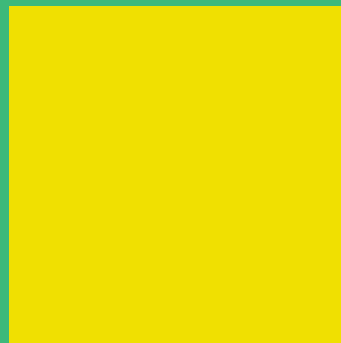


5



DIVINE AND HUMAN LAWS:
COMPATIBLE OR NOT?

MODULE FIVE

DIVINE AND HUMAN LAWS COMPATIBLE OR NOT?

5.1 INTRODUCTION OF THE VIDEO

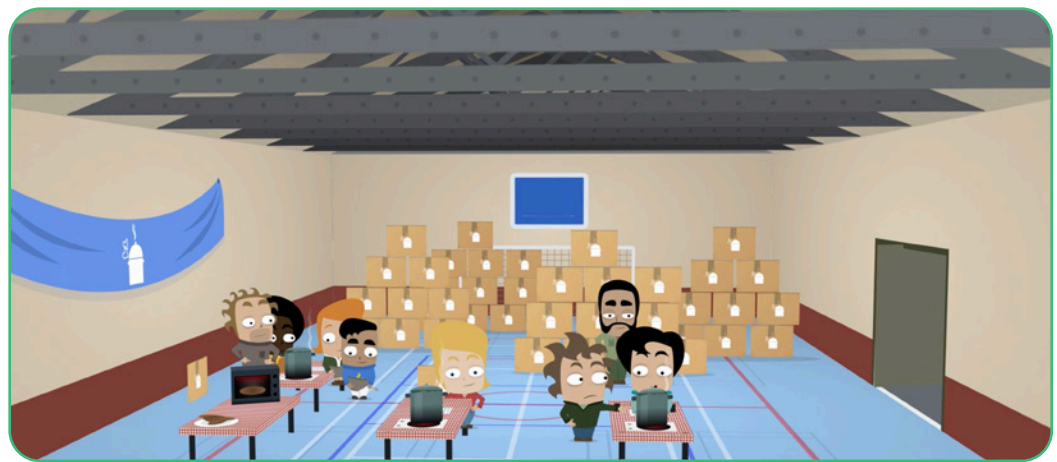


Figure 5.1
Video Clip

Ahmed and his fellow students volunteer at school. The volunteers make food parcels and deliver the food parcels to the less fortunate. Such a package contains everything an average family needs to not go hungry for a few days. While preparing the food parcels, a conversation arises between Ahmed and his teacher about democracy and Islam.

Hassan is an extracurricular volunteer sharing his experiences and vision on this topic. War has started in his country of origin. Fundamentalists were given a free hand to interpret Islam in favor of their extreme vision.

In this scenario we want to make young people aware that Islam does not have absolute forms of government, but that it pursues fundamental universal values. They were also against democracy and believed that Islam is the only law we must obey. And while the main ethical principles in Islam are, our foundations reflect universal values such as the human laws prohibiting murder, theft, injustice, discrimination, etc., they choose a different interpretation to impose their way of thinking on all of us.

5.2 HUMAN LAWS

5.2.1 INTRODUCTION



Figure 5.2
Source: © Murrstock /
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The contradiction between divine laws and human laws is an age-old discussion. This, in fact, fits in the context of “How does reason relates to faith?” The ancient Greeks spoke of *logos* (ratio) versus *mythos* (belief). They tried to explain everything rationally.

The Islam has known the tension between mind and faith in the past as *tarud al aql wa annaql*. Several scholars, such as the great muslim philosopher Ibn Rushd (Averroes)¹ has attempted to remove that contradiction. In his book *Fasl Almaqaal* (the decisive word) he spoke out the fatwa that reason and Islam complement each other and do not contradict each other.

Ibn Rushd explains how to interpret the Quran in such a way that it doesn't contradict with reason. In fact, using reason is a religious obligation, he says. He substantiates this statement with a few verses such as “*Take this for your example, O you understanding ones*” (Quran 59: 2), “*Have they not seen the kingship of the heavens and the earth, and all the things that God has created?*” (Quran 7: 185).

