

Shari'ah Sanctions as Secular Grace?

A Nigerian Islamic Debate and an Intellectual Response¹

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Background: Containment or dialogue?

The terrorist attacks on September 11, 2001 in the US sparked a wide-ranging debate on inter-cultural relations between the East and the West. Nearly everyone seems agreed that these attacks opened a new phase of the relation between Islam and the West and the need, therefore, to recognize retreat and isolation as impossible. The attitudes of people however, vary greatly. Some argue that conciliation will advance dialogue and inter-cultural solidarity, and isolate the untamed radical fringe. Others assume confrontation to be inevitable in a world of irreconcilable difference and hostility with war and armed vigilance the terms of engagement. There are still others who fault the global imbalance of economic resources and opine that the solution lies in programmes of debt relief and poverty alleviation.² Material security, they argue, would make potential terrorists more amenable to reason and moderation, and by implication, make them that much easier to wean from religious fanaticism. All these views represent an attempt to respond to the recent upsurge of terror.

Many analysts have tried to look to past experience as a guide and have found an analogy in what went before rather than seeing the crisis as something new. The closest analogy they find is the Cold War and its totalitarian ideology. The comparison now is between truth, *jihad*, and martyrdom in the Muslim world, and liberal democratic values in the West. The anachronism

of Islamic utopianism is opposed to the progressivism of western liberalism. As Paul Berman expressed it in his *Terror and Liberalism*, what is happening today is a 'war of ideas', every bit as fierce as the anti-totalitarian struggles of the twentieth century. The same weapons of vigilance and containment are needed to deal with the Islamic threat.

Blowing yourself up for the cause is as meritorious as blowing up the enemy

Analogies, however, distract as much as they instruct and, so, if we have to use them, we must exercise caution. The Cold War habits of global menace, for instance, spawned the doctrine of mutually assured destruction (MAD) as a deterrent, with the nuclear arms race a corollary. Your being credible was a calculus of the balance of terror, one that fortified you for the struggle of moral pre-eminence as much as it diminished the other side, as Caspar Weinberger, a Defence Secretary under President Reagan, once expressed it. Ultimately, the margin of security you enjoyed reflected the economic resources you controlled. Not unsurprisingly, the pace of the arms race ruined the Soviet Union's command economy while buoying up the West's liberal market system. By 1989 the strain had become too great on the Soviet empire and it collapsed like a pack of cards. As a frustrated Mikhail Gorbachev put it, the Soviet Union's ability to put a man in space counted for nothing when simple utensils like a can opener in the home did not work.

Yet the moral clarity of Cold War analysis can fudge our understanding of Islamic radicalism. On its own terms the shadowy world of radicalism is not a good fit with the ideology of the ill-fated Soviet Union. The stock-in-trade of the fundamentalists is not a campaign for a messianic classless society or for a workers' commune, but for the truth of God divinely mandated and historically constituted, a truth immune to considerations of strength and weakness, or to dialectical contradictions of the means of production. Blowing yourself up for the cause is as meritorious as blowing up the enemy. Without investment in an industrial infrastructure or any commitment to the international state system, the method of terror draws on stealth and secret oaths to cross borders and to infiltrate free and open societies. How do you confront or contain a foe like that? This suggests that the Cold War has little parallel with the fundamentalist challenge, and should not be pressed for synoptic insight.

We should emphasize that the Cold War system of national and international security was a project designed for competitive advantage from the open exchange of goods and ideas, and, thus, for frustrating and subduing the forces of monopoly and regulation. But national security is a woefully inadequate way to come to grips with the deeper moral issues of the fundamentalist challenge. The enemy being in our case a radical ideology, rather than a nation state that has mutually binding obligations and countervailing interests vis-à-vis other states, it behoves us to ask different questions. Homeland security, for example, begs the massive question about civil commitment and collective values: how do you corral a fractious, distracted nation to confront a ubiquitous foe? Terrorists thrive as an informal global network of violence and intimidation; it is not hard to embolden them by the same methods. The terrorists also naively construe domestic contentiousness as national weakness and as warrant for their antipathy. Suppleness of mind is a virtue they do not know and, so, they see the balance of terror – as mutually assured destruction – as a provocative rather than a persuasive strategy. In part, that is because their radical ideology spins wishfully and ever so plausibly on moderate and conventional versions of the faith that sustains rank and file Muslims, and in part because to be credible against their unscrupulous methods is certain to be self-damaging. A US installed gov-

ernment in Baghdad, for that reason, is guaranteed to aggravate and entrench the hostility that the mere presence by invitation of US troops on the sacred soil of Saudi Arabia first provoked. A credible exit strategy for the US in Iraq, a way of safely letting go of the tiger's tail, is now as urgent, and as fraught with menace, as the taking down of Saddam Hussein.

Even if conflict is not inevitable, or inevitably calamitous to the West, that does not mean that there is no enduring struggle of ideas and values. Thus, while the twin towers of the World Trade Centre in New York represented faith and confidence in the West's global pre-eminence, in the eyes of the terrorists they were symbols doubly of the humiliation and powerlessness of their societies. Accordingly, they attacked the Centre twice, showing their fixation with it. The West for the most part remains none the wiser, stubbornly adhering to the line that force – combined with economic aid – will overcome enemies and win friends. For their part, the terrorists feel their humiliation and powerlessness as a moral outrage. They remember that their societies are the inheritors of the mantle of the divine authorization to subdue and rule the world according to God's commands and, so, humiliated by growing evidence of the West's ascendancy, they will contest with their lives the West's global role.

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Since against the 'axis of evil,' and to the disquiet of its allies, America has assumed a global franchise for its hemispheric idea of manifest destiny, but acknowledges no divine mandate for it, that suggests, according to the radicals, why overweening power is immoral and represents covert hostility towards God, the true source of all power, and towards those on God's side. Power not only corrupts but also condemns when it forsakes God, in which case it demands in God's name to be resisted absolutely and by all means necessary. The West has, accordingly, been called the Great Satan and the abode of *jabiliyah* (ignorance) because its undeniable greatness has been severed from divine obedience, and its pandemic ignorance from the divine light. The radicals who have lived and studied in the West can speak with

field authority about the West's moral deficiency and about the West's disobedience and blindness, with the despairing masses at home left to concur from the evidence arrayed before their own eyes on television, in pornographic magazines, and from Hollywood. A god-deficient West should be condemned from the global perniciousness of its power and influence.

