

Islamic Discourse: *Shari'a* or Islamic Law?⁽¹⁾

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Having dealt with "The Image of Nineteenth Century Cairo as a Medieval City in Alexander Kinglake's *Eothen*", "The Character of the Egyptian in Sir Richard Burton's *Personal Narrative of a Pilgrimage to al-Madinah and Meccah*" and "The Imperialist Discourse in Florence Nightingale's *Letters from Egypt*", I felt I had adequate evidence that the misunderstanding and misrepresentation of Islam has deep roots in the past. This, together with the frequent reference to the need for a new Islamic discourse that would be appropriate for the post 9/11 world, prodded me to take part. Rather than define "Islamic discourse" (which could be the subject of another paper), my purpose in this paper is to show that, since by its very nature a discourse involves communication which necessitates, among other things, the choice of the medium of communication, the use of language is a problematic issue that requires attention especially in the case of Islamic studies and scholarship. The two main languages used in this "discourse" are Arabic and English. Logically, it would not be plausible to claim that Arabic should be used because it is the language of the *Qur-an*, or that English is more appropriate being a language more widely read in the world today. A superficial observer can say that the writer, naturally, chooses the language that s/he is most comfortable with and translation helps in disseminating knowledge. Although this observation is partly true because the language of communication depends on the writer's choice and competence, it does not take into account the three problems discussed below.

The first problem concerns two groups who use the Arabic language: scholars who write in Arabic in the Arab world and translators who translate Arabic texts to other languages. This first group has constraints because of censorship, and the fear of being regarded as infidels, or apostates, or because of threats of arrest or exile. True, debate

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should not be stifled, but it is. Because of the lack of freedom of expression in the Arab world, writers are not always straightforward in conveying their ideas and points of view. The result is that the second group, namely, the translators, who venture to transfer these Arabic texts to another language, have difficulties for two reasons. First, such texts are not easy to understand or translate because the writers often resort to ambiguity and subtlety in using language and in presenting the argument in order to escape censorship. The second reason has to do with the Arabic language itself. The Arabic of the *Qur-an* is quite different from the two forms of Arabic used today. In *On Translating Arabic: A Cultural Approach*, Mohammed Enani gives the following adequate explanation that 'classical' Arabic "has been renamed Modern Standard Arabic (MSA)—and defined as the written language" and 'colloquial' Arabic "has been renamed 'local Arabic', and described according to the place where it is spoken" (9). He adds that,

I have come to the conclusion that there is indeed a duality in Arabic—but the duality is less between the 'local' language and MSA, than between both of them on the one hand and archaic Arabic on the other (11).

This is a very important conclusion especially in the light of the fact that writers and speakers often quote the *Qur-an* and make the shift from one form of Arabic to the other without really being aware that words and structures have, in time, acquired different meanings and usages. The term *shari'a*, the focus of this essay, can be an interesting example.

The second problem in the use of language and in translating a text from one language to another concerns English which is a most common language of research and communication. Is the use of English problematic? Yes, it is, indeed. This is not a naïve question at the beginning of the 21st century after the world has been exposed to works like Palestinian American Edward Said's *Orientalism*, Kenyan education activist Ngugi Wa Thiongo's *Decolonizing the Mind* and Nigerian novelist Chinua Achebe's "The African Writer and the English Language" and *Things Fall Apart*. When students at the American University in Cairo or in many academic institutions in the world study Islam, Arab History or Arabic Literature, the books and articles they read, the papers they write and the discussions in class are mostly in English. What is good about such contexts is that students have freedom of thought and expression. However, how far do these books, articles, and discussions convey an Arab Muslim understanding and how far is this understanding colored by the use of the English language and English terms? This question can imply that an Arab Muslim understanding of Islam is the only right one. Of course this cannot be true or reasonable, but there are Arabic terms that do not exist in English and if the explanations

and definitions are provided in English in a western context, the meanings are inevitably inaccurate. This is why it is necessary to indicate that relying only on English is inappropriate and that a thorough knowledge of the Arabic language is paramount for a sound understanding and analysis of Islamic concepts.