Ibn Rushd explains the first verse as follows: “*This is a textual foundation for the obligation to use logical reasoning, or possibly a combination of logical and legal reasoning.*”² The second verse, according to the author, is an incentive to study everything that exists.³ Then he comes to the conclusion that the Quran obliges man through reason to think about everything that exists.

Ibn Rushd was strongly convinced that it is impossible for reason to be in contrast with Islam. That is why he says: “*After all, the truth is not contrary to truth, but rather must agree with it and be a confirmation of it.*”⁴ With the first truth he refers to the truth that one obtains through the mind and the second truth refers to Islam. Finally, he concluded his book with the following statement: “*... by this I mean that the mind is the friend and foster sister of religion.*” In other words, reason and faith are two methods of finding out the truth.



Figure 5.3
Source: © artisticco /
Adobe Stock

¹ Ibn Rushd or Averroes born in Córdoba (Spain) He lived between 1126 and 1198

² M. AVERROES, *Het beslissende woord*, Kampen, Uitgeverij Klement, pag 31.

³ M. AVERROES, *Het beslissende woord*, Kampen, Uitgeverij Klement, pag 31.

⁴ M. AVERROES, *Het beslissende woord*, Kampen, Uitgeverij Klement, pag 38.

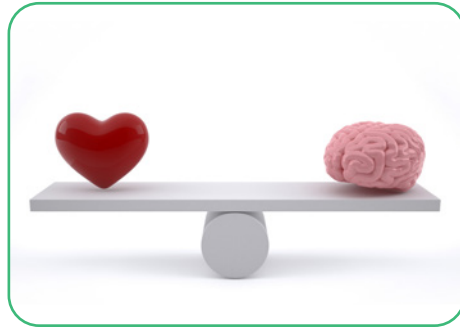


Figure 5.4
Source: © harunyigit /
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Of course, everything depends on the interpretation of rules in the right context. If you choose for a literal interpretation of rules of centuries ago in order to apply them today, you will face some problems. By the way, the Prophet has never been obsessed with the rules, but with justice as an outcome.

5.2.2 DEFINITION OF DIVINE LAWS

Divine law according to Islam is the will or guidance of Allah revealed to man through his prophets. This will or guidance can be found in the first place in the Quran and in the second place in the Sunna.

The basic question is, “*How can man find out the will of Allah?*” Many Islamic scholars have investigated this very carefully. They use the method called *ijtihad*.

Ijtihad is a well-known term in Islamic teachings. The term literally means “*to make every effort*”⁵.

After all, every effort is made in order to create an opinion on the guidelines of Islam. It is important to emphasize that it’s an opinion for no one can claim the absolute truth with all certainty. In other words, no one represents God on earth and only He knows the absolute truth. That is why all scholars always end their *ijtihad* with *Allahu a’lam* (which means “Allah knows better”). In short, the divine laws include the will or guidance of Allah and these are interpreted through *ijtihad*.



Figure 5.5
Source: © rudall30 /
Adobe Stock

⁵ M. FAIRUSABADI, *Alqamus Almuhiid*, Beiroet, Al-Resalah Publishers, 2005, p. 387.

5.2.3 EXERCISES

Exercise 1: Answer the following questions individually

1. What was the fatwa that Muslim philosopher Ibn Rushd spoke out in his book Fasl Almaqaal?

2. What was the fatwa that Muslim philosopher Ibn Rushd spoke out in his book Fasl Almaqaal?

3. Was Prophet Mohammed obsessed with rules?

Exercise 2: Missing words

Fill in the missing words.

Religious obligation - Complement- Muslim Philosopher - Quran - Reason

Islam also had known a tension between and belief in history. Ibn Rushd a great raised this in his book Fasl Almaqaal pronounced a fatwa. In his book he emphasizes that reason and Islam are mutually exclusive and certainly not contradictory. In his book Averroes teaches us how to read while taking into account the rules of interpretation. According to him, it is even one .

5.3 THE RECONCILIATION BETWEEN DIVINE AND HUMAN LAWS

5.3.1 INTRODUCTION

Each country has its own legal system to maintain order in society. Human Laws strive for harmonious societies in which justice and equality stand central. Therefore, people are expected to fulfill duties and avoid society harming behavior.



