



## From Traditional Islam to Islam as an End in Itself

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The development of religious thought in Iran has particularly accelerated during the past century. It can be interpreted as the passage from a traditional view of religion to one which is an end in itself. I mean by traditional Islam the domination of the culture and exigencies of the time, place, and special circumstances of the Age of the Revelation as the immutable, sacred, and idealized framework for Islamic thought (retrospective utopia). It is as if the genuine form and appearance of Islam is its form and appearance at the time of the Revelation, and the further we are from that sacred past and those historical circumstances, the further we are from genuine and true Islam. The best conditions are those of the age of the Prophet, and the revival of the Faith has no meaning other than the reconstruction of those initial conditions, exigencies, and frameworks.

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On the other hand, Islam which is an end in itself, by passing over the temporal and spatial conditions of the age in which the religion arose, considers religiosity through the cognition and realization of the spirit of religion and the goals of Islam. Based on this view, theoretical and practical allignment with the aim and the purpose of the Revelation and the spirit of Islam, i.e., piety, is the criterion for being religious, and not the mere observance of the particular temporal and spatial superficialities and forms of the Age of Revelation. Islam is limp as rain and, as it flows over the bed of history and various lands, takes on the hue, taste, and odor of various customs, although of course most of this is from the time and place of the Age of the Revelation.

There have been joint efforts by wise scholars of religion and Islamologists to arrive at an unalloyed understanding of the faith and to purify its commandments of the various relationships of different times and places, including the exigencies of the Age of Revelation. In other words, by abandoning temporal issues to achieve the major goals and timeless criteria of faith and purifying Islam from that class of commandments whose relevance has expired and only whose forms and appearances have remained, meaningless forms which no longer serve the Faith's lofty purposes, they have redoubled the emphasis on the goal, content, and essence of religious teachings.

The spread of Islamology and religious studies in our society is in harmony with this, and this process of perfection and development favors religiosity. Although it appears to reduce the scope of religion, it actually greatly deepens it as it approaches the true sphere of religion, and today's bewildered humanity seeks what it has lost in the depth of these pious meditations. The more religion is dissolved into various social and intellectual issues, the better, greater and more precisely distinguished are its reality, effectiveness, scope, and what is expected of it.

In the meantime, modernity is at a turning point. Before Muslims' confrontation with modernity, which dawned in our society with the Constitutional Movement, the religious people had few difficulties with their religiosity. In other words, they found their beliefs, morals, religious law, and *shari'a* normal, and they did not have any trouble facing various problems. With the world's entrance into the age of modernity and modernization and the gradual acquaintance of Muslims with the

criteria and discourse of the new age, the relationship between religiosity and modernity became one of the most important issues of contemporary Muslim humanity.

The problem began with the incompatibility of certain religious propositions with the achievements of the new civilization. The scope of these incompatibilities gradually expanded. Among the spheres of Islam, these incompatibilities grew more in *shari'a*, i.e., *fiqh* (religious jurisprudence) and the practical commandments of Islam than in Islamic faith, belief, morality, and ethics. This problem became more severe when the achievements of the new civilization and the fruits of modernity gradually became transformed into the common usage (*'urf*) of the age, or, in more technical terms, into the method of reasonable people (*sira-yi 'uqala'*) of this age, and some religious propositions contradicted this method and course.

The first reaction of the religious was to attack the new issues and criteria. Modernity was considered an organized effort and a satanic conspiracy to destroy the basis of religion, and shutting the country's gates to this sewage of modernity was considered a religious obligation. But as this confrontation unfolded, it became clear that that flood could not be stopped with a slab of stone and another solution had to be thought up. Another group went to the other extreme and completely gave up and saw the way to prosperity in unconditionally surrendering to modernity and consigning religion to the most private corners of one's life. These people were overly concerned with changing appearances and never reached the essence of progress.

Eschewing these two extreme tendencies, the wise pious realized that one could neither escape modernity nor abandon tradition and religion. But how could one preserve Islamic tradition and still live in the age of modernity? Various answers were given to this important question. These answers bespeak a great effort by religious scholars in solving the problem of how Islam should respond to the exigencies of the modern age. They are not all equally strong or deep, yet they are important indications of the religious scholars' concern with this matter. We limit our discussion to answers by Iranian Muslims, i.e., a review of the efforts of Shī'i Muslim thinkers in Iran (or Shī'i thinkers that impact Iranians). What emerges demonstrates that these thinkers mostly found incongruities between religion and modernity in the sphere of the *shari'a* and

less so in discussions of the two spheres, belief and faith, morality and ethics; and that their solutions were mostly oriented towards resolving contradictions between the sphere of *shari'a* or *fiqh* or Islam's practical injunctions on the one hand and the modern world on the other. A review of the ways Muslim scholars in contemporary Iran confronted the exigencies of the new era in the sphere of *shari'a* shows that the most important solutions presented could be classified in three perspectives. These three perspectives are: The Constant and Variable Perspective, the Government or Expedient Perspective of *fiqh*, and the Perspective of Islam as an End in Itself.

### **The First Perspective: Constant and Variable**

The Constant and Variable Perspective is the most popular perspective of the past century. According to it, commandments which are known as Islamic commandments are of two varieties: Constant and Variable. Constant commandments are immutable and eternal and form the *shari'a* text. Variable commandments are limited, temporary, governed by the interests of the time they arose, and fleeting. Constant commandments are those which have been revealed by God in the form of revelation, but variable commandments, i.e., commandments posited by people under the influence of constant commandments, although obligatory in religious society, are not considered part of religious scripture. Scholars have two views on who gets to posit and legislate variable commandments.