The third problem in the use of different languages in the case of Islamic studies is that in the world today, the internet, the media, and traveling have facilitated communication and interaction, nonetheless, there is no real dialogue between what is produced in Arabic and what is produced in English. Arab voices are ignored or dismissed by most of those who write in English. This is serious. Misunderstandings develop and increase. The translations of the *Qur-an* and of some classical Arabic texts are, however, clear evidence that a commendable effort is being made. But what is urgent, I believe, is to study how far the texts in translation convey the message of the original. In a paper entitled "The Translation of the Term *Mūbīn* in *Sūrat Yasīn* in Yusuf Ali and Pickthall" published in *The Proceedings of the Fifth International Symposium on Comparative Literature*, Cairo, 1999, I investigated the function of the refrain in which the term *mūbīn* is used as an adjective seven times in *Sūrat Yasīn*. Proving that this refrain naturally divides the *sūrah* into seven parts and a conclusion, that the meaning of the term *mūbīn* varies from one point to another, and that the development of the argument, if the *sūrah* is to be regarded as an extended argument, seems to relate to the use of this word, I was struck by the fact that the two English translations of the *sūrah* by Ali and Pickthall fail to translate this term adequately. The translations show that neither Ali nor Pickthall seems aware of the presence of this refrain and thus, the argument of the *sūrah* in the English translations loses a great deal in the transfer process. The richness and the comprehensiveness of the emphasis on clarity in choosing the seven nouns qualified by this adjective are only evident in the Arabic text.

Since the translations of the *Qur-an* by Ali and Pickthall are more commonly used, this finding inspired me to do more research. One of the issues that should be explored is the use of English terms associated with Islam. It is challenging to redefine the very meaning of terms like *fiqh*, *faqih*, *shūra*, *ijtihād*, or concepts like tolerance, human rights, women's rights, gender equality. The list also includes fundamentalism, political Islam, Islamists, Islamism, Islamization, Islamic feminism, Islamic theology, Islamic law, Mohammedan jurisprudence, Muslim jurists etc. The use of these terms has created serious misunderstandings that must be addressed. Some of these misconceptions have now become established as truths about what Islam calls for and what Muslims believe in. Today, it is politically and socially dangerous to misinterpret religious statements. Writers

who are not free from prejudice against Islam and even well intentioned scholars have used English words to refer to *Qur-anic* terms that are not fully understood. By so doing, they have contributed to the misunderstanding of Islam. They bring to focus those aspects of Islamic practice which, by no means universal, uncontroversial, uncontested or practiced currently in most Muslim countries, establish a negative image of Islam which is spreading.

(i)

Today, many are hardly conscious of the differences between synchronic (describing the structure of a language at one particular time) and diachronic (a linguistic study which considers change and development in a language over a period of time) approaches to language/semantic values. Many seem to accept or take for granted that Modern Standard Arabic (MSA) is no more than a usable version of archaic/ancient Arabic. My contention in this paper is that part of the misunderstandings concerning Islam arises from confusing in translation such synchronic and diachronic values in Arabic. A prime example concerns a core concept in Islam, namely the so called "Islamic law" which is assumed to be an adequate translation of the Arabic concept of *shari'a*. Because the terms "Islamic law" and *shari'a* are often used interchangeably, the question that I am posing in this paper is how far these terms are similar or different. This simplistic translation of a complex term is a misnomer² that leads to confusion. I will rely on the *Qur-an* which is the primary source of *shari'a* as the point of reference. By so doing, I hope to shed light on the context of the use of the term *shari'a* and its cognates in *ayat* (plural of *ayah*, the Arabic word for *Qur-anic* verse)³ 5: 48, 7: 163, 42: 13 and 21, and 45: 18 to show that it encompasses a broader and more complex scope than the term "Islamic law". These *ayat* will be quoted and discussed in the context of each *sūrah* rather than by dealing with *asbab al-nuzul* (reasons for revelation) because focusing on the reasons for revelation would limit the understanding of the *ayah* to a particular time and place.⁴