Figure 5.6
Source: © kuroksta /
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5.3.2 MEANING AND FUNCTION OF HUMAN LAWS

Human or secular laws⁶ are not inspired by religion. In the Roman Empire, religion was a state affair (state religion) where the state tolerated or suppressed certain religions. Christianity became the state religion of the Roman Empire in the 4th century. Until the 18th century, there was a direct relationship between church and state: coronation of the emperor by the pope, appointment of bishops by the local king, link between local law and church law, inquisition, local tax and church tax, waging war in the name of religion. This direct relationship started ending from the Enlightenment: the state did not interfere anymore within the personal faith of the citizens, nor with the church, and the church does not interfere with the state. A separation of institutes arose. Therefore, the state from then on cannot condemn or punish anyone for particular religious beliefs and it does not determine or judge the truth claim of a religion.

The European model has always left room for religion and allows people to draw inspiration from their faith. Freedom of religion is thus an important good in Europe. As long as that inspiration is in accordance with the constitution, science and reason, it



can fit within the story of European values. But this requires a reflection for muslims by reading their faith more to the spirit and less to the letter.

Philosopher Karl Popper⁷ makes a difference between “the context of discovery” and “the context of justification”. The “context of discovery” indicates where a theory comes from and that it should not play a role where the rule comes from. Someone may even dream about a theory.

The “context of justification” means that the theory must be subjected to

⁶ Secular Laws: Laws Made by Man

⁷ Karl Popper (Vienna, July 28, 1902 - London, September 17, 1994) was an Austro-British philosopher widely regarded as one of the greatest philosophers of science of the 20th century.

Figure 5.7
Source: © MIND AND I /
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scientific methods. If the theory passes this test, it can be a plausible and useful theory.

Moreover, laws are nothing more than values converted into standards. Values can have their origin anywhere, even in ideological ideas. Laws are not secular or religious, laws are formal rules of the game that can be justified or articulated into a common basis in the public space from both secular and other philosophies of life. For believers, those values grow from the fact that every human being is a child of God. Rationalists see every person as a rational being and seek their values from that rational perspective. Utilitarians start from the idea that everyone is entitled to the highest form of happiness and ecologists refer to the idea that everyone is part of an ecological system seeking a balance. In this way there is a common basis that be formed into different laws. In addition, standards are not static, but dynamic and evolving depending on the context.

5.3.3 EXERCISES

Exercise 1: Definition of values and norms Give your own definition of the term “values” and norms.

Definition of values:

Definition of norms:

Exercise 2: Value Top

A. Make a list of 5 values that are important to you.

- 1.
- 2.
- 3.
- 4.
- 5.

B. Creat Students create their top 3 of values:

- 1.
- 2.
- 3.

Exercise 3: Conflict of values

1. **Anes's case:** Anes's friend makes a discriminating comment about a female classmate. Anes thinks his friend's comment is unacceptable.

In conflict of value, you start doubting between two values that are conflicting.

What are the conflicting values in the case of Anes and his friend?

What value would you let go first in this situation. Why?

Selma's case: Wearing a headscarf is very important to Selma. Her headscarf helps her express herself in her own way. At school on the other hand, they think Selma should take off her headscarf. Religious symbols are prohibited at school, this is stated in the school regulations. Selma finds her education very important and has a lot of respect for the school, but she also considers her freedom, self-determination and religious beliefs important.

- **What are the conflicting values in the case of Anes and his friend?**

5.4 THE RECONCILIATION BETWEEN DIVINE LAWS AND HUMAN LAWS

5.4.1 INTRODUCTION

"If we are to think intelligently about the relations between Islam and British law, we need a fair amount of 'deconstruction' of crude oppositions and mythologies, whether of the nature of sharia or the nature of the Enlightenment"⁸.

This citation from former Archbishop of Canterbury Rowan Williams points out that the expanded meaning of the term Sharia is very important. In other words, it is unjustified to reduce the term *sharia* to a narrow interpretation of Islamic criminal law.



Figure 5.8
Source: © David Carillet /
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The correct interpretation of the term is important to know whether or not there is a contradiction between divine laws and the human laws. Many people associate the term *sharia* with injustice, harsh legislation and brutal punishment such as oppression of women, corporal punishment, etc.

This is because the media, certain politicians and jihadists use the term inappropriately. But are they using the term correctly?

The meaning of the term *sharia* means more than just Islamic law. It does not only contain legislation but also rituals, doctrine and philosophy. It is therefore incorrect to limit the translation of *sharia* only to Islamic law.