### **View One: Rulers Are the Legislators of Variable Commandments**

In the first view, the late 'Allāma Muḥammad Ḥusayn Ṭabāṭabā'ī (1892-1981) and his followers believe that the positing of variable commandments is the responsibility of the ruler of an Islamic society. According to the theory of the *wilāyat-i faqīh* (guardianship of the jurist), Islamic variable commandments are precisely the custodial (*wilā'i*) or governmental commandments which have been issued to serve the Muslims' interests. According to the author of *al-Mizān* ('Allāma M.H. Ṭabāṭabā'ī), Islamic laws and commands are divided into two distinct categories:

First, the commandments and laws which protect the interests of human life (because it is human and social) in every age and in every location and with all characteristics which it might have, such as some beliefs and laws which embody human worshipfulness and humility towards its Creator—Who brooks no manner of alteration or diminution—or like all the laws which [are related to] the principles of human life, such as food, shelter, marriage, and the protection of the necessities of life and social living which humans have always needed to implement.

Second, the commandments and rules which have a temporary or local or specific character, and have to do with differences in lifestyle. Of course, these commandments are mutable and can change with the gradual progress of civilization and social transformation, urbanization, and the transformation of the features of societies and with the appearance and disappearance of ways of life. Thus, Islam may have its rules divided into two parts, constant and variable; the first, which is firmly based on the creation of humanity and its particular characteristics, is called the Islamic creed and *sharī'a*, whose light leads to human prosperity. “Arise, turn to the Faith of the devotee. Be of the nature which God made human nature. There is no transformation of God’s creation. That is the upright Faith.” (Qur’ān, 30:31)

In the meantime, it must be recognized that the second part, which consists of mutable rules and can change in accordance with various temporal and spatial interests, as a sign of the general custodianship (*wilāyat-i ‘amma*), is conditional upon the view of the Prophet of Islam, his successors, and his appointees, and shall be determined and implemented in light of the constant religious rules taking into consideration the interests of time and place. It is obvious that these rules are not known as divine commandments and *sharī'a* and are not called religion in religious terminology.

“O believers! Obey God and obey the Prophet and those in authority among you.” (Qur’ān, 4:59) In the case of such commandments and rules in Islam, we have a principle which we shall call “the ruler’s prerogatives” in this discussion. This is a principle which answers the people’s mutable needs in every age and in every time and place, without overriding and voiding Islam’s constant rules, while relieves human society’s needs. The Muslims’ authority (*walī-yi amr*), who is legitimated from an Islamic perspective, considering the general custodianship which rules within its realm and in fact governs Islamic society’s thinking and focuses everyone’s feelings and will, can make the alterations in the sphere of public life that an individual can in his personal life.

In short, any new rules which are useful for advancing society’s social life and end up being in the interest of Islam and the Muslims is within the powers of the ruler and there is nothing forbidden in posing and executing them. Of course, although the implementation of such rules is obligatory and the authority (*walī-yi amr*), whose duty is to pose and implement them,

must be obeyed, at the same time, they are not considered part of the *sharī'a* and a divine commandment. The legitimacy of such rules naturally follows the interest which made them necessary and brought them into being. As soon as this interest disappears, these rules will also disappear.

The former authority (*walī-yi amr*) or the new one announces to the people the disappearance of the former commandment and the emergence of its successor and abrogates the old commandment. But divine commandments which form the text of the *sharī'a* are constant and fixed forever and no one, including the authority (*walī-yi amr*) has the right to change them because of temporary interests and cancel some of them, because of the elimination of some of the interests in his view.<sup>1</sup>

The perspective of 'Allāma Ṭabāṭabā'ī's exposition of the constant and variable might be expounded as follows:

- 1) Islamic commandments, laws, and rules may be divided into two distinct classes.
- 2) The features of the first class consist of:
  - a. Protecting the living interests of the human species.
  - b. Being constant, immutable and impossible to abrogate.
  - c. Are posed by the Legislator (*shāri'*), i.e., either revealed by God to the Prophet (peace be upon him) or posed by the Prophet, or the infallible Imams (peace be upon them) reported their having been posed by the Prophet (peace be upon him).
  - d. The object of the Islamic creed and *sharī'a* is exclusively this class of commandments.
- 3) The features of the second class of the rules are:
  - a. Protecting humanity's various temporal and spatial interests and temporary and partial benefits.
  - b. Variable, ephemeral and possible to abrogate.
  - c. Specified and posed and abrogated by the Islamic ruler (*walī*) in light of fixed religious rules and taking into consideration temporal interests.

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<sup>1</sup>) Sayyid Muḥammad Ḥusayn Ṭabāṭabā'ī, *Islām wa Insān-i Mu'āṣir* (Islam and Contemporary Human Beings), ed. by Sayyid Hādī Khusraw-Shāhī, *Barrasīhā-yi Islāmī* (Islamic Reviews), vol. 2, Qom, "Islam and the Needs of Contemporary Human Beings", pp. 36-43 (summarized). See also "Custodianship and Authority in Islam", *Barrasīhā-yi Islāmī* (Islamic Reviews), vol. 1, pp. 180f.

- d. Although they are obligatory in Islam, they are not considered *sharī'a* or divine commandments.

This exposition of the Constant and Variable Perspective is faced with the following questions:

- 1) Are all *sharī'a* commandments in the Qu'rān and the Sunna (tradition) considered constant commandments?
- 2) If there are also variable commandments among the commandments issued by the Prophet (peace be upon him) or the Imams (peace be upon them), by what criteria does one distinguish the constant commandments from the variable commandments?
- 3) If the Islamic creed and *sharī'a* are limited to the constant commandments, and the variable commandments, despite their being obligatory, are not considered part of the *sharī'a* and the divine commandments, how can the variable commandments of the second class of commandments be considered Islamic rules?
- 4) What are the policies, criteria, and limitations of the variable commandments and by what criteria does the Islamic ruler pose them?

### **The Second View: The People's Representatives Pose the Variable Commandments**

In the second view of the first perspective, posing commandments, subject to certain conditions, is the responsibility of the people's representatives. There are two expositions of this perspective.