Using "Islamic law" in English to refer to the Arabic term *shari'a* and regarding *shari'a* solely as law (in Arabic or in English) show a misunderstanding of *shari'a* and lead to a series of incorrect interpretations of principles and practices in Islam. The process of proving this requires us to establish, even in general terms, the differences between *shari'a* and law in the light of the use of this Arabic term in the contexts within which it is used in the *Qur-an*. *Shari'a* and law are different in source, in legislature (the body that prepares and enacts laws), in the process of legislation (the enactment of laws) and in the execution of reward and punishment. It is inappropriate to equate *shari'a* with law because Muslims believe that the *Qur-an* is the primary source of *shari'a* whereas the different sources of

laws are customs, constitutions, lawmaking bodies, judges in courtrooms, and administrative agencies. It is safe to infer that in the modern time the term law⁵ generally refers to a rule of action prescribed and decreed by a 'human' governing authority. The Ancient Greeks have established that laws made by men may change. Ever since, in Europe, civil law and common law have been the basis of the laws that regulate the relationship between individuals and between individuals and the government. The case of *shari'a* is different from my point of view. In order to discuss this, it is now necessary to initially deal with the dictionary definition of this term; secondly, to consult the *Qur-an* in order to examine when and how the term and its cognates are used; thirdly, to show how the English translation by Yusuf Ali conveys a message that is different from the original; and finally, to explore how the prominent mainstream Grand Sheikh of Al-Azhar, Mahmoud Shaltout, and the controversial intellectual associated with the Muslim Brotherhood, Sayyid Qutb, define and use the term.

The Arabic Language Academy Dictionary *Al-Mo'jam Al-Waseet*, المعجم الوسيط (1960 Mustafa et al 479), gives five different definitions of the root word *shar'*/*sharra'a* شرع that do not help in understanding the term. Although this dictionary quotes the *ayat* that include this term, it is alarming that none of these definitions comes close to the general meaning of the term as used in the *Qur-an*. The first meaning is : "تناول الماء بفيه" to drink water through the mouth," the second is "دنا من طريق" to come close to a road/path," the third concerns "أخذ يفعل" a person who undertakes an action..., the fourth is "أعلاه و" "سنه و بينه" to elevate and make something clear," and finally in relation to religion, "والدين: what The Prophet Muhammad has prescribed and clarified as the *Sunna* (Traditions)" and "جعل مشروعا و مسنونا" to prescribe and render something official following the *Sunna*." The cognates are given the following definitions: *eshtara'a alshari'a* الشريعة means "سناها و إتبعها" to legislate using the *Sunna* and to follow," *al-tashri'e* التشريع which is "سن القوانين" to enact the laws, but again the root verb is from *Sunna*," and *shari'a* which is "ما شرعه الله لعباده من عقائد و أحكام" the dogmas and rulings ('*aqa'id* and *ahkam*) that God prescribed (*shar'*) to those who believe in Him" as well as "مورد الماء: source of water".

To begin with, the definitions are limited and limiting. The first four definitions are pre-Islamic and early Islamic meanings that refer to a past that is not easy to understand. They do not speak to the modern mind that lost touch with traditions and with these different usages of the term. As for the definition of *shari'a* as "'*aqa'id* and *ahkam* و عقائد و أحكام" it is a narrow sense that is quite restricting and does not convey the comprehensive meaning of the term as used in the *Qur-an* (as the discussion below will show), and as

defined by Mahmoud Shaltout in his edifying text book *Al-Islam 'Aqida wa Shari'a*. Whereas the dictionary definition equates *shari'a* with "'*aqid* and *ahkam*" (the first being a reference to basic tenets of the faith, namely, belief in God, His attributes, the Prophets, reward and punishment on the day of judgment, and the second being the practice of *hudud*, known today in English as Islamic punishments), in choosing this title for his book, Shaltout appropriately points out that the *shari'a* and *'aqida*, though different, are the two fundamental interlinked branches of Islam. Shaltout divides this book into three unequal parts: the first short one (57 pages) is devoted to *'Aqida*, whereas parts two and three (410 pages) deal with *Shari'a* and its sources. This clearly indicates that *shari'a* requires more detailed explanations. In his Introduction, Shaltout gives a short but comprehensive definition of *shari'a* as the systems that God introduced or the sources of such systems for man to follow in his relationship with God (through religious duties like praying and fasting), with his fellow Muslim (through affection and support and through the commands about establishing a family and inheritance), with his fellow human beings (through cooperation for the development of public life and general peace), with the universe (through the freedom to explore and observe different creatures), and with life itself (through enjoying the *halal* (permitted) pleasures without extravagance or stinginess) (5).