This litany of the sins of the West shows the flammable dimensions of the 'sacred space' of fundamentalist ideology and, too, the charmed circle of its self-propelling logic that western hegemony represents at close range moral peril for the Muslim world. Even a costly and protracted defiance of a corrupt West is to be preferred to profitable partnership with it, a pointed censure of the West's Muslim allies and of their approved representatives in diaspora. In the view of the radicals, believers cannot be friends with infidels, and this is a judgment about truth, not about temporal gain. To appreciate this properly, it is crucial to scrutinize these ideas and values scrubbed of their sanguinary associations. Only within the healthy 'open borders' of moderate Muslim values can we come within credible range of the otherwise strange and convulsive world of terrorist rage, or begin to grasp the murky logic of the terrorist mind.

Subject and method

The septic side of radical terror thus has an approachable side that is more complex and much longer enduring than a merely visceral rejection of the West.³ That complicates matters for us, for it sidesteps the U.S. administration's spread-eagle rhetoric about taking sides without a convincing definition of what the sides are. The heavy weather view of the terrorists as people motivated by hatred and intolerance of everything western overlooks the other directions from which the wind of change is blowing in general mainstream religious life and practice. The Israeli/Palestinian crisis, for instance, is a cause célèbre in popular anti-western diatribe, and also in the chemistry of fundamentalist grievances, yet, the merits of the cause duly acknowledged as with a road map, it is not an attack on Islam's truth claims.

Shari'ah and colonial advocacy

We may argue that the Muslim encounter with

the West is not fated to lead to conflict or to radicalism. At its most provocative, such as in Europe's far-flung colonial enterprise, the Muslim world, for example, encountered the modern West on a more or less amicable basis, with periods of repression and dogged resistance mixed with periods of rapprochement and glad cohabitation. Thus, did the '*ulama*' (religious doctors) and many Sufi brotherhoods take turns in opposing and collaborating with local administrators? Large sections of the Islamic world came under direct colonial rule without that igniting the radical extremism we are familiar with today. There was, needless to say, much uncertainty about how exactly Muslim leaders should comport themselves before their new masters, but a lot of that was due to untested assumptions and mutual ignorance. Once that initial barrier was overcome, a genuine partnership developed in which Muslims participated actively in the colonial venture, resulting in irreversible gains for Islam. For example, the tax engine of the colonial state enabled the Muslim '*ulama*' to organize more effectively *waqf* (charitable endowment) and acquiring enhanced political influence as a result. Similarly, the Nizam of Hyderabad in India presided as a benign ruler over his subjects under the umbrella of British rule. And, so, the imperial *cordon sanitaire* expanded Islam's *halal* (lawful) outreach. Almost everywhere in the colonial empire Islam remained as firmly entrenched at the end as it had been at the beginning, and often in a strengthened form. The Muslim encounter with western suzerainty was seldom at the expense of the religion, a fact that may have shielded minority Muslim communities from open hostility from their subdued, sullen neighbours. The Makurdi riots in Nigeria in 1949, for example, suggest the potential for such hostility. Partition as a response to the end of British rule in India is another example of Muslims' lack of confidence in Hindu rule once the colonial cover was withdrawn. Colonial infidels had their sins, admittedly, but they never sold out on Islam's global assets. Not a stone, not a pillar, for example, was dislodged from the Islamic holy shrines of Mecca and Medina, a lot more than can be said for the Christian holy places of Bethlehem and Jerusalem. Rome as the centre of Roman Catholicism, the radical content, is a compromise already with the classical pagan residue. Consequently, nobody has been able to persuade the radicals that Rome is comparable to

Mecca and Medina. Who prays, for instance, in the direction of Rome? Accordingly, for the affected Muslims there still lingers in the air a whiff of stigma concerning the eternal city, and this before any of the radical vitriol that breeds terror.

On the level of irreconcilable differences, Shari'ah law has played a crucial part in the radical fundamentalist rhetoric as well as in western perceptions of Islam. Yet in the machinery of colonial jurisdiction Shari'ah as civil law was a crucial component in the organizing of Muslim life, showing how present day rhetoric and perceptions are far removed from reality. It was, in fact, the sudden withdrawal of colonial rule and the pressure of nationalist demands that made the appeal of religious radicalism so attractive, a radicalism that increasingly became distrustful of the pluralism of a post-colonial society. It is a pattern repeated in numerous parts of the Muslim world, with Nigeria an outstanding example. There the debate also shows the exigencies of the process that Sir Muhammad Iqbal once characterized as the 'reconstruction of religious thought'.⁴ The challenge picks up on a critical strain in Muslim thought about truth and dissent, about community and difference, and has implications for inter-faith understanding.

Fundamentalists oppose secularization, and the western powers that spread it

In the language of political opportunism, Shari'ah is being promoted as the constitutional right of Nigerian Muslims, including the right of establishing an Islamic state and abrogating the secular constitution regarded as incompatible with the Shari'ah. Fundamentalists oppose secularization, or so they claim, and the western powers that spread it. In turn, they back Shari'ah, understood here as the divine law and its accompanying tradition of jurisprudence and legal scholarship, known as *fiqh*. Anti-secular fundamentalism tries to ground itself in the tradition of *fiqh*, tracking the adopted course of political change with the help of rules of guidance and precedent available to Muslims. While it is true that such opposition feeds the anti-western radical sentiment, it is, however, not always the case that it leads to violence, though sometimes it does, admittedly.

