

The End of Traditional Islamic Jurisprudence in Hermeneutics of Moḥammad Mojtahed Shabestari¹

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ABSTRACT: This article is devoted to the contemporary Shi'a Iranian religious scholar and thinker Moḥammad Mojtahed Shabestari (b. 1936) whose daring ideas on the end of Islamic jurisprudence (*fiqh*) in recent years caused a commotion not only among the adherents of the so-called traditional approach to legal methodology (*uṣūl-e fiqh*) but among Islamic thinkers in general. Educated in a Shi'a religious *houzeh*, Shabestari belongs to an older generation of Iranian clerics who for years now has not been wearing a traditional clerical garment. Although retired from an academic career, the scholar remains active – gives lectures and participates in public meetings at the well-known Tehranian intellectual centre *Hoseynīye Ershād* where he conducts classes on modern hermeneutics and new approaches to Qura'nic exegesis. In recent years, Shabestari became increasingly critical of the present state of Islamic jurisprudence in Iran and announced the end of *fiqh* and its methods. Challenging the idea that through the Qur'an, God has provided people with a timeless model of a permanent and universal legal and political system to organise the life of Muslims in every age, Shabestari called for a change of paradigm in reading sacred scripture based on the adaptation of philosophical hermeneutics and phenomenology. He has also advocated for an endorsement of the philosophy of human rights which he believes is an 'antidote' to the current problems within Islam.

KEYWORDS: Moḥammad Mojtahed Shabestari, *fiqh*, *uṣūl-e fiqh*, Qur'an, hermeneutics, Qur'anic exegesis

In Post-revolutionary Iran, Islamic jurisprudence (*fiqh*²), constituted one of the main areas of public debate among Shi'a scholars and religious thinkers. The legal theory expressed in the science of *uṣūl-e fiqh* has become a field of dispute not only between those who uphold well-established interpretations of Revelation and those who appeal for a new understanding of the legal message of the Qur'an, but also amongst the religious and lay adherents of different approaches within more liberal or traditional perspectives. In recent years, issues such as human rights, democracy, gender equality, relations with non-Muslims or the danger of radicalisation in Islam have become a real challenge for Muslim scholars who for the most part, as observed by a Canadian-based scholar of Modern Islam, Liyakat Takim, failed to address current problems of Islamic communities (cf. 2014, 102; 2018). In Iran, the need for a debate on the actual state of jurisprudence was accompanied by an attempt that went beyond the critique of particular legal rulings and dealt with the need to rethink the fundamental assumptions underlying the science of *fiqh* in Islam. The most controversial voice today belongs to Moḥammad Mojtahed Shabestari, an 83-year-old Iranian Shi'a scholar and religious thinker whose daring declarations about the end of Islamic jurisprudence in its current form has brought him as many supporters as critics. The present study is an attempt to elaborate on Mojtahed Shabestari's ideas concerning Shi'a jurisprudence which proved to be extremely challenging in contemporary times as evidenced by the reaction to his claims.³ Yet, before his reflection some fundamental issues related to the status of science of jurisprudence in contemporary Iran will be discussed.

The Condition of the Science of Islamic Jurisprudence (Uṣūl-e fiqh) in Contemporary Iran

In Shi'a Islam, *fiqh* is considered "the processes of exposition, analysis, and argument which constitute human effort to express God's law (*shari'a*)" (Calder 1999) that is a scholarly endeavour in elaborating religious and legal rules in the Revelation contained in the Qur'an and *Sunna*. The methodology of this process has been described in the works of *uṣūl-e fiqh* and traditionally practiced by the *ulemā*. The present framework, Iranian Shi'a jurisprudence owes to the adoption of the position of *Uṣūlī* school and the thought and ideas of Āqā Moḥammad Bāqer Behbahānī

