

# The Islamic Secular

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## Abstract

It is common to assume an inherent conflict between the substance of the category “religion” and the category “secular.” Given its putative rejection of the separation between the sacred and the profane, this conflict is presumed to be all the more solid in Islam. But even assuming Islam’s rejection of the sacred/profane dichotomy, there may be other ways of defining the secular in Islam and of thinking about its relationship with the religion. This is what the present essay sets out to do. By taking Sharia as its point of departure, it looks at the latter’s self-imposed limits as the boundary between a mode of assessing human acts that is grounded in concrete revelational sources (and/or their extension) and modes of assessing human acts that are independent of such sources, yet not necessarily outside God’s adjudicative gaze. This non-*shar‘ī* realm, it is argued, is the realm of the “Islamic secular.” It is “secular” inasmuch as it is differentiated from Sharia as the basis for assessing human acts. It remains “Islamic,” however, and thus “religious,” in its rejection of the notion of proceeding “as if God did not exist.” As I will show, this distinction between the *shar‘ī* and the non-*shar‘ī* has a long pedigree in the Islamic legal (and theological) tradition. As such, the notion of the Islamic secular is more of an excavation than an innovation.

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## Introduction

Few contemporary constructs generate the definitional ambiguity evoked by the term *secular*. Such definitional vagueness notwithstanding, *secular* almost invariably implies an antagonistic relationship with *religion*.<sup>1</sup> This illocutionary effect accrued to the term as a product and co-producer of an emergent Western modernity.<sup>2</sup> And this hostility to *religion* is routinely abstracted out of that context and assumed to inform the way that *all* religions engage (or perhaps should engage) the world, especially the modern world. Of course, as José Casanova points out, “religions that have always been ‘worldly’ and ‘lay’ do not need to undergo a process of secularization. To secularize – that is, ‘to make worldly’ ... is a process that does not make much sense in such a civilizational context.”<sup>3</sup>

This insight, however, as keen as it is, does not appear to go very far when the topic under consideration is Islam. Instead, its worldliness notwithstanding, the antagonism between “secular” and “religious” is assumed to be all the more acute in Islam, as the latter is understood to defy the distinction between sacred and profane, and modern Muslim movements seem bent on sustaining the non-existence of this boundary in favor of the religious. The result is a dichotomous bifurcation between the “Islamic” and the “secular,” according to which an act, idea, or institution can be described either as Islamic *or* secular, but never both. This perpetuates in the minds of many the presumed necessity of having to choose between the two.

In this paper, I shall propose a reading of Islam that suggests a different understanding of its relationship with the secular. This relationship is both uncovered and mediated through a more careful reading of Sharia that imputes jurisdictional boundaries to the latter, thereby challenging the notion of it being coterminous with Islam as religion. Ultimately, it is the space *between* the bounded Sharia as a concrete code of conduct and the unbounded purview of Islam as religion, that is to say, life lived under the conscious presumption of an adjudicative divine gaze, that constitutes the realm of “the Islamic secular.” This domain is *secular* inasmuch as it remains, to borrow Max Weber’s term, *differentiated*, meaning that it is neither governed nor adjudicated through the concrete indicants of revelation or their extension as recognized in Islamic legal methodology (*uṣūl al-fiqh*). It remains Islamic, however, in its imperviousness to the impulse, first articulated by Hugo Grotius in the seventeenth century, to proceed “as if God did not exist” (*etsi Deus non daretur*).<sup>4</sup> On this reading, while the secular and the religious both intermingle and remain distinguishable from each other, they are not, as with the Western secular, effective rivals; nor is the secular relied upon or primarily valued for its ability to police

or domesticate religion. The Islamic secular is not forced upon Islam (or Islamic law) from without but emerges as a result of the Sharia's own voluntarily self-imposed jurisdictional limits.

Numerous implications as well as challenges attach to this reading, the most salient of which I will engage over the course of my discussion. As a final preliminary, however, I would like to spell out more clearly, in an effort to avoid confusion, the nature and degree of overlap and divergence I see between the Western and Islamic seculars. This will enable us to discern more readily an important aspect of my thesis, namely, that the most operative distinction between the Islamic and Western seculars resides not so much in their *substance* as in their *function*. This difference is indebted to different historical realities confronting (Western) Christianity and Islam, as well as to differences in their structure and ethos. Reference has been made to the religio-political challenges reflected in the Thirty Years' War (1618-48).<sup>5</sup> According to Jonathan Israel, this also birthed the emergence of a radical fringe of dissenters and republicans who conceived that "there might be a purely secular, philosophical rationale for dismantling ecclesiastical authority, [promoting] freedom of thought, and independence of individual conscience."<sup>6</sup> This was the beginning of the Early Enlightenment, at the heart of which lay theological debate and the specter of overturning "all forms of authority and tradition, even Scripture and Man's essentially theological view of the universe."<sup>7</sup>

Prior to this, a more quotidian sense of crisis had already set in. According to Nomi Stolzenberg, a major impetus behind the emergence of the Western secular was "an acceptance of the fact that the divine law and sacred ideals of justice have to be violated in the temporal world."<sup>8</sup> This generated fears that religion and religious institutions might be corrupted and their authority undermined by what would eventually amount to normalized violations. The response, particularly within Protestantism, was to create an alternative realm presided over by non-religious values, authorities, and expertise, the flouting of which would not connote inadequacy, irrelevance, or corruption on the part of religion or its institutions. This was not a mere exercise in religious navel-gazing or kicking the institutional can down the road; there was a genuine concern for the practical needs and aspirations of the day. As Sheldon Wolin summarizes the fears of Martin Luther, "the world would be reduced to chaos if men tried to govern by the Gospel."<sup>9</sup> The Western secular, then, initially arose in an effort to protect both religion and society. The way it came to operate subsequently need not be assumed to be a function of its essential meaning or to go back to its origins.

By contrast, at any rate, pre-modern Islam did not replicate the Thirty Years' War (1618-48). Not even the Ottoman-Safavid conflict took on quite the same religious tone or implications, and Muslims did not birth anything comparable to the Enlightenment. In fact, faced with the challenges of quotidian reality, Muslim jurists sought to *expand* the scope of the religious law through analogy (*qiyās*), equity (*istiḥsān*), public utility (*maṣlaḥah mursalah*), blocking the means (*sadd al-dharā'i'*), adaptive legal precepts (*qawā'id fiqhīyah*), and even inductive readings of scripture (*istiqrā'*). The aim of all of this, as with the early Western secular, was both to secure the interests of society and preserve the sovereignty of the sacred law. And on this approach, obedience to the religious law became an increasingly more protean construct. For example, while the Hanafi school condemned "provisional sales" (*bay' al-wafā'*) for centuries, they would later confer legal sanction upon them, as dictated by need, all the while declaring their new position to be firmly within the law.<sup>10</sup> Such examples could be multiplied.<sup>11</sup> And on this combined tendency toward expansion and recognizing obedience as a mutable construct, there was never a perceived need or effort among the jurists to create a formally recognized separate realm over which explicitly non-religious deliberation reigned as an alternative to, or check on, religion.<sup>12</sup>

Meanwhile, the divine origins of the religious law retained universal recognition, and this, in tandem with Islam's understanding of monotheism (*tawḥīd*), generally implied that only what God dictated or intended as religious law could be rightfully recognized as such. The battle cry of the early Khariji movement, "There is no rule but God's" (*lā ḥukm illā li-llāh*) may have been an exaggeration in the eyes of the majority, but it was neither fundamentally wrong nor off track.<sup>13</sup> Indeed, the nerve it struck continued to pulsate through the rise of Mu'tazilism in the second/eighth century, when the question of the *scope* of God's specifically legal address became a topic of debate. Ultimately, the Islamic secular would emerge (eventually more explicitly) out of what was seen as being at stake in these deliberations. But it emerged as a more or less "innocent" by-product, not as a rival or a competitor with religion or the religious law. Again, while its substance bore much in common with that of the Western secular, namely, its dependence upon sources and authorities outside the parameters of religion's concrete (in Islam's case *shar'ī*) indicants, its function was patently different from the role the category "secular" came to play in the West.

A common feature of depictions of the Western secular is its essentially regulatory function vis-à-vis religion. In his seminal work *Formations of the Secular*, Talal Asad points out that part of the very meaning of the (Western)

secular resides in the perpetual dislocation it visits upon religion through the generation and deployment of an evolving series of cognitive oppositions (reason/myth, public/private, autonomy/submission), all of which are designed and normatively function to establish and reinforce the primacy of the secular *over* the religious.<sup>14</sup> The secular, in other words, not only contrasts with but is expected to control the religious. We see a similar recognition in the description of Casanova, who locates the secular precisely in the moment when people transcend the secular/religious divide. “Secular,” he writes, “stands for self-sufficient and exclusive secularity, when people are not simply religiously ‘unmusical,’ but closed to any form of transcendence beyond the purely secular immanent frame.”<sup>15</sup>

Drawing on the insights of Weber, Casanova identifies the secular with the rise and proliferation of non-religious fields of inquiry and expertise as eventually breaking down the monastic wall that once defended religion’s primacy and separated it from the worldly realm. The crumbling of this wall eventually laid bare the entire terrestrial order as a field of secular conquest, where religion would ultimately end up struggling to find – and vindicate – its place.<sup>16</sup> Once again, the hierarchal, “paternalistic” relationship between the secular and the religious is confirmed. Of course, Casanova’s reference to an “immanent frame” implicates the work of Charles Taylor. In his massive *A Secular Age*, Taylor, like Asad, identifies the boundary between the secular and the religious as porous.<sup>17</sup> But the secular constitutes the super-context, the “immanent frame,” that circumscribes and increasingly exerts “pressure” on the much smaller sphere of religious influence. This pressure progressively squeezes God’s presence out of public life, contributes to a general falling away from religious sensibilities and practices, and ultimately makes it difficult to maintain belief in God.<sup>18</sup> The secular increasingly functions, in sum, as the primary, active force in life, while religion is gradually reduced to a passive, reactionary role.

Alternative notions of the (Western) secular include variations on French *laïcité*,<sup>19</sup> or the attitude that opposes living life “in a way that puts God first.”<sup>20</sup> Others equate it, following the American model, with “state neutrality,”<sup>21</sup> where the (secular) state domesticates religion and legitimizes itself via the implicit promise to protect society from it. Still other descriptions include “the fashioning of religion as an object of continual management and intervention, and of shaping religious life and sensibility to fit the presuppositions and ongoing requirements of liberal governance.”<sup>22</sup> Again, in all of these depictions, the (Western) secular essentially arrives on the scene as the new sheriff in town to define and police the proper boundaries of religion. By contrast, the

Islamic secular assumes neither the urgent need nor authority to define or police the religious. Rather, it is merely the result of the religious law's own efforts to define and impose boundaries upon itself. Again, on my reading, the boundaries of Sharia are self-imposed, not a retreat or diminution in the face of some independent, external authority called "the secular."