Shari'ah civil law in the main is a conventional

code, involved routinely in guidance, encouragement, reconciliation and assurance, and widely observed as such in the Muslim world. Colonial rule, for instance, made the decision to engage Islam's intellectual tradition by concluding that nowhere is that intellectual tradition better represented than in Islamic legal science. One such colonial assessment described it as 'a vast science [representing] the genius of the same people which gave arithmetic, algebra, trigonometry, astronomy, optics, chemistry and medicine to the western world, and generally stood at the cradle of modern science'. It is in legal scholarship that the genius of Islam 'has exhibited itself in all its power and exactitude'.⁵

In north Nigeria, Shari'ah is administered in Islamic courts directed by *qadis* (Muslim magistrates). In 1956, a Muslim Court of Appeal was set up in Kaduna, the then northern capital, later upgraded to have jurisdiction in Shari'ah appellate cases. Law manuals were identified and translated from Arabic and placed in the hands of justices; schools and institutes were founded by government to train Muslim officials; students were recruited to enrol in these places of higher learning; tribunals were set up to handle Muslim issues; Islamic appellate procedures were instituted; and budgets created to underwrite the costs of implementing the Shari'ah code. What emerged from the synthesis of classical Islamic law and the customs and exigencies of Muslim African societies under western colonial rule represents an important venture in comparative law. With a possible few exceptions, there is little earlier evidence of such hybrid legal work being carried out anywhere else in the modern Muslim world.⁶

The motivation behind such legal work was the colonial government's interest in investing in the local legitimacy and stability of alien suzerainty over Muslim populations. In the process, Muslims were trained and equipped to run a modern state, the sort of political apprenticeship administrators were unwilling to extend to Christian subjects except as trustees of the secular state.⁷ As I shall make clear presently, this policy disparity would come to have an important bearing on the divergent attitudes of Muslims and Christians towards secularism.

The colonial authorities were, notwithstanding, opposed to Shari'ah as penal law because of their desire to preserve the distinction between

criminal and civil law, with the state as the sole repository of criminal justice.⁸ Officials wanted to maintain uniformity in the administration of justice throughout the colonial territories and, accordingly, they restricted Shari'ah to the status of customary law, leaving the state free to design and enforce the criminal code. The state legislated and levied taxes; customary law, including Shari'ah personal law, filled the permitted gaps. A principle of great importance was involved in this arrangement, namely, that the British were prepared to divide state authority between them and their Muslim subjects. Shari'ah law intervened, in effect, to prevent a state monopoly of power, while at the same time accommodating itself to an adjustment of the normative boundaries of Islamic jurisprudence. Colonial directives and African customary law combined with Shari'ah stipulations to broaden the scope of Muslim civil society.

This *modus vivendi* created an identity of interest between administrators and Muslim officials, and allowed the Muslim objection to western infidel power to be modified in favour of accommodation. In appreciation, colonial officials embraced their Muslim protégés as partners and future heirs, overlooking peculiar domestic practices like slavery and polygamy.

Roots of controversy: Politics of Shari'ah enforcement

It was inevitable that once colonial rule ended, the issue of the north's political participation based on Shari'ah prescriptions about the integration of religion and politics would reassert itself. Nationalist politics had no incentive for pragmatic conciliation lest that detract from the logic of proud sovereignty. This writer remembers an interview in the 1970s with the Wazirin Junaidu, a scion of the ruling house of Sokoto, in which the Wazirin spoke of the duty not to surrender the north's Islamic legacy to secular influences emanating from Lagos in the south. Islam, he felt, should not be gambled in the cause of national sovereignty. Military rule under the repressive regime of Sani Abacha (1993 - 1998) kept Shari'ah sentiments in control. The 1979 constitution had recognized Shari'ah courts by giving them jurisdiction over civil matters, a reversion to the colonial status quo, and the provision was confirmed in the 1999 amendment to the constitution which now contained an ambiguous refer-

ence to 'other jurisdiction as may be conferred upon [Shari'ah courts] by the law of the State'.

Abacha's predecessor, General Babangida (ruled 1985-1993),⁹ gave an international twist to the controversy when he changed Nigeria's observer status by enrolling it as a member of the Organization of Islamic Countries (OIC) (Ar. *munazzamah al-mu'tamar al-islami*). This sparked local unrest, prompting a decision to form the Christian Association of Nigeria (CAN) in 1986 as an ecumenical grouping of protestants, catholics and African independent churches. CAN issued a statement protesting the federal government's backing for Shari'ah courts in north Nigeria and asking for an identical public status for Christianity.

The Council of '*ulama*' in a press statement in May, 1990, pounced on CAN's charge that Nigeria as a member of the OIC had become an Islamic country by pointing out that Nigeria's secular constitution prescribes a secular state, the OIC notwithstanding. The '*ulama*' persisted: 'Strictly speaking, the government [of Nigeria] has more to do with Christianity than [with] Islam[,] since secularism as practised by the government is an extension of the church concept of government. In Islam, politics and religion are inseparable. For a government to be Islamic, Allah has to be the legislator through the Qur'an and the Sunna of the Prophet.'¹⁰ The charge that secularism is church doctrine leaves the field to the '*ulama*', or else to the radicals, to make the religious case.

Shari'ah debate round two: National integration and religious autonomy

A second uncompromising round of controversy erupted, coinciding with the election in May, 1999, of retired General Olusegun Obasanjo, a southerner, and a Christian. The Shari'ah issue assumed explosive force with the announcement on October 22, 1999, of the inauguration of Shari'ah rule in Zamfara State by its youthful governor, Alhaj Ahmed Sani Yerima, to the alarm of Nigerian federal authorities and civil rights groups. Yerima had shelved his clean 'corporate' image¹¹ and instead sprouted a shaggy beard that highlighted his handsome face as that of a medieval religious crusader. He declared that the Shari'ah announcement was the culmination of the hopes, ideals and aspirations of Nigerian Muslims, the long-delayed awakening of the dormant

ummah from its silence and inactivity. National independence in 1960, Yerima charged, had given the north's Muslim majority only a partial victory, leaving the way open for the full implementation of the Shari'ah code some day. That day had now arrived with his announcement, he declared. As a corollary, a controversial *dhimmi* status was implied for non-Muslim fellow Nigerians.