Sharia is not a law that contains strict rules. There is no book on *sharia* that contains Islamic laws as is the case with the Belgian code. All books on Islamic *fiqh* are individual interpretations of the Quran and Sunnah.

Allah's words are eternal, but the one who interprets Allah's words is only a product of his time. There are thousands of *tafsiers and books about the fiqh*, everyone has a different interpretation and opinion. All those books are obviously works made by humans and therefore may contain errors in contrast to the words of Allah.

⁸ HUMBERTO, *Islam and Enlightenment*, Baltimore, Maryland, The Johns Hopkins University Press 2012, p 223.

5.4.2 WHAT DOES SHARIA REALLY MEAN?

The Arabic term *sharia* originally means the path that leads to the water. This does not refer to a well from which you get water, but refers to the road that you have to follow to find a fertile place or a place where water flows to.

Water represents life. That means that *sharia* is the way to go to protect human nature. The natural disposition of man must be protected and this will automatically lead to a more just and peaceful society. Unfortunately, this term is often misinterpreted and misunderstood.

5.4.3 CONTRADICTORY OR RECONCILABLE?

Usually the term *sharia* is considered as Islamic law. This interpretation does not cover the entire content of sharia. *Sharia* largely contains religious norms pertaining to doctrine and rite (*ibadaat*), the latter of which falls within the freedom of religion granted by the European legal order. Article 9 of the European Convention on Human Rights guarantees freedom of religion and also guarantees its expression.

Even when *sharia* is translated as Islamic law, there is still a wide range of sharia norms that are fully consistent with European legal norms, provided the term sharia is understood in its entirety.



Figure 5.9
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In view of the foregoing, there is no problem for Islam to function reasonably in a democratic state. Islam contains a large extent of religious norms pertaining to doctrine and rite, and the latter falls within the freedom of religion granted by Article 9 of the European Convention on Human Rights. On the other hand, Islam also contains many norms relating to social actions (*mu'amalaat*), but as mentioned earlier, it is Islamically legitimate to approach this category rationally provided that Islamic principles are taken into account. And the latter almost always coincide with Western norms and values.

So if secularism means the separation between Church and State and the State determines its norms and values by reason, then there is no problem. Because the State usually regulates the mutual social actions of its subjects on a rational basis, which is an Islamic belief, provided that justice is the ultimate goal. If secularism is a form of managing philosophical diversity, then Islam has no problem here either. For it is Islamic irresponsibility to enforce any religion individually as plainly and clearly states Al-Baqara verse 256:

“In religion there is no coercion. Reasonable insight is clearly distinguished from corruption.”

As mentioned before, justice is the highest principle of sharia and it doesn't matter how this is realized or brought about as Ibn Alqayyim beautifully stated.⁹



Figure 5.10
Source: © mehmet /
Adobe Stock

5.4.4 EXERCISES

Exercise 1: Are the following statements true or false? Motivate your answer.

Statement	True	False	Reason
1. Sharia only means Islamic law.			
2. Tafsirs and books on the fiqh do not contain mistakes because they are made by man.			
3. The term sharia is often associated with injustice and oppression.			
4. There is no book on sharia containing Islamic laws.			
5. The books on Islamic fiqh are not individual interpretations of the Quran and Sunnah.			
6. It is correct to reduce the term sharia to a narrow interpretation of Islamic criminal law.			
7. Media, certain politicians and jihadists often use the term sharia without the proper meaning and context.			

⁹ Allah sent His prophets and revealed His books that mankind may rule with uprightness which means as much as justice with which the heavens and the earth came into being. So when one recognizes signs of righteousness and the direction is clear, then this is the shar'ia of Allah and his religion. Allaah has not limited the attainment of justice, his proofs and his signs to one particular method, and thus has rejected all other methods that are identical or even better. However, he has shown that the methods he uses are for righteousness to prevail and that mankind must act with uprightness. So whatever method is used to achieve justice and uprightness is part of religion."

Exercise 2: Sharia

1. With what did you associate the term *sharia*?

2. With what did you associate the term *sharia*?



Figure 5.11
Source: © zendograph /
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5.5 GLOSSARY

Ta'rud al'aql wa annaql: Tension between mind and faith.

Ibn Rush, Averroes: Muslim Philosopher.

Fasl Almaqaal: Book written by Ibn Rush.

Ijtihad: Make full effort.

Allahu a'lam: Allah knows better.