Back to the dictionary definitions quoted above. What is worth shedding light on is the link between the root terms *shar'*/*sharra'a* with water and drinking. An analogy is clear between the terms *shar'* and *shari'a* and the source of life on earth. Indirectly, a bond is established between creation, water and the principles that Muslims should follow. Like water, *shari'a* is the origin of the law, but not the law itself. The last of the above quoted dictionary definitions directly links religion to law. Because the meaning of the verb *sharra'a* introduced here is "to legislate," that is to make laws, it can be easy to infer that the term *shari'a* refers to "Islamic law" and the legislator is God. This is an inappropriate inference because it does not distinguish between *shari'a* which is God-given according to Muslims and laws which are based on or derived from the interpretation and application of *shari'a*. Laws and constitutions can be subject to change but the *Qur-an*, the source of *shari'a* is sacred. It is the understanding and interpretation of the *Qur-an* and *shari'a* that change and develop. It is interesting that the Arabic word *shari'a* that is so often and so widely used today is mentioned only once (45: 18) in the *Qur-an* and each of its cognates, the noun *shir'a* شرعة (5: 48), the adjective *shurra'* شرع (7:163), the verb *sharra'a* شرع (42: 13) and the plural form of the verb *shara'u* شرعوا (42: 21), is used once.

(ii)

The first time a cognate of the term *shar' /sharra'a* occurs in *Sūrat al-Ma'idah* (The Table) in *ayah* 48 in a series of statements in which God is addressing The Prophet Muhammad initially and then the Muslims at large. The term is used in the context in which God asserts that He sent "the book" which conveys the "truth", that His purpose is diversity, and that Muslims are put to the test: they are clearly ordered to follow their own *shari'a* not any other:

وانزلنا إليك الكتاب بالحق مصدقا لما بين يديه من الكتاب ومهيئا عليه فاحكم بينهم بما انزل الله ولا تتبع أهواءهم عما جاءك من الحق لكل جعلنا منكم شرعة و منهاجا و لو شاء الله لجعلكم امه واحده ولكن ليلوكم في ما اتاكم فاستبقوا الخيرات إلى الله مرجعكم جميعا فينبئكم بما كنتم فيه تختلفون

To thee We sent the Scripture/In truth, confirming/The scripture that came/Before it, and guarding it/In safety; so judge/Between them by what/God hath revealed./And follow not their vain/Desires, diverging/From the Truth that hath come/To thee. To each among you/ Have We prescribed a Law/And an Open Way./If God had so willed,/He would have made you/A single People,/ but (His/Plan is) to test you in what/He hath given you: so strive/As in a race in all virtues./The goal of you all is to God;/It is He that will show you/The truth of the matters/In which ye dispute (5: 48) (emphasis mine).⁶

Although the discussion that immediately precedes this *ayah* provides evidence {through, for instance, the fact that the same *Qur-anic* terms that describe the *Qur-an* as a light and a guide (5: 15-6) are used to describe the Torah and the New Testament and the command *اذكروا نعمة الله* (that Yusuf Ali translates as "And call in remembrance/The favour of God/Unto you") is given to both Muslim believers and the Children of Israel} that there is parallelism, and continuity in the beliefs of Muslims and the People of the Book, here a demarcation line becomes obvious, and a clear separation is established. Acknowledging the previous sacred Books, the *Qur-an* here stresses that The Prophet Muhammad is ordered to pass judgment according to the truth as revealed to him by God, not as the Jews or Christians perceived it. There are continuities between Islam, Judaism and Christianity, but there are marked differences. In this *aya*, The Prophet and the Muslims at large are told that each Prophet has a different God-given *shir'atan wa menhagan* *شرعة و منهاجا*. Embedded in the meaning of this *ayah* is the self-evident truth that Jews, Christians and Muslims are not one 'umma and that each 'umma must follow its own Prophet. Here there is an affirmation of difference rather than similarity.

Now, *shir'atan wa menhagan* can be read in more than one way: this expression can be regarded as a binomial. The combination of two words that go together, the one

emphasizing the other in Arabic is functional (since Arabic does not use intensifiers). In this case, with this particular combination, the Arabic does not use a cognate, or a synonym, but another word with a different meaning, to support the first. Another way of reading this is by considering the *واو* (*wāw*) as a coordinator that links *shir'atan wa menhagan* which means that the two terms are similar but not quite the same. Since *menhag* *منهاج* is a method, or plan of conduct or action, and involves a process (and it is not clear to me what Yusuf Ali means by using the adjective in his translation "Open Way")⁷, *shir'atan* *شرعة* is neither. It does not strictly mean "Law" either, but can be a path, road, order, system, and, in this case constitutes the directions God has sent to The Prophet Muhammad and to the Muslims who ought to follow them in managing their lives at every level. Taking the "right path" becomes an endeavor that must be integral to all aspects of the life of a human being and to all human interaction, with others, with God and with the environment.