Of course, placing Islamic *law* at the center of a discussion of the secular would seem to require some vindication. After all, law in the West is an emphatically secular, profane institution from which there would seem to be no point in drawing any contrast with the secular. But comparative examination of the traditional dichotomy between the sacred and profane might point us in the direction of relief. In his discussion of the sacred and profane, Talal Asad points out,

attempts to introduce a unified concept of "the sacred" into non-European languages have met with revealing problems of translation. Thus although the Arabic word *qadāsa* is usually glossed as "sacredness" in English, it remains the case that it will not do in all the contexts where the English term is now used. Translation of "the sacred" calls for a variety of words (*muharram*, *mutahhar*, *mukhtass bi-l-'ibāda*, and so on), each of which connects with different kinds of behavior.<sup>23</sup>

It does not take much to recognize that all of these candidates for "sacred" come under the gaze and authority of Islamic law, as Sharia (or *shar'ī* discourse) is the basis upon which the applicability of all of these adjectives is determined. In this regard, Sharia can be seen as upholding or mediating a boundary of sorts. Whether, however, this boundary divides the world, to use Durkheim's notion, into "two domains, the one containing all that is sacred, the other all that is profane,"<sup>24</sup> or simply restricts the validity of viewing the world, even as a single domain, through a *shar'ī* lens is a separate (though deeply relevant) question. Earlier in his discussion, Asad had noted: "In the Latin Roman Republic the word *sacer* referred to anything that was owned by a deity, having been 'taken out of the region of the profanum by the action of the State,' and passed on into that of the *sacrum*."<sup>25</sup>

By contrast, Islam insisted, of course, that God ultimately owned everything. In fact, the theologian al-Bayhaqi (d. 458/1065) cites an early linguistic opinion to the effect that the name *Allāh* was derived from the phrase "*la hu*," namely, "it is his/its," "it belongs to him/it." The Arabs added the definite article along with a medial *alif* (*ā*) for emphasis (in accordance with linguistic convention), yielding the proper name for God, *Allāh*, as Owner of everything in the universe.<sup>26</sup> Sharia functions in this context, not as did the Roman State,

to assign or transfer ownership, but to identify that area of what God owns that is the object of God's direct, concrete address aimed at regulating normative human behavior.

In this process, again, given God's summary ownership of everything in the universe, separating the sacred from the profane in the Western sense alluded to by Asad will prove problematic. But the parameters of Islam's *shar'ī* discourse can be clearly distinguished from those of the non-*shar'ī*. And it is the *shar'ī* alone that represents God's *concrete divine address* that aims at regulating human behavior. It is in this sense that Islamic law plays the definitive role I have assigned to it in establishing and sustaining the category of the Islamic secular.

### **Sharia: Unbounded Stereotype versus Bounded Reality**

Of course, Sharia is commonly depicted as boundless in scope. As the celebrated Joseph Schacht once put it: "Islamic law is an all-embracing body of religious duties, the totality of God's commands that regulate the life of every Muslim in all its aspects; it encompasses on an equal footing ordinances regarding worship and ritual, as well as political and (in the narrow sense) legal rules."<sup>27</sup> More recently, Wael Hallaq characterized Sharia as "a representation of God's sovereign will [that]... regulates the entire range of the human order, either directly or through well-defined and limited delegation."<sup>28</sup> In addition to Islam's presumed rejection of the sacred-profane divide, such depictions probably owe something to the equally common presumption that law is the bulwark against man's exploitation of man. As John Locke famously put it, "Wherever Law ends Tyranny begins."<sup>29</sup> This positive association between Sharia and the rule of law is equally popular in modern Muslim circles. In sum, the view that Islamic law is boundless and thus mandated to address *every* aspect of life is common to both modern Muslim and non-Muslim discourses on Sharia.

To be sure, this notion has potentially far-reaching implications. For example, if, as has been suggested, the Muslim state exists "for the sole purpose of enforcing the law,"<sup>30</sup> such a state might be aided and justified in extending its executive authority to proportions co-extensive with a boundless law. This implication is indirectly confirmed by Hallaq, who sees the unbounded sovereignty of the modern (secular) state as placing it in full and irreconcilable conflict with an Islamic state founded on Sharia.<sup>31</sup> In other words, Sharia and the modern state represent a clash of unbounded sovereignties. Meanwhile, another

implication of Sharia's being credited with infinite scope would be the elimination of "the people" from the enterprise of negotiating the socio-political and economic orders. For to the extent that the unbounded Sharia is Islam's sole basis for judging human action, only those authorized to determine its substance, namely, the religious establishment (*fuqahā'*), can have any impact on defining a normative Islamic order.<sup>32</sup>

Having said all of this, there is a reading of the classical Islamic legal tradition that would appear to warrant a "totalitarian" understanding of Sharia. Certainly from the time that analogy (*qiyās*) was vindicated as a means of expanding legal rulings, Islamic law acquired an ostensibly boundless capacity to go beyond revelation's direct address. But the validity of *qiyās* remained far from a point of unanimous consensus (*ijmā'*) for centuries, and the manner in which Sunnis debated its admissibility directly implicated the matter of scope. The Zahiris, for example, who appear in the third/ninth century and were *not*, as they are popularly cast, "literalists," rejected analogy precisely on the grounds that one could not go beyond what the revealed sources indicated *directly* (which is not the same as what they indicated "literally").<sup>33</sup> As A. Kevin Reinhart points out, the Zahiris affirmed that "Revelation's writ ran to what it explicitly addressed and no more ... it applie[d] strictly, but it applied [in relative terms] to very little."<sup>34</sup> In sum, they insisted that any number of issues simply fell *outside* the boundaries of scripture and remained, as such, *unaddressed*. It was wrong, according to them, to claim that God had a concrete legal ruling for all issues.

The Zahiris lasted well into the fifth/eleventh century and were far from marginal outcasts. In his influential book *Ṭabaqāt al-Fuqahā'*, the stated purpose of which was to catalogue the names and schools of all those whose views were to be considered in making and breaking unanimous consensus, the famous Shafi'i jurist Abu Ishaq al-Shirazi (d. 476/1083) lists them alongside the other four Sunni schools, again, despite their rejection of analogy and all that that implied in the way of the law's limited reach.<sup>35</sup> But even beyond them, the importance of scope is reflected in the early controversy over whether the legal category "neutral" (*mubāḥ*) referred to what God directly declared to be inconsequential or to what simply fell outside the boundaries of God's *shar'ī* address, as a matter of happenstance, as it were.<sup>36</sup> This issue was still being discussed as late as the sixth/twelfth century, as we see in Ibn Rushd the Grandson's commentary on al-Ghazali's *Al-Mustasfā*.<sup>37</sup>

The point in all of this is that there was a centuries-long period during which an important minority of Muslim jurists accepted or at least entertained the idea that God did not have a direct or even an analogically determined



ruling on every thing. And even the majority who rejected this position did not find their orthodox sensibilities offended to the point of casting charges of unbelief (*kuf̄r*), unsanctioned innovation (*bid'ah*), or moral turpitude (*fisq*) against those who espoused it. In sum, the view that there are jurisdictional limits to Islam's *shar'ī* address is not new; nor, obviously, given how far back it goes back, could it have been imposed from without by a secularizing, emergent modern West; nor was it ever definitively placed outside the pale of Sunni orthodoxy.

Of course, these controversies over scope would ultimately be resolved in favor of an expansive view of Sharia that recognized the validity of analogy and placed the neutral category *between* the obligatory and forbidden categories as part of God's *shar'ī* address. But this should not be seen as a contradiction of the claim that Sunni jurists remained alive to the issue of scope and suspicious, if not critical, of haphazardly totalizing conceptions of the religious law. Indeed, careful analysis reveals that even mainstream jurists, who accepted the expansive, positivist notion of Islamic law, remained nonetheless vigilant in their recognition that there were limits beyond which the Sharia's authority simply did not extend.<sup>38</sup> In sum, even in the post-formative period,<sup>39</sup> when Islamic law took on its fully developed form, Sharia was perceived as a bounded and not an unbounded affair.

### **The Islamic Secular: *Shar'ī* versus Non-*Shar'ī***

Much of my work on Islamic law has revolved around the thought of the great Egyptian Maliki jurist Shihab al-Din al-Qarafi (d. 684/1285). Elsewhere, I have shown that he was quite direct and unequivocal in imputing jurisdictional limits to Sharia.<sup>40</sup> This sustained focus on al-Qarafi might give the impression that he was alone or unique in this regard. But this is demonstrably not the case. And while space will not allow for a full accounting here, the following should suffice to make the point.

Going all the way back to the Prophet, we find indications to this effect. Standard books on the Prophet's biography (*sīrah*) report that when he issued instructions to the Muslim forces at Badr, the Companion al-Ḥubab b. al-Mundhir asked if this was revelation or simply the Prophet's considered opinion. The Prophet responded that it was the latter, at which time al-Ḥubab offered his own plan, which the Prophet accepted.<sup>41</sup> In the "canonical" hadith literature, we read that when a group of farmers whom the Prophet had advised on pollinating their trees complained that the trees died (or failed), he responded: "Do not hold me accountable for mere (non-revelational) ideas. But when I inform

you of something on the authority of God, take it, for I will never invent lies against God.”<sup>42</sup> In this same section, Muslim reports that the Prophet stated: “You are more knowledgeable (than I am) regarding your secular affairs” (*antum a‘lam bi amr dunyākum*).<sup>43</sup> These references clearly reflect an understanding that the divine address was limited in terms of the range of issues regarding which it could be taken to bind Muslims to a concrete legal injunction.

In the generations after the Prophet, we see a subtle blurring of the boundary between the concretely legal (*shar‘ī*) and the non-legal (non-*shar‘ī*). At least as early as Malik (d. 179/795), factual determinations, such as details of the kinds and quantities of food due a wife as part of her maintenance (*nafaqah*), are clothed with legal authority despite not being based on scriptural sources.<sup>44</sup> We see it as well in the writings of al-Shafī‘i (d. 204/819)<sup>45</sup> and his early followers on such factual matters as determining the prayer-direction, the uprightness of witnesses, and the like. As Ahmad El Shamsy notes: “Although the determination of the *qiblah* represents an empirical matter while legal theory involves interpretive judgments, at least in the early centuries Shafī‘i jurists do not seem to have drawn any distinction between the two.”<sup>46</sup> But already with Ahmad b. Hanbal (d. 241/855) in the first half of the third/ninth century, a more explicit recognition of scripture’s jurisdictional boundaries appears to be in evidence. In his account of the famous Inquisition (*miḥnah*) over the Qur’an’s createdness, al-Tabari (d. 310/923) reports that Ibn Hanbal’s initial response was: “It is the speech of God; I have nothing to add beyond that” (*huwa kalām Allāh lā azīdu ‘alayhā*),<sup>47</sup> clearly suggesting that the question of its createdness or uncreatedness, or perhaps his understanding of the issue at the time, fell outside the scope of what Ibn Hanbal deemed scripture to have concretely addressed.

Later, the distinction between *shar‘ī* and non-*shar‘ī* becomes more concrete. Al-Ghazali (d. 505/1111), for example, rebukes those he terms “ignorant friends of Islam” who condemn non-Muslim natural sciences as contravening Sharia. Against this view, he insists that “the religious law has nothing to say about these sciences, either positively or negatively” (*wa laysa fī al-shar‘ ta‘arruḍ li hādhi al-‘ulūm bi al-nafy wa al-ithbāt*).<sup>48</sup> With al-Qarafī, of course, we get perhaps the most explicit articulation.<sup>49</sup> He cites as examples of non-*shar‘ī* sciences mathematics, geometry, sense perception, knowing the identity of prevailing customs, bounteous things, and the like: “Knowledge of none of these things reverts to scriptural sources (*sharā‘i*).”<sup>50</sup>

This basic recognition of *shar‘ī* limits did not stop with al-Qarafi. Ibn Taymiyyah (d. 728/1328) routinely cites instances where the *shar‘ī* tradition neither confirms nor negates (*lā nafy<sup>an</sup> wa lā ithbāt<sup>an</sup>*) an imported concept or

technical term.<sup>51</sup> He also insists that purely rational claims (e.g., the validity of Greek logic) cannot be judged on the basis of scripture alone, but must be examined on the basis of reason.<sup>52</sup> In their commentary on al-Baydawi's (d. 685/1286) *Minhāj al-Wuṣūl ilā 'Ilm al-Uṣūl*, the Shafi'i father and son, Taqi al-Din (d. 756/1355) and Taj al-Din (d. 771/69) al-Subki, confirm the distinction between knowledge that is contingent upon the divine address (*shar'ī*) and knowledge that is not,<sup>53</sup> everything that could be considered knowledge, in other words, not falling within the boundaries of the *shar'*.