(d. 1791) who “re-established the authority of rational argument in law” (Tabatabaei Lotfi 1999, 56). The *Uṣūlī* approach legitimised Shi'a jurists in practicing *ijtihād*, a continuing intellectual attempt based on the ability of the human intellect to formulate legal rules from divine sources (Moussavi 1985, 37). The enhancement of the institution of *marja'iyat* in the nineteenth century by another prominent Shi'a scholar, Sheykh Murtaḍā Anṣārī (d. 1864) strengthened the position of *mojtaheds*, experts in religious doctrine and at the same time obliged believers to emulate the most knowledgeable and learned one among them (Cole 1983, 33). This developments in the field of jurisprudence have also provided a space for distinct interpretations of legal Quranic passages to emerge (cf. Heern 2014), consequently this has led to the situation where Shi'a experts may differ significantly in many, even fundamental, legal issues.⁴

From as early as the twentieth century, under the influence of the challenges of the modern world, the traditional legal interpretations, as well as old methods of formulating them started to be challenged. Many scholars noticed that in order to meet expectations of modernity and maintain a high status among Islamic sciences, jurisprudence must face new tasks and be able to answer new questions of contemporary reality. Eventually, *fiqh* constituted the area where the gap between reality and religious teachings was most evident. It became apparent that in many instances the so-called traditional *ijtihād* did not constitute a sufficient tool for building “a coherent legal system that can effectively respond to the needs of contemporary Muslims” (Takim 2018, 4).

There were growing signs that the traditional science of *fiqh* must be reformed and its tools rethought. This process started already in pre-revolutionary Iran but it intensified after the Revolution, partly on the back of new interpretations (especially in the field of political *fiqh*) introduced by Rūhollah Khomeīnī. Political scientist Mehrzad Boroujerdi claims that following 1979:

The clerics were split into two major camps: those who sanctioned traditional jurisprudence (*fiqh-e sonnati*) and those who advocated the need for a more dynamic jurisprudence (*fiqh-e pūyā*) capable of dealing with the contemporary, public, and non-esoteric challenges facing the Islamic *umma* (1996, 166).

This dichotomous distinction however, does not fully reflect the reality of Shi'a *fiqh*, which is believed by many to be a dynamic science from its outset. As Ayatollah Yūsef Sāne'i once said, these were just jurists who become reluctant to comply with its principles and make use of all its tools (1390, 64).

Rūhollah Khomeīnī who was generally opposed to any fundamental changes in jurisprudence, is believed by many of his followers to be an adherent of dynamic jurisprudence. Khomeīnī considered *ijtihād* to be already a sufficient guarantee that the law would be adapted to reality. In his opinion, two important factors must be taken into consideration in interpreting the law, namely the time and the place, and it already make it progressive (*pūyā*) in nature⁵. However, Khomeīnī's stand did not end the dispute on the reform of legal thinking. One of the crucial postulates put forward and developed by some scholars in subsequent years was that some statements of the Qur'an should be assumed as everlasting and constant while others as temporary and changeable. This solution, in different forms has also been proposed even prior to the Revolution by leading figures among Shi'a clergy among others by Āyatollah Ḥoseyn Ṭabātabāi (cf. Kadivar 2011, 462-469). In subsequent years, other positions to Islamic jurisprudence have been proposed as well. This was helped by the fact that Shi'ism did not develop any institution similar to the Church or any other religious body that would have the authority to advance ultimate interpretations and proclaim the only right approach to sacred scripture but rather remained a dynamic branch of knowledge, at least *in potentia*. In practice, the popularity of a given interpretation or stance in contemporary Iran depends primarily on the authority and the political power of the given scholar.

The current condition of *fiqh* and its science in Iran has also been influenced by the changes brought by the Islamic Revolution and the introduction of the doctrine of *vilāyat-e faqīh* according to which the main objective of Islamic government was to implement divine law (*sharī'a*). This caused the elevation of *uṣūl-e fiqh* to the position of key discipline within Shi'a *houzehs*, but also required greater harmonisation of legal judgments as divine law formed the foundations of state law (cf. Banakar, Ziaee 2018, 3).⁶ This provided *fiqh* with even more validity, but at the same time it caused its rigidity at least regarding state-sensitive issues. Additionally, knowledge of the foundations of jurisprudence was

made a condition for exercise of political power. According to Khomeinī, the *walī-ye faqīh*, the leading jurist of the country had to be the most knowledgeable and competent of all the *foqahā* (1378, 66-7). Eventually, some interpretations of legal matters have been favoured over others which led to a situation in which many Islamic laws have started to function as fixed, eternal, unchangeable, and hardly disputable because they formed a part of the fundamentals of the power system.