What will also help in showing that Yusuf Ali's translation of *shir'atan* as law is inappropriate, is to discuss how the prominent Mahmoud Shaltout used the term *shari'a* and its cognates in his extended definition in section two (69-360), the longest in his book. The titles of the five chapters, namely, "forms of worship" (praying, *zakat*, fasting the month of Ramadan and pilgrimage to Mecca once in a lifetime for those who can), "the family system and inheritance", "money and exchanges", "punishments", and "the *ummah* in Islam" indicate that the scope of *shari'a* is much broader than that of law. Whereas law is only meant to establish and maintain order, *shari'a* is not only concerned with the social system, but with the practices regulating the life of human beings in all respects in this world in order to secure a good place in heaven in the afterlife.

Another significant difference between *shari'a* and law can be understood from Shaltout's discussion of polygamy (169-187). My concern is not whether he argues for or against polygamy or to determine whether he is persuasive or not in presenting his point of view, but rather to direct attention to how in taking a position and in refuting the standpoint of others, he reveals that different readings of the *Qur-an* in different contexts have led to the legislation of different laws. This supports the idea mentioned earlier, that it is the understanding of *shari'a* that changes and, therefore, the process of legislating laws based on *shari'a* is different from how laws are otherwise prepared and enacted.⁸ The question that one has to ask here is: when there are different interpretations of texts leading to differences concerning the enactment of certain laws, how could/should these differences be settled especially with the warning in the *Qur-an* that disputes concerning matters of faith and *shari'a* ought to be avoided since such arguments cannot and will not be settled in this life?

An easy answer to this question may be sought in one of the basic principles of Islam, namely, consultation, the basis of decision making. What is interesting is that this warning is repeated in *Sūrat al-Shūra* (Consultation) where the cognate of the term *shari'a* is mentioned once as the singular verb *shar'* شرع (42: 13) and another as the plural *shara'u* شرعوا (42: 21). *Aya* 42: 13 says:

شرع لكم من الدين ما وصى به نوحا والذي أوحينا إليك و ما وصينا به إبراهيم و موسى و عيسى أن أقيموا الدين ولا تتفرقوا فيه

The same religion 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.

And *aya* 42: 21 says:

أم لهم شركاء شرعوا لهم من الدين ما لم يأذن به الله

What! Have they partners/(In godhead), who have/Established for them some/Religion without the permission/Of God?

Initially, the use of “established” in English in translating *shar'* شرع and *shara'u* شرعوا, however, in no way corresponds with the Arabic. The more important observation about the two *ayat* in Arabic is that in both cases the verb is linked to the term *aldeen* (the religion). This bond contributes to the understanding of *shari'a* and it is commendable that the English text reflect this bond.

To shed light on these two points it is important to introduce the definition of the term *deen* because binding the cognate of *shari'a* and *aldeen* is telling. It indicates that the *Qur-an* does not distinguish between the religious and the legal. In his extended definition of the term *deen*, Syed Abul-Ala Maududi said that “it stands for the entire way of life, of which the composite factors are:

1. Sovereignty and supreme authority;
2. Obedience and submission to such authority;
3. The system of thought and action established through the exercise of that authority; and
4. Retribution meted out by the authority, in consideration of loyalty and obedience to it, or rebellion and transgression against it.”

This comprehensive definition of *aldeen* as “the entire way of life” is quite different from the narrow meaning of religion as the belief in and worship of a deity. The link between the act of *tashree'* (legislation) (with God as the doer of the action) and religion (which comprises the four factors quoted above) implies that *shari'a*, like law, is binding but in a different way. Punishment is inevitable in the case of the violation of *shari'a* and law, but

is administered in this world in the case of law and, both on earth by using the injunctions in the *Qur-an* and by God in the hereafter in *shari'a*. When reward, like punishment, is deferred to the hereafter according to Muslims, this is within the realm of *shari'a* rather than law.