Early modern jurists continue along these lines. Ibn Abidin (d. 1258/1842), for example, notes that the knowledge that fire burns or that grammatical subjects are in the nominative case falls entirely outside the parameters of the religious law. In fact, in words reminiscent of al-Qarafi, he states that "what is meant by *shar'ī* . . . is that which would remain unknowable absent an address from the Divine Lawgiver."<sup>54</sup> Clearly, on these articulations, the idea that Sharia and its relative adjective *shar'ī* is bounded as opposed to unbounded was not unique to al-Qarafi, but was a widely recognized feature of pre-modern Muslim juridical thought that made its way down to modern times.<sup>55</sup>

This restrictive understanding of the category *shar'ī* lays the foundation for my working definition of the Islamic secular: "*that for concrete knowledge of which one can rely neither upon the scriptural sources of Sharia nor their proper extension via the tools enshrined by Islamic legal methodology (uṣūl al-fiqh).*" At first blush, this might appear to be a rather strained use of the term *secular*, given the latter's entrenched association with indifference, if not hostility, toward religion. But Sharia is *the* medium through which God's will is made known in concrete, objectively verifiable terms (objective in the sense of existing in the public domain, where everyone has equal access to them). And to the extent that Sharia does *not* concretely address every issue, it does acknowledge the existence of other bases and norms of assessment. This corresponds, in the main, to the "differentiation" that Casanova identified as a central feature of the secular.<sup>56</sup> At the heart of differentiation is specialization in distinct fields of concern – religious, economic, political, and so forth. And while Islam may not insist on such an explicit, formal division of knowledge, the distinction between the *shar'ī* and the non-*shar'ī* is, in fact, an expression of specialization. The secular is simply differentiated from *religion* in Casanova's depiction, whereas it is differentiated from the *shar'ī* in my working definition of the Islamic secular.

This basic understanding and valuation of "differentiation" is not the preserve of Casanova alone. Asad essentially recognizes its role and centrality when he writes: "It is when something is described as belonging to 'religion'

and it can be claimed that it does not that the secular emerges most clearly.”<sup>57</sup> And Taylor speaks of an “independent political ethic” free of confessional allegiance as part of his understanding of the secular.<sup>58</sup> Of course, given its juristic thrust, my concept of the Islamic secular will fall dumb before any number of the brilliant sociological and anthropological insights of these (and other) treatments of the secular. But with differentiation as a point of departure, the idea that Islam’s religious law is not the only forum for negotiating the value of human acts should go a long way in demonstrating a point of convergence with established discourses on the secular and in vindicating my use of the term.

### Reason and Revelation

Again, the claim that Sharia does not concretely address a particular matter is not the same as saying that Islam takes no interest in it. In fact, a Muslim may not be able to ignore this matter because of the magnitude of potential benefit or harm his Islamic sensibilities lead him to surmise. In more concrete terms, of course, the actual substance of “benefit” and “harm” will have to be defined; and Islam and/or Sharia will play an obvious role in this regard. But beyond the basic recognition that a particular action is inspired, obliged, or simply allowed by Islam or Sharia, the empirical question of which particular modality of its concrete instantiation will best serve the interest associated with it is *not*, properly speaking, the business of *shar‘ī* deliberations. It is one thing, in other words, for Sharia (or Islam) to support or actively promote the value of wealth-creation; it is quite another to see Sharia (or Islam) as the direct source of the concrete acts or policies that actually create wealth.

Ultimately, this takes us back to the ancient controversy over the role and status of reason (*‘aql*) in Islam, as reason would be the ostensible alternative to deliberating matters on the basis of Sharia. But the Sunni response to early Mu‘tazilism (which argued that reason could independently apprehend the moral and soteriological implications of acts) gave rise to the view in Western scholarship that Sunnism rejected reason’s evaluative power in matters of religion *tout court*. And this has led to the assumption that rigid “scripturalism” is the presumed norm in Islam. One could argue, however, that the primary object of the Sunni rejection of Mu‘tazilism was Mu‘tazilite cosmology and the notion that revelation was *bound* to confirm whatever moral or soteriological conclusions reason reached.<sup>59</sup> It did *not* imply that reason was incapable of or barred from making religiously relevant value judgments independent of revelation.

This is clear in the response of Mu‘tazilism’s most bitter opponents, the Ash‘aris, especially later Ash‘aris. In *Kitāb al-Irshād*, for example, al-Juwayni (d. 478/1085) plainly acknowledges that communities can know, based on their own communally accepted premises, that certain things are good or evil, even if there is no indication of such according to God.<sup>60</sup> In *Al-Iqtisād fī al-I‘tiqād*, al-Ghazali is even more explicit in pointing out that what is routinely deemed good or evil is simply what is deemed to serve or contradict individual or collective desires or interests, which can be known independent of revelation.<sup>61</sup> In *Kitāb al-Arba‘īn fī Uṣūl al-Dīn*, Fakhr al-Din al-Razi (d. 606/1209) affirms that there is a realm of “good and evil that is merely an expression of that which attracts and repels us by nature (*tab‘*), and that there is no dispute that this can be known by reason.”<sup>62</sup> We might note that this was not an exclusively Ash‘ari position; both the Maturidis and even Traditionalists essentially agreed with it.<sup>63</sup> In fact, none other than the “puritanical” Hanbali Ibn Taymiyyah states explicitly that revelation (i.e., the Qur’an and Sunna) could never provide human beings with all they need for a successful worldly life or even otherworldly salvation.<sup>64</sup> And reason, according to him, was perfectly capable of apprehending worldly benefit and harm (*maṣlahah aw mafsadah*), even if, in the absence of indications by the religious law, such judgments could not guarantee reward or punishment in the Hereafter.<sup>65</sup>

In sum, across the theological spectrum, Sharia was *not* enshrined as the *only* basis upon which value judgments could be made, especially in the practical realm. The notion, as such, that scripture is as far as a Muslim can legitimately go in negotiating quotidian reality is simply inaccurate. This is critical to a fair assessment of the Islamic secular. Otherwise, the latter is likely to be brought under indictment as an aberration that seeks to grant an unauthorized role and authority to reason. At the same time, we should be mindful of the fact that reason, in the Muslim understanding, has traditionally been broader than the mere faculty of formal reasoning. In fact, it might be more accurate to speak of ways of knowing, apprehending, imagining, or even sensing reality. On this understanding, reason would include such things as sense perception, social convention, “taste,” imagination, spiritual epiphany, and the like.<sup>66</sup> This should be borne in mind as we approach the practical implications of the Islamic secular.

## The Islamic Secular: Practical Implications

The stubborn notion that reason is antithetical to religion, coupled with the perceived Western purchase on the concept “secular,” gives rise to at least three

reactions to the secular on the part of contemporary Muslims: (1) reject it altogether (as un-Islamic) and thus leave all issues falling within its orb to chance, haphazardness, and non-regulation; (2) reject (or simply overlook) it (again, as un-Islamic), but this time by simply subsuming it into the *shar'ī* realm and attempting to regulate *everything* through the Sharia's rules and instrumentalities; and (3) embrace it, but here in its Western guise as the antithesis and/or overseer and domesticator of religion, in response to the Sharia's perceived failure to speak effectively to legitimate human interests.

We begin to see the inadequacy of completely rejecting the secular (i.e., as a construct), however, when we consider such basic questions as the legal age for driving or what a specific national healthcare plan or immigration policy should actually be. Clearly, these questions cannot be ignored, as they impinge upon broader communal interests (e.g., the preservation of life), which both Islam and Sharia clearly recognize and seek to promote. Yet no concrete scriptural sources can dictate the concrete substance of such rules or policies, either directly or by analogy. Of course one might argue that scripture does indirectly instruct Muslims in this regard by obliging them to avoid what is harmful and protect basic human needs (e.g., *hifz al-nafs*, *hifz al-nasl*, and so on).

But the question goes beyond the theoretical to the practical matter of whether *this* legal age for driving, *this* healthcare plan, or *this* immigration policy will sufficiently or best serve the community's interests. This cannot be determined on the basis of scripture or its *shar'ī* indications, but must be pursued through various secular, non-*shar'ī* instruments (e.g., empirical observation, practical experience, childhood psychology, modern medicine, public administration, actuarial science, and the like), none of whose substance or inherent authority is derived from or necessarily contradicted by Sharia. The scope and significance of all of this becomes more obvious when we expand our vistas to include FAA regulations, monetary policy, building codes, education policy, zoning laws, tenure procedures, passport regulations, and a virtually endless list of issues in the public domain.

To be clear, the argument here is not that these issues must be contemplated in a manner that is entirely devoid of *shar'ī* (or Islamic) influence or consideration. The fact that, for example, Sharia holds empathy (*shafaqah*) and loving care (*ḥanān*) to be essential to a child's welfare, or that residential buildings must respect the rights of neighbors, may inform such disciplines as childhood psychology or architecture, respectively. But while Sharia seeks to produce *legal rulings* (*aḥkām*), such norms of assessment as efficient, safe, profitable, beautiful, and fun are simply not *shar'ī* categories. And yet these qualities re-

main critical to the realization of what Islam, and perhaps Sharia, would recognize as interests. For example, a legal driving age that ignored safety or an inefficient healthcare plan could hardly be said to serve the broader aims and objectives (*maqāsid*) that justify (if not obligate) their existence. Thus, one could not simultaneously ignore these secular categories of assessment and successfully pursue the interests of Islam or Sharia in concrete terms.

At the same time, however, even assuming that a particular legal driving age or health-care plan fell perfectly within the general parameters of the religious law (though obviously not dictated by it), one could not claim that it was “God’s law” or against “God’s law” in the same way that one could claim this about the obligation to support one’s family or avoid alcohol consumption. Neither, however, given the source of its inspiration, would it always be appropriate to adjudge this legal driving age or healthcare policy as entirely “non-religious,” let alone anti-religious.

As for the tendency to subsume the secular into the *shar‘ī* realm, perhaps its most common manifestation is the exaggerated focus in many Muslim circles upon unmediated scriptural interpretation (*ijtihād*). To be sure, *ijtihād* is important to the enterprise of moving beyond the realities, presuppositions, and going opinions of the pre-modern world and navigating through new and changing moods and circumstances. Strictly speaking, however, it is relevant only to the explicitly *shar‘ī* realm.<sup>67</sup> And in this light, an exaggerated focus upon *ijtihād* leaves the optimal, concrete *instantiation* of Islamic or *shar‘ī* values in a state of confusion or neglect. The result is often a misplaced reliance on Muslim juristic activity and a frustrating dissonance between the perceived Islamic or *shar‘ī* ideal and the modern quotidian real.