#### **First Exposition: Non-*manṣūṣ* Commandments**

In the first exposition, Mīrzā Muḥammad Ḥusayn Gharavī Nā'inī (1861-1936) considers the variable commandments to be precisely the non-explicit (*ghayr al-manṣūṣ*) commandments whose posing, subject to the principle of consultation and the exigencies of the times and interests, may be consigned to the people's representatives in the parliament. In his opinion, accordance with the *sharī'a* is restricted to the constant and *manṣūṣ* commandments.

According to the view of the author of *Tanbīh al-Umma wa Tanzīh al-Milla* (Najaf, 1908) of Nā'īnī:

The set of duties concerning the system and preserving the country and the politics of the affairs of the Muslim world (*umma*), whether they are primary duties vouchsafed in the principle instructions concerning human duties or secondary ones comprising the punishments of violators of the primary fixed commandments, are of no more than two varieties. Necessarily they are either *manṣūṣ*, whose practical obligation is specifically determined and whose commandment is recorded in the pure *sharī'a*, or they are not *manṣūṣ*, whose practical obligation is indeterminate and left to the opinion and preference of the custodian of humanity, because it is not included under a specific criterion.

It is clear that just as the first class cannot be altered or varied in various times and places and is not apart from following exactly (*ta'abbud*) as stipulated in religious *manṣūṣ* as envisioned as obligatory until the hour of judgment, the second class follows the interests and exigencies of times and places and with such variations, it may vary and change, both with the presence and expansion of the power of the custodian (*walī*) appointed by God (may His name be grand!) and even in other places, with the oversight and authority of those appointed on behalf of His Holiness [the Prophet] (peace be upon him) and in the Age of Occultation, too, with the oversight and authority of the general deputies [of the Hidden Imam] (*nuwwāb-i 'āmm*) or someone who may take up the aforementioned duties and who has the mandate of being authorized by the authorized (*man lahu wilāyat al-izn*).

It follows plainly and with complete clarity that political derivations based on this principle shall be as follows:

First: Those rules and commandments that shall be harmonized with the *sharī'a* as they should, with care and precision, shall be limited to the first class [*manṣūṣ*]. This issue is irrelevant in the second class and has no place there.

Second: The principle of consultation, on which is based the knowledge of the grounds for Islamic rule in accordance with the teachings of the Qur'ān and the Sunna (tradition) and the sacred life (*sīra*) of the Prophet, belongs to the second class, and the first class, as has been pointed out previously, is outside this subject matter and consultation has absolutely nothing to do with this.

Third: That just as the age of the presence [of the Prophet and Imams] and the free hand and even administrations (*tarjihāt*) of the rulers and agents appointed by the universal custodian (*walī-yi kull*) [the Prophet] necessitated the second class, similarly in the time of Occultation, too, administrations of the general deputies (*nuwwāb-i 'āmm*) or those who are authorized by



their permission (*ma'zūnīn*), in accordance with the exigencies of a firm and decisive deputyship, necessitates this [second] class.

Fourth: The bulk of general (*naw'īya*) politics is of the second class and is included under the heading of the custodianship of the Twelfth Imam (*walī-yi amr*) (peace be upon him) and his deputies, Special [during the Minor Occultation] or General [during the Major Occultation] and their administrations, and the Shi'ite principle of consultation is in the *sharī'a* for this reason, and acting upon this necessary civil (*hisbīya*) duty [pertaining to the duty to "Enjoin the proper and forbid the improper."] under present circumstances and the suspension of its recognition and its promulgation are to issue from an official National Consultative Assembly [parliament]. It has been previously made clear that it is by the responsibility of the full wisdom and capacious capacity of the nation's deputies and by the signature and permission of all who bear the signature and permission that they shall gather all propriety and legitimacy and eliminate doubts and difficulties.

Fifth: Since the understanding of the second class of general (*naw'īya*) politics is under definite criterion which is not included and accepts various interests and exigencies, it is not set down as authoritative (*manṣūṣ*) in the pure *sharī'a*, but is consigned to consultation and the preference of those whose opinions are authoritative, surely the laws referring to this class will represent different perspectives of their interests and exigencies for various ages and will likely vary and are subject to annulment and amendment and cannot be like the first class, based as it is on permanency and confirmation. Thus far, it appears that such laws will necessarily be annulled or altered as is characteristic of the laws of this second class.<sup>2</sup>

We can summarize Nā'īnī's exposition of the constant and variable model as follows:

- 1) Political commandments and, indeed, all social commandments are of two kinds:
  - a. *Manṣūṣ* commandments.
  - b. Non-*manṣūṣ* commandments.
- 2) *Manṣūṣ* commandments are
  - a. Fixed and immutable.
  - b. Unnullifiable.
  - c. May be elucidated by jurists (*faqīhs*).
  - d. Most political commandments are not of this class.

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<sup>2)</sup> Mīrzā Muḥammad Ḥusayn Gharavī Nā'īnī, *Tanbīh al-Umma wa Tanzīh al-Milla*, with an introduction and explanations by Sayyid Maḥmūd Ṭaliqānī, Tehran, 1954, pp. 98-102 (summarized).

- 3) The second class of commandments is:
- a. Not *manṣūṣ*, i.e., they do not have a special criterion and a particular standard in the text of the *sharī'a*.
  - b. Follow temporal and spatial interests and exigencies.
  - c. Variable, evanescent, and nullifiable.
  - d. The status of these commandments is the responsibility of the Islamic ruler.
  - e. These commandments are posed after consultation with eligible experts.
  - f. The Islamic ruler may delegate posing these commandments to the people's representatives in the parliament.
  - g. Harmonizing with the *sharī'a* for this class of commandments is irrelevant and has no place.
  - h. Most political commandments are of this class.
  - i. These commandments are religiously obligatory.

What distinguishes Nā'īnī's exposition from the previous exposition is the following:

- 1) The relationship between constant and variable to what is *manṣūṣ* and what is not.
- 2) The necessity of consultation in posing commandments which are not *manṣūṣ*.
- 3) A lack of need for harmonizing the *manṣūṣ* commandments with the *sharī'a*.
- 4) The ability to consign posing commandments which are not *manṣūṣ* to the people's representatives in the parliament.
- 5) Most commandments which are political, indeed, social, are in the class of commandments which are not *manṣūṣ*.