Shari'ah law is now a consumer confidence index

Basking in the glow of his success, Governor Yerima was greeted with cheers when he went on tour in Egypt, Pakistan, Qatar, Sudan, and Saudi Arabia.¹² The governor has dismissed complaints against Shari'ah law, saying popular support for Shari'ah seals it against outside objections. Shari'ah law is now a consumer confidence index, 'a dividend of democracy', in the words of Hamza Y. Kurfi, the Solicitor General of Katsina State.¹³

Against the criticism of civil rights groups, Yerima is adamant that Shari'ah law does not breach the boundary between the Islamization of the state, which he opposes, and the Islamization of society, which he favours. This crucial distinction has roots in a broader Islamic tradition, such as in Turkey, but its specific source in this context comes from other Nigerian Muslim leaders. One such was Alhaji Abubakar Gumi (d. 1992), Grand Kadi of Northern Nigeria and leader of the influential Wahhabi-inspired reformist movement,¹⁴ and another is the Iranian-inspired cleric, Shaykh Ibrahim Yaqoub El [Az-] Zakzaky, the Shi'ite head of the Islamic Brotherhood Movement based in Zaria, and, according to reports, with a branch in Kafanchan.¹⁵ According to El Zakzaky, who visited Teheran in 1990, the state superstructure must be Islamized first on the pattern of the 1979 Iranian revolution before Shari'ah can be introduced. In that argument the constitution creating the state, presumed to be infidel, must be replaced with an Islamic one based on *majlis* and *shura* (religious counsel and consultation). Only then can the state be considered *halal*. What exists now, instead, is a schedule of constitutionally mandated popular elections that has no foundation in Islamic law. El Zakzaky, an economics graduate of the University of Zaria, has acquired national prominence as an opponent of the con-

stitution which he regards as an instrument of secularization. He declared:

Islamic law is meant to be applied by an Islamic government in an Islamic environment. If you introduce Islamic laws under [sic] an un-Islamic environment, under a system of government which is not Islamic, then it is bound to be an instrument of oppression.¹⁶

On its own terms, however, the distinction between the Islamization of society and the Islamization of the state offers a potentially productive way of re-framing the debate on the proper relationship between religion and statehood in Muslim thought in general, and among Nigerian Muslim leaders in particular. Its great intellectual merit is to shift the focus from the role of the state exclusively to the role of civil society in dealing with issues of tolerance, diversity and pluralism. The distinction does not deny the challenge of secularism, but instead mitigates it by restructuring it as a matter of the civil order. As a general matter, modernist Arab thought, for instance, has tended to oppose a public role for religion as something outside the purview of public reason, and instead to embrace secularization as the proper domain of democracy.¹⁷ The reasoning is that religion is incompatible with freedom and diversity while secularization is conducive to freedom and oneness. But that reasoning leaves us in a cultural muddle about diversity as something that saves our difference and is to be embraced and about difference as something that threatens the truth that we are all one and so is to be suppressed. Diversity as remedy becomes, in effect, the denial of difference.¹⁸

The idea of secularization rather than religion fomenting democracy is alleged by the dissenting statement of the Council of 'Ulama' in Nigeria about secularism being a part of the 'church concept of government', implying that Muslims should oppose secularism and democracy as being incompatible with Islam.¹⁹ In the particular case of its advocates, however, the Islamization of society in Nigeria would not politicize religion, or oppose democracy, in the way that the Islamization of the state would. Furthermore, the Islamization of society, involving a code of strict personal standards of religious observance, such as prayer, pilgrimage and almsgiving could proceed with the dual affirmation of a laic state, on the one hand and, on the other hand, of the role of Muslims in promoting Islam without denying a similar role

for members of other religions. In other words, the effects of civil agency could neutralize at the same time combative secularism and religious fundamentalism.

Thus could Alhaji Aliyu, the Magaji Gari, a senior political councillor of the Sokoto Sultanate, dismiss the idea of political Islam as mere academic diversion, as 'the view of radical academics' who ingratiate themselves with the government.²⁰ Aliyu's argument allows for the Islamization of society by preventing the Shari'ah from being turned into a bullyrag and instead enhancing the civil scope of society by promoting human community, and enjoining moral standards for conduct and behaviour without state authorization. In that way Muslims may embrace a mild form of secularization by supporting the separation of 'church and state' and taking their rightful place in national affairs alongside others.

A politically negligent Muslim implicates the larger Muslim Community

The proponents of the Islamization of the state favour a different course of action. Shaykh Gumi spoke for such proponents when he said that politics was more important than prayer or pilgrimage for reasons of scale.²¹ A Muslim delinquent at his or her prayer and devotion brings harm only to himself or herself, whereas a politically negligent Muslim implicates the larger Muslim community, both present and future. El Zakzaky makes this philosophical distinction, giving advantage to the political reading of religious duty. That position aligns him with Gumi, a Sunni, unlike himself and who, as such, has greater legitimacy in the north's political culture. Yet El Zakzaky's pro-Iranian rhetoric has echoes in unrest elsewhere in the north.

Although Gumi is united with El Zakzaky as an advocate of the Islamization of the state, he differs significantly in that he had no known Iranian Shi'ite sympathies or links. The resemblance, then, in the approaches of the two men may be nothing more than circumstantial, even if the cause of advancing northern Muslim rights is a common goal between them. That common goal may explain why Gumi, for instance, could make the pronouncement, without risk of repudiation or sanction, that *siyasa* (politics) is more impor-

tant than *salat* (prayer) even though prayer, unlike politics, is one of the five pillars of faith. For all his reputation as a religious maverick, El Zakzaky has stirred a fiercer controversy without going that far.

The debate about secularism then, has deep roots in Muslim circles, and is not just the pet theme of Nigerian academic radicals.²² It is in that context that El Zakzaky's objections, in spite of their marginal Shi'ite significance, have deepened existing fault lines in a common attempt by all interested parties to shift power from the south to the north. To all intents and purposes, and declarations to the contrary notwithstanding, Yerima, with foreign aid and succour, has in fact turned Zamfara into an Islamic state. He admitted as much in giving evidence to the members of the human rights commission. He said he had been upfront on the matter when he campaigned in the elections. To quote him, 'when I was campaigning for this office [of governor], wherever I go, I always start with *allahu akbar* (Allah is the greatest) to show my commitment to the Islamic faith. Therefore, as part of my programme for the state, I promised the introduction of Sharia.'²³ The reference, however, to the *takbir* (the recitation of *allahu akbar*) in the context of constitutional national elections that never administered or invoked the *shahadah* (Muslim confession) scarcely constitutes a safe religious foundation for government and public order in Islam: it might attest to nothing more than a self-help personal mandate. Other states pondered Zamfara's example, with Kano, Kaduna, and Niger States, for example, declaring their intention to adopt Shari'ah law.²⁴

As if to make due penance for his southern connections, Obasanjo proceeded to crack down on the unrest in the south, mobilizing police and military units to rein in vigilante groups, such as the Oodua Peoples Congress (OPC) in Lagos State, whom the federal government accused of acts of 'ethnic cleansing'. The crisis was threatening to assume an ethnic guise in the south.