In recent years, attempts to redefine the science of Islamic jurisprudence and restore its natural flexibility that would enable to adapt the law to the requirements of modernity has been undertaken among the clergy in Shi'a *houzebs*. *Hojjatoleslam* Alī Shafī'ī, a religious scholar believes that a more up-to-date approach to law is inevitable and observes that new generations of seminarians already tend to be more open-minded in their rulings (1397). Many younger clerics, some educated abroad like Moṣṭafā Moḥaqqueq Dāmād believe that *fiqh* can be reformed and adapted to modern times and current needs of Muslims and insist on the re-establishment and reinforcement of the use of *ijtihād* in legal thinking. The activity of scholars in the *houzebs* has been also confirmed by Liyakat Takim who speaks of a "silent revolution" that he observed in the Qom seminaries regarding different approaches to contemporary legal matters (2014, 102).

On the other hand, even if engaging in sometimes very controversial and theologically demanding disputes, Shi'a *houzebs* remain closed institutions whose members hardly translate them into practical changes in positive law which would have to be addressed and accepted by those in power. Years ago, Ayatollah Morteḍā Moṭaharī observed that not many jurists have the courage to openly propose new interpretations of the religious texts when they have no allies among other clergymen (Qābel 1392, 48).

The critical assessment of the activities of the Shi'a *houzebs* came also from religious figures defined as having reformist views like *hojjatoleslām* Moḥsen Kadīvar (b. 1959), *hojjatoleslām* Aḥmad Qābel (d. 2012) or lay intellectuals like Abdolkarīm Sorūsh (b. 1945). Though frequently possessed full right to issue personal legal opinions or as in the case of Sorūsh had religious education, those scholars are not part of state religious establishment and sometimes even operate from outside Shi'a

circles. Many of them argue that since the Revolution Shi'a religious centres have become bastions of official interpretation of religion presented by political elites who started to promote a *fiqh*-oriented Islam and even if they lead progressive debates, they have no impact on the real condition of the law. They criticise Shi'a clergy for being too ossified, conservative and reluctant to introduce the use of modern sciences in their religious investigations (Sorūsh 1372/1993, Kadīvar 1387/2008). This kind of criticism started to appear a few years after the Revolution. Probably the first one to address such issues was Sorūsh who criticised the political involvement of the clergy in Iran and the idea of *eslām-e feqāhatī*, legalistic Islam (cf. 1372). The debate on the condition of the clergy and the science of *fiqh* was conducted in public space, in newspapers, journals, universities and other academic institutions. Soon afterwards, many intellectuals and scholars developed personal websites which allowed them to reach wider audiences and to some extent also avoid censorship. These were new religious thinkers, including both lay and religious figures, who not only considered specific legal solutions and elaborated on new interpretations of controversial laws but started to reflect on the assumptions underlying different approaches to sacred texts, involved in a more substantive and primary discussion of Qur'anic hermeneutics. The need to re-evaluate and re-think the foundations of the science of law and methods of developing legal principles has become an important issue for many contemporary Shi'a thinkers.

Moḥammad Mojtahed Shabestari

Shabestari was born in 1315/1936 in a clerical family in a small town in the western part of the country, in the province of Azerbaijan in Iran. In 1335/1956, he began his education at the Shi'a religious centre at Qom where he studied Muslim philosophy, theology and Islamic law instructed by such eminent religious scholars as Āyatollah Ṭabāṭabāī. In 1348/1969, he left Iran for Germany where, as the successor of Āyatollah Beheshti, he held office as the head of the Islamisches Zentrum Hamburg. During the following nine years Shabestari engaged in academic activity, took part in seminars and conferences in Europe and America. He returned to Iran in 1357/1978 on the eve of the Revolution, became involved in socio-political activities, even won a seat in Parliament. However, after

the first term, he resigned from politics and devoted all his energy to scholarly work. Shabestari started to lecture at the University of Tehran, until he was forcibly sent into retirement in 1385/2006 by President Mahmud Ahmadinezhād's administration. Even after retirement, he kept publishing and taking part in public debates promoting knowledge of the new approach to religious texts based on assumptions of Modern Western hermeneutics. Today, although he no longer works at the university and despite his advanced age, he still gives open lectures and conducts regular cycles of meetings at the Tehranian intellectual centre *Hoseynīye Ershād* (some of Shabestari's lecture cycles consist of dozens of meetings). He did not accept any offer of permanent employment at foreign universities and still lives and works in Iran. For several years now he has been appearing in secular clothing, without the traditional headgear and robe of a Shi'a cleric.