To support the claim that *shari'a* covers a much broader scope than law, it would be relevant here to refer to the explanation provided by Sayyid Qutb. In his chapter "*Shari'a Qawneya*" (Universe *Shari'a*) (97-101) in *Ma'alem fi Al-Tareek* (Landmarks on the Road), he deals with *shari'a* as the method/system devised by God in creating the universe in which man is only one element. Understanding the universe, therefore, he argues, is a prerequisite to understanding man/the self and vice versa. This bond between man and the universe is, perhaps, one of the reasons why Muslims follow the lunar calendar, the cycle of the sun when they pray (sun rise, noon, sunset) and fast in the month of Ramadan from dawn to sunset. It could also be one of the reasons for the constant emphasis in the *Qur-an* on the necessity of the contemplation of nature.

Two other cognates of the term *shari'a* occur in the context of "Consultation" which is a clear indication that understanding *shari'a* requires and should involve discussion but not disputes. This *sūrah* stresses that in worldly matters differences in opinion and debates are acceptable and those in positions of leadership do not have the right to take decisions unilaterally because the possibility of making mistakes is higher, and such decisions affect the lives of people. The principle of "consultation" has to be established through a long process. In matters concerning faith and *shari'a*, however, argumentation is prohibited. Whereas in *Sūrat al-Ma'idah* the cognate of the term *shari'a* is mentioned only in relation to the followers of Moses and Jesus, i.e. the People of the Book, the context here is even broader to include Noah and Abraham. Preceded by twelve *ayah* that directly address The Prophet Muhammad to highlight that he is not responsible for those who do not believe in God, *Ayah* 42: 13 emphasizes that the teachings of all five prophets are basically the same and those who follow one of them should not disagree with one another and should not disagree with the followers of another prophet or messenger. The end of *ayah* 5: 48 is fast to correspond with the speed with which Muslims ought to both follow God's guidelines and do good and with which all human beings will "return" to God who will be the ultimate judge. Reiterating the ending of 5: 48, but in a different tone, the two commands at the end of *ayah* 42: 13 are arresting: أن أقيموا الدين ولا تتفرقوا فيه (adhere to your religion and do not disagree regarding your religion). In his chapter entitled "Islam as we know it" in his book *Tuesday Talk*, the founder of the Muslim Brotherhood Hassan al-Banna (1906-1949) quotes *ayah* 42: 13 twice, once in full at the beginning to point out

that the order is not to differ/argue (وأمرهم أن لا يختلفوا) (427) and once at the end by citing the two commands explaining that they stipulate that equality, love and affection, coordination and understanding are the basis of religion (430). The question is: should these *Qur-anic* commands be codified? No, because the result of codification would be compulsion whereas in 2: 256 the *Qur-an* states that: لا إكراه في الدين (Let there be no compulsion/In religion).

Ayah 42: 21 refers to those who introduced and devised their own religion without God's permission and asks a question that is clearly rhetorical with a cynical tone. The implication is that the act of *tashree'* is solely God's prerogative. It would not be farfetched to claim that although Sayyid Qutb does not specifically quote this *ayah* in his book *Ma'alem fi Al-Tareek* (Landmarks on the Road), it is this *ayah* that sums up his argument concerning the cause of the confusion the Muslims have been suffering from since the time of The Prophet Muhammad. My purpose is not to argue for or against Qutb, but to show that for him *shari'a* and law are different. The distinction Qutb makes between law as man-made and *shari'a* as ordained by God is initially implicit when he argues that in Islam man on earth has to be liberated from man and has to surrender to God by obeying the *Qur-an* (Qutb 20-96). He is explicit when he recommends إلغاء القوانين البشرية وهداها و سيادة الشريعة الإلهية وحدها (the prevalence of God's *shari'a* alone and the annulment of human law (Qutb 60) and when he states that the worst kind of slavery from the point of view of Islam is خضوع البشر لأحكام بشرية (emphasis mine) (when humanity submits to commands/judgments that other human beings stipulate) (Qutb 62). Both Arabic quotes indicate that the cognate of *shari'a* is only appropriately used in relation to God.

It is in *Sūrat al-Jāthiya* (Bowling the Knee/the Kneeling) (45: 18) that the term *shari'a* itself, rather than any of its cognates, occurs:

ثم جعلناك على شريعة من الأمر فاتبعها ولا تتبع أهواء الذين لا يعلمون

Then We put thee/On the (right) Way/On Religion: so follow/Thou that (Way),/And follow not the desires/Of those who know not (emphasis mine).