Wole Soyinka, the Nigerian Nobel Laureate, gave voice to this ethnic sentiment in a statement in which he was quoted as saying that, being neither a Christian nor a Muslim,²⁵ he wished to assert the virtues of what he called 'traditional Orisa' as something authentically African and, as such, equally entitled to the primary loyalty of Nigerians like himself. He imputed political motives and

moral duplicity to those advocating Shari'ah penal law. In the final analysis, claims Soyinka, these advocates are wolves in sheep's clothing, hiding their political ambitions behind a smokescreen of pious pretence. As an argument, the statement is conspicuous more by what it opposes than by what it advocates. In any case, by the same logic traditional Orisa may be accused of being a cover for the south's own political ambition. All of this amounts to saying that the statement evades the real challenge the country faces. Defending 'traditional Orisa' in the name of indigenous rights soon runs out of steam against the heavy artillery of cumulative Islamic legal scholarship ranged against it, and may explain why Muslim Yoruba leaders have not rushed to intercede with Orisa, or with Soyinka for solidarity. At any rate, here is Soyinka's statement:

I am neither a Christian nor a Moslem. Definitely, if I have any religion at all it is our traditional [Yoruba] Orisa. As far as I am concerned, both Islam and Christianity are interlopers in Africa spiritually. That is my position. Even though I say I am neither a Christian nor a Moslem, let me make it clear that I studied comparative religions and so I know quite a bit of the Qur'an. We are not totally ignorant even though we are 'infidels' and 'Kafirs'. We are not totally ignorant about the provisions of the Qur'an. And we are saying that some of these people [Shari'ah advocates] are lying, misusing and abusing the Qur'an. And we also know that we have studied the religious sociology of many countries even in contemporary times and we know very well that their own interpretation of the Sharia is at least different from the one which is being imposed on this country. . . . So let them stop claiming some kind of very special knowledgibility [sic]. They are abusing knowledge. They are abusing faith. They are abusing piety and they are showing themselves to be nothing but real impious secularists who are merely manipulating religion for political ends.²⁶

In the north, ethnicity has been superseded by religion as the driving force of the debate

In the north, however, ethnicity has been

superseded by religion as the driving force of the debate. Press and media reports emanating from the south, exhibiting all the classic symptoms of religious privatization, have tended to downplay religion and to look instead for a similar ethnic interpretation of the unrest in the north. And so reports spoke of Obasanjo's slowness in taking action in areas of Muslim unrest in the north, though they also noted his failure to take on the Shari'ah issue as a root cause. The Catholic Bishops Conference of Nigeria (CBCN), responding to the religious nature of the crisis, nevertheless looked for a solution that evades the long-term challenge of Shari'ah. It issued a statement regretting the slowness of the federal government to respond to the troubles in Kaduna and elsewhere. Archbishop John Onaiyekan, the vice president of the Bishops Conference, said in a public statement that the government should have acted much sooner than the Kaduna riots and taken decisive military action in October, 1999, when Yerima was in full tilt mobilizing his followers in Zamfara.²⁷ Like others in the debate, Onaiyekan was looking to government to overcome the handicaps of government.

State: Friend or foe? Critique of Muslim jurisprudence

The northern strategy to advance its political aims by deploying theological arguments, namely, that religion is too important to abandon it in private hands as personal choice, evades the other half of the argument, namely that religion is too important to entrust to the state, whether civilian or military. Gumi's defence of the northern strategy perpetuates the problem, however much it may resonate with pious sentiment that sound religion requires collective state endorsement; for without public enforcement the ideals of religion are empty and pander to wrongdoers and the wicked. In this reasoning, the law of God demands the law of the state for proof and safeguard. Gumi, accordingly, concedes that Muslims and non-Muslims, including Christians, cannot be equal under one government. On principle, Muslims would not accept the authority of a non-Muslim ruler except under special circumstances, such as military rule.²⁸ Gumi saw partition, perhaps on the Indian model, as the radical answer for Nigeria, though it is not clear whether he means by that secession by the Muslim north or a loose confed-

eral system allowing for local autonomy. El Zakzaky, for his part, comes at the same issue from a purist angle. The secular state, according to El Zakzaky, is the illegitimate child of the secular constitution, and to overthrow the state it is necessary to overthrow the constitution that gave it birth. Only so can Muslims save themselves from what El Zakzaky calls the idolatrous worship of the secular state.²⁹ A sovereign secular constitution and a sovereign national state represent a double assault on revealed law and the chosen *ummah*. They are an unholy alliance, and must be opposed by Islam's *ittihad* (unitary mandate).

These religious arguments, however, are laden with the flaws they wish to remedy. The argument against compromise with the secular state, for example, spirals into the requirement of a *shabadab*-based state of Shari'ah prescription. Yet religious or secular anointing of the state does not solve the problem of the state; they merely exacerbate it. A religious state would allow government to guard revealed truth with political sanctions, the ideological counterpart to the normative secular state elevating political expedience into a sovereign national dogma. It is in that sense revealing that both Shaykh Gumi and Shaykh El Zakzaky offer little theological critique of the history of military rule in Nigeria in spite of the doctrinaire secular state that military rule fostered and in spite of the conspicuous absence of a religious warrant either for military rule or for an ideological state, both vanguards of secularism.

The Muslim opponents of Shari'ah law, for their part, insist that state sponsorship threatens the moral foundations of religion (*la ikraba fi al-din*, Qur'an ii: 256), and that, far from solving the secular challenge within, Shari'ah rule leaves Muslims helpless before it. For these opponents, if religion is too important for the state to ignore, it is equally too important for the state to co-opt. Shari'ah belongs with the end and purpose of its temporal and eternal felicity, not with the stratagem and means of state control. Responding to the criticism, Governor Yerima argues that popular support entitles him to the mantle of upholder of revealed truth.

Many contest Yerima's claim, including Suleman Kumo, a Muslim lawyer in private practice in Kano and himself a prominent Shari'ah activist since 1978. He belongs to the loose circle of critics of the politicization of Shari'ah. Although known for his pro-Iranian leanings, Kumo, never-

theless, states his objections to Shari'ah law, saying incompetent and corrupt judges, many of whom would fail a simple character test, are meting out justice. Abuse is prevalent in these courts. 'They are the worst courts. Ninety per cent of the area judges, if you were to apply the Sharia rules that witnesses must be upstanding citizens, would not even be competent to testify.'³⁰ Called to serve on a state government appointed committee called the Kano Forum, Kumo opened a dialogue with members of the militant Jama'atu Tajidmul Islami, a breakaway group from El Zakzaky's Muslim Brothers. Kumo noted that the members were well educated: engineers, medical students, and university-age young men. These people wanted to be self-reliant, to be independent of the government, but felt nevertheless that Islam should have a public role, though what that role would be, they did not say.