In this article, I argue that even though the thinker could have been counted among those who attempted to revise traditional Islamic jurisprudence and adapt it to the modern world, his more recent statements suggest that now he rather tends to reject *fiqh* and its tools that can no longer be defended in a system with today's conditions. Mojtabeh Shabestari's opinions on Islamic jurisprudence are currently some of the most daring and radical in Iran which cause much confusion among scholars and religious thinkers. Trying to prove this thesis I will refer to the source material that consists of the thinker's articles, speeches and interviews published or delivered between 1381/2000 and 1395/2017. During these years, Shabestari published few books, however most of the studied sources come from his website (<http://mohammadmojtahedshabestari.com>) where his texts are made currently available to readers (many of them only as audio files). Recently, in 1396/2017 several dozens of his previous writings has been also published in the form of an ebook under the title *Naqd-e bonyādhā-ye fiqh va kalām* (*The Critique of the Foundations of Islamic Jurisprudence and Theology*).

Shabestari and The End of Islamic Jurisprudence

Khomeini was convinced that abandoning classical methods in the science of law would mean the end of traditional Islamic jurisprudence (1372/1993, 198). Less than thirty years later the end of *fiqh* was announced

by Moḥammad Mojtahed Shabestari, who sought to redefine some of the main concepts underlying the classical understanding of law in Islam. The scholar's key argument in supporting his thesis is the assertion that the Qur'an does not contain any legal regulations which Muslims should still concern themselves with, or which should still serve to organise Muslim communities. A few years ago, he stated: "The Prophet Moḥammad was not a lawgiver, and the Qur'an is not a book of laws (*ketāb-e qānūn*)" (Shabestari 1392a/2014).

Although, as Mojtahed Shabestari emphasised, the Qur'an is the most precious legacy left by the Prophet Moḥammad, no part of it – not even the so-called *āyāt-e aḥkām*, that is legal verses, which Islamic jurisprudence considers to be a source of legal regulations – has the nature of a legislative text (Shabestari 1392a/2014). According to Shabestari, the rules regarding inheritance, divorce and punishments for theft, murder or adultery contained in the Holy Book were not only not formulated as legal regulations, but, moreover, they were in no way described as universal, everlasting or temporary (Shabestari 1392a/2014). Also, Shabestari cites a fragment of the Qur'anic verse: O you who have believed, obey Allah and obey the Messenger (4:59) saying that the Book contains only an encouragement for the believers to obey the words of the Prophet; at no place are these words called an everlasting law (1392b/2014).

Shabestari based this rather unconventional statement on the premise that there is no scientific basis for the assumption that the statements which have a legal character (i.e. the *āyāt-e aḥkām*), and which in Islamic jurisprudence constitute the source of the *shari'a* law, are expressed in the Qur'an as a universal message (1392b/2013). The only everlasting messages pertaining to the commands or instructions addressed to humans are, found in those passages which focus on morality and are known as ethical verses (*āyāt-e akhlāqī*) and in those which deal with the issues of the religious worship (*āyāt-e ebādātī*). Shabestari stressed, however, that these passages refer to "human efforts on the path of the purification of the soul" and thus by definition cannot have a legal character (Shabestari 1392b/2014).

