

## *Editorial*

In his capacity as president of the Islamic Republic of Pakistan, on 13 April 2009 Asif Ali Zardari signed an ordinance (Nizam-e-Adl Regulation) imposing Shari`ah law on the Swat Valley. Although approved by the Pakistani National Assembly,<sup>1</sup> analysts believe this measure will embolden the Taliban's already increasing strength in and around that region. Some human right groups also fear that the Taliban will see this decision as a license to send the region's people back to the "Dark Ages" (whatever that may mean).<sup>2</sup> These reactions are not new.

It may be quite tempting to ask why the Shari`ah is so abhorrent to its opponents and why implementing it is so attractive to those Muslims who are bent on applying it. Frankly put, although the mere mention of such a prospect evokes both emotions, to the majority of practicing Muslims even posing such questions affronts their religious sensibilities. However, is the current reaction truly about the Shari`ah's essence and application, or about what the Taliban will make of it? Yes, the maddening and egregious behavior of the Taliban and other extremist elements render almost everything about Islam (especially the Shari`ah) terrifyingly repulsive.

But in this era of information explosion, it is the responsibility of the world's "civilized" people, regardless of religion, to inform themselves, in an honest and sincere manner, about the Shari`ah's contents (not that doing so would absolutely guarantee its positive or fair consideration) in order to avoid any "hair-splitting" whenever its application is proposed. Whose fault is it if people fail to distinguish between the likes of the Taliban (who are unable to understand the Shari`ah's real reasons and wisdom, even if they have the utmost zeal to apply them) and the actual Shari`ah (which, the majority of Muslims believe, exists only to protect and guide people in their lives and does not impose on them anything beyond their capability)?

As always, Muslims must assume the obligation of making sure that they properly understand and present the Shari`ah in ways that reflect it as the reasonable, progressive, and humane law that it is. This is easier said than done, however, for Muslims are not monolithic even in their understanding of the Shari`ah. Yet that should not vitiate their responsibility, or at least their effort, to present it as it should be. Whether applied or not and in whatever way, Shari`ah law, as found in the Qur'an and the Sunnah, remains

an important religious symbol to the Muslim community; a symbol that inextricably, and understandably so, arrests individual Muslim's psyche with its imposing authority.

Critical observers like Ignaz Goldziher (d. 1921) would insist on pointing out the human role of the classical jurists, those who were active between the late eighth and the sixteenth centuries CE and who supplemented the Shari`ah by their own endeavors,<sup>3</sup> a fact that is hardly novel to Muslims or denied by them. From the vantage point of this observation, they would rather see Muslims deemphasize the entire Shari`ah's divine status and thus either depend on it less or possibly discard it altogether. But for Muslims, the jurists' role, no matter how elaborate and substantial, remains secondary, as they claim to depend on the Qur'an and the Sunnah (as the real sources) for their endeavors. In other words, they were simply gatekeepers and interpreters. This invites the discussion of the role of all jurists in interpreting the Shari`ah vis-à-vis their authority and credibility.

Speaking of what people like the Taliban make of the Shari`ah (serving as a source of abhorrence), it is sadly true that the aforementioned role of Muslim jurists is abused, their authority confused, and their credibility, though strong, manipulated. The following is an elaboration of this observation. The roles of the eponyms of the popular classical legal schools as interpreters, jurisconsults, and religious leaders came to be abused by their disciples and followers. *Ijtihad* (juristic exertion) that culminated in outlining their legal opinions were meant to help Muslims live according to Islamic teachings, not to create legal schools, at least not in the forms they ultimately took. If these jurists took pride in presenting different views and opinions, that was to demonstrate the diversity and flexibility of Islamic law. Unfortunately, their followers ferociously emphasized their own school's supremacy, thereby creating competing enclaves of jurists whose loyalties were to their schools and whose objectives were to outdo one another. Their efforts and exertions had to be expended in consonance with the school's line of argument, a requirement that led to blind following and stagnation.

