



MEDIEVAL ISLAMIC SHARIAH: A PRECURSOR TO WESTERN ENLIGHTENMENT

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Abstract

Westerners, who are not acquainted with the remarkable role of shariah in the western enlightenment, are baffled when they see profound devotion for shariah in the Muslim societies. It goes without saying that it was the illumination of Shariah that lifted the western world out of its dark ages. This article makes a historical analysis of how Shariah ensured freedom of religion when Christians in Europe persecuted their co-religionists and levied unbearably heavy against them due to theological discrepancies. Additionally, it provides historical evidence for the fact that Shariah strongly emphasized the significance of inviolable human rights and civilization which upheld rule of law as one of its most important values. There is another major problem which the westerners associate with shariah and that is terrorism. This article repudiates such allegations and proves that Shariah strongly denounces indiscriminate slaughter of noncombatant civilians and bystanders. Finally, this article attempts to show that Shariah established a robust civil society which served as a vital source of inspiration for enlightenment in the west.

Keywords: Shariah, Dark Ages, Orientalists, Colonialists, Rule of law, Christians, Jews, Human Rights, Civilization.



Introduction

Shariah is a legal system of commands and prohibitions based on the Qur'an and Sunnah that organizes and regulates the deeds and behavior of individual as well as community. In Arabic, the word "shariah" refers to a water source. It is also used to refer to religion, nation, way of life, Sunnah, and *Minhaj*. Similar to how water is an essential component of human life and provides them with refreshment, Islam is the wellspring of humankind's spiritual and religious development. Islamic history attests to the fact that Islamic Shariah led its believers to the pinnacle of civilizational grandeur at a time when the western world was profoundly shrouded in darkness. It is well known that the Islamic Golden Age coincided with the Dark Ages in the Christian West. Without a doubt, the splendor of Muslim culture may be attributed to the Islamic shariah.

Before the dawn of the nineteenth century, majority of the Christian writers in the West largely subjected Islam to a purely theological critique. However, the Cristian missionaries transferred the emphasis from the religious to the secular when they chose to make common cause with the French and British colonialists. They described the backwardness and weakness of Muslim societies as the direct outcome of their enslavement to obsolete teachings and outmoded beliefs of Islam. Though some of them grudgingly admitted that Islam had made some contribution to the medieval west but they confidently added that its contribution and creativity had vanished forever. Now the only way to progress, the maintain, is to emulate western ways of life (Saeed, 1987).

When the European powers entered the Oriental world, they developed serious interest in the Eastern religions, cultures, languages and history of the indigenous population. They paid special attention to the study of Islam and Arabic language, the fundamental vehicle of Islamic thought. Most of these specialists of Islam—known as Orientalists—developed negative portrayals of Muhammad (peace be upon him) and tried to prove the inferiority of his message in comparison with that of Christianity (Saeed, 1987). By such academic juxtaposition, they meant to establish the ascendancy of Western civilization over Islamic Civilization.

According to Renan, Muslims lack reason and intellectual subtlety simply because of being adherents of Islam. He argues that the unalterable essence of Islam is composed of irrationality and fanatic worldview and the European powers must subdue their elements of barbarism. The Orientalist discourse has persistently portrayed the Eastern folks as “irrational, depraved, childlike and different”. A Survey of orientalist's literature reveals that Muslims are presented as “backward, degenerate, uncivilized, and retarded. They are depicted as “other” characterized by emotional imbalance, inflexibility of mind and fatalistic attitude (Moughrubi, 1978).

The territorial expansion which began in the reign of rightly guided caliphs continued in the reign of the Umayyad dynasty. The Islamic empire extended as far as Spain in the west and quickly Islamized the Balkans, Caucasus, parts of Africa, Asia Minor etc. Parallel with the military conquests, peaceful preaching also conquered big regions such as China, Indonesia, India and



South Africa. These series of conquests produced to significant results: it transformed the entire worldview and culture of the conquered territories and inversely affected the ways of the conquerors.