The following questions arise regarding Nā'īnī's exposition of the Constant and Variable Perspective:

- 1) May one consider all *manṣūṣ* commandments constant and immutable? Is it not possible that a mutable commandment posed by the Prophet or the Imams (peace be upon them) might be found among the *manṣūṣ* commandments?
- 2) If the commandments of the second class do not have a special criterion in the context of the *sharī'a*, if harmonizing them with the

*sharī'a* is pointless and irrelevant, if positing these commandments needs consultation, and if one might even consign posing them to non-jurists (*faqīhs*)—the people's representatives—, what need is there for the Islamic ruler's being a jurist (*faqīh*)?

- 3) Is the necessity to pose these commandments on behalf of the Islamic ruler or their execution being obligatory according to the *sharī'a* something apart from the rational necessity of complying with the social order?
- 4) If the great perspectives, indeed, most if not all social commandments, are among the commandments which are not *manṣūṣ*, how and with what meaning may one talk about religious politics, religious government, etc.?

### **Second Exposition: The Commandments of the Discretionary Sphere**

Sayyid Muḥammad Bāqir Ṣadr (1935-1980, Iraqi but with a great impact on Iranian elites), with his innovative expression “the discretionary sphere” (*manṭiqat al-farāgh*), considered the variable commandments to be limited to the sphere of permissible (*mubāḥāt*) subjects in *sharī'a*. In his last decree, it should be the responsibility of the people's representatives in the legislature to determine commandments in the discretionary sphere based on following the public interest. Ṣadr believed that in various disputed commandments—i.e., most juristic (*fiqhī*) commandments—an assembly of “those who bind and loose” shall choose from among the views of the jurists (*faqīhs*) that view which has the greatest relationship with the system's well-being. According to his view:

The Islamic *sharī'a* is the source of the Constitution and common rules because all laws are posited based upon it as follows:

- 1) The *sharī'a*'s constant commandments, over which there is no dispute among the jurists (*faqīhs*). This group of commandments, depending on their relationship to social life, is in the permanent part of the constitution, whether they are referred to in the law's text or not.
- 2) The permanent religious commandments subject to dispute among the jurists (*mujtahids*) and so without a unique position on them under the *sharī'a* and for which transformations under the *sharī'a* are

conceivable. The legislature is responsible for choosing a specific alternative among these numerous views, based on the public interest.

- 3) The region in which no commandment of obligation or prohibition has been issued by the Divine Legislator and in which choice of position has been granted by the legislator to legal agents (*mukallafān*). This domain is called the discretionary sphere. The legislators are responsible for determining the obligatory commandments in this domain, based on observing the public interest and subject to not contradicting the constitution.<sup>3</sup>

Sayyid Muḥammad Bāqir Ṣadr's exposition of the Constant and Variable Perspective may be summarized under the following headings:

- 1) Islamic laws are of three classes:
  - a. Commandments of the *sharī'a* which are not subject to any dispute.
  - b. Commandments of the *sharī'a* which are subject to disputes between jurists (*faqīhs*).
  - c. Commandments of the discretionary sphere, a sphere for which there are no commandments of obligation or forbidding under the *sharī'a*.
- 2) Religious commandments which are not subject to dispute among the jurists (*faqīhs*) are to be considered permanent and non-transitory commands (in the domain of necessary juristic ordinances (*ẓarūrīyat-i fiqhī*)).
- 3) In disputed religious commandments, it is the responsibility of the people's representatives to choose among the commandments the one which suits the public interest. In this sphere, the *fatwā* of a special *faqīh*, even if he is a proper source of emulation (*marja'i*) or authority (*walī-yi amr*), is not required for the law to be implemented. These commandments, too, are considered permanent.
- 4) In the discretionary sphere, decision-making is turned over by the Legislator (*shāri'*) to legal agents (*mukallafān*). The people's representatives are responsible for positing the obligatory command-

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<sup>3)</sup> Sayyid Muḥammad Bāqir Ṣadr, *Lamḥa Fiqhīya Tambhīdiya 'an Mashrū' Dustūr al-Jumhūrīya al-Islāmīyat-i Īrān, Majmū'at al-Islām yaqūd al-Ḥayāt* (Introductory Juristic Glance at the Constitution of the Islamic Republic of Iran, Series "Islam Guides Life"), 1979, pp. 18f.

ments in this sphere is the responsibility of the people's representatives in accordance with the public interest and within the framework of the constitution. It is clear that the commandments of this sphere shall be considered variable.

The following points distinguish Şadr's exposition from Nā'inī's:

- 1) Dividing the permanent *manşūş* commandments into the disputed and the non-disputed.
- 2) Accepting the choice by the people's representatives of the commandment suitable to the public interest from among the disputed constant authoritative (*manşūş*) commandments.
- 3) Turning over the positing of variable commandments in the discretionary sphere to the people's representatives.
- 4) Being content with legal oversight by a proper source of emulation (*marja'*) over positing commandments in order to warn of issues which violate the *sharī'a*.

Comments arise regarding Şadr's exposition of the Constant and Variable Perspective:

- a) May one consider all the *manşūş* commandments, both disputed and not disputed, to be constant and immutable under the *sharī'a*? Is it not possible that some of these same *manşūş* commandments were among the remaining variable commandments issued by the Prophet or the Imams?
- b) If in the discretionary sphere there is no commandment of obligation or forbidding under the *sharī'a*, what could a jurist's (*faqīh*) supervision over the people's representatives' decisions mean? Could one not, with Nā'inī, decide that the compatibility of these decisions with the *sharī'a* is out of place and pointless?
- c) Could distinguishing the public interest in the discretionary sphere and the disputed *manşūş* commandments have a criterion according to the *sharī'a* and religion?