Attempting to substantiate his thesis, Mojtahed Shabestari also refers to the principles of Western philosophy of language and philosophical hermeneutics, pointing out that the semantic contents of a statement

alone does not carry its full meaning; the meaning is revealed only when, among others, the addressee of the text is defined and the associated assumptions are stated (Shabestari 1392a/2014). In Shabestari's opinion, those statements in the Qur'an which might be considered as having a legal character have a very precisely defined addressee – in contrast to the religious and ethical statements, which are directed to every individual (*fard fard-e ensān*) – and that his addressee is a community embedded in a concrete time and space (Shabestari 1392b/2014). Thus, the legal contents of the Qur'an were meant to organise and impose order on the lives of the first Muslims, the residents of Hijaz, and their nascent *umma*. From these premises Shabestari draws the conclusion that the interpretation of these two differing messages – one that contains instructions addressed to a concrete group of Muslims and one that pertains to the universal and everlasting issues of worship – must necessarily differ. In addition, he stresses that communities of today differ from the one described in the Qur'an, hence:

The assumption that instructions pertaining to socio-politics issues are addressed to some unspecified, universal group of people, and that today they should [still] show the Muslims their legal duties, is entirely unjustified (Shabestari 1392b/2014).

Accordingly, this view allowed Shabestari to formulate the subsequent thesis: that today it is impossible to speak of any laws that would stem from the text of the Qur'an (1392b/2014). Thus, in his view, a part of the Qur'an's text, traditionally perceived as carrying legislative contents, nowadays can be interpreted only in a historical perspective, i.e. one in which “every exegete interprets and understands the statements and writings of those who lived in the past in the context of the conditions in which he himself lives” (Shabestari 1387b/2009). Yet Shabestari's take on the historical approach to the Qur'an differs from the approach demonstrated in recent years by other figures like Pakistani scholar Fazul Rahman or Egyptian thinker Nasr Abu Zaid who, among others, argued that the text of the Book needs to be interpreted in the socio-historical and cultural context (2004). Shabestari seems to transcend such reasoning.

Some years ago, one could suppose that he was criticising the traditional approach to the Qur'an because it did not take under

consideration the changes that had occurred in the world and assumed the need to enforce the laws and regulations contained in the Qur'an in the form they were expressed and interpreted by Shi'a clerics several centuries ago. Now, however, Shabestari seems for some time to be promoting a slightly different thesis: that because Qur'an does not contain any legislative message, all the efforts of the Muslim scholars aimed at proposing a universalistic interpretation of these passages can be unwarranted (Shabestari 1394a/2015). That is also why Shabestari's insists that the Qur'an should no longer be viewed as containing detailed information on the condition of the world but as a kind of a grand narrative (*revāyat-e kalān*) (1396/2017, 431). We may assume that what he means here is a kind of a Western postmodern perspective that the Qur'an should be viewed as a story about a story, a narrative of a narrative told by Prophet Moḥammad which contains a certain imaginative understanding (*fahm-e takhāyyālī*) of the world the Prophet lived in (1396/2017, 431–433). The thinker indicates also that Prophet's understanding of the world appears in what is called '*Lebenswelt*' (life-world) in phenomenology and what refers to the world that surrounds a person and is conceived by him as real (1396/2017, 431). Therefore, reading the Qur'an for Shabestari is not only reading the words of God but also reading a narrative, a story told by Prophet Moḥammad. That is also why in his opinion the language of the Qur'an is metaphoric, not in its literary meaning but as a language "that attempts to translate what is not clear" (1396/2017, 431). Shabestari claims that without defining an approach to language any attempt to understand religious texts would be impossible (1396/2017, 432). This story is therefore told in human language which is perceived by Shabestari as a socio-historical phenomenon, and is therefore intersubjective.

The scholarly approach Shabestari has chosen affected himself as well. As the thinker reminisces, when he was working on his first theses, he believed that the correct interpretation of the Qur'an is aimed at reaching the knowledge of how a human being should live. This was for centuries the aim of the reflection on the Qur'an, which, practised in various ways was to enable man to reach the Divine Truth contained in the Revelation. As time went by, the scholar's perspective changed. Instead of understanding the texts of the religious tradition in order to reach the truth of what to do and how to live, he began to reflect on how those texts help him to understand himself, what the relationship between him and those texts is, and how tradition may assist him in

his search for the meaning of the world (Shabestari 1392c/2014). Today, Shabestari describes this relationship with Revelation as one of dialogue; he says that he is no longer trying to discover revealed truths, but that his interest in the religious tradition is hermeneutical in its nature.