Fundamentalists face internal contradictions

In any case, Tajidmul is an example of secularization spreading among the fundamentalists, their assertions to the contrary notwithstanding. In the meantime, fundamentalists face internal contradictions. Thus, Maitama Sule, a Kano power broker and friend of the emir, for instance, wants to stamp out any signs of militant Islam lest a political stampede ensue and religion becomes mere fodder. He was taunting of El Zakzaky's Muslim Brothers, calling them 'a group of disgruntled elements who are out to vent their anger and who are joined by undesirable waste products of humanity'.³¹

Another example of opposition to the political misuse of Shari'ah is Mohammed Sani, a tailor and reportedly a devout Muslim. In August, 2000, Sani preached at an open air meeting to a crowd of fellow Muslims about the banners, bumper stickers, and posters featuring governor Yerima's photograph. He pointed out that such partisan displays were a mockery of the claim that all this was about Shari'ah. 'This is a political campaign, not sharia', he protested. Shari'ah, he assured his audience, is from God, not from a governor. For his pains Sani was thrown in jail for four months, his enemies charging him with disloyalty to the government. In defence of the government action, Abdul Kadir Jelani, a leading Muslim scholar and an advisor to the government said, 'Islam does not

permit someone to criticize the government'.³² The sentiment echoes the statement of the Council of 'ulama', to the effect that, 'for a government to be Islamic, Allah has to be the legislator through the Qur'an and the Sunna of the Prophet'. Public dissent is anathematized in such a government. Few should miss the irony that it is a secular constitution that has sanctioned public dissent and allowed Shari'ah advocates to mobilize in the first place.

This loose coalition of dissidents has, in a liberal environment of the city of Zaria, a hinge community of the disaffected that is most hospitable to their reform ideas. Zaria has been a stronghold of anti-establishment sentiments that challenge the state government and those who set themselves up as champions of Islam, as if being champions of justice for the common person is less worthy or desirable. Exemplary of this attitude is Sabo Bako of the Ahmadu Bello University. He castigates those in power as feudalistic and corrupt. 'The only way you can remain in power', he charges, 'is by keeping people down. You must not allow people to know what you are doing and how much money you have. So don't give them education, don't give them fertilizer, don't establish industries for them.'³³

Immunity or double jeopardy?

The West looms so large in the debate about Shari'ah penal law that it would be reasonable to conclude that the West is the cause of the problem. But, as I argued at the outset, the colonial concordat shows that Islam and the West could cohabit successfully. The heart of the issue, it would seem, is the role assigned to the state by each side in the debate. One side feels that the Islamization of the state, with religion and government united in a single source, will make government a source of grace and assure immunity for God's truth, while the other side feels that such a step will result in double jeopardy for political stability and religious integrity. Such diametrically opposed positions end up postulating an iconic state, with religion and secularism bidding for it on their own terms.

This intellectual cleavage has driven much of the momentum of the debate. The demand by Nigerian secularists, mostly from the south, for a constitutional separation of religion and government provokes in the Muslim north criticism on two fronts, first, that separation is a ruse to hand

government *carte blanche* to embark on innovation and, second, that religion would be reduced to a personal and private option, having no standing in the public square. It is the major reason why the Council of 'Ulama' alleges that secularism is a Christian Trojan horse deployed to assail Islam from within. The allegation, however, befuddles Christian Nigerians and others who have not the least rudimentary notion of 'Christendom' as a religio-political system. Typically, Christian Africans, such as Archbishop Onaiyekan of Kaduna, defend political secularism on pragmatic grounds of equality under the law, national stability and participation in public life, rather than for theological reasons. The prominence, in contrast, of religious reasons in the radical case creates a grave imbalance in the national debate and polarizes attitudes. That secular pragmatism has been the Christian failure, though the radicals misunderstand it by attributing it to theological self-interest. Pragmatism as a relative ethic is its own reward.

Secularism remains deeply suspect among the radicals because it promotes legislative innovation as the commodity of a free market economy. In Islamic terminology, 'innovation' is a code for heretical adding, subtracting, or alteration. The radicals recall that the Prophet Muhammad discharged his mission by claiming only that it was a confirmation and continuation of earlier messages rather than a break with them. His successors felt they had, and should have, no different mandate with respect to his legacy.

Not a word has been uttered about third world debt relief

In the secular scheme, by contrast, political innovation is the right of the sovereign national state, with the elected legislature the inviolable shrine of the people's will. The argument by the secularists for constitutional separation belongs with that of popular sovereignty and, as such, provokes among the Islamists a counterproposal of state-sponsored piety. Given the reality of weakened and ineffective government institutions and structures at both the federal and state levels in Nigeria or elsewhere and of the accompanying widespread public disenchantment with failed reforms, it is easy to see why Shari'ah law has popular appeal and why it has been a magnet for the disenchanted. Yet amidst all the contentions

and diverse agendas of Shari'ah advocates, it is striking that not a word has been uttered about third world debt relief or about programmes of poverty alleviation. The question remains then, as to whether even a Shari'ah-mandated state can do better against the existing failures of mismanagement, public incompetence, judicial corruption, social injustice, the absence of safety and security, falling standards of living, and widespread loss of morale, or whether, instead, Shari'ah would aggravate the problem by making God a party to the divisions. In the end, whatever the moral merit of a cargo, it cannot save a ship out of trim.

The legal and normative tradition that has helped shape Islam's historical identity has depended crucially on the dialogue and encounter of the religious community with its neighbours whose experiences and insights were reassembled, reformulated, and adopted into the code. Customs and ideas that were once regarded as alien and remote, or as worthless and irrelevant, became, by virtue of their proximity and familiarity, no longer heretical and strange, or no longer feared and ignored, and so the canon could expand from cumulative understanding, experience, and observance. Shari'ah evolved in the crucible of life and experience, and should be allowed to resume its fruitful course.