### A Critique of the Constant and Variable Perspective

For all this, one cannot doubt that the Constant and Variable Perspective has perfected itself in the course of these three expositions. Even so, this model is plagued with difficulties in each of these three expositions:

- 1) In the first exposition, no criterion for distinguishing variable commandments is presented. In the second and third, too, it is not specified why all the *manṣūṣ* commandments are constant. What happened to the temporary and variable commandments issued by the Prophet and the Imams?
- 2) The difficulty of the incompatibility of the religious commandments with modernity is in the field of commandments which are constant and *manṣūṣ*. This problem remains unresolved in this perspective.
- 3) If religion and *sharī'a* are restricted to constant and *manṣūṣ* commandments, then the variable commandments or those which are not authoritative or are in the discretionary sphere may not be considered religious or subject to the *sharī'a*. This is particularly the case since no religious criterion has been presented for distinguishing the public interest.
- 4) Considering that there is no special criterion for variable or non-*manṣūṣ* commandments, that harmonization with the *sharī'a* is pointless and has no place, and that positing such commandments requires consultation:
  - a. There is no reason to consign positing them to an Islamic authority or the *walī-yi faqīh*.
  - b. Neither is there any reason to consign supervision over them to the jurists (*faqīhs*) lest they not violate the *sharī'a*.<sup>4</sup>

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<sup>4</sup> Nā'īnī did not consider it necessary to have a board of jurists (*mujtahids*) supervise the people's representatives' bills in the sphere of non-*manṣūṣ* of *sharī'a*. Indeed, he considered only the primary permission of the religious authorities or the presence of some jurists (*faqīhs*) among the representatives to suffice, and even this was out of caution and not obligation: "To the best of one's ability, simply out of the caution which must be observed, the principle of election and the participation of the electees may occur with the permission of a jurist-ruler (*mujtahid-i nāfiḡ al-ḥukūmat*) or the inclusion or include a board of deputies so that the rejection or approval should be the responsibility of a number of the system's *mujtahids*, to approve and ratify the votes taken." *Tanbīh al-Umma wa Tanzih al-Milla*, p. 79.

These difficulties led to the Constant and Variable Perspective's ineffectiveness and the necessity of proposing a different perspective.

### **Second Perspective: Governmental or Expedient Jurisprudence**

The second perspective, the Governmental Jurisprudence (*fiqh*) or Expedient *fiqh* Perspective, is an innovation of the Ayatollah Khomeini, the Leader of the Islamic Revolution and founder of the Islamic Republic. This perspective is the upshot of the practical confrontation of religion with the administration of society or, more precisely, the confrontation between religious and social difficulties in the modern age. The initiator of this perspective, recognizing the shortfalls of the first perspective, gradually discovered the second perspective.

At first, he, too, like some jurists (*faqīhs*) who supported the first perspective, looked towards variable commandments and the powers of the governor and governmental commandments and, by extending and deepening this sphere, reached for "the elements of expediency". But he realized that independent reasoning (*ijtihād*) in the idiom of seminaries, i.e., the prevalent *fiqh*, could not resolve the difficulties of our time and that acting in accordance with them would only lead society to a dead end and the collapse of civilization.

He therefore became aware of the very serious role of time and place in independent reasoning (*ijtihād*), noting that the decisive position of time and place was not limited to the derivation of variable religious commandments, but that all commandments, including the commandments which were constant (according to the first model), were traversed. And at this point, i.e., with a sort of revision in the commandments which had been considered constant in the previous model, a new model was founded. Observing the exigencies of time and place in this elucidation concluded with the harmonization of the *shari'a*, indeed, of religion, with modernity, or at least it reduced many discrepancies. Some of Ayatollah Khomeini's key statements in this regard are as follows:

Islam is the government in all its aspects, and the commandments are the laws of Islam, which are aspects of the government. Indeed, the commandments

are means to an end and tools to implement the government and spread justice.<sup>5</sup>

In other words, the religious commandments are not an end in themselves. They have motion and not position. What is an end in itself is the spread of justice by an Islamic state. What is a means to an end may be altered to achieve the goal.

If governmental powers are within the framework of divine secondary commandments, the divine government and absolute custodianship being entrusted to the Prophet of Islam would be a meaningless and a void idea. A government which is a branch of the absolute custodianship of the God's Messenger is one of Islam's primary commandments and takes precedence over all the secondary commandments, even praying and fasting and the *hajj*. The ruler may destroy a mosque or a house which blocks a street and turn the money for the house over to its owner. The ruler may close mosques, should it be necessary, and he may destroy a deleterious mosque (*masjid-i zarar*) if its harm could not be removed or eliminated without destroying it.

The government may unilaterally abrogate the religious contracts it made with the people should they be against the interests of the country or Islam. It may prevent anything, devotional or not, which might at some point be against Islam's interests, as long as this is so. The government may temporarily prevent the *hajj*, which is an important religious obligation, as long as it is against the Islamic country's interests. What has been or is being said is out of a lack of knowledge of divine absolute custodianship.

As for the rumor that temporary sharecropping contracts (*muzāra'a*) and silent partnership (*muzārabā*) and the like will be nullified by these powers, I clearly submit that supposing it is true. This is within the government's powers, and there are issues which go beyond this with which I shall not trouble you.<sup>6</sup>

Time and place are two decisive factors in independent reasoning (*ijtihād*). A problem that in the past may have a verdict may call for a totally different verdict in the context of a different time and a different political and social situation. Although the subject remains the same, deep and precise knowledge and findings in the sphere of social, political and economics have turned the same old subject into something new which calls for a new verdict. The jurist (*mujtahid*) should have necessary knowledge of the issues of his own time.<sup>7</sup>

<sup>5</sup> Ayatollah Khomeini, *Kitāb al-Bay'* (Book of Selling), vol. 2, p. 472.