Divine Laws: The will or guidance of Allah.

Sharia: Islamic Law, Rituals, Doctrine, Philosophy.

Tafsir: Interpretation of Islam.

Fiqh: Doctrine of duties, Islamic Rituals, Islamic Law.

Mu'amalaat: Social acts.

Secularism: Separation of Church and State.

Hasana: Reward for a good deed.

Hadith: Traditions of events in the Life of the Prophet Muhammad.

Maslaha: Well-being.

Nas: Revelation or text.

Hanafia: The Pure Religion.

Kitab Almastoer: Revelation.

Kitab almandoer: Reality.

Ibda'at: Rituals

5.6 TRANSCRIPT OF THE VIDEO

INT Sporthall School DAY

We see some kids working together in a large kitchen environment cooking under the close watch of their teacher and some other volunteers:

Teacher: Lindsay, watch out with the salt please, you only need a little bit, not the whole sack. Ahmed how is the Khubz coming along your mother prepared for us?

Ahmed: I think it is almost finished, Mr Roberts!

The teacher walks by.

Lindsay: I think it's great we are doing our part in society. Feeding the poor as a community effort really feels like being part of our democracy.

Ahmed: I don't know... My father said the other day that he and he actually means we as Muslims don't acknowledge Democracy as there can't be anything above Islam.

We see one of the volunteers in the kitchen eavesdropping on the conversation of the kids.

Lindsay: and what do you think?

Ahmed: I'm a bit confused. I mean,... they say democracy is about the human laws which I think is true. And my father also says that it is Allah and Allah only who can make laws, not some kind of committee of ...people. The volunteer who was eavesdropping starts to talk out loud:

Hassan: Did you father use people in that sentence or did he use the infidels?

Ahmed: I don't recall... Does it really matter?

Hassan: Well kiddo, I think the ideas you are struggling with can lead to dangerous thoughts.

Lindsay: Hey, you don't have to scare him for having a different opinion.

Ahmed: No Lindsay please let him speak.

Hassan: "I come from a country where Islam is instrumentalized and sometimes for political reasons.

Lindsay: Wow I can't even imagine how that would feel like, not being able to speak freely.

Hassan: Believe me, freedom is underrated but you only know when it is taken away from you. In my country I was a respected man. As a pharmacist I knew a lot of people personally. It was even a greater shock to me when it were those people that I helped that turned against me. And that under the false interpretation of my own beloved faith.

Ahmed: I don't understand...

Hassan: They were also against democracy and believed that Islam is the only law we must abide. And although the main ethical principles in Islam, our foundations reflect universal values like the human laws that forbid murder, stealing, injustice, discrimination, etc. they choose another interpretation to force their way of thinking on all of us.

Lindsay: I see... You didn't have the freedom to practice your beliefs anymore.

Hassan: Exactly... And by penalty of death I fled my home country. Seeking shelter.

Ahmed: Wow that is a rough story.

Hassan: And you know... what I really don't understand about those radicals is when you look closely to the principles of the declaration of the Human Rights and the ones in Islam. There are so many things in common.

I mean the freedom of thought, conscience and religion is almost the same as Quran 2:257: 'There shall be no compulsion in acceptance of religion' which also guarantees that religion can never be something to be forced upon people.

Lindsay: That is actually really interesting.

Ahmed: This seems again something that has a lot to do with the interpretation of words coming out of text with a very different context. I never imagined that people would make religion this complicated?

Hassan: Yes indeed, People often make things more difficult than it is and often for their own interests. And that is not only the case with religion. This also arises from different ideologies... Did you guys know that it actually different in every Islamic country as well.

A lot depends on the culture and interpretation of the Quran. You'll see countries with a conservative interpretation also reflect that in their legislation.

Lindsay: I believe in most democracies the freedom of religion is a constitutional right and Article 9 of the European Convention on Human Rights also guarantees freedom of religion and its expression.

Ahmed: The Prophet Muhammad led efforts for preparation of the constitution of Medina which established love, tolerance and coexistence between different communities and tribes, regardless their religion.

Hassan: Indeed I see you are seeing the right way to interpret the Quran young one. This would not be true in a radical Theocracy, a country where religion is the law. I am happy Europe provided me shelter. And now I'm giving back to society by doing charity actions for the league for Human Rights. It only feels right.

5.7 REFERENCES

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Lapino Albino



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