Religious injunction and cultural imperative: A postscript

Comparable issues face other religious groups in the West who have come at the subject from the direction of an antinomian view of faith. Some of these groups have withdrawn into communes and farmsteads or, as in Jonestown and Waco, into apocalyptic *fin de siècle* enclaves, where in isolation they nurse a sectarian view of the world. Others make a bid for power to turn back the tide of vice. All such groups seem of the mind that the existing status quo is complicit in the emergence of an imperative secular culture bereft of a sense of the holy and transcendent, and they wish to remedy that with a fundamentalism of their own. Secular powers, they claim, have declared open war on religion, prompting them, in turn, to invoke *jihad* to condemn secularism and the liberal free market system related to it. Yet society can ill afford this combative stalemate or its incendiary consequences.

We must recognize that the secular status quo

from the left and the right is bedevilled with this polarizing controversy. In mitigation, we should take seriously the moral insight that the things of God and those of Caesar belong to separate domains and are entitled to radically different conceptions of truth and values. The bidding of Caesar holds us to temporal obligations for our mutual safety and security while the injunction of God calls us, albeit also here and now, to the holy and transcendent for our eternal good. Obedience to Caesar draws on obedience to God like the shadow on the sunlight: the connection between the two is one of outward temporal necessity, not that of intrinsic moral equivalence. Faith has fruits for the public good, but its roots lie in another realm. That means the fruits of religion have untainted public use while the roots of religion have unreserved divine safeguard. Usefulness, accordingly, is not a truth claim just as faith is not just a public convenience. The costs of postponing open public discussion of how, in that light, religion may impinge on politics to tame doctrinaire secularism, and to thwart its radical religious nemesis, are high. The modern cultural project of acceptance of difference and tolerance of diversity is at stake.

Notes

1. This paper was commissioned by the OCMS for WMB in Oxford, April 29 to May 1, 2003. In writing the paper I had in mind the special needs of the international audience of the conference. At their request, an expanded version of the paper is lodged with the International Institute, University of Michigan, Ann Arbor.

2. Daniel Pipes has examined this issue in his article, 'God and Mammon: Does Poverty Cause Militant Islam?' *The Middle East Forum*, January, 2002.

3. In an uncannily prescient statement, A.J. Arberry, an eminent life-long student of things Muslim and Islamic, reflected more than fifty years ago on the challenge of Islam to the West: 'Present-day Oriental contempt for Europe, to my way of thinking the most terrible and menacing aspect of contemporary politics, is not to be dismissed simply as a triumphant reaction against a defeated or a penitent imperialism. Doubtless there is much of that in it; but the roots go deeper. Underneath all of it lies the challenge flung down more than thirteen centuries ago, and taken up again and again by leading Muslim thinkers. Islam claims specifically to be the final revelation of God to mankind, and an overthrow of all other religions . . . The tables have been turned. Christian Europe, adventuring into the East upon its self-appointed civilizing mission, is now informed that it is itself in need of civilizing anew from

the East . . . If the threatening and so unnecessary conflict is to be avoided, it is imperative that we should make a renewed and unremitting effort to understand each other's viewpoint, and to study what possibilities exist for, first, a diminishing of tension, next, a rational compromise, and, ultimately, an agreement to work together towards common ideals.' *The Mysteries of Selflessness: A Philosophical Poem* (London: John Murray Publishers, 1953), pp. xiv ff.

4. That was the title of Iqbal's influential book published in 1934. It became a national charter for the state of Pakistan, created in 1948. In the book, Iqbal wrote that the Muslim community, now scattered perforce in a multiplicity of free independent units must strive to have their 'racial rivalries adjusted and harmonized by the unifying bond of a common spiritual aspiration. It seems to me that God is slowly bringing home to us the truth that Islam is neither Nationalism nor Imperialism but a League of Nations which recognizes artificial boundaries and racial distinctions for facility of reference only, and not for restricting the social horizon of its members.' His was a voice for open borders of intellectual exchange.

5. Alexander David Russell and Abdullah al-Ma'mun Suhrawardy, *First Steps in Muslim Jurisprudence*, 1906, reprinted (London: Luzac & Co. Ltd., 1963), p. viii.

6. At about the same time similar efforts were going on in Egypt. Sir Norman Anderson's book, *Law Reform in the Muslim World* (1976) offers a comprehensive overview and summary of developments in the field. See also his *Islamic Law in Africa* (London: H.M. Stationery Office, 1954); reprinted (London: Frank Cass Publishers, 1970). Anderson, it should be pointed out, was not, however, concerned with issues of normative or prescriptive coherence in the administration of law.

7. Some Muslim spokesmen have contended that secularism divested the Muslims of their right to Shari'ah law while imposing no similar disability on Christians, a contention that does not accurately reflect the fate that, according to R.H. Tawney, had befallen Christianity when it was subjected to privatization in early modern Europe, with the church removed from having any public role in society. Tawney, *Religion and the Rise of Capitalism: A Historical Study* (Penguin Books: Harmondsworth, UK), p. 272. Under much of colonial rule, accordingly, the churches were severely restricted by being privatized; Nigeria was no exception.

8. *Hadd* (pl. *budud*) is the sphere of Shari'ah criminal law, and comprises i) *sariqa* (cutting off the hand for theft), ii) *zina* (caning or execution for fornication and adultery), iii) *qadhf* (slander or false accusation for fornication and adultery punishable by caning), iv) *baraba* (highway robbery or rebellion, for which the punishment is amputation of the right hand and left foot, exile, imprisonment, or sometimes execution by crucifixion), v) *shurb al-khamr* (alcohol consumption,

punishable by caning), and, sometimes vi) *al-rida* (apostasy, which is punishable by death).

9. For a study of contemporary Nigerian politics, including the regime of Babangida see Eghosa E. Osaghae, *Crippled Giant: Nigeria Since Independence* (Bloomington: Indiana University Press, 1998).

10. Birai, 'Islamic Tajdid', 1993, p. 190. The implication here is that there is no ground for dialogue with Christians. They are responsible for secularism.

11. Yerima was appointed as an official participant at the August, 2000 Democratic National Convention in Los Angeles, California, a measure of his range and appeal.

12. *Christian Science Monitor*, 22 February, 2001.

13. 'As Stoning Case Proceeds, Nigeria Stands Trial', *New York Times*, 26 January 2003, A3.