<sup>6</sup> *Ṣahīfa-yi Nūr* (Book of Light), vol. 20, p. 170, "Letter dated January 6, 1988".

<sup>7</sup> *Ibid.*, vol. 21, p. 98.



A very important issues in today's turbulent world is the role of time and place in independent reasoning (*ijtihād*) and our manner of decision-making. The government has determined a practical philosophy of confronting idolatry, unbelief and domestic and foreign difficulties that all these student's theoretical discussions at the seminaries not only will not solve, but would drag us into an impasse which will result in an apparent violation of the constitution.<sup>8</sup>

I must express regret over your perception of the traditions (*akhbār*) and commandments. The way you perceive the traditions and narratives (*riwāyāt*), the new civilization must utterly disappear and the people must live in caves or deserts forever.<sup>9</sup>

In the eyes of the true jurist (*mujtahid*), government is the practical philosophy of all jurisprudence (*fiqh*) in every aspect of human life. Government displays the practical aspect of *fiqh* in facing all social, political, military, and cultural issues. *Fiqh* is the true and complete theory of individual and social administration from cradle to grave.<sup>10</sup>

This perspective could be summarized in the following points:

- 1) Prevalent jurisprudence (*fiqh*) and conventional independent reasoning (*ijtihād*) are powerless against the problems of our time. It is clear that this powerlessness is the result of the misperception of the constant commandments (in the first perspective).
- 2) Attention paid to exigencies of time and place is necessary for an effective independent reasoning (*ijtihād*) in all religious commandments.
- 3) Jurisprudence (*fiqh*) is the true and complete theory of individual and social administration from cradle to grave. The solution to all the political, economic, social, cultural, and military difficulties of Islamic societies and, indeed, of all human societies can be expected from *fiqh*.
- 4) Islamic government is the practical philosophy of the entirety of jurisprudence (*fiqh*) applied to every aspect of human life. Protecting the government is the ultimate obligation. The government takes precedence over Islam's primary commandments and all secondary commandments, even praying, fasting, and the *ḥajj*.

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<sup>8)</sup> Ibid., p. 61.

<sup>9)</sup> Ibid., p. 34.

<sup>10)</sup> Ibid., p. 98.

- 5) The absolute custodian (*wilāyat*) over jurisprudence (*fiqh*) gives the jurist (*faqīh*) sweeping powers to secure the people's interests and spread justice. The Custodial *faqīh* (*walī-yi faqīh*) may nullify all the commandments of the *sharī'a* which are not relevant to the time and place or do not secure the system's interests, as long as this is the case, and posit the necessary commandments to satisfy the system's interests or for temporal or spatial exigencies.
- 6) The religious commandments are true as a means to an end and not an end in themselves. The ultimate truth is the establishment of an Islamic government to spread justice.

### Evaluating the Governmental Jurisprudence Perspective

The strong points of this perspective relative to the Constant and Variable Perspective can be understood in the following points:

- 1) While the problem of the incompatibility of the religious commandments with modernity, being in that sphere of the constant and unchangeable *manṣūṣ* commandments, has remained unresolved in the first perspective, it is resolved in this perspective by the absolute custodianship of jurist (*wilāyat-i mutlaqa-yi faqīh*) on jurisprudence (*fiqh*) and the consideration of the exigencies of time and place applied to all commandments.
- 2) The fact that the jurist (*faqīh*), as the advocate of the interests of the people and the Islamic system, by observing exigencies of time and place may pose any commandment which he considers expedient and nullify whatever religious commandment which he finds contradictory to such interests, lends special strength to this model to update the *sharī'a*.

For all that, this perspective is faced with ambiguities and difficulties:

- 1) In this perspective, no general (as opposed to special) criterion to distinguish between exigencies of time and place is presented. Considering that ultimately, distinguishing temporal and spatial conditions is the responsibility of the person of the Custodial *faqīh* (*walī-yi faqīh*) himself and the survival of all religious commandments is dependent upon his understanding and elucidating them from the aforementioned conditions, what guarantee is there that

- all or most of the commandments will not change when he does? How can one consider religion and the *shari'a* dependent upon the personal understanding of a single individual?
- 2) How can such perspective lead to religiosity? What are the criteria of validity, authenticity and legitimacy of this perspective? Observing the exigencies of time and place, or the system's interests or the people's well-being are rational issues and will perforce not be found in a religious context, and perhaps will not keep up with changes in religion. Simply placing the jurist (*faqih*) in the sole position and authority of judging the best of public interest or determining exigencies of space and time is no guarantee that his understanding and perception will be a religious one. If he bases himself on something non-religious—for so it is—in understanding these two issues (specifying an interest or determining exigencies of time and place) how can something outside religion be a criterion for understanding and elucidating religion? Indeed, shall anything of religion remain in pursuing this course, or shall the *aqua fortis* of expediency and exigencies of time and place dissolve all the religious commandments within it?
  - 3) Considering the great importance of this perspective in the matter of government, political power, strength and the absolute custodianship of the religious ruler over jurisprudence (*fiqh*), the religious commandments shall in a sense follow the government's interests, tail political power, and swim in the mundane. The result of this perspective will ultimately be a statist religion. A statist religion will, in turn, destroy religious faith, spirituality, and the pious conscience.
  - 4) In this perspective, expectations are raised of religion in general and jurisprudence (*fiqh*) in particular which are to be expected of the humanities.
    - a) It is impossible for there to be such a science that would meet the vast expectations that can solve all social, political, economic, cultural, and military problems of all human societies.
    - b) Such expectations, i.e., ordering the world and the administration of society, are not to be expected of religion and declaring otherwise requires proof, which is not forthcoming.

- c) If the specification of social interests and determining exigencies of time and place are rational issues and not religious and are generally topical (*mawḍūʿī*)—as opposed to having the character of a verdict (*ḥukmī*)—, why should these issues be consigned to a jurist (*faqīh*)?