Equally problematic, however, is the tendency to try to overcome this gap by simply doubling down on *ijtihād*. For assuming, as I think we must in many instances, that the problem is not the substance per se of a *shar‘ī* rule or that the rule is simply too univocal to accommodate “reinterpretation” (e.g., the ban on adultery), the problem would have to be seen as residing in the rule’s concrete instantiation.<sup>68</sup> And to the extent that this is the case, *ijtihād*, which is about *extracting rules* from the sources, would seem to be powerless to make any difference.<sup>69</sup>

For example, in a scathing critique of marriage in early twentieth-century Egypt, Muhammad Abduh (d. 1905) criticizes the jurists for their pathetically transactional attitude toward the institution of matrimony, especially as it affects women. According to him, their juridical definitions focused almost exclusively upon a husband’s sexual rights over his wife and were “entirely devoid of any reference to “ethical obligations” (*wājibāt adabīyah*) between spouses.<sup>70</sup> This,

according to him, undermined the whole point of marriage, which was for two hearts and minds to come together in love and compassion (*mawaddah wa rahmah*). Asad has suggested, incidentally, that European influence was, at that particular time, informing Egypt's discourse on gender.<sup>71</sup>

My focus, however, is not so much on Abduh's critique as it is on what he seems to offer as a solution. Rather than sheer callousness, it seems reasonable to assume that the jurists omitted "ethical obligations" because they fell outside their *shar'ī* purview, as entities for which Sharia could not prescribe any concrete instantiations in the form of specific acts. "Love and compassion," in other words, could mean different things in different contexts and could thus be concretized in a myriad of ever-changing, socio-culturally embedded ways, from bringing home flowers to bringing home a rare cut of meat. Their instantiation, in other words, was not a *shar'ī* matter but rather an activity to be pursued by individuals and communities via their culturally literate engagement with the Islamic secular. But rather than recognize this non-*shar'ī*, secular dimension of the problem, Abduh appears to double down on *ijtihād*, going back to the Qur'an and Sunnah and reiterating their provisions for marital bliss, especially for women: "All we have to do is hear the voice of our Sharia and follow the rulings of the Noble Qur'an, the authentic Sunna of the Prophet and the ways of the Companions in order for women to find happiness in marriage."<sup>72</sup>

Abduh's goodwill and eloquence notwithstanding, his approach here runs the risk of ignoring the extent to which issues of culture can affect a rule's reception and efficacy no less than the actual substance of the rule itself. Even if a man harbors the most intense love and compassion for his wife, this alone serves as no guarantee that the latter will actually *feel* loved and cherished. Rather, this will depend on how adept he is at translating these sentiments into actions that effectively convey them to his wife. But this is far more a matter of cultural literacy than it is of knowledge of or commitment to the religious law per se; after all, a "good" Muslim can be a "bad" kisser (or dresser or conversationalist). As such, doubling down on scriptural exhortations to love and compassion (especially given that in this case these already exist) would seem to be of little effect. Rather, *cultural* adjustments, including enhanced cultural literacy, would appear to constitute the bulk of the remedy; for culture fundamentally informs the manner in which the law, including its religious values, virtues, and overall vision, are concretized and instantiated in real time and space. In the case at hand, for example, non-*shar'ī* culturally informed charm and winsomeness can clearly be seen as serving the *shar'ī* interest of marital harmony.



Yet cultural production per se is not a *shar'ī* endeavor. While the law may determine the general parameters in which culture must operate, even within the domain of the legally permissible (*ḥalāl*), scripture-based rulings (*aḥkām*/sg., *ḥukm*) cannot tell us what actually is pretty, fun, chic, romantic, and so on. Culture-production is simply not the province of the jurists. On the contrary, it is the domain of the Islamic secular and is undertaken by “the people.” While *ijtihād* determines the law’s substance, culture contributes directly to what Peter Berger refers to (in another context) as the law’s “plausibility structure.”<sup>73</sup> Thus cultural producers, and not jurists, will play a critical role in priming social conditions and spreading cultural literacy to the end of promoting greater realization of the law’s broader aims and objectives and, in so doing, engendering broader voluntary compliance.

In this sense, both the generality of Muslims and jurists can be seen as bearing responsibility for the overall state of the socio-cultural-*cum*-legal order *and* to be engaged (constructively or not) in religious activity.<sup>74</sup> Yet, the tendency to “over-*sharī*’atize” and ignore the Islamic secular summarily blocks this insight from view. And with this, we effectively arrive at the third contemporary Muslim response to the secular: Sharia and the religious establishment are burdened with the complete and sole responsibility for any dissonance existing between the religious law and the “ideals” of the religion, not to mention the “legitimate aspirations of the people.”

I do not mean to imply by this that the Islamic secular is reducible to culture-production. But the significance of culture in this context, like that of architecture, childhood psychology, and actuarial or military science in other (aforementioned) contexts, does suggest, *pace* those who would look exclusively to “ethics” as the antidote to over-*sharī*’atization, that the Islamic secular is not synonymous with ethics.<sup>75</sup> In fact, ethics is often irrelevant to the Islamic secular because the values or interests at stake are often neither *moral* nor *ethical* in nature. Constructs such as chic, fun, profit maximization, or even efficiency are not, strictly speaking, moral or ethical. Even if we assume that efficiency, for example, actually *is* ethical in that it is the opposite of wasteful, determining what actually *is* efficient in concrete terms could not be achieved on the basis of purely ethical considerations. Rather, this would require, again, the same sorts of secular instruments cited above, such as reason, actuarial science, cultural imagination, or plain old experience.

The often marginal relevance of ethics is even more glaring in the area of cultural production. To take one concrete example, the Nation of Islam, despite its theological irregularities, was able to craft salutary approaches to the cul-

tural, existential, and socio-psychological challenges confronting its followers. This enabled the group to produce an “Islamic” cultural identity that actually resonated in an American context, while relying upon no material artifacts from the Muslim world (e.g., *thawbs* or *ṭaqīyas*). Clearly, the great bulk of these innovations defied the categories “ethical”/“unethical.” And yet their approach was far more successful than any other to date at producing an indigenized cultural expression of “Islam” in America through which they were able to secure a more empowered sense of self and an independent moral identity, both clearly Islamic, *shar‘ī* interests. Had Sunnism followed suit, these cultural semiotics might have greatly complicated the efforts by Islamophobes today to cast Muslims in America as fifth-column aliens.

### **The Islamic Secular and *Siyāsah Shar‘īyah***

To many, much of the foregoing may sound like a restatement of the concept of state-owned discretion (*siyāsah shar‘īyah*). To my mind, however, *siyāsah shar‘īyah*, especially in its modern, popular form, is not a fully adequate approach to or substitute for the Islamic secular. According to this approach to *siyāsah shar‘īyah*,<sup>76</sup> rulings and policies, particularly discretionary rules and policies that issue from the state, do not have to be based directly on scripture; they merely have to show themselves to be in accord with it.<sup>77</sup> The problem with this criterion, however, is that it ultimately restricts any assessment to the simple question of “permissibility” (*jawāz, ibāḥah*), leaving aside the qualitative question of what is actually best or most suitable. On this criterion, a highway speed limit of 30 mph or a legal driving age of thirty-nine could theoretically pass muster. Similarly, leaders or officials could hand down disastrous administrative or economic policies, and all of this might be unassailable from a modern *siyāsah shar‘īyah* perspective. To my mind, by contrast, successful engagement of the Islamic secular must include not only an adequate area of discretion and non-*shar‘ī* rational deliberation, but also the legitimate right of communities to press for decisions and policies that are qualitatively and functionally sound.

As an alternative to the modern *siyāsah shar‘īyah* approach, I would revert to an insight afforded by Shihab al-Din al-Qarāfī. As part of his effort to distinguish the *shar‘ī* from the non-*shar‘ī*, he insisted that the only binding and unassailable instrument in Islam is the legal ruling (*ḥukm*). The *ḥukm*, however, is actually of two types: (1) juristic (*shar‘ī*), whose authority resides in the fact that it reclines upon scriptural proof (and in the case of judges, courtroom evidence as well); and (2) discretionary, whose authority resides in the ruler’s

(read: state's) authority to pursue the community's preponderant interests. While al-Qarafi was certainly not a populist (and even more certainly not a democrat), he invests significant authority in "the community" (*al-umma*). He insists that a ruler's decree acquires binding status not merely by the fact that he issues it, but by the fact that it actually *serves* the public interest.<sup>78</sup> This, in turn, empowers the community to question or even reject those decrees that it deems inconsistent with what is best for the public good.<sup>79</sup>

Beyond the *ḥukm*, al-Qarafi recognized a genre of "official decrees," which he placed under the designation "discretionary action" (*taṣarruf*). The difference between a *taṣarruf* and a *ḥukm* is precisely that the latter is assumed to be binding and unassailable, whereas the former is provisionally binding but *not* unassailable. In the case of bankruptcy, for example, although a judge can sell a debtor's property for a certain amount, this sale is not considered to be a *ḥukm* but rather a *taṣarruf*. While it may be *assumed*, in other words, to be valid and binding in terms of settling the dispute at hand, it might also be legitimately challenged and overturned, in contradistinction to a *ḥukm*. That is to say, the debtor may legitimately protest that his goods were sold at too low a price. And upon receiving such a complaint, a subsequent judge (or other official) could legitimately reverse this sale and demand a fairer price.

The Islamic secular, being non-*sharʿī*, would be subject to a discretionary *ḥukm* only when the latter clearly and uncontrovertibly served the community's interest, what al-Qarafi termed *al-maṣlahah al-rājiḥah aw al-khāliṣah*. But inasmuch as what is actually and concretely safe, efficient, most profitable, culturally edifying, and the like are not fixed but indeterminate, it could rarely be claimed that any particular state-sponsored ruling or policy in the area of the Islamic secular was in and of itself unassailable or beyond review. The Islamic secular, in other words, is not, generally speaking, the realm of the *ḥukm* but rather the realm of the *taṣarruf*, which may be legitimately challenged and reversed. This applies to both the private (e.g., bankruptcy cases) as well as the public domain (e.g., public policy).

Regarding the latter, the right to petition for redress would accrue to the community at large, and *its* cumulative wisdom, experience, insight, and expertise could legitimately function as a check. In other words, if a state decree in the realm of the Islamic secular fails to stir the community to significant protest, such a decision may be assumed to be valid and binding. But if it fails to meet community standards, then the community may legitimately seek redress without being accused of engaging in an improper display of contempt for legitimate authority. Of course, the precise procedural mecha-

nisms through which all of this is negotiated and held in balance is a technical question beyond the scope of the present discussion. Two points, however, might be noted.

First, whatever mechanisms are arrived at for negotiating the use of state power in the non-*shar'ī* realm of the Islamic secular will emerge largely out of deliberations that are themselves grounded in non-*shar'ī* disciplines, apparatuses, experiences, and insights. That is to say, much of what goes into these deliberations will transcend questions of permissible and impermissible and hinge upon empirical considerations (e.g., efficiency, orderliness, justice, privacy, and the like) and how these can be most effectively instantiated in concrete terms, as opposed to being merely acknowledged theoretically as valid interests. In this capacity, these deliberations may *not* be dominated by jurists but rather by non-clerical experts from other fields and disciplines. Indeed, care must be taken to ensure that the jurists' *shar'ī* authority is not mistaken for a universal authority that empowers them, *qua* jurists, to speak *authoritatively* in the non-*shar'ī* realm of the Islamic secular.

Second, the distinction between *shar'ī* and non-*shar'ī* (i.e., between *ḥukm* and *taṣarruf*) comes with at least three theoretical advantages that are not, to my recollection, explicitly highlighted in the modern *siyāsah shar'īyah* approach. First, by promoting a broader recognition of the legitimacy of the Islamic secular, government officials are insulated from inflated charges of violating Islam every time they propose or implement rules or policies that are not based on strictly *shar'ī* justifications. Second, it empowers the community to impose a modicum of accountability on its leaders through the legitimate right to police the quality of their discretionary decisions. Finally, it domesticates power in the realm of the Islamic secular by denying the decisions and policies made therein the automatic, unassailable authority of a *ḥukm* backed by Sharia.

## Concluding Thoughts

My attempts at carefulness and circumspection notwithstanding, these articulations may still inspire in many the suspicion that the concept of the “Islamic secular” can only put Muslims on a slippery slope toward secularization in the modern, Western sense of the word. Bit by bit, and under the pressure of the West’s dominant cultural and intellectual hegemony, they may sense that such a construct will merely prompt Muslims to interpret away as much of the Sharia’s authority as they can in order to justify expanding the realm in which such secular instruments as reason, science, public

opinion, custom, experience, cultural imagination, and the like can be legitimately invoked.

This is a serious challenge. Yet, it may go some way in vindicating my project to call to mind that a major effect of neglecting the Islamic secular is to burden Sharia with the responsibility for speaking effectively to all and sundry matters. When this fails, as it surely must (i.e., how can Sharia or the jurists know what will make one's spouse feel cherished or maximize personal or communal wealth), the frustration that sets in can only strengthen the allure of secularism in the modern, Western sense. In short, its undeniable liabilities notwithstanding, we are simply faced with an inescapable choice: either the Islamic secular or Western secularism.

