woman's Journey* – makes clear the contested nature of the relationship between Islamic law and ethics, as well as their varied impact on public life. As a specialist on Islamic law and professor of Islamic and Inter-religious Studies at Edinburgh University, she is well positioned to offer insight and orientation.

Siddiqui observes that it is unsurprising that non-Muslims are confused as to the nature of shari'a:

> Misleadingly but commonly translated as Islamic law, the term has become synonymous with penal law, stripped of its broader ethical dimensions and fluidity of juristic reasoning. As contemporary Muslim scholars attempt to contextualize the debates on Islamic law and ethics, they are constantly battling against the bloody-mindedness of some Muslim states which refer to shari'a as God's law but apply it only as a tool for self-interest and political expediency. God's law must be simple to be implemented. Unfortunately this sentiment is also rife amongst many Muslims in the UK who feel that shari'a is a body of immutable laws and that as law it must be applied without due consideration of time, place and individual moral agency.[1]

Siddiqui observes that in popular piety '[t]he Qur'an and indeed the post-Qur'anic literature are viewed predominantly as books of answers rather than books of reflection'.[2] This tendency to essentialise revered texts, not least shari'a, and to treat them as eternal and outside history and context is, as Sadakat Kadri notes, reinforced by a proliferation of satellite TV channels and 'online fatwa factories', where 'cyber-muftis' located somewhere else in the world rattle off answers to predicaments of Muslims in the UK, usually with little knowledge of the country and its specific context.[3] This view of shari'a whereby one can go back to the revered texts of the Qur'an and Sunna [4] and read off 'answers' to complex contemporary issues is rooted in the influence of two modern developments, Islamism, or what is often referred to as 'political Islam', and '*Salafi*' Islam.[5]

It is no exaggeration to say that these two tendencies have wrought havoc across the Muslim world, deepening intra-Muslim sectarianism and with its extreme expressions – ISIS – seeking to impose an imagined Islamic utopia – the Caliphate – through pitiless barbarism.[6]

The Saudi Arabian backed *Salafi* tendency – known to its critics as Wahhabism after its founder Abd al Wahhab (d. 1792) – has left a baneful trail of intolerance across the Muslim world with its sustained assault on the ancient and more humanist traditions of Sufism, as well as Shi'ism and the diversity embedded in historic schools of Islamic law. Not only has Wahhabism impacted the Muslim majority world, but one recent study estimates that Saudi Arabia (both state and private organisations) has 'spent as much as $100 billion' projecting and legitimising its Manichean worldview in the West which dwarfs the Soviet propaganda campaign at the height of the Cold War'.[7]

The relationship of shari'a and ethics

Siddiqui points out that:

[a]part from a handful of works, classical Islam did not have systematic treatises on ethics, as the subject was subsumed under law and worship. The juridical literature gives us some insight as to the dilemma of whether Muslims could actively participate in non-Muslim societies but these pre-modern texts are not conclusive...[nor do they contain]...the appropriate equivalent of words like 'liberalism', 'human rights' or 'democratic pluralism' – the global vocabulary of the modern age. With new contexts emerges a new language, and one of the biggest challenges for many Muslims who reflect on these issues is the alignment of text to context.[8]

For Siddiqui, this is part of a much larger crisis which she exemplifies through the writings of the late Muhammad Arkoun, a Muslim scholar from North Africa who lectured at the Sorbonne. Arkoun coined the terms the 'unthought and unthinkable' to capture the dilemma of much Muslim thinking which had not kept abreast with the knowledge revolutions of the last few centuries. This means that most traditional scholars cannot describe reality accurately, a precondition for interpreting it Islamically. The Muslim world emerged from colonialism with two parallel educational systems, one consisting of western colleges and universities which train the new elites, the other consisting of centres of traditional Islamic formation – *dar al 'Uloom* – which train the *'ulama*, Islam's religious scholars who man the mosques and other Islamic institutions. With a few exceptions, both embody different pedagogies with alumni from both suspicious of the other.