This new approach can be noticed also in a theory formulated by Shabestari a few years ago in his multipart text *Qerā'at-e nabavi az jahān (The Prophetic Reading of the World)* which has been published in an Iranian journal *Madrasa*. Its author states that a reading of the contents of Qur'an is possible only when the Qur'an is treated as a text, a narrative articulated by a human being (1396/2017, 318–319). Making use of methods belonging to non-religious field of scholarship, mainly philosophy of language, modern hermeneutics and phenomenology and, as it may be assumed, drawing on the experience of Persian poets and mystics by referring to such concepts as *sokhan* ('speech', 'word', 'dialogue') and *kheiyrat* ('bewilderment') (Shabestari 1381, 325, 327, 331-3), Shabestari reached the conclusion that the words contained in the Qur'an have not been articulated by God in a direct manner, and although of divine nature, are a consequence of a certain religious experience that the Prophet Moḥammad was granted by the Creator. Thus, the Qur'anic narrative would be a human narrative, expressed in a human language and addressed to a very concrete human recipient (Shabestari 1387b/2009).

These assumptions made it possible for Shabestari to even more categorically question the foundations of Islamic jurisprudence which, in his opinion enforced the application of laws and principles articulated many centuries ago and made the text of the Qur'an unclear and incomprehensible (*nāmafḥūm*) (1387a/2009). This, in turn, he explicitly calls legislative dogmatism (*dogmatism-e feqhī*) and considers it detrimental to Islam (Shabestari 1387a/2009).

Modern Hermeneutics in Use

Ultimately, this approach has led Shabestari to the assertion that nowadays, the principles of the law which are to be in force in Muslim societies must not be developed within the framework of the traditional science of law (*uṣūl-e fiqh*) and by means of methods or other tools for understanding the text that would operate within traditional jurisprudence. For several

years now, Shabestari has been consistently repeating that today the interpretation of religious texts, also in its legal perspective, is only possible on the basis of philosophical hermeneutics and “Muslim centres of scholarship should accept hermeneutical knowledge happily and with all their might” (Shabestari 1384/2005, 33).

Shabestari encountered Western hermeneutical thought for the first time probably in the 1970s, when he was the head of the Islamic Centre in Hamburg. As he reminisces, he developed an interest in mainly Protestant theology and the related debates on the understanding of religious texts. His scholarly sympathy to the ideas presented by the theologian Friedrich Schleiermacher (d. 1834) dates from that time. The concept of *fabm*, understanding, was the key idea of Shabestari’s thought already in his early texts, which he published after his return from Europe (1396/2017, 444). For years, he tried to argue that, contrary to the tendency towards the literal understanding of the Qur’an (*zāher-e kalameh*), prevalent in the camp of conservative Muslim lawyers and theologians, the contemporary interpretation of religious texts should transcend this type of understanding. He once mentioned:

No-one who says or writes something is ever able to express everything he has inside him. What gets said or written is only a fragment of the contents he possesses. If we decide to content ourselves with what is external, we will deprive ourselves of access to what is internal and we will never reach a correct or proper understanding of a text (Shabestari 1385/2007).

The power of Western philosophical thought is demonstrated in Shabestari’s sympathy towards many Western thinkers. He refers not only to Schleiermacher’s concept of understanding, but also to Dilthey’s (d. 1911) conviction that no thought exists without life, so the understanding of any idea must necessarily presuppose the awareness of the life that produced it. Shabestari is convinced that a human being functions and creates in a certain context and “what he writes or says is a reflection of his life and its conditions” (1385/2007). This view results in a simple assertion that in order to understand what the narrator of the Qur’an says, it is necessary to understand the world in which he lived and understand to whom he directed his words (1385/2007). This, of course, is not possible

without the earlier assumption that the narrator of the Holy Book is a human narrator and his language is that of a man, not God. Another proponent of Western hermeneutics, Hans Georg Gadamer (d. 2002), provided the Iranian theologian with the perception that every message is an effect of a *sui generis* dialogue (*goft-o gū*) with reality. Shabestari wrote, for instance, that in order to be understood, this message must be interpreted in the framework of that dialogue (1385/2007) hence, as he stressed, "our understanding of any text is, in reality, an understanding of 'tradition'" (1385/2007).