Most of the orientalist argue that the territorial expansion of Islam purely hinged on military conquests when Muslims, under the banner of Islamic Jihad, went out in different directions and used sword as an instrument of proselytization. But such and oversimplified interpretation of the miraculously quick expansion of Islam is not tenable at all. History corroborates the fact that Muslim warriors did not interfere with the religious ideologies of the conquered people and never forced them to quit their faith and enter the fold of Islam. The holy Quran strongly denounces compulsion in religion (Akyol, 2011). Wherever forced conversion has occurred it can't not be defended as it is an unforgivable deviation from Islamic teachings pertaining to freedom of religion. That's the reason why Muslims scholars regard the actions of the bigoted fanatics Almohavids in North Africa.

An important question arises at this juncture: why did the Muslims conquer the world? In response to the posed question, Mustafa Akyol opines that Muslims aimed at spreading the message of God to lands where it was unknown. The word *fatah* means opening and by this way they opened the conquered lands to the word of God. Orientalists erroneously contend that Islam spread with the help of sword; however, they do not know that the purpose of jihad was not to force people to convert to Islam but it rather aimed to eradicate hurdles to conversion. St. Thomas and St. Bernard offer similar explanations with regard to the Christian crusades (Lewis, 1995).

In addition to removing obstacle to conversion, they endeavored to establish what they sincerely believed to be a fair political system. They had already tried their political order and were fully convinced that if they eradicated tyrannical regime with the power of their sword and replaced it with egalitarian Islamic system, the oppressed people would take a sigh of relief. Having said this, there have been some people with worldly motivations who wielded sword to satisfy their lust for wealth and power.

The Muslim conquerors bestowed *dhimma* (legal protection) on the non-Muslim people of the conquered territories. The life, honor and property of the dhimmis were safeguarded in return for a meager amount of *Jizya* and they were given the freedom to retain their religion and perform their rituals freely. However, they had to observe certain social limitations which were meant to symbolize their capitulation to the Islamic empire. Mufta Akyol admits that a gradual increase did occur in these limitations which made their circumstances unfavorable. He contends that Muslims could not avoid the preexisting approaches and religious tendencies towards religious minorities. In the beginning only Jews and Christian got *dhimma* but later on the same status was extended to the Zoroastrians, Hindu and Buddhist by way of *ijtihad* (Brown, 1988).

Orientalists usually extricate the contract of *dhimma* from its historical and cultural context and



put it in juxtaposition with the modern concept of citizenship and resultantly criticize it as unfair treatment and discrimination against non-Muslim citizens. Put in its historical context, *dhimma* was quite an advanced institution. It saved the life and honor of Syrian and North African Christians who had been subject to unbearable persecution at the hands of powerful Christians of the Byzantine empire whose theological worldview significantly differed from theirs; the latter believed in the Chalcedonian Creed and contended that Jesus was a combination of divine and human nature. Majority of the Egyptian and Syrian did not share this belief and believed in the single divine nature of Jesus. They were known as Monophysites. owing to such theological discrepancies, their co-religionists not only persecuted them but also imposed heavy taxes on the Monophysites. During the intra-Christians theological debates and differences, Muslim soldiers broke open the gates of Byzantine and delivered the oppressed Christians from the tyrannical treatment of their brethren. They welcomed the Muslims conquerors and thanked them for winning their liberation from “Greek tax-gatherers and orthodox persecutors.”

Because of the kind attitude of the conquerors, the Christians actively guided and supported them to establish victories. When The Arab warriors laid siege to Damascus, the Monophysite bishop provided useful information to the Muslim commander about the weak points of the adversary and also gave them ropes and ladders to help them scale the castle wall. And when the battle ended in the victory of Muslims, they decided to divide the cathedral of St. John into two portions: half church and half mosque. Archeological records show that Muslims too displayed religious generosity in the sense that they did not demolish their churches and permitted them to erect new ones (Afsaruddin, 2013).