For the term *shari'a* to occur in a *sūrah* with the title الجاثية (kneeling) indicates a link between the two, which is quite significant. The adjective *jāthiya* الجاثية is mentioned in 45: 28 to describe a scene in which every *'ummah* كل أمه (the followers of very faith) is grouped together on judgment day, kneeling to surrender in fear to God's power, knowing how far it has obeyed or disobeyed God and His Prophet. The word *'ummah* here does not refer to nation or state as we know them today, but the followers of a certain prophet or creed. In the four *ayat* that directly precede 45: 18, The Prophet Muhammad receives a message to deliver to the faithful, namely "to forgive." This order forces the believers to be

ready and willing to accept others and live in peace and not to be judgmental. It also allows them to cease to resent those who have different beliefs. The *Qur-an* immediately stresses that on the day of judgment God Himself will settle disputes, again in order to clarify that certain disagreements would not be settled even by The Prophet: the emphasis is on the fact that God is the prime legislator, ultimate judge and final arbitrator.

The only cognate of the term *shari'a* that has not been mentioned yet is the adjective *shurra'* شُرْع which occurs in *Sūrat al-Araf* (The Heights) to describe the whales that emerged from the depths of the sea to appear clearly to the Jews on the Sabbath (7:163). Discussing the significance of this parable is beyond the scope of this essay. It is, however, relevant to point out that the adjective is used in relation to the idea of clarity. This sheds light on one of the common features that the four *ayat* quoted above which include one of the cognates of the term *shari'a* (5: 48, 42: 13, 21 and 45: 18), namely, that aspects of *shari'a* are easy to understand and perceive. The four *ayat* also stress that aspects of *shari'a* are not controversial and trying to settle differences will be in vain. Another most important feature that three of these *ayat* (5: 48, 42: 13 and 45: 18) have in common is that *shari'a* is ordained by God and the fourth (42: 21) does so by implication. The third feature is a warning: not following *shari'a* has grave consequences both in this world and in the hereafter. And finally, all four *ayat* (5: 48, 42: 13 and 21 and 45: 18) stress the marked difference between Muslim *shari'a* as ordained to The Prophet Muhammad and previous *sharā'it'* (plural of *shari'a*). In both *Sūrat al-Ma'idah* and *Sūrat al-Shūra*, the cognates of the term *shari'a* are used to draw a demarcation line between Judaism and Christianity on the one hand and Islam on the other. It is only in *Sūrat al-Jāthiya* (as mentioned above) that the term *shari'a* itself is used in association with the Children of Israel to refer to what God has prescribed, that is, a whole set of principles, a path, instructions and guidelines that do not involve disagreement or division and that must be the basis of a way of life.

(iii)

Shari'a has been defined as and compared to a path, road, track, or course that eventually leads to a destination or a predetermined end. A path, however, can be right, moral, good, just, proper, fitting, and correct or wrong, harmful and evil. It is logical to assume that discovering that the path is not the right necessitates a change. Both the individual taking the path and/or the path itself can change (understanding and interpreting *shari'a*). Taking a certain path involves a process and a decision. If a decision at a particular time and place proves inappropriate in another context, therefore all the steps of the process should be revised, reconsidered and replaced. These factors which are in sharp

contrast with the image of a codified (hence rigid) law, do not correspond with *shari'a* that is God-given and does not change. *Shari'a* is more than a methodology or a body of rules and is also not simply the reference to *al-fara'id* (duties and obligations) as some claim either. Following *shar' Allah* شرع الله is not simply abiding by laws but following the right path in literally everything one does.

Shari'a could be regarded as the source of law and is, therefore, more comprehensive than law. It could also be a contract between God and the believers and the contracts between human beings that have to be respected. Secondly, *shari'a* is the regulation of external conduct and sets forth the distinction between what is right and wrong in human conduct, ethics and morals, what is *halal* (legitimate, right, approved by God) *haram* (not legitimate, right, approved by God) both in general (food) and specifically (hunting during pilgrimage) and it governs human interaction not only amongst Muslims, but amongst people of different faiths. Thirdly, *shari'a* sets the principles of justice on earth (for example, in the case of theft, males and females are punished in the same way when the offence is the same). Finally, *shari'a* stipulates that the context of an action determines whether it is *halal* or *haram*. *Shari'a*, therefore, encompasses what can and what cannot be codified and clarifies the basis of reward and punishment in the afterlife.