### Third Perspective: Islam as an End in Itself

These serious difficulties led to the raising of a third perspective, which may be called Islam as an End in Itself. In this perspective, efforts were made to choose from the strong points of the two previous perspectives while resolving their difficulties. Several points must be noted in this perspective:

- 1) Religion must remain religion and not be overshadowed.
- 2) The scope of religion relative to the two previous models is smaller, but is deeper.
- 3) The power of religion in the sphere of what is expected of it in the new age is strengthened and many incongruencies with new issues are placed outside its scope.

The Faith of Islam was sent down to the Seal of the Prophets, Muḥammad b. ʿAbdallāh (peace be upon him), by the wise God. Islam is a faith for all times and places reliance on virtues, norms, and wise, just, and rational commandments. Matters of faith and belief, ethical and moral virtues, the commandments of the *fiqh* of ritual worship (*fiqh-i ʿibādī*) and some of the principles in the jurisprudence of human interactions (*fiqh al-muʿāmalāt*) are the major parts of the religion which all transcend time and place and are eternal. But the jurisprudence of human interactions i.e., nondevotional commandments, has very serious components of exigencies of time and place.

All commandments regarding criminal law and penal code, civil law (including family rules and non-criminal personal law), international affairs, and basic law, some of which are rooted in the Qurʾān and the Sunna (tradition), are considered to be in the realm of the *fiqh* of human interactions. All these commandments were absolutely wise, just, moral and reasonable at the time they were issued, or they would not have

been issued by the Legislator (*shāri'*).<sup>11</sup> Not a single one of these commandments was considered oppressive, violent, immoral or unreasonable in the common usage of reasonable people (*'urf 'uqalā'i*) of the Age of Revelation.

One may not consider the commandments of the sphere of the *fiqh* of human interaction to have been completely scripture bounded (*tawqīfī*) and to be accepted unquestioningly, so that human reason would perceive no expedience in them and would only be submitted to out of pure imitation (*ta'abbud*), particularly since the commandments of secular interaction were a matter of verdicts of approval (*ahkām-i imdā'i*) and not of innovation (*ta'sīsī*). In other words, Islam signed off on the pre-Islamic customs' commandments as they existed, or with reforms in such a way that one might consider these commandments to have been revealed as marginalia to the common usage (*'urf*) of the Age of Revelation. Clearly the common usage (*'urf*) of that time was not scripture bounded (*tawqīfī*) imitational (*ta'abbudī*), and sacred (*qudsī*), otherwise they would not be used by the reasonable people (*'uqalā'*). These commandments were legislated to achieve justice and advocate human communities' worldly interests.

On the other hand, one may not deny that human issues, particularly in the spheres of the social and human communities' common usage (*'urf*) have been severely transformed and that many things which were considered just, moral, reasonable and normal in centuries past would be considered oppressive, immoral, abnormal, and contrary to the way of reasonable people (*sīra-yi 'uqalā'*). Issues of international law more than the discourse of general law, the discourse of general law more than criminal law and penal codes, and matters of the penal law more than the discourse of civil law (personal and family law) have been very deeply impacted by these changes and transformations. Clearly devotional *fiqh* has come under the impact of these transformations and has been changed less than all the other spheres of *fiqh*.

Since justice is a criterion for religion and not the other way around, and since reasonableness (*'uqalā'i*) is a criterion for the social sphere

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<sup>11</sup>) These criteria were explained in this article: Mohsen Kadivar, "Human Rights and Intellectual Islam", in *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition*, ed. by Kari Vogt, Lena Larsen & Christian Moe, London, 2009, pp. 47-74.

and the *fiqh* of human interactions (*mu'āmalāt*), one may conclude that juridical (*fiqh*) commandments are legitimate and conclusive as long as they satisfy the exigencies of justice and as long as the way of reasonable people (*sīra-yi 'uqalā'*) does not contradict it. May one consider commandments which violate the way of reasonable people (*sīra-yi 'uqalā'*) and negate the criteria of justice religious and *shar'ī* in the religion of the justice (*mazhab-i 'adliya*)?

The definite opposition of a commandment to the way of reasonable people (*sīra-yi 'uqalā'*) or its negation of the criteria of justice or its affirming an increase of corruption (*mafsada*) over benefit (*maṣlahat*) would expose it as fleeting and not permanent. In other words, such commandments are from legislation appropriate to the exigencies of the Age of Revelation and not of the Legislator's permanent and constant legislation. The philosophy of the existence of such commandments in the text of the Qur'ān and the Sunna (tradition) is that they were necessary for solving the problems of the Age of Revelation and of similar times. If the Legislator did not legislate such commandments (and this, despite the urgent need of the people of those times), the people would not have recognized the prophetic mission of the preachers and similar people; and if people considered such commandments tied to temporal and spatial exigencies of the Age of Revelation to have been eternal and constant Islamic commandments, they would not have understood the meaning of religion, the purpose of the Revelation, and the spirit of Islam.

Islam as an End in Itself means earnest attention to the lofty goals of religion and Islam's essence. In other words, it means that we should not consider the practical commandments and forms as being above religion's goals, and hold with certitude that the commandments which are a means to an end are an end in and of themselves. The commandments of the *shari'a* are a way to reach the Faith's lofty goals and every path is legitimate as long as it gets us to reach the goal. If we are certain in the belief that a commandment does not achieve the ultimate goal (and not supposing it), that commandment loses its legitimacy and a new commandment to reach that lofty should be considered.

Of course, this does not mean that all non-devotional (*ghayr al-'ibādī*) commandments of *fiqh* are *ipso facto* illegitimate. Rather, this discourse points to a serious likelihood and orientation towards exigencies of

space and time based on the criteria of religion of justice (*mazhab-i 'adliya*) and the teachings of the Qur'an and the Sunna (tradition) means nothing but this. Moreover, the criteria for legitimacy, definitiveness, and persistence of the commandments of *fiqh* emerge with flying colors from two important tests: First, they do not violate justice. Second, they do not violate the way of reasonable people. In any case, both criteria ultimately return to a single criterion. Justice, too, is provided by reasonable people, but the importance of justice has resulted in our giving it preeminence over the other reasonable criteria.