Still, it would be remiss to ignore Montesquieu's ever-so-cunning words: "A more certain way to attack religion is by favor, by the comforts of life, by the hope of fortune, by what makes one forget it; not by what makes one indignant, but by what leads one to indifference when other passions act on our souls and when those that religion inspires are silent."<sup>80</sup> The greater the area of the *non-shar'ī* Islamic secular, in other words, the greater will be the area in which Sharia waxes mute (or may be called upon by its opponents to do so), quietly leading to more and more indifference toward what is perceived as an increasingly silent religion. And, of course, the greatest threat to religion is almost never persecution but the apathy born of its own irrelevance.

There are two considerations, however, that I hope would be taken seriously in the face of this challenge. First, the advocates of *ijtihād* are relentless in pointing to the deleterious effects of *taqlīd* (fixed readings<sup>81</sup>). Of course, *taqlīd* is assumed to imply a reading not of the sources, but of the precedents upheld by the schools of law (*madhhabs*), which are themselves assumed to have executed a proper reading of the sources. This is what confers such an immovable authority upon these fixed readings. While the bulk of attention, however, is directed toward "legal *taqlīd*," the effects and logic of this phenomenon extend to the socio-cultural, economic, and political realms as well. Just as modern Muslims labor under the constraints of pre-modern legal and para-legal deductions that have been infused with pre-modern facts, sensibilities, and presuppositions, they labor perhaps even more so under the authority and influence of pre-modern socio-cultural and political norms, whose presumptive status is underwritten by a vague association with scriptural texts that are assumed (or occasionally claimed) to be the basis of their authority. In this capacity, the effects of "secular *taqlīd*" are often far more difficult to overcome than are those of legal *taqlīd*, because the former is less recognizable and thus less susceptible to critical analysis.<sup>82</sup>

Meanwhile, paying more careful attention to the Islamic secular could alert us to the fact that much of what is upheld as “Islamic” is not a function of textual interpretation or even reliance upon *madhhab* precedent, but of the exercise by pre-modern jurists (and others) of their own reason, imagination, cultural literacy, and other faculties en route to discretionary and other non-*shar‘ī* conclusions deemed appropriate to their own context. By recognizing this, contemporary Muslims could free themselves from the would-be authority of any number of bygone conventions, vogues, preferences, insights, biases, assumptions, and the like. For inasmuch as these did not concretely recline upon direct scriptural or *shar‘ī* authority, the most they could amount to would be practical discretionary choices that even pre-modern jurists would deem open to ongoing critique and revision.

By recognizing and engaging the Islamic secular, then, we would free the rational, cultural and imaginative powers of contemporary Muslims – from all walks and disciplines – from the undue constraints of an over-inclusive understanding of Islamic law and history. And in so doing, we may actually render them *more*, rather than less, likely to avoid secularization both by sparing Sharia the responsibility for inadequately addressing issues it was never calibrated to address and by opening the way for present-day Muslims, including, or perhaps especially, those outside the clerical class, to deploy their talents to the end of (re)acquiring the kind of cultural and intellectual authority via which Muslims can (re)construct an appropriate and functionally effective plausibility structure for Islam in the modern world.

Second, and finally, as I have repeated several times over the course of this essay, the *shar‘ī* and the religious are *not* synonymous. Whereas the *shar‘ī* necessarily implies the religious, the religious does not necessarily entail the *shar‘ī*. Thus, even if our engagements with the Islamic secular lead us to greater comfort, hope, and fortune above and beyond the strictly *shar‘ī*, this need not imply, *pace* Montesquieu, the irrelevance of Islam as religion. After all, between one supremely reasonable economic policy, drug-treatment program, or speed limit and another, something other than reason will have to guide us to a final decision.

Islam, in this context (i.e., as religion and the fount of trans-rational direction, insight, virtue, and guidance), remains thus inextricably relevant to the Islamic secular realm. The Islamic secular, in other words, is entirely and permanently deaf to Grotius’s suggestion to proceed “as if God did not exist.” This is the most important substantive difference between it and the Western secular. And this binds the Muslim to perpetual, conscientious engagement with Islam as religion, even in the most secular of endeavors. In the end, there-

fore, as I have noted elsewhere, it may be far less the notion that Sharia is limited in scope that opens the path to Western-style secularization than it is the sense or belief among Muslims that, by relying on a purely intellectual engagement of “Islam” or Sharia or the Islamic secular, they can so perfectly master the art of living that they have no need to seek supra-worldly guidance directly from God.<sup>83</sup>

## Endnotes

1. Of course, “religion” also generates its share of definitional ambiguity. See, for example, R. T. McCutcheon, “The Category ‘Religion’ in Recent Publications: A Critical Survey,” *Numen* 42, no. 3 (October 1995): 284-309; J. Z. Smith, “Religion, Religions, Religious,” *Critical Terms for Religious Studies* (Chicago: University of Chicago Press 1998), 269-84.
2. According to T. N. Madan, “the word ‘secularization’ was first used in 1648, at the end of the Thirty Years’ War in Europe, to refer to the transfer of church properties to the exclusive control of the princes.” See his “Secularism in Its Place,” *Secularism and Its Critics*, ed. R. Bhargava, 6th ed. (New Delhi: Oxford University Press, 2007), 297. According to Madan, the Englishman George Jacob Holyoake coined this term in 1851. See Madan, “Secularism,” 298. According to Ashis Nandy, Holyoake coined it in 1850, a time when it was still “accommodative of religion.” See his “The Politics of Secularism and the Recovery of Religious Tolerance,” in *Secularism and Its Critics*, 327. The Thirty Years’ War was a devastating religious conflict, ostensibly between Protestants and Catholics, that claimed several million lives and ended with the Peace of Westphalia. I note for the record the dissenting view of W. Cavanaugh regarding the significance of Europe’s wars of religion. See his *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (New York: Oxford University Press, 2009), 123-80.
3. J. Casanova, “Secularization Revisited: A Reply to Talal Asad,” *Powers of the Modern Secular: Talal Asad and His Interlocutors*, ed. D. Scott and C. Hirschkind (Stanford: Stanford University Press, 2006), 19-20. Casanova mentions, incidentally, Confucianism and Taoism as examples in this regard.
4. Cited in C. Taylor, “Modes of Secularism,” *Secularism and Its Critics*, 34.
5. See note 2.
6. J. Israel, *Enlightenment Contested: Philosophy, Modernity, and the Emancipation of Man 1670-1752* (New York: Oxford University Press, 2006), 64.
7. Israel, *Enlightenment Contested*, 65.
8. N. Stolzenberg, “The Profanity of the Law,” *Law and the Sacred*, ed. A. Sarat, L. Douglas, and M. M. Umphrey (Stanford: Stanford University Press, 2007), 34.
9. S. Wolin, *Politics and Vision: Politics and Change in Western Political Thought* (Princeton: Princeton University Press, 2006), 147.

10. See, for example, M. Zurqā, *Fatāwā Muṣṭafā al-Zarqā* (Damascus: Dar al-Qalam, 1420/1999), 405.
11. For example, while Ibn Rushd cites unanimous consensus on the ban on Muslims inheriting from non-Muslims, the Hanbalis Ibn Taymiyyah and Ibn Qayyim al-Jawziyyah incline toward allowing converts to inherit from their non-Muslim relatives, partly in light of their recognition that this ban was functioning as a bar to Islam. See Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Cairo: Dar al-Fikr, n.d.), 2:264; Ibn Qayyim al-Jawziyyah, *Aḥkām Ahl al-Dhimmah*, 3 vols., ed. A. al-Bakri and A. al-‘Aruri (Dammam: al-Ramadi li al-Nashr, 1418/1998), 2:853-72, esp. 2:253-58.
12. One might make a case for the *maẓālim* courts as a formally recognized, secular forum. But they were more an alternative régime of enforcement, not an alternative régime of law per se. This is certainly the impression one gets from such authoritative descriptions as that of al-Mawardi. See Abu al-Hasan Ali b. Muhammad al-Mawardi, *Al-Aḥkām al-Sulṭānīyah wa al-Wilāyāt al-Dīnīyah*, ed. A. al-Baghdadi (Kuwait: Maktabat Dar Ibn Qutaybah, 1409/1989), 102-26. On page 15, for example, he explicitly states: “*Maẓālim* jurisdiction does not recognize rulings disallowed by the religious law” (*naẓar al-maẓālim lā yubīḥ min al-aḥkām mā ḥāzarahu al-shar’*).
13. For example, the modern jurist Muhammad Abu Zahrah insists that “there is unanimous consensus to the effect that the *ḥākim* in Islam is God the Exalted and that there is no religious law (*lā shar’*) except from God.” See his *Uṣūl al-Fiqh* (Cairo: Dar al-Fikr al-Arabi, n.d.), 63.
14. T. Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), 21-66.
15. J. Casanova, “The Secular and Secularisms,” *Social Research* 17, no. 4 (2009): 1052.
16. J. Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994), 15; see also the discussion at 20-25.
17. C. Taylor, *A Secular Age* (Cambridge, MA: Belknap Press, 2007), 594.
18. *Ibid.*, 2-3.
19. See O. Roy, *Secularism Confronts Islam*, trans. G. Holoch (New York: Columbia University Press, 2007), xii-xiii, 7-8, 59 and *passim*.
20. S. L. Carter, *God’s Name in Vain: The Wrongs and Rights of Religion in Politics* (New York: Basic Books, 2000), 4.
21. See, for example, A. March, “Are Secularism and Neutrality Attractive to Religious Minorities: Islamic Discussions of Western Secularism in the ‘Jurisprudence of Muslim Minorities’ (*Fiqh al-Aqallīyāt*) Discourse,” *Cardoza Law Review* 30, no. 6 (2009): 2821-54; A. An-Na‘im, *Islam and the Secular State: Negotiating the Future of Shari‘a* (Cambridge: Harvard University Press, 2008), 1.
22. See H. A. Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: University of Chicago Press, 2012), 24.



23. Asad, *Formations*, 36-37, nt. 41.
24. *Ibid.*, 31, nt. 24.
25. *Ibid.*, 30.
26. See Abu Bakr Ahmad b. al-Husayn b. Ali b. Abd Allah b. Musa al-Bayhaqi, *Kitāb al-Asmā' wa al-Sifāt* (Beirut: Dar al-Kutub al-'Ilmiyyah, n.d.), 35.
27. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 1.
28. W. B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 51.
29. J. Locke, *Two Treatises of Government*, ed. P. Laslett (New York: The New American Library, 1965), 448.
30. See N. J. Coulson, "The State and the Individual in Islamic Law," *International and Comparative Law Quarterly* 6 (January 1957): 49.
31. After explaining how the modern state is ubiquitous in terms of its jurisdiction, Hallaq writes: "Whereas the modern state rules over and regulates its religious institutions, rendering them subservient to its legal will, the Sharī'a rules over and regulates, directly or through delegation, any and all secular institutions. If these institutions are secular or deal with the secular, they do so under the supervising and overarching moral will that is Sharī'a. Therefore, any political form or political (or social or economic) institution is ultimately subordinate to the Sharī'a, including the executive and judicial powers." See Hallaq, *The Impossible State*, 51. Given the entrenched incumbency of such a view, based in part on the straightforwardness of its logic, it may be difficult at times for readers to remain focused on my actual point. Suffice it to say at this juncture that there is a difference between Islam and Sharia. And where Sharia's jurisdiction ends it simply cannot concretely regulate a matter, even if the matter itself remains within the purview of Islam's values and virtues. In short, even if Islam may preside over all matters, Sharia does not.
32. O. Anjum wrestles head-on with the problem of the community being excluded from negotiating the quotidian order in his *Politics, Law, and Community in Islamic Thought: The Taymiyan Moment* (Cambridge: Cambridge University Press, 2012).
33. In his classic work on the Zahiris, I. Goldziher discerned that they were not about literalism per se, but rather constituted an attempt to combat *ra'y* (i.e., informed opinion), which could not recline directly on the sources for its content. See I. Goldziher, *The Zahiris: Their Doctrine and Their History*, trans. W. Behn (Leiden: E.J. Brill, 1971.) Meanwhile, we might note that Ibn Hazm (d. 1064), among the greatest representatives of Zahirism, explicitly recognizes the legitimacy of figurative or allegorical renderings of certain passages of scripture. See, for example, his *Al-Ihkām fī Uṣūl al-Ahkām*, 8 vols., ed. A. M. Shakir (Beirut: Dar al-Afaq al-Jadidah, 1308/1993), 2:28
34. A. K. Reinhart, *Before Revelation: The Boundaries of Muslim Moral Thought* (New York: State University of New York Press, 1995), 16.