14. The name, *Izala* is Arabic for 'eradication' and occurs in the name of the movement, the Society for the Eradication of Heresy and the Establishment of the Prophet's *Sunnab*, founded in 1978.

15. For a report on El Zakzaky and the 1996 religious riots in Kafanchan and Kaduna he inspired, see 'Bloody Riots in the North', *Tell* magazine, September 30 1996. According to the magazine's report, the government crackdown commenced on September 12, 1996 in Zaria, when El Zakzaky gave himself up to the authorities. The following day after the Friday Jum'ah prayer, his followers mounted public demonstrations in various parts of the country, including Katsina and Kaduna, and Zaria, demanding his release. There was bloodshed from these demonstrations. On the background to El Zakzaky, see also Ousmane Kane, 'Mouvements religieux et champ politique au Nigeria septentrionale: le cas de réformisme musulman au Kano', *Islam et Sociétés au Sud du Sahara*, vol. 4, pp. 7-24

16. Muiyiwa Akintunde, 'This Isn't the Sharia We Know', *Africa Today*, December 1999.

17. Some Egyptian modernists follow Leo Strauss and Karl Popper in making this distinction. Among them was Faraj Fuda, assassinated in 1992. He accused Shari'ah advocates of offering a false panacea for present ills. Like Mamadou Dia, one time Prime Minister of Senegal, Fuda called for a dynamic understanding of Shari'ah and Islamic history. See Ibrahim M. Abu-Rabi', *Intellectual Origins of Islamic Resurgence in the Modern Arab World* (Albany: State University of New York Press, 1996), pp. 255 ff. In this respect, a report on Iran says that the clerical leaders of the revolution there have climbed down from their high theocratic positions and opted for 'a minimalist' approach in order to reduce the risk of popular backlash and to connect with the youth. But this is not surrender to secularists who also admit that Islam has a role in society. Thomas L. Friedman, 'Iran and The War of Ideas', Op-Ed article, *New York Times*, 19 June 2002. This sentiment is in line with the distinction being made in Nigeria in the contrasting roles of state and society which promises a

more fruitful avenue of thinking, if only because it accepts the coexistence of Islamization and secularization. The issue of democracy and Shari'ah rule was taken up also by the influential Pakistani scholar, Maududi, but with unsatisfactory results. Abul A'la Maududi, *Political Theory of Islam* (Lahore: Islamic Publications Ltd., 1980), pp. 21-25, 34-42. See, too, James Piscatori, *Islam, Islamists, and the Electoral Principle in the Middle East* (Leiden: International Institute for the Study of Islam in the Modern World, 2000).

18. In an irate editorial, 'Faith in the Public Sphere', the *New York Times* invoked this argument when it chided Rod Paige, the African American Secretary of Education, for advocating the promotion of Christian values in schools. Dr Paige's statements confirm 'the suspicions that the [Bush] administration is in sympathy with the religious right's drive to undermine the public school system in favour of a voucher-financed nationwide network of religious schools'. Dr. Paige's religious views, according to the *Times*, are destructive of the public interest. *The New York Times*, April 11, 2003. On the flaws of secular diversity see Diane West, 'God and man at Harvard, an uneasy relationship', *New Haven Register*, 4 May 2003, B3.

19. Maududi's influential opinions include guarded support for 'theo-democracy', i.e., democracy qualified by Islamic restrictions. See Piscatori, 2000, pp. 20-21.

20. Interview, *This Week*, 6 April, 1987. This condemnation of those 'ulama' who are under the thumb of temporal rulers is a well rehearsed one in the literature. As far back as Jalal al-Din al-Suyuti (d. 1505) we hear of attacks on religious scholars who ingratiate themselves with rulers.

21. Report in *Quality*, Lagos, October, 1987, and cited in S. Ilesanmi, *Religious Pluralism and the Nigerian State* (Athens, Ohio: Center for International Studies, 1997), p. 186.

22. The example of Dr. Mohammed Tawfiq Landan, senior lecturer in law and Head of the Department of Public Law at Ahmadu Bello University, Zaria, is a case in point. In a major dissenting article, he attacked the method of Shari'ah implementation as flawed and 'violative of the rights of life and security' of the poor. *The Guardian*, 8 January, 2002.

23. Report of the commission: 'Sharia and the Future of Nigeria: Report of the Trip by the Civil Liberties Organization, CLO, Hurilaws and other NGOs to Zamfara State', p. 9.

24. BBC reports of 23 December, 2000, spoke of continuing public campaigns demanding Shari'ah law in other parts of the north.

25. Mr. Soyinka's own justifiable protestations notwithstanding, the northern Muslim leaders prefer to consider him a Christian for the purposes of legal classification. Thus, when he received the 1986 Nobel Prize for Literature, Shaykh Gumi was awarded by Saudi Arabia an Islamic equivalent created for the occasion.

26. 'This is Prelude to War', Soyinka interview, *The News*, Lagos, March 6 2000. One must allow for some editorial shoddiness in this copy. Only academic essentialism can make us persist with equating Shari'ah with Orisa: the two have Nigeria fortuitously in common; otherwise in historical range, scale, and claim, they move in very different spheres altogether.

27. *The Guardian*, Tuesday, February 29, 2000.

28. U.M. Birai, 'Islamic Tajdid and the Political Process in Nigeria', in M.E. Marty & R.S. Appleby (eds.), *Fundamentalism and the State: Remaking Politics, Economies, and Militance* (Chicago: Chicago University Press, 1993), pp. 184-203, 196.

29. Birai, 'Islamic Tajdid and the Political Process in Nigeria', p. 197.

30. Karl Maier, *This House Has Fallen: Nigeria in Crisis* (London: Penguin Books, 2000), p. 178.

31. Maier, 2000, pp. 170-171, 172. The leader of Tajidmul, Shaykh Abubakar Mujahid, is a self-declared uncompromising admirer of the Iranian Revolution and of the Talibans. He expressed disquiet about Iran's reformist president, Mohammad Khatami, saying Khatami was slipping from the old moorings, was 'getting loose', as he put it. He wishes to use western education, including its technology, to inculcate Islamic values. Tajidmul ran a small school in Kano, a pharmacy, and a wholesale food store for its members, showing secular inroads in fundamentalist theology.

32. *Christian Science Monitor*, 22 February, 2001.

33. Maier, 2000, pp. 172-173.