One example will suffice. Professor Ebrahim Moosa, a South African, and one of America's leading Islamic scholars teaching at Notre Dame University, was trained in a traditional deobandi 'seminary' in India – the deobandi franchise largely dominates the 'seminaries' in the UK. Moosa returned to India to research whether the curriculum of Deoband and other Indian Islamic 'seminaries' had changed in the four decades since he graduated. He concludes that:

All experiments to accomplish a modest level of innovation in traditional Muslim educational circles in South Asia for over a century have been largely stillborn. Experiments to integrate multiple knowledge traditions in order to enhance the study of religious discourses have been shockingly incompetent.… [N]o madrasa integrates modern science, social science, and the humanities … in conversation with the core traditional curriculum.... [The] objection to [such] new disciplines and knowledge traditions is associated with a fear and loathing of a materialistic West whose knowledge traditions are viewed as poisonous.… The absence of a credible orthodox tradition opens the door for rank scripturalism and toxic do-it-yourself Islam.… Contemporary Muslim societies are exposed to dangerous distortions of faith and are paying a heavy price.[9]

Lessons from Islamic history?
Professor Siddiqui's studies of the history of Islamic thought made her acutely aware that the 'the Islam of twentieth century Britain was a diminished Islam, much reduced in grandeur, generosity and humility from its various golden periods'.[10] Many Muslims are unaware that in fourth century Baghdad, an Islamic ethics – *akhlaq* – emerged, the fruit of an engagement with the Greek philosophical tradition. Its greatest exponent, Miskawayh (d. 1030), was a pupil of an influential monophysite Christian, Yahya ibn 'Adi.

It was Ibn 'Adi who '[brought] virtue ethics to the forefront of Arabic ethical writing, arguing that the aim underlying the commands and admonitions of scripture is the refinement of character. This view will be adopted not only by Miskawayh, and Ghazali in his train, but also by Maimonides. It becomes a significant leaven to the legalism and legal positivism that might otherwise dominate scriptural ethical thinking.'[11]This reminds us that there was a time in the mediaeval world that Christian, Jew and Muslim thinkers shared a common intellectual culture and were able to influence each other.

Today, virtue ethics is kept alive among Muslim thinkers within Sufi traditions. An accessible and attractive example is given in a short article by an influential American Sufi and educationalist, Hamza Yusuf, entitled 'Tribulation, Patience and Prayer' in which he rebukes many young Muslim men in the West for their anger and obsession with seeing themselves as 'victims'. This, for Yusuf, is to ignore the primacy of forgiveness and patience whose significance he unpacks in the context of stressing the 'foundational [Aristotelian] virtues of … prudence, courage, temperance and justice'.[12]

While such virtue ethics remains an attractive feature of Sufism, it exists in an uneasy tension with the thrust of much contemporary, Islamic legal thinking. The late Fazlur Rahman (d. 1988), probably the finest modernist scholar of his generation, reflected deeply on the reason for the cleavage between law and ethics in Islam, which he sought to address in his seminal work, *Major Themes of the Qur'an*.[13]

Rahman considered that there were a number of reasons for this disconnect. First, while jurists took seriously specific Qur'anic commands and prohibitions,

> whenever the lawyers are faced with general Qur'anic requirements with an ethical import, they do not know how to deal with them, and in many cases do not even try…[for example] in 4.3 the Qur'an states that if …guardians cannot do justice to the orphan girls' properties, then they may marry up to four from among the latter, provided they do justice among co-wives; but if they cannot do justice to each, they must marry only one. In 4.129, again, the Qur'an categorically denies the possibility of justice among a plurality of wives. Now the lawyers understood 4.3 to grant specific legal permission for marrying up to four wives; as for the justice clause, they understood it not as a specific rule but only as a general command to do justice and as a recommendation to the husband's conscience.[14]