Jews, like Christians, also witnessed improvement in their circumstances under Muslim rule. Jewish historians recognize that the Arabs liberated them from the oppression of Byzantium. It's historically recorded that Muslim lands were safe haven for the persecuted Jews and until recently and that's why they preferred to dwell under Islamic rule rather than in the medieval Europe (Rober, 2010).

The institution *dhimma* is deeply embedded in the Quran which stresses the point that humans have rights and no nobody can deprive other humans of their rights. This Quranic attitude towards inviolable human rights created a civilization which upheld rule of law as one of its most important values. Mustafa Akyol argues that protection of human rights is unimaginable without law and law enforcing authority. Where there is no law and such an authority, things turn into chaos and anarchy. But in order for the law to safeguard the basic freedoms and rights it needs to be just and fair because if the law is unfair and tyrannical, it would cause horrendous tyranny (Akyol, 2011). The Rule of Law upheld by Stalin was a curse not bless. He did not care for the protection of the rights of the people rather all he wanted was to safeguard the communist ideological values. According to Akyol, where a group of people legislate a system, they will tactfully endeavor to secure their interests and rule of law in this case would mean rule of a particular group. To avert the imposition of a bunch of laws by a group motivated by self-interest, society needs a rule of



such law which honestly aims to preserve the rights of individuals rather than protecting the interests of a privileged class. This is exactly what happened when Islam spread across the world. Muslim rulers implemented the rule of Sharia, “the way” and “the path” laid down in the holy Quran and the traditions of the prophet (Noah, 2012).

Here it is pertinent to note that shariah wasn't dictated by some emperor; the fact is that it was deduced and inferred by independent Islamic scholars and legal experts. It was predicated on the premise that no one is above law but if it had been laid down by a state or an emperor, it would have stipulated that “the prince is not bound by law” as was done by Roman law. Shariah does not confer any sort of immunity from prosecution to any individual be they heads of state, monarchs, parliamentary figures or diplomats.

In shariah all are equal and none has any privileged status. That's the reason why Muslim rulers could not exercise their power according to their whims and wishes and they guaranteed justice in accordance with the dictates of shariah. But it can't be disputed that in the first thirty years or so the rightly guided caliphs did not deviate from the norms and values of shariah but when power shifted to dynasties, the monarch failed to come to the high standards of shariah. During their reigns of injustice and oppression, scholars of shairah spoke against the tyrannical rulers and defended the rights of the people. Westerners, who are not acquainted with the great role of shairah, are baffled when they see profound veneration for shariah in the Muslim societies (Espisito, 1999). Shariah has been a bulwark against the unbridled ambitions of the rulers. There are several historical examples of its curbing despotism and injustice. The story goes that Ala-ud-Din desired to over tax his Hindu subjects but he could not impose extra taxes on Hindus because the eminent Muslim scholars were averse to such decision, arguing that it was a violation of Islamic laws of property. Khilji is reported to have complained: “whenever I want to consolidate my rule, someone tells me that this is against shariah.” shairah can be seen playing the same protective role for the poor and helpless people in the Ottoman empire (Rahman, 1984).

Hain Gerber says that it didn't serve as the tool of elites but did serve as means for the downtrodden folks against the injustice and encroachments by the elite. He appreciates the bold Muftis in the eighteenth-century ottoman courts as they never hesitated to speak against government though they were paid by the government (Noah, 2012). According to Gerber, shariah is largely individualistic in its nature because it gives precedence to individual's rights when it falls into conflict with the rights of the state. In the Ottoman empire people would take to streets chanting “we want shariah” when the sultan or any of his governors violated the rights of the subjects. It's worth noting that in their slogans shariah amounts to justice.