35. See Abu Ishaq al-Shirazi, *Ṭabaqāt al-Fuqahā'*, ed. I. Abbas (Beirut: Dar al-Ra'id al-'Arabī, 1970).
36. On the general debate around this point, see, for example, Reinhart, *Boundaries*, 128-32.
37. See Ibn Rushd, *Talkhīṣ al-Mustaṣfā*, ed. J. Alaoui (Beirut: Dar al-Gharb al-Islami, 1994), 47-48.
38. Part of the point I shall argue is that even where Sharia requires action or non-action, there may remain other evaluative bases upon which to assess how this act or non-act is most appropriately instantiated in real time and space. Here we may think of Sharia's limits in terms, perhaps, of depth as opposed to scope. See below, 14-18.
39. The division between "formative" and "post-formative" is contested, both in terms of when it occurred and of its meaning and implications. Recently, Intisar Rabb has offered "founding period" as an alternative, pointing to three distinct phases: (1) the founding period (the seventh to ninth centuries CE); (2) the period of textualization (the tenth and eleventh centuries CE), including the purported "closing of the gates of *ijtihād*"; and (3) the period of synthesizing textual and interpretive authority. See I. Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge: Cambridge University Press, 2015), 8-9.
40. This goes back as far as my doctoral dissertation, "In Defense of Two-Tiered Orthodoxy: A Study of Shihāb al-Dīn al-Qarāfī's *Kitāb al-Iḥkām fī Tamyiz al-Fatāwā 'an al-Aḥkām wa Taṣarrufāt al-Qāḍī wa al-Imām*" (PhD diss., University of Pennsylvania, 1991).
41. See, for example, Ibn Hishām, *Al-Sīrah al-Nabawīyah*, ed. M. al-Saqa, I. al-Abyari, and A. Shalabi (Damascus: Dar Ibn Kathir, 1426/2005), 523.
42. See Muslim b. Hajjaj, *Ṣaḥīḥ Muslim*, 5 vols. (Beirut: Dar Ibn Hazm, 1416/1995), 4:1464.
43. Ibid.
44. See, for example, Jamal al-Din b. Umar b. al-Hajib, *Jāmi' al-Ummahāt*, ed. A. al-Akhdari (Damascus: al-Yamamah li al-Tiba'ah wa al-Nashr wa al-Tawzi', 1421/2000), 331ff.
45. See, for example, *Al-Risālah*, ed. A. M. Shakir (Cairo: al-Maktabah al-'Ilmiyyah, 1358/1939), 487-503 on *ijtihād*.
46. A. El-Shamsy, "Rethinking *Taqlīd* in the Early Shāfi'i School," *Journal of the American Oriental Society* 128, no. 1 (2008): 14-15. Emphasis mine.
47. See Abu Ja'far Muhammad b. Jarir al-Tabari, *Tārīkh al-Ṭabarī*, 6 vols. (Beirut: Dar al-Kutub al-'Ilmiyyah, 1433/2012), 5:190.
48. Al-Ghazali, *Al-Munqidh min al-Ḍalāl wa al-Muwaṣṣil ilā Dhī al-'Izzah wa al-Jalāl*, ed. J. Saliba and K. 'Ayyad (Beirut: Dar al-Andalus, n.d.), 102. Of course, al-Ghazali did not always speak with complete consistency in this regard. In *Al-Mustaṣfā* 1:3, for example, he places among the three genres of knowledge, "the purely rational (*'aqlī maḥḍ*) which the religious law neither encourages nor ap-

- plauds, such as statistics, geometry, astronomy and the like, all of which amount either to false suppositions . . . or valid knowledge that is of no benefit.” His Maliki commentator, Ibn Rashiq (d. 632/1235) criticizes this view, insisting that these sciences cannot be categorically dismissed as being of no benefit. See al-Husayn b. Rashiq, *Lubāb al-Maḥṣūl fī ‘Ilm al-Uṣūl*, 2 vols., ed. M. Jabi (Dubai: Dar al-Buhuth li al-Dirasat al-Islamiyyah wa l-hya’ al-Turath, 1422/2001), 1:189. Of course, both of them are speaking in a specific historical context regarding the degree to which non-Muslim science in general may or may not touch upon issues of relevance or potential harm to religion.
49. See my *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: E.J. Brill, 1996), 113-41.
  50. Al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtisār al-Maḥṣūl fī al-Uṣūl*, ed. A.F. al-Mazidi (Beirut: Dar al-Kutub al-‘Ilmiyyah, 2007), 109.
  51. See, for example, his *Dar ‘Ta’āruḍ al-‘Aql wa al-Naql*, 11 vols., ed. M. R. Salim (Riyadh: Matba‘at al-Imam Muhammad b. Sa‘ud, 1399/1979), 4:146.
  52. See, for example, Jalal al-Din al-Suyuti, *Juḥd al-Qarīḥah fī Tajrīd al-Naṣīḥah* (Beirut: al-Maktabah al-‘Asriyyah, 1430/2009), 91-92 (an abridgment of Ibn Taymiya’s *Naṣīḥah Ahl al-Imān fī al-Radd ‘alā Manṭiq al-Yūnān*). This is not to say that scripture would necessarily have nothing to say about the religious status of a particular rational claim. The point is simply that the claim itself would have to be rationally examined to determine its actual substance before a *shar‘ī* ruling could be reached. On another note, I obviously cannot concur with the view of my former colleague John Walbridge when he writes: “The great fourteenth-century fundamentalist reformer Ibn Taymīya hated reason wherever it expressed itself in Islamic intellectual life.” See his *God and Logic in Islam: The Caliphate of Reason* (Cambridge: Cambridge University Press, 2011), 5.
  53. See *Al-Ibhāj fī Sharḥ al-Minhāj*, 3 vols. (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1424/ 2004), 1:30.
  54. *Radd al-Muḥtār ‘alā al-Durr al-Mukhtār Sharḥ Tanwīr al-Abṣār*, 12 vols., ed. A. Abd al-Mawjud and A. Muawwad (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1415/ 1994), 1:118.
  55. The late Muhammad al-Khidr Husayn wrote: “Whoever looks carefully will see the difference clearly between what the religion provides guidance on and what it leaves to the tried and tested experience of society.” See his *Dirāsāt fī al-Sharī‘ah al-Islāmīyah* (UAE: Maktabat Dar al-Farabi, 1326/ 2005), 13.
  56. Casanova, *Public Religions*, 21-25.
  57. Asad, *Formations*, 237.
  58. C. Taylor, “Secular Imperative,” 32-33.
  59. Intisar Rabb summarizes the Mu‘tazili position as follows: “The idea was that there is a moral system woven into the fabric of this world that humans could rationally discern, but that God made them free to follow or disregard the dictates of that morality and promised to judge them on that basis... [W]hatever the

- human intellect perceives as morally good or morally wrong is indeed so before God... In other words, morality is objective, meaning that perceptions of moral value should not differ from God to human beings.” See her *Doubt in Islamic Law*, 273. I would argue that this Mu‘tazili realism, and not reason’s evaluative capacity per se, was the real, primary target of the critique by the Sunnis, who favored a more voluntarist approach that accommodated God’s right and ability to act independently. Of course, just how voluntarist God is would become a bone of contention within Sunnism itself. For example, while characterizing the Mu‘tazili position as “weak” (*da‘if*), Ibn Taymīyah rejects what he sees as Ash‘arism’s completely “empty cosmology.” He thus complains that, on their understanding, where the Qur’an speaks of the Prophet “commanding good and forbidding evil,” this does not refer to any substantive good or evil in existence prior to the command itself; rather, this phrase merely means that “he commands them to do what he commands them to do and forbids them from doing what he forbids them from doing.” See his *Majmū‘ al-Fatāwā*, 37 vols., ed. Abd al-Rahman b. Muhammad b. Qasim (Riyadh: Maktabat al-Ma‘arif, n.d.), 8:433.
60. *Kitāb al-Irshād ilā Qawā’i‘ al-Adillah fī Uṣūl al-I‘tiqād*, ed. Z. Umayrat (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1416/1995), 110.
  61. *Al-Iqtisād fī al-I‘tiqād* (Cairo: M. al-Babi al-Halabi and Sons, n.d.), 80-82.
  62. *Kitāb al-Arba‘īn fī Uṣūl al-Dīn*, ed. M. A. Mahmud (Beirut: Dar al-Kutub al-‘Ilmiyyah, 2009), 244.
  63. On the Maturidis, see, for example, Kamal al-Din Muhammad b. Muhammad b. Abi Sharif al-Maqdisi, *Kitāb al-Musāmarah fī Sharḥ al-Musāyarah*, 2 vols. (Cairo: al-Maktabah al-Azhariyyah li al-Turath, 2006), 2:38; Abd al-Rahim b. Ali b. al-Mu‘ayyad Shaykh Zadeh, *Naẓm al-Farā‘id wa Jam‘ al-Fawā‘id fī al-Masā‘il al-Mukhtalaf fihā bayna al-Sādah al-Ash‘ariyyah wa al-Sādah al-Māturīdīyah*, Arabic MS. # 875, *‘Ilm al-Kalām*, 14 vols. (Dar al-Kutub al-Misriyyah).
  64. See his *Amrād al-Qulūb wa Shifā‘uhā* (Cairo: al-Matba‘ah al-Salafiyyah wa Maktabatuha, 1386/1966), 12-13.
  65. *Majmū‘ al-Fatāwā*, 8:434-35.
  66. *‘Aql*, as employed by pre-modern Muslim jurists and theologians, included affective and other elements that the Enlightenment explicitly sought to eliminate from reason as a construct. When Mu‘tazilis (and others) speak of the good of saving a drowning man or the evil of falsely accusing an innocent man as being known by reason (*‘aql*), this is clearly more than the dictates of reason as an autonomous faculty unbounded and uninformed by culture, sensibility, or convention. By contrast, the latter is precisely what Enlightenment thinkers such as Kant proposed reason to be, namely, “an autonomous faculty in the sense that it was self-governing, establishing and following its own rules, independent of political, cultural or subconscious interests.” On this point, see F. C. Beiser, *The Fate of Reason: German Philosophy from Kant to Fichte* (Cambridge, MA: Harvard University Press, 1987), 8.