In comparing the primary source of *shari'a* and those of law, it is clear that the origins are altogether different in nature, and therefore, it is logical to claim that the product must inevitably be different. It is indeed safe to regard law as a component and a by-product of *shari'a*. In the *Qur-an* there are commands that cannot be codified, but there are also orders, principles and prohibitions from which laws can be derived. The laws that can be drawn can and will be different and can change depending on time, place, legislatures etc. The compelling command that The Prophet Muhammad received in his first encounter with the angel Gabriel, namely اقرأ *Read* ought to be obeyed, but how can it be codified?

In the *ayat* quoted above, it is clear that the *Qur-an* does not distinguish between the religious and the legal. The interpretation of the *Qur-an* shows that *shari'a* has religious, social, economic, political and legal dimensions and covers more than the scope of law. *Shari'a*, therefore, is not a legal, political or economic system but is the source that regulates a way of life that governs the life of the individual and the community. It is not simply "the light in the lamp of Islam" as Sanhuri claims (qtd. in Hill 158) but a reference to Islam itself. In referring to laws based on or derived from the *Qur-an*, using the terms "Islamic law" is misleading. Using the term *shari'a* to refer to the history of lawmaking or to laws based on the *Qur-an* or on any other sources can be misleading as well. When dealing with Muslim concepts, the Arabic terms themselves ought to be used in such a way

as to indicate that they do not have exact equivalents in different languages. An alternative for "Islamic law" could be "Applied *Shari'a*" to indicate that the laws are inspired by or an application of *shari'a* and, therefore, changes are possible because of context or interpretation.

In this essay, in the process of showing that using "Islamic law" and *shari'a* synonymously is inappropriate and that Yusuf Ali's translation of the term *shari'a* as law is inaccurate, I attempted to give my own definition of *shari'a* in order to point out that *Shari'a* does not change, but it is the understanding, interpretation and consequently the application of *shari'a* that does. This has led to mutability which gives observers the impression that Muslims and laws are whimsical not that Islam is tolerant and flexible. Our understanding of the *Qur-an* is evolving, unfolding gradually, growing, developing, and is being modified by every scholarly work. I quoted the key Muslim scholars Shaltout, and Qutb not to cite their specific arguments nor to compare or contrast their different schools of thought, but to shed light on their use of the term *shari'a* and to point out the danger in ignoring the scholarship of such key figures. In writing this essay, I am inspired by the spirit and faith of Islam, in the hope of making use of the bond between *shari'a*, water and creation to provide myself with sustenance. This understanding of *shari'a* as feeding and nourishing the soul of the faithful, which has been lost, ought to be revived.

1. Edward Said dealt with these ideas at length and in depth in *Covering Islam*.
2. This became clear to me from inspiring papers by and conversations with Dr. Haifaa Khalafallah, the Director of the Sinai Center for Islamic Mediterranean Studies in London, who got her Ph.D. from Georgetown University and organized the seminar on "Islamic Legal Narratives" in London in July 2005.
3. The use of the word verse as a translation of *ayah* is another misnomer because verse suggests the reference to a poetic form but *ayah* refers to *Qur-anic* prose. In his translation, Abdullah Yusuf Ali designs the *ayat* on paper to look like poetry which is not quite appropriate, but this is not within the scope of this essay.
4. In so doing, I am dissociating the discussion from the Arabian context on the grounds that Islam is for all times and environments.
5. It is worth mentioning that in Old English, according to both *The Oxford English Dictionary* and *The Barnhart Concise Dictionary of Etymology*, the word "canon" refers to "a rule, law or decree of a church" (Simpson and Weiner) and, therefore, the term law used to have an ecclesiastical connotation that it has almost lost in modern times. It is also interesting that the Arabic word *qānūn* قانون has been coined recently from the term "canon".
6. The English translations of the *Qur-anic ayat* are quoted from Abdullah Yusuf Ali's *The Holy Qur-an: Text, Translation and Commentary*.
7. The structuralist Roman Jakobson provides a reason for the fact that it might not be possible for a translator to find an exact equivalent for a term when he states that "there is ordinarily no full equivalence between code-units" (114).
8. *Shari'a* and *fiqh* should not be used interchangeably because they are different. In the *Qur-an* the first is always directly associated with what is ordained by God, but the second necessitates the use of the intellectual human power of reasoning.

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