Secondly, jurists never developed an ethical system that was genuinely Qur'anic, deriving its values and principles from the entire Qur'an. Instead, the Qur'an was atomised into isolated commands and injunctions rather than treating its message as a unity. Also, ultimate values of God's law – the shari'a – were not distinguished from instrumental ones in the development of Islamic jurisprudence, *fiqh*. This Rahman illustrates by comparing the clear teaching of the Qur'an in 2.256 which formulates the principle of freedom of faith – 'There can be no coercion in matters of faith – truth has become clear from falsehood' – with the jurists' teaching on apostasy rooted, instead, in the logic of an expanding empire which neutralised such freedom.

Instead of developing a coherent Qur'anic ethics to inform the practice of God's law, jurists resorted to general principles of equity, justice and necessity. The problem with these principles was the difficulty of applying them well and avoiding arbitrariness. In the absence of a Qur'anic ethics, over time it became necessary to 'invoke the infallible authority of the Prophet – *Prophetus ex machina*, as it were – and attribute to him all the trivia of daily life.… [Such a need was] then satisfied by the fabrication of hadith [prophetic tradition]…'[15]

In short, we can see three broad tendencies that have shaped Islamic ethical thinking. 'The first two are contraries: on the one hand, Islamic ethical thought demonstrates a tendency toward extreme theological voluntarism, and yet there is also a counter-balancing tendency to presume that God's commands are purposeful. The first would seem to deny any human role in knowing ethical values while the second would allow that role to flourish. As a result of the interplay of these two tendencies a third tendency arises: an ongoing tension over the respective importance of God's specific commands and His general will … the majority of Muslim jurists and theologians have tended to extreme voluntarism…' [16]

Islam in the public square: governance or guidance?
Siddiqui worries that many educated Muslims living in the West still desire a return to a period when the Muslim world was politically victorious and the broker of human relations. This invariably translates into a familiar binary divide where they either see themselves as 'the dominant or as the victims'.[17] Further, she argues that it is not just Islamists but 'many ordinary Muslims who wish to reinstate a *Khilafah* [caliphate] system whereby the global community of Muslims have a central figurehead, a person who lies at the centre of the Muslim political world as a reference point, basically a situation which sees the state playing God'.[18]

Fortunately, there are other voices beginning to be heard which seek to quarry the tradition, to retrieve the ethical imperatives and concepts overlooked or forgotten. Indeed, there is something of an ethical turn among Islamic thinkers active in the West. This is evident in the work of Tariq Ramadan.[19]

The most daring and imaginative proposal is that made by the American Egyptian scholar, Khalid Abou El Fadl. This is a hopeful note on which to end. El Fadl argues that in the age of nation-states, the interpreters of the Shari'a are no longer carriers of viable legal system but closer to being theologians and moral philosophers:

> This is nothing short of a complete shift of paradigm and total restructuring of the juristic culture in Islam. This is dictated by the fact that Islamic law in the contemporary democratic state cannot be

enforced by the state. By definition, political sovereignty in the nation-state belongs to the citizenry of the state and not to God. The role of the … Shari'ah expert is critical – as the Qur'an describes it, [their] role … is to act as teachers and reminders to people of the call of conscience and the indicators … that point to God's will. This necessarily means that the only method available to them is persuasion, by appealing to people's hearts and minds … testifying in terms of ethics, virtue, and also the aesthetics of beauty and transcendence….'[20]

For further reading

- Innes Bowen, *Medina in Birmingham, Najaf in Brent: Inside British Islam* (Hurst, 2014).
- Khaled Abou El Fadl, *Reasoning with God: Reclaiming Shari'ah in the Modern World* (Rowman & Littlefield, 2014).
- Sadakat Kadri, *Heaven on Earth: a Journey through Shari'a Law* (Vintage, 2013).
- Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford University Press, 2009).
- Mona Siddiqui, *My Way: A Muslim Woman's Journey* (I.B. Tauris, 2014).