It is high time that contemporary Muslims disabuse themselves of these tendencies, which, in essence, resulted in the abuse and inflation of the pioneer jurists' roles. To do so, they must distinguish between the laws governing the eternal and unchangeable religious rituals and the socioeconomic imperatives that must keep up with the modern world. They must concentrate on the wisdom behind each Islamic law and how it will help improve Muslims' religious, social, and political lives without, at the same time, violating the basic principles. This is the Shari`ah's true intention, one that remains an

ongoing process and could never have been finalized by the classical jurists. Understood and applied this way by Muslims, the Shari`ah would hardly evoke such fear. However, deeply entrenched in the twisted mindset of juristic fanaticism and largely outmoded legal interpretations, the Taliban have misconstrued the Shari`ah and are, surely, unlikely to apply it appropriately in the Swat Valley. They have already proven this in Afghanistan.

Many average Muslims as well as conservative scholars seem to confuse the authority inherently accorded to the Qur'an and the Sunnah with that of the classical jurists. They consider the latter's opinions just as binding as the Qur'an's, thereby leaving no room for disagreement. One result of such an understanding is that *ijtihad* is easily slighted in favor of *taqlid*. This is regrettable, since the early jurists would be the first to admit that their opinions were not binding on anybody. Nor should they be. Did not Imam Malik ibn Anas (d. 795) declare that all of the eponyms's opinions may be rejected or accepted? And yet his followers, as well as those of the other schools, would ignore this simple but candid message while insisting that people take their opinions as final.

While in Egypt, Imam al-Shafi'i (d. 820) reconsidered his opinions and took positions that differed from those he had held earlier in Iraq. It would not be far-fetched to suggest that had he traveled to North America or sub-Saharan Africa, whether in his day or even today, he might have changed his opinions on many issues yet again. This means that in time he disagreed with his own positions – a perfectly natural human trait. So, it makes no sense to reject somebody else for disagreeing with him. As intelligent and sincere as they were, and as unique as they may be perceived to be, these eponyms were, like all human beings, fallible and holders of imperfect opinions.

Besides, it was a common practice for the classical scholars to end their deliberations with *Allahu a`lam* (God knows best; God knows more). Theological implications aside, this is a clear admission that they were not the final authority on whatever they said as regards God but, especially, to other scholars as well. This must be understood to include subsequent generations of scholars.

Sadly, some Muslims do not acknowledge contemporary scholars' right to disagree with any classical jurist even on matters that are more pertinent to contemporary life (e.g., family planning). Seen through such a lens, the Shari`ah will be depicted as rigid and uncompromising. Muslims must learn to trust those modern jurists who are trained and willing to interpret the Shari`ah with the intention to help them worship their Lord properly and

relate to humanity in terms appropriate to the times, and not for the sake of perpetuating a particular school's views. Muslims must develop some confidence in their scholars even when the latter disagree with their classical counterparts.

Tariq Ramadan, in his new book *Radical Islam* (2009), insists that "text scholars (*'ulama' al-nusus*) as well as context scholars (*'ulama' al-waqi'*),<sup>4</sup> should participate on an equal footing in elaborating ethical norms in different fields of knowledge."<sup>5</sup> I would go beyond this and suggest that contemporary jurists, including the so-called "text scholars" (another name for traditional scholars: classical/modern), must be trusted to disagree with their classical counterparts, which requires them to exercise their right to *ijtihad*. As it now stands, even the group that Ramadan calls "text scholars," although they most likely follow the chorus of specific legal school, will certainly be rejected if their opinions differ from those of the classical jurists. Lack of confidence in all modern scholars, irrespective of their training and sensibilities, hinders any effort to present the Shari`ah as a living and dynamic set of legal guidelines.

Owing to the contents of their deliberations and the aggressive push on the part of their disciples, classical jurists have enjoyed immense credibility among Muslims of all generations. They have been seen as honest, sincere, and faithful to their religion, as scholars who left no stone unturned on virtually any matter. For their ardent supporters, this credibility has led to the reliability of their books and the endurance of their opinions. For some contemporary Muslims, however, modern circumstances have managed to affect the reliability of some of their opinions. To be sure, modern circumstances do not render all of their opinions wrong, but only make some of them obsolete and absolute dependence on them counter-productive (e.g., women's role and participation in society).

The tacit belief that classical scholars, individually or collectively, had a monopoly on absolute truth and credibility is a myth that must be abandoned. I say this because the consequences of holding on to such a myth (including, but not limited to, rejecting whoever disagrees with them and thereby inhibiting creative interpretation and limiting the Shari`ah's scope) are catastrophic both to the Shari`ah as a dynamic legal system and to Muslims as those who seek to apply it. It is, therefore, hoped that contemporary Muslims will rid themselves of this mindset.