67. Of course, it might be objected that this is only according to my restricted definition of *ijtihād*. But any attempt to return to the formative period's approach, according to which the boundary between the interpretive and the empirical was blurred or absent, must be openly acknowledged as such. In addition, it should openly take account of the potential abuses of the religious law that such an approach might engender in a modern context. Second, any advocacy or recognition of the distinction between scholars of the texts ('*ulamā' al-nuṣūṣ*) and scholars of context ('*ulamā' al-wāqi'*) should be accompanied by an explicit acknowledgment that what is desired in many instances is not a religious ruling (*ḥukm shar'ī*), but some other evaluative judgment. Otherwise, we remain firmly within the *shar'ī* realm and effectively the domain of the scholars of the text.
68. Even Qasim Amin, for example, would state that his issue was not with hijab itself but with a specific concretion thereof in Egypt at the time: "Were there a single text in the Sharia requiring *ḥijāb as it is known among some Muslims today*, it would be incumbent upon me to avoid any investigation into the matter, and I would not write a single letter that goes against these texts, no matter how harmful they might appear to be at first blush; for one must submit to divine commands without investigation or debate. But we do not find any texts in the Sharia requiring *ḥijāb as it is typically worn today* ('*alā al-ṭarīqah al-mā' hūdāh*')." See his *Tahrīr al-Mar'ah* in Qasim Amin, *Al-A'māl al-Kāmilah*, ed. M. Imarah (Cairo: Dar al-Shuruq, 1409/ 1989), 352.
69. This might provide some insight into the observation of Tariq Ramadan, a major proponent of *ijtihād*: "[A]fter constantly referring to *ijtihād*, *tajdīd*, and *iṣlāḥ* for over a century, Muslims – whether in Muslim-majority societies or Western communities – still find it difficult to overcome the successive crises they go through and to provide something more than partial answers; and even the answers [they do put forth] remain constantly apologetic or [are] produced by mostly defensive postures." See his *Radical Reform: Islamic Ethics and Liberation* (New York: Oxford University Press, 2009), 30. Oddly, he appears at times perhaps to fall into the trap of inflating the role of *fiqh* to the point that it acquires relevance beyond the strictly legal. And where *fiqh* does reach its limit, "ethics is often pressed as the appropriate alternative. On what I see as an inadequacy of the ethics-approach, see below, 17-18.
70. Muḥammad Abduh, "*Al-Zawāj*," in *Al-A'māl al-Kāmilah li al-Imām Muḥammad 'Abduh*, 5 vols., ed. M. 'Umarah (Cairo: Dar al-Shuruq, 1427/2006), 2:70 (the essay runs from 2:70-75).
71. Asad, *Formations*, 232-34.
72. Abduh, "*Al-Zawāj*," 73. Incidentally, it is not my intention in adducing this example to imply that Abduh's approach overall failed to recognize the Islamic secular.
73. See P. L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Anchor Books, 1967), 110-13. Berger argues, inter alia, that

early modern Protestantism's significant success in stripping the world of any mystical or super-natural elements has sapped religion's ability to sustain its relevance in the modern world, spawning the rise and diffusion of a secular (i.e., non-religious) worldview. My argument is not that this has obtained in the Muslim world (The situation of Muslims in the West is a different matter). My point is simply that the intellectual and cultural "immanent frame" in which religion exists will affect its overall plausibility as a way of life.

74. And here I suspect that the insight of Edward Bernays is gravely relevant, especially given the realities of our contemporary globalized world: "The conscious and intelligent manipulation of the organized habits and opinions of the masses is an important element in democratic society. Those who manipulate this unseen mechanism of society constitute an invisible government which is the true ruling power of our country. We are governed, our minds molded, our tastes formed, our ideas suggested, largely by men we have never heard of." See his *Propaganda* (New York: Ig Publishing, 2005), 37. The book originally appeared in 1928. This might also provide the context within which to appreciate a view more recently expressed by Shaykh Yusuf al-Qaradawi to the effect that rather than violent jihadis or more assiduous commitments to jihad as organized violence, what Islam needs today is, "a massive army of preachers, teachers and competently trained journalists who are able to address today's public in the language of the age and the style of the times, through voice, image, spoken word, physical gesture, books, pamphlets, magazines, newspapers, dialogue, documentaries, drama, motion pictures and everything that ties people to Islam. This peaceful jihad which is an absolute necessity (*al-jihād al-silmī al-ḍarūrī*) we have not undertaken by one thousandth of what is required of us." See his *Fiqh al-Jihād*, 2 vols. (Cairo: Maktabat Wahba, 1430/2009), 1: 402-03. Of course, all of these activities would fall under the Islamic secular, none of them being *sharʿī* endeavors.
75. This is related, I suspect, to the tendency to equate Islam with morality as an absolute first order priority alongside the assumption that no other values (e.g., order, privacy, safety, and charity) can compete with morality. Sharia, in this context, is viewed as course-motor morality with ethics allowing us to fine tune things. Hidden from consideration, meanwhile, is that the ethical still traffics in dos and don'ts and, as such, remains impervious to the world beyond good and evil.
76. I acknowledge that my reference here to a modern approach to *siyāsah sharʿīyah* is oversimplified. The contrast I have in mind, however, might be highlighted by a comparison between classical and modern definitions. In the introduction to Ibn Qayyim al-Jawzīyah's *Al-Ṭuruq al-Ḥukmīyah fī al-Siyāsah al-Sharʿīyah*, M. J. Ghazi cites the definition of *siyāsah* by the pre-modern Hanbalite Ibn ʿAqil (d. 1119) alongside that of the modern Abd al-Wahhab Khallaf. Ibn Aqil: "[Implementing] an action according to which the people will be closer to wholesomeness and farther from corruption even if the Prophet laid down no precedent and no revelation came down in that regard."

- Khallaf: “Arranging the public affairs of the Islamic state in accordance with what secures the realization of interests and averts harm, in ways that do not go beyond the boundaries of Islamic law (*min mā lā yata‘addā ḥudūd al-Sharī‘ah*) and its universal principles (*uṣūluḥā al-kullīyah*), even if this goes against the views of the *mujtahid*-Imāms.” See Ibn Qayyim al-Jawziyyah, *Ṭuruq al-Ḥukmīyah fī al-Siyāsah al-Shar‘īyah*, ed. M. J. Ghazi (Cairo: Matba‘at al-Madani, n.d.), p. ‘A (‘*ayn*). Khallaf also cites these two definitions in his *Al-Siyāsah al-Shar‘īyah*, 15 and 17, apparently without seeing any tension between them. We might note, incidentally, in Ibn Aqil’s definition, the implied recognition of formal limits to Sharia beyond which those discretionary actions for which there are no concrete scriptural indications are appropriately invoked.
77. See, for example, F. Vogel, *Islamic Law and Legal System* (Leiden: E.J. Brill, 2000), 173-74, discussing aspects of this approach in the context of Saudi Arabia.
  78. See, for example, his *Al-Furūq*, 4 vols. (Beirut: ‘Alam al-Kitab, n.d.), 4:39, in which he discusses those discretionary decrees that are to be enforced and those that are not.
  79. See, for example, his *Kitāb al-Iḥkām fī Tamyīz al-Fatāwā ‘an al-Aḥkām wa Taṣarruḥāt al-Qāḍī wa al-Imām*, ed. A. Abu Ghuddah (Aleppo: Maktabat al-Matbu‘at al-Islamiyyah, 1387/1967), 183, in which he points to instances, such as the Imam’s declaring jihad, where the community may ignore the state’s discretionary decree if they deem it lacking in substance or legitimacy.
  80. Cited in J. J. Owen, “Church and State in Stanley Fish’s Antiliberalism,” *American Political Science Review* 93, no. 4 (1999): 922.
  81. Ramadan, *Radical Reform*, 22.
  82. This is not to suggest that every secular conclusion institutionalized by pre-modern Muslims was wrong, illegitimate, or treacherous. It is simply to point out that no society will be able to rely entirely upon law in the strict sense even for its legal institutions. As such, society will have to draw upon any number of extra-scriptural norms and presuppositions. Extra-scriptural, however, does not necessarily mean wrong or illegitimate. Indeed, the Qur’an directs the Prophet and his followers to draw upon any number of pre-Islamic Arabia’s *ma‘rūf* (prevailing notions of good and wholesome). The problem, of course, comes with imputing to such conventions an authority that is greater or longer lasting than what they should properly enjoy.
  83. See, for example, my “Islamic Law, Muslims and American Politics,” *Islamic Law and Society* 22 (2015): 289.

# The Islamic Secular: Comments

*Mohammad Fadel*

Professor Sherman Jackson's essay "The Islamic Secular" challenges the popular conception within the Muslim community that norms are either "Islamic" or "un-Islamic." Insofar as popular Muslim consciousness accords legitimacy only to the "Islamic" and grants only grudging, if any, legitimacy to the "non-Islamic," this intervention is welcome and profoundly needed. But his ambition here goes beyond correcting misconceptions within the community itself: It is also an intervention in debates about the secular, secularization, and religion in western academic discourses. In the brief space allotted to me to respond to this very rich and important essay, I will limit myself to the arguments he directs toward the terms mentioned above and his argument that the "Islamic" secular presents a different phenomenon.

Jackson argues that the western intellectual tradition's understanding of the relationship of the secular to religion is based upon the notion that it is the function of the secular to discipline religion, with the ultimate goal of making it consistent with sociability and rationality. In contrast to the western secular, he posits that the Islamic secular is internal to Islam, insofar as the Sharia itself places jurisdictional boundaries on what religion can rightfully claim, thereby creating a legitimate space for non-religious (i.e., secular) reason. Broadly speaking, although this secular domain exists within an abstractly Islamic normative scheme, its contents are not explicitly *determined* by revelation. This gives rise to an Islamic secular in which secular reason predominates, but never proceeds "as if God did not exist."

Jackson provides many details of his interesting argument that deserve a more lengthy engagement than is possible here. I wish to focus my comments, therefore, on what I consider to be the most academically provocative part of the thesis: Given that the idea of the secular is internal to the Sharia itself, the

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crucial role that western intellectuals have assigned to it, namely, the necessary disciplinarian of religion – whatever its merits in European history might have been – is superfluous with respect to Islam. The difficulty with this argument, in my opinion, is that it equates the Sharia to Sunni conceptions of the Sharia. It is not simply that all of the particular examples of historical cases that he cites come from the Sunni tradition, or that the techniques of legal reasoning<sup>1</sup> so critical in generating the Islamic secular emerge from Sunni jurisprudence, it is the failure to consider as fully Islamic the alternative conceptions of Islam against which Sunnism defined itself.

Whether or not one accepts Sunni historical claims that their positions simply “are” a continuation of the authentic teachings of the Prophet and his Companions, it is historically incontestable that not all Muslims accepted as normative all of the theologically controversial positions that came to be associated with Sunnis. Among these positions are deferring the status of the major sinner (*al-fāsiq*) to God; rejecting the requirement that legitimate rule requires the rule of the most virtuous (*al-afdāl*); rejecting the doctrine of charismatic authority (*al-naṣṣ*), whether in politics or religion in favor of community choice (*ikhtiyār*) and the objective nature of knowledge (*‘ilm*)<sup>2</sup>; and rejecting violent change as a legitimate means for correcting governmental misconduct.

Insofar as all of these questions were not conclusively settled by revelation, it is implausible to believe that the particularly Sunni answers can be divorced from any consideration of the disastrous political consequences these contrary doctrines had on the peace of the early community. Indeed, elevating the caliphate from a question of law (where differences would be tolerated) to one of theological doctrine (where different positions are not) – a positioning that theologians such as Sa’d al-Din al-Taftazani admitted was awkward – seems to me precisely to be a use of secular reason to discipline otherwise socially dangerous conceptions of religion, whether Khariji puritanism or Shi‘i messianism. Moreover, the way in which Sunni political theology excludes both of these alternative conceptions from the orbit of legitimate theological doctrine strikes me as not generically different from the role that the secular plays in disciplining religion that Jackson identifies as a marker of the western, but not the Islamic, secular.

This is significant because if I am right, the particular reflective equilibrium between the secular and the revealed that Jackson discusses in his otherwise persuasive essay depends upon sustaining a particular set of theological doctrines that are all closely connected to maintaining social peace and the state’s role in underwriting it. One could argue that the religious-

inspired violence plaguing many areas of the Muslim world is a result not only of confusion among Islam, the illegitimate secular, and the legitimate *Islamic* secular, but also of the political failure of post-colonial states to sustain the kind of politics necessary to prevent either puritanical or messianic interpretations of religion.

Jackson's failure to expressly invoke the state's role in sustaining the Islamic secular is particularly odd, given that he cites Qarafi's theory of the Imam's *taṣarruf* as the paradigmatic example of the Islamic secular. The Imam's authority to exercise this power to generate the provisionally binding norms that govern the public domain of the Islamic secular, however, is completely contingent upon the existence of a legitimate public order. While *taṣarruf* vindicates the legitimacy of the idea of the Islamic secular, it also undermines the claim that Islam, as a religion, constructs its secular by virtue of purely internal, pre-secular, as it were, restraints. Rather, it seems to me, the enduring teaching of Sunnism in this regard is that the existence of a proper polity is a condition precedent for preventing the distortion of true religion.