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[1]   Mona Siddiqui, *My Way: A Muslim Woman's Journey* (I.B. Tauris, 2014), 169.

[2]   Siddiqui, *My Way*, 191.

[3]   Sadakat Kadri, *Heaven on Earth: a Journey through Shari'a Law* (Vintage, 2013), 189. See Zareena Grewal, *Islam is a Foreign Country: American Muslims and the Global Crisis of Authority* (New York University, 2014). Grewal notes that Muslims in the western diaspora assume that if they are to study authentic Islam they must attend Islamic institutions in Muslim majority countries rather than study Islam in the West. But most such institutions have no understanding of the West, and may be openly antagonistic to it. This is of no help to these Muslims when they return to apply the tradition in a radically different context.

[4]   The Sunna is the normative practice and teaching of the Prophet Muhammad enshrined in six voluminous, canonical collections of traditions [*hadith*] purportedly going back to the prophet as transmitted by his companions. The historical reliability or otherwise of these compilations is an ongoing storm-centre in Islamic studies. Along with the Qur'an, these collections became the source books for the development of the four main Sunni schools of law. See Sadakat Kadri, *Heaven on Earth: a Journey through Shari'a Law* (Vintage, 2013), for an accessible and readable study of the historical development of the different schools of law, as well as a *tour d'horizon* of key Muslim majority countries today.

[5]   For the history and devastating impact of these tends across the Muslim world on institutions for religious formation, see Khaled Abou El Fadl's anguished masterpiece, *Reasoning with God: Reclaiming Shari'ah in the Modern World* (Rowman & Littlefield, 2014). For their impact in the UK, the indispensable work is Innes Bowen, *Medina in Birmingham, Najaf in Brent: Inside British Islam* (Hurst, 2014).

[6]   To understand the history and debates, past and present, about this institution, and the utopian hopes it has come to carry, see Madawi Al-Rasheed, Carol Kersten and Marat Shterin, eds, *Demystifying the Caliphate* (Hurst, 2013).

[7]   Simon Ross Valentine, *Force and Fanaticism: Wahhabism in Saudi Arabia and Beyond* (Hurst, 2015), 255.

[8]   Siddiqui, *My Way*, 151.

[9]   Ebrahim Moosa, *What is a Madrasa?* (Edinburgh University Press, 2015), 50-53. For an acute analysis of the situation in British 'seminaries' and his attempt to address its ahistorical and acontextual study of revered texts, see Abduallah Sahin, *New Directions in Islamic Education: Pedagogy and Identity Formation* (Kube Publishers, 2013).

[10] Siddiqui, *My Way*, 187.

[11] Lenn E. Goodman, *Islamic Humanism* (Oxford University Press, 2003), 105.

[12] Hamza Yusuf, 'Tribulation, Patience and Prayer', in Aftab Ahad Malik, ed., *The State we are in, identity, terror and the law of jihad* (Amal Press, 2008), 55.

[13] Fazlur Rahman, *Major Themes of the Qur'an*, 2nd ed. (Bibliotheca Islamica, 1994).

[14] Fazlur Rahman, 'Law and ethics in Islam', in Richard G. Hovannisian, ed., *Ethics in Islam* (University of California, 1985), 6.

[15] Rahman, 'Law and ethics in Islam', 12, 14.

[16] Daniel Brown, 'Islamic Ethics in Comparative Perspective', *The Muslim World* 89:2 (1999), 181.

[17] Siddiqui, *My Way*, 180.

[18] Siddiqui, *My Way*, 157.

[19] See especially his *Radical Reform: Islamic Ethics and Liberation* (Oxford University Press, 2009). For a considered Christian evaluation, see Tom Wilson, *What Kind of Friendship? Christian Responses to Tariq Ramadan's Call for Reform within Islam* (Wipf & Stock, 2015).

[20] El Fadl, *Reasoning with God*, 365.