Modern westerners think that Shariah is a bunch of severe and brutal punishments ranging from lashes to stoning to death. Akyol admits that their objection and fear are justified because these medieval forms of corporal chastisements are brutal from contemporary standards. According to Noah Feldman, these punishments were “the most liberal and humane” in comparison with



prevalent medieval forms of punishments. He maintains that none of pre-modern societies had well organized police department and the classical Islamic polity had a couple of law-enforcing officers to ensure the implementation of Shariah law. They had to resort to severe punishment in public in order to frighten the masses to obey law. Feldman argues: The physical punishments of Islamic law were originally meant to be enforced in a world of extremely limited enforcement—considerably similar to English common law which handed death sentence for every sort of felony. Marshall Hodgson has similar views as he says that Islam seems “dangerously soft on the criminals” in an age when horrible sorts of punishments were inflicted on deviants. From a pre-modern perspective, shariah was, according to him, mild (Hodson, 1974).

Imprisonment, being more burdensome to those who applied than to those subjected to it, was not a working solution and therefore corporal chastisement was a better option in the desert where Islam emerged (Rosenthal, 2015).

Akyol argues that contemporary proponents of shariah set aside the historical circumstances which necessitate such punishment and want to implement shariah in its medieval form. He supports Dr. Fazal Rahman who advocated the reform of shariah in the light of “high objectives”: preservation of religion, life, intellect, progeny and wealth. These high objectives can be realized without enacting the old medieval practices. Akyol maintains that Islam incorporated some of the medieval customs and practices during its formative phase. To him, Quran doesn’t prescribe stoning to death; it probably borrowed from Jewish law.

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There is another major problem which the westerners associate with shariah and that is terrorism. Perhaps the westerners do not know that in the Middle Ages Sharia served as a Bulwark against what is known in the modern world as terrorism. Medieval Muslim jurists had developed a comprehensive theory of just war which laid down necessary stipulations to protect the lives of noncombatants. Bernard Lewis notes that Muslim warriors were strictly warned not to kill women, children and old people. They were enjoined to avoid torture and mutilation of captives. They were categorically instructed to honor treaties and strictly prohibited to resume hostilities after truce



without clear announcement (Lewis, 2002). There are exhaustive juristic discussions about the rules of battle and the kind of weapons not allowed in the warfare. They have legally debated the lawfulness of certain weapons such as mangonels, catapult and poison tipped arrows. Similarly, Muslim jurists have discussed the illegality of putting poison into enemy water supplies. The reason why they have taken such pains to describe wartime illegalities is to avert indiscriminate casualties.

Lewis admits that the basic scriptures of Islam do not enjoin murder and terrorism. He maintains Islamic law doesn't let warriors indulge in indiscriminate slaughter of noncombatant civilians and bystanders.

Akyol thinks that illegalities committed by Islamist terrorist should not be associated with shariah as these terrorists bypass and ignore the fundamental teachings of Islam. Islam is unequivocally averse to assassination of innocent civilians as the holy Quran explicitly orders:

“Fight in the way of Allah against those who fight you, but don't transgress the limits.”¹ In addition to the Quranic warning, the prophet of Islam always instructed his troops: Don't murder old people, children and women.

Contrary to Islamic warfare ethics, when the Christian crusaders conquered Jerusalem in 1099, they brutally murdered the local population without drawing any distinction between combatants and civilians. Karen Armstrong writes that “They killed all Saracens and the Turks they found.” She adds that the crusaders spared neither male nor female. Similar barbarous attitude can be observed in the decision taken by Richard the Lionheart who ordered the merciless murder of about 2700 Muslim men, women and children in the Castle of Acre. In response to the Christian atrocities, Saladin exhibited benign attitude towards the crusaders by sparing those who were not participants in the battle and graciously released a great many prisoners of war. Saladin made his victorious entry into the Jerusalem in 1187 but his Reconquista was way different from that of his counterparts. He banished only the Franks and let Eastern Christians stay in the city. A meager amount of ransom was levied on the conquered people and those who could not afford were excused. So remarkable was the influence of his benign treatment that legends got around in the Europe that Saladin was baptized Christian Knight (Armstrong, 2001). But the truth of the matter is that he was simply a shariah abiding Muslim.