In addition, contrary to previous perspectives, commandments which do not emerge with flying colors from the aforementioned important tests are considered variable commandments and are contingent upon certain situations, but by losing their expediency or by conflicting with reasonableness or justice, we realize that the time for this commandment's legitimacy has come to an end, that it is a temporary and not a permanent commandment. But the legislation of a religious commandment in that situation will not be turned over to a jurist (*faqih*) or theocratic ruler (*wali-yi faqih*) since legislation is restricted to God and the Prophet alone and, in fact, we have absolutely no record in preserved tablet (*lawh-i waqi'*) to indicate the existence of any other commandments in the *shari'a* to be elucidated.

Rather, instead of these variable commandments whose time has come, reasonable laws are posited by the public wisdom, and they should in no wise be attributed to religion. Moreover, no new variable religious commandments and legislation remain in the hands of the Legislator alone. It is wrong to determine commandments through secular reason (*'aql-i 'urfī*) and attribute them to religion and the *shari'a*. Moreover, this restriction of religious commandments to the just and rational fixed commandments in the Qur'an and the Sunna (tradition) save us from falling into the trap of reliance on suppositional reason (*'aql-i zanni*) and its necessary consequences.

By accepting this method, although the domain of jurisprudence (*fiqh*) was steadily diminishing and it was gradually becoming more evident that some of the commandments of the *shari'a* were not permanent and are therefore categorized as variable commandments which are deprecated at the present time, by grace of religion's vast dimensions, the pious found the opportunity to deepen faith and promote a vaster

wisdom. By accepting the Perspective of Islam as an End in Itself, the actual teachings of Islam will not be ranged against justice, the way of reasonable people, and modernity.

Moreover, the commandments of the *sharī'a* will become a path towards the spread of justice, the achievement of the criteria of the reasonable ('*uqalā'ī*), and advocacy of the public interest. Nor is it that the juridical (*fiqhī*) commandments themselves will have become topical (*mawzū'iyat*) or that *fiqh*'s form and appearance would be sacred. And so any commandment according to the *sharī'a* survives as long as it maintains its quality of being a means to achieve religious ends, but as soon as it ceases to be such a means, it is outside the circle of religious (*shar'ī*) commandments and is consigned to the museum of variable commandments.

It is the responsibility of the mainstream of scholars of religion and Islamologists to distinguish whether or not commandments of the *sharī'a* are in agreement with the criteria of justice and the way of reasonable people (*sīra-yi 'uqalā'*), and not just the jurists (*faqīhs*). The necessity for such a great responsibility, in addition to a profound comprehension of religion and religious texts, is a practical knowledge of the exigencies of the times, the way of reasonable people (*sīra-yi 'uqalā'*), and the criteria of justice as pre-religious criteria. The mainstream of scholars and specialists in various fields of the humanities and determining their majority is the loftiest way of finding the way of reasonable people (*sīra-yi 'uqalā'*), and learning of the exigencies of time and place.

### **The Dimensions of Islam as an End in Itself**

The Perspective of Islam as an End in Itself may be summarized in the following points:

- 1) The criterion for the legitimacy of a religious (*shar'ī*) verdict in each time is justice and accordance with the way of reasonable people (*sīra-yi 'uqalā'*) of that time.
- 2) Religious (*shar'ī*) commandments in the Age of Revelation were just, moral, reasonable ('*uqalā'ī*), and normal. These criteria, too, are the conditions for their being superseded or remaining as reli-



- gious. Any commandment which does not include the above criteria in this time will be *ipso facto* outside the circle of religiosity and it will be discovered that it is among the temporary and non-permanent commandments of religion and not permanent.
- 3) The Legislator is only God and the Prophet. The Imams of the Prophet's household (*ahl al-bayt*) were the pure (*mutahhar*) reporters of Prophet Knowledge and Legislation. No one else may have responsibility for reporting religious legislation. Commandments which do not demonstrate that they are just or reasonable are outside the sphere of religious (*shar'i*) commandments and no religious commandment can be substituted for them; rather, in these cases, one acts in accordance with the reasonable laws without affected (*mutakallifāne*) resorting to religious texts.
  - 4) In this perspective, the sphere of jurisprudence (*fiqh*) and the *shar'i'a* is gradually reduced while the scope and depth of the sphere of religion is increased. Whatever loses its quality of being a path to religious purpose is dropped. The religious path is that path which God and the Prophet made known. The way to arrive at these ultimate goals through different paths is not closed. Perhaps the alignment of reasonableness and justice might seem incongruous, but the limits of these two criteria are the limits of human thought and wisdom and we humans have nothing more than that with which to understand revelation. In any case, the Perspective of Islam as an End in Itself is the least problematic, soundest, and surest way, relative to the previous perspectives, to defend religiosity and Islam in the modern age.

## Conclusion

There are three approaches to the discussion of the compatibility of Islam (or more precisely *shar'i'a* and *fiqh*) with modernity among Muslim Shī'i thinkers in the recent century and a half in Iran. Although the Constant and Variable Perspective in its different expositions by Nā'īnī, 'Allāma Ṭabāṭabā'i and Sayyid Muḥammad Bāqir Ṣadr, is the most famous perspective of the compatibility of Islam and modernity, it has four serious problems. Ayatollah Khomeini's Perspective of

Governmental or Expedient *fiqh*, which is the official policy of the Islamic Republic of Iran, aside from its flexibility, encounters four problems.

The Perspective of Islam as an End in Itself is the third approach that I argue has four advantages. It has the capacity of giving a new interpretation of Islamic jurisprudence (*fiqh*) in the modern world based on the spirit of Islam and the goals of the Qur'ān, the Sunna (tradition) of the Prophet and his household (*ahl al-bayt*). I find that Islam as an End in Itself is a perfect perspective for the modern world.