It is certainly hoped that Islamic institutions and organizations will understand the importance of having confidence in modern jurists to handle the Shari`ah. They must work diligently to convince Muslims to support all

modern scholars who have the adequate training and sincerity to serve Muslims. This way, not only will the Shari`ah serve its intended purpose, but it will also not evoke any negative passions and apprehensions when its application is duly proposed.

This issue of AJISS includes contributions from yet another set of independent scholars (though not jurists) who are willing to take a second look at the existing scholarship in their areas. Norman K. Swazo's article "Rehabilitating Islamic Ethics: A 'Postmodern' Opportunity," leads with a call for a fresh debate about Islamic ethics (*`ilm al-akhlaq*) in a contemporary setting. Given the globalization of western values and jurisprudence, Swazo argues that this endeavor is necessary because it may contribute, in a substantive way, to international morality in contrast to international law. It may also disabuse both Islam and the West of inflating or criticizing the Shari`ah's authority.

The next paper, "Constructing an Axis of Evil: Iranian Memoirs in the 'Land of Free,'" is an extraordinarily scathing, but intellectually compelling, critique by Seyed Mohammad Marandi and Hossein Pirnajmuddin. In this article, they study very critically and challenge some of the popular memoirs that are largely also about the Iranian people and culture. Marandi and Pirnajmuddin describe these writers as part of the Iranian diaspora in the western world and their works as part of the neo-Orientalist discourse "pursued to absurd extremes," even though they enjoy great credibility in the eyes of their western audience.

Yousuf Dadoo, in his "The Consolidation and Spread of Islam in South Africa over the Last Half Century," traces and assesses the various methods used by South African Muslims to consolidate Islam. Some of the remarkable features of this paper are his emphasis on the socio-religious dimensions of Islamic faith and practices in that particular country and his faithful recording of this attempted consolidation's successes and failures.

The fourth article, "Revisiting the Principle of Invitation to Treat and *Mu`atah* in Online Contracts," comes to us from Siti Salwani Razali. Basing herself upon the Qur'an and the Sunnah, she reviews opinions of classical Muslim jurists to highlight the fact that contrary to English common law, upon which Malaysian law is based, Islamic law considers an invitation to treat to be a valid contract. She also compares some of the popular classical theories in the context of online transactions.

The first of the two essays in the "Forum" section is "The Political Economy of Arab Cultural Underdevelopment: The Case of Lawrence E. Harrison." This relaxed but critical observation is penned by Emad Aysha as

a response to one of Harrison's articles in which he blames certain cultural dysfunctions for the continued underdevelopment of the Arab-Islamic world.

Sobhi Rayan's "Difference in the Qur'an" is a ground-breaking analysis of how the Qur'an perceives cultural difference. Rayan, who argues that the idea of difference is crucial to the reality of diversity among societies, concludes that "difference turns out to be a project of human liberation from fanaticism, domination, and war. It is a call for openness and peace."

In conclusion, it is my hope that together, these fantastic papers will not only present our readers with thought-provoking arguments, but inspire in them the intellectual passion to actively participate in the ongoing debates on an array of issues.

## Endnotes

1. See [www.dailytimes.com.pk/default.asp?page=2009\04\14\story\\_14-4-2009\\_pg1\\_1](http://www.dailytimes.com.pk/default.asp?page=2009\04\14\story_14-4-2009_pg1_1). As this editorial was being written, the Pakistani government was fully engaging the Taliban in a war that has forced more than a million average Pakistanis out of the region.
2. See [www.hrw.org/en/news/2009/04/15/pakistan-swat-deal-grave-threat-rights](http://www.hrw.org/en/news/2009/04/15/pakistan-swat-deal-grave-threat-rights).
3. Ignaz Goldziher, *Introduction to Islamic Theology and Law*, trans. Andras and Ruth Hamori (Princeton, NJ: Princeton University Press, 1981).
4. Though I have some problems with this categorization and how reliable this latter group would be, his call to include them is creatively bold.
5. Tariq Ramadan, *Radical Islam: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 121.

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