Shariah made sure that people's property rights are protected. Shariah safeguarded the property of the subjects whenever a ruler felt tempted to usurp their property. The scholars of shariah warned the rulers against the sanctity of private ownership and explicitly argued that its usurpation amounts to theft, hence prohibited (Noah, 2012). Scholars had developed a legal system of *waqf* which wasn't vulnerable to interference on behalf of official institutions. Such financial arrangements under the auspices of shariah created a “robust civil society” with a large number of

¹Al-Quran, 2:190



hospitals, charity organizations and schools. Islam, unlike monastic creeds, not only guarantees economic security but also encourages creation of wealth through economic activity. The holy Quran regards commercial profits as a blessing. Muhammad (peace be upon him) was a merchant who opposed price-fixing, saying that Allah governs the market. Maxime Rodenson put it briefly: "Muhammad was not a socialist."

With such a positive approach towards economic activity, Muslim conquerors turned Muslim world into a colossal free-trade hub and successfully consolidated "financial and commercial capitalism." The various forms of economic practices developed by Muslim scholars voyaged into European markets. The influence of Islamic economic techniques can be observed in European languages. Italian commenda, French cheque have their origin in Arabic language. Western capitalism undoubtedly borrowed many concepts from Islam. It's on record that the Jewish scholar Maimonides complained that Jews were conducting their trade and business in an Islamic way (Braudel, 1992).

Western glory owes a great deal to Islamic civilization. According to Akyol, the British common law so closely resembles Shariah and sounds very different from the European legal tradition that it can be theorized that it owes a lot to Islam. To substantiate his view that western civilization founded on legal, political, economic exports from the Muslim world, Akyol presents a list of English vocabulary with Arabic roots: algebra, amalgam, admiral, muslin, nadir, tariff, zenith, syrup, sugar, alembic, guitar checkmate and lute (Hodgson, 1993)

The reason why west was frequently borrowings ideas from the Muslims world pool is that the latter was "the richest, most powerful, most enlightened region in the world." Muslims scientists made incredible contributions in various disciplines such as optics, physics, biology, mathematics, astronomy and medicines. An American historian has succinctly put it in this way: had there been Nobel prizes in 1000, they would have gone almost exclusively to Muslims." (Kramer, 1991). Their accomplishments were not limited to the domain of science alone; Muslim theological thought was far ahead of their Christian counterparts who initiated theological debates on ideas which Muslim theologian had broached centuries before them. Cities in the Muslim world were way more sophisticated advanced than European cities. It's said that a tenth century nun was so impressed with the dazzling beauty of Córdoba that she described it "the ornament of the world." (Rosa, 2002).

Scaling such heights of grandeur would not have been possible, if Islam had not conferred freedom on the people. The flexibility of the social order provided the subjects with unprecedented opportunity to cultivate and develop their talents. The flexible social order resulted in quick urbanization. Because of its individualism paved the way for the emergence of modern city where ethnically different people can dwell together under established legal codes. No wonder when there were thirteen cities in the middle east, Europe had just one city, called Rome (Karabell, 2013). A Christian priest bitterly laments the unpleasant state of affairs that Christian eagerly read Arabic



poems, romances, the ideas of Arab theologians and philosopher not to challenge them but to add to the elegance of their Arabic. He mourns the fact that intelligent young Christians have ignored the study of gospels and holy scriptures and unluckily preferred to study Arabic books with great enthusiasm.

Christians could not resist the fascination of Islam and those who were allured by the beauty of Islam were named by their orthodox co-religionists as *mozarab*. The fascination was very natural as the library in Córdoba had more than 400000 manuscripts, but Charles the wise who lived four hundred years after caliph Al-Hakam II had only nine hundred books in his library. For the Christians Another fascinating aspect of Islam was its easy practicability (Braudel, 1995). Nicolas Zernov said that observance of Islamic rituals and practices does not need any supernatural efforts. In Summary , Shariah offered an egalitarian system in which everyone could confidently and freely develop their potentials and contribute to the prosperity of society. It led to the creation of a civilization that served as a covetable example for the rest of the world in the fields of science, economics, and politics.



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