Whether one wishes to speak of true religion preceding proper politics or of proper politics preceding true religion, what is indisputable is that, from the Sunni perspective, politics and religion exist in a mutually reinforcing relationship, whether positively or negatively. In either case, however, it is hard to sustain the argument that the Islamic secular is interior to Sharia or, for that matter, that Sharia is interior to the secular, whether or not the latter is Islamic.

## Endnotes

1. These include "analogy (*qiyās*), equity (*istiḥsān*), public utility (*maṣlaḥah mursalah*), blocking the means (*sadd al-dharā'i*'), adaptive legal precepts (*qawā'id fiqhīyah*), and even inductive readings of scripture (*istiqrā'*)."
2. See, for example, Bukhari's statement in his chapter "*Al-'Ilm qabla al-Qawl wa al-'Amal*" in his *Ṣaḥīḥ*'s "Book of Knowledge": "Knowledge is acquired only by learning (*innamā al-'ilm bi al-ta'allum*)."

# The Islamic Secular: Comments

*Humeira Iqtidar*

Professor Sherman A. Jackson, an authority on Islamic legal and intellectual history, has claimed in this article that a particular form of the secular is internal to Islam. For him, the secular is primarily a manifestation of the differentiation of spheres of human life. The Islamic secular, he argues, is revealed through a close reading of the boundaries that the Sharia self-imposes upon its jurisdiction and that implicitly operationalizes a type of differentiation. His argument rests upon a distinction between Sharia and the wider religion of Islam. This allows him to claim that the Sharia's self-limitation supported a recognition of other modes of reasoning and argumentation within Islam, and that it is this space of non-Sharia reasoning that constitutes the space of the secular within Islam. Arguing for such a relationship between Sharia and the secular, then, leads him to point out that the distinction between the Islamic and the Western seculars lays not so much in the *substance*, but in their *function*. In other words, substantively both versions of the secular seem to support rational, empirical thought; however, in the case of Islam, the function of the secular is not to reduce of religion.

These are exciting ideas. As many have already argued, the secularization that happened in Europe was not needed in most other parts of the world because no exact equivalent of the Roman Catholic Church's hierarchical, structured, and institutionalized control existed beyond Europe. Jackson carries that argument further to flesh out the precise contours of the difference between European secularization and Islam. There is much to appreciate in that move. Specifying the difference, while simultaneously enriching categories

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such as “the secular” with new layers of meaning, allows a greater depth to the whole discussion. I am also sympathetic to the political project of moving public debate – among Muslims as much as beyond them – away from the binaries of Islam and rationality, Islamic and secular, and so on.

However, several aspects of the argument require greater explication for the overall claims to be fully plausible. The first concept that needs some more unpacking is the idea of the secular itself. Jackson bases his definition upon José Casanova’s discussion of differentiation in order to argue that the secular is that differentiated realm which is not governed or adjudicated through revelation or its extensions. There is, however, a problem with differentiation more generally to consider. While differentiation theorists have tended to assume that human life has been broken into these separate containers, it is clear that lived reality has somewhat obstinately refused to oblige; social, political, religious, and economic life continues to bleed across putative boundaries. Academics, of course, buy into this thesis more than many others. They need to operate as if the social and the economic, the political and the cultural, the rational and the irrational spheres of life can be rather neatly divided into not just different categories, but also into different disciplines with their own methodologies for studying these respective aspects of human life.

The success of differentiation theory lies not in accurately describing an empirical reality, but in concretizing a shift in popular imagination. It is worth pausing to ask: Why do we need differentiation? What forms of human behavior and subjectivity are endorsed by assuming that human life can or should be divided into these separate spheres? How is differentiation linked to capitalism? What role did differentiation play, if any, in pre-capitalist societies? At stake, then, are two issues that are unclear in Jackson’s current formulation: (1) there seems to be an acceptance of differentiation as an ahistorical phenomenon, one not linked to the development of industrial/colonial capitalism, and (2) an implicit attribution of positive normative association with it, given the hint of rationality inherent in the definition of the secular used here. There is not enough time to flesh them both out in detail, but let me just note regarding the second that the reader is left wondering about the implications for our understanding of Sharia: Does it constitute the realm of the irrational, if the sphere of rational, empirical thought is located outside of it?

Linked to these questions is the definition of religion. As Jackson himself suggests, the jurists who argued for limitations to the Sharia’s application did not see other modes of reasoning as belonging to a different sphere of human life altogether. They also did not assume that their self-imposed

boundaries on Sharia would place them or these modes of reasoning outside of Islam. What did the jurists mean when they spoke of Islam? Did they imagine Islam as a distinct sphere of human life? Jackson insists, in fact, that we recognize “the space between the bounded sharia as a concrete code of conduct, on the one hand, and the unbounded purview of *Islam as religion*, on the other then constitute the realm of ‘The Islamic Secular’” (emphasis mine, p. 2).

However, he does not specify what the term *religion* means here to him and what it meant to the jurists about whom he writes. Nor does he specify the place of Sharia within “the wider religion.” Did these jurists even have a notion of religion equivalent to our notion of it today, which relies heavily upon differentiation theory to conceptualize religion as a particular aspect of human life, one that can be carved out separately from the political or the economic? Or did they think of Islam as a way of life, or a tradition<sup>1</sup> that Sharia facilitated?

Relying upon a conceptual repertoire that, in turn, depends upon a very parochial history to make universal claims is an important limitation of this thought-provoking article – and one that needs greater critical interrogation. It may be that there is a generalizable definition of religion, contrary to Talal Asad’s<sup>2</sup> influential argument, but there is enough research from around the world that makes us recognize that the one currently used in Western academia and public discourse is not it. This dominant definition of religion is reliant upon a very limited and, at the same time, reified European experience of a particularly complicated history of the development of industrial capitalism, the modern state with its vastly expanded repertoire of governance technologies, colonialism, and nationalism.

Jackson claims that the Western secular “initially arose in an effort to protect both religion and society.” But the brief narrative he lays out does not recognize that Martin Luther was looking not to reduce the spheres of religious influence, but rather to deepen religiosity; that Enlightenment thinkers painted a picture of deep religiosity as a foil for their arguments, but that the historical veracity of these claims remains open to question; and that the move from the Enlightenment to the modern period is not one of religion’s reduced influence, but, if anything, a greater role for public religion at the peak of colonialism and nation-state building in Europe.

There is not enough space to discuss the many interesting questions raised in this essay. The evidence from Islamic sources that Jackson provides here is significant and powerful. It persuades one that the Sharia’s self-limiting feature was an important aspect of its entrenchment and longevity, precisely because

it did not explicitly set up religiosity against rational thought and an empirical approach. I am also convinced that the Islamic experience can generate insights that go beyond relevance to Muslims alone, that it can provide the resources for generalizable theoretical insights. What we need now is a more fleshed out theoretical framework, one that is built from the evidence that Jackson has presented here.

### **Endnotes**

1. On the question of redefining tradition such that the Islamic experience provides the resources for more generalizable theoretical insights useful for Muslims and Non-Muslims, see my "Redefining Tradition in Political Thought," *European Journal of Political Theory* 15, no. 4 (2016).
2. Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: The Johns Hopkins University Press, 1993).

## Response to Professor Fadel and Professor Iqtidar

*Sherman Jackson*

Professor Fadel sees me as claiming that the Islamic secular “places jurisdictional boundaries on what religion can rightfully claim, thereby creating a legitimate space for non-religious, i.e., ‘secular’ reason.” What actually I argued, however, was that Sharia placed limits on its own *shar‘ī* jurisdiction, obviating the necessity-*cum*-legitimacy *not* of *non*-religious, secular reason but of *religious* secular reason. He appears to be unable to transcend the commonly held dichotomy between the secular and the religious (which my article calls directly into question) and thus to recognize the reality of the “Islamic secular” as I define it. This underwrites a profound misreading of my thesis.

It is true that I limit myself to the Sunni tradition. But it is difficult to take this as a serious critique, especially of the *substance* of my thesis. As for the Sunni exclusion of Shiite messianism and Kharijite puritanism, this is hardly a matter of the Islamic secular policing religion; this is Sunni *religious* orthodoxy asserting primacy over putative contenders, and this through explicitly *shar‘ī* machinery. As for the notion of the state “sustaining the Islamic secular,” perhaps Fadel’s point of departure is the modern jurispatholic state and its monopoly over law. But the Muslim state could no more *define* the Islamic secular than it could the *shar‘ī*. As for *guarding the integrity* of the Islamic secular, certainly, politically speaking, this would be consistent with the state’s executive authority. But, at least in theory, this would not translate into any unassailable authority to assert the legitimacy of its own or others’ acts within this non-*shar‘ī* realm.

Fadel’s closing remarks appear to double down on the aforementioned misconstruction of my thesis. Even were we to concede the relationship that he posits between a “proper polity” and “true religion,” and even were we to concede that “religion and politics exist in a mutually reinforcing relationship,” none of this would obliterate Sharia’s self-generated distinction between the *shar‘ī* and the non-*shar‘ī* dimensions of religion and thus the realm

of the Islamic secular. Once again, his inability to transcend the secular-religion dichotomy appears to impede his ability to recognize the secular *within* the religious.

Professor Iqtidar critiques my following the contested assumption of “differentiation theorists” that human life can be “differentiated” into insularly separate categories – economic, political, social, religious, and so on. But her focus on this debate, presumably as it unfolds among anthropologists and sociologists, directs her away from my actual point. I make no claim that Islam recognizes the division(s) she describes (in fact, I challenge this notion). My point is simply that *shar‘ī* discourse *can be/is* differentiated from non-*shar‘ī* modes of assessment and that the latter is the putative realm of the Islamic secular. How the “separate containers” (if we may speak of such) that emerge from this distinction bleed into, differentiate from, or relate to one another is a separate issue. The Islamic secular simply has no dog in that fight. Even in my invocation of José Casanova and others, I am explicit that mine is a juristic project, not a sociological or an anthropological one. In sum, I use “differentiation” in a manner that need not be taken to imply everything connoted by its use in formal sociological or anthropological discourses.

As for leaving the reader, “wondering about whether sharia ... constitutes the realm of the irrational, if the sphere of rational, empirical thought is located outside of it,” we might note that “rational” is distinct from “rational, empirical.” Nothing I said in this article (or anywhere else) would deny the role of reason and rationality in Islamic law. Even *taqlīd*, in my definition, has a rational element. But when reason is deployed in the pursuit of empirical determinations, we are outside the *shar‘ī* realm proper, even if the ultimate *shar‘ī* ruling may be contingent upon such factual findings. To say, however, as I do in the article, that reason plays an Islamically legitimate role in the empirical realm is not to say or imply that it therefore plays no legitimate role in the *shar‘ī* realm.

As for the charge that I do not define religion, I plead guilty. In the absence of such a definition, however, it seems reasonable to assume the common-use meaning. This is essentially what Iqtidar does in her own use of the term *religion*. At any rate, the final draft includes a few sentences that make it clearer what I am talking about, even if this does not amount to a formal definition.

Iqtidar seems to think that I am seeking to make some universal claim, for which my database is simply too thin. But I am not sure what that universal claim might be. As I clearly state, mine is a juristic project, an Islamic juristic project whose explicit focus is Islam. Regarding Martin Luther, I am not sure



that my argument that he sought to establish a separate realm outside the religious is in full contradiction with her insistence that he sought to deepen religiosity. Perhaps I was not clear or forceful enough in making the point that Luther sought to protect, rather than destroy or weaken, religion.

Given the brutal limitations of space imposed upon this response, I could hardly hope to give these two rich and thoughtful critiques the attention they deserve. I do hope, however, that my trespasses against them have not been too egregious. And I would like to extend my sincerest and heartfelt thanks to Professors Fadel and Iqtidar for taking the time to engage my work and for challenging, inviting, and helping me to think more clearly, deeply, and carefully about these and other important issues they raise.