What Mojtabeh Shabestari's demands here is new, secular hermeneutics which he describes as rational (*aqlāni*) hermeneutics (1394c/2015). He stresses that its secularity lies chiefly in referring to human intellect and is not intended to question the religious significance of the Qur'an and the Revelation; it serves solely the inter-subjective understanding the text of the Book (1381/2002, 178). This is linked with his conviction that an interpretation of a text must take into consideration also the intentions, expectations and aims of the theologian who undertakes to expound it.

The Question of Radical Islam

In recent times Shabestari articulated another very controversial idea claiming that the ideas laying at the foundation of the interpretation of sacred texts that is officially accepted and supported by most Muslim scholars in Islamic world (in the case of Iran he refers to it as 'the official reading of religion' *qerā'at-e rasmī az dīn*) to some extent resembles approaches that have been demonstrated by various radical movements of today.

If Caliph Abu Bakr Baghdadi, who considers himself a model Muslim and a vehicle for the introduction of the *shari'a* law, were to ask the scholars of the Islamic world where the theoretical difference between his and their approach to the Islamic law lies that they drag his name through the mire so badly; what would they answer? (Shabestari 1393a/2014)

He further explained that the conviction, entrenched in the philosophy of *fiqh-e sonnati*, adopted in Iran, that through the Qur'an, God has revealed his permanent and everlasting laws and obliged the believers to obey them and put them into practice always and without exception is in his opinion a threat to contemporary Muslims (Shabestari 1393c/2014). Shabestari considered this conviction to be a heterodoxy (*enḥerāf*) (Shabestari 1395a/2016). In his opinion, what has occurred over the centuries is:

...a degeneration relying on the fact that traditions and ways of living generally accepted among the people, which had been confirmed in the Qur'an, were transformed into a system of divine and eternal laws on the basis of conclusions drawn by a certain group (...) (Shabestari 1395b/2016).

The scholar believes that similar premises might be the source of such phenomena as the emergence of *Dā'esh*. His theory here runs contrary to the general belief that the main reason for the development of Muslim radicalism is an inclination to understand religious texts literally and an aversion to interpreting them. Assuming, following the Western hermeneutics, that an avoidance of interpretation is in itself an interpretation and hence it must be based on some theoretical premises, he stated that the danger of contemporary Muslim radicalism lies not in the aversion to interpreting the Revelation *per se*, but in the assumptions on which this aversion is based (Shabestari 1393a/2014). Therefore, the scholar believes that Muslims will not be able to deal with Muslim fundamentalism or radicalism by means of Islam's traditional sciences, such as theology or philosophy; in the present day, rather, this will be possible only by means of non-religious fields of scholarship, such as philosophical hermeneutics:

Why did our lawyers submit to *Dā'esh*? They sat down (...) and are saying that *Dā'esh* decries other people's faith. The problem with *Dā'esh* does not lie solely in the fact that it condemns others, but in the fact that it promotes violence in the name of religion. Let us imagine that *Dā'esh* does not manage to destroy Shi'ism and thus stops condemning the Shi'ites; is the problem with *Dā'esh* solved? (Shabestari 1395d/2017).

A Turn Toward Human Rights

In the opinion of Shabestarī, the interpretation of religion that has for a long time been pushed by numerous groups in Islamic world consists mainly of commands, rules and – as he says, slightly ironically referring to the rich legal terminology of Islam – the *ḥalālḥā* and the *ḥarāmḥā*, things allowed and things prohibited, the *vājebḥā*, things necessary, and *mojāzḥā*, things permissible (1383/2004, 61). He points out that this manner of speaking about religion and God makes use of the vocabulary of regulations and duties (*taklīf-e shar'ī*); he seems very certain that in our time such language can no longer be used in speaking about human affairs. In today's world, in the face of the growing threat arising from radical interpretations of Islam, Muslims should, in his view, speedily abandon the approach distinctive to politically motivated legislation (*fiqh-e siyāsī*) and its underlying assumption that when it comes to the socio-political sphere (i.e. the issues of penal law, civil law, political system etc.), God has laid out some concrete plan for humans. Concurrently, a turn away from classical jurisprudence (*fiqh-e sonnati*), which contains all these views, should be accompanied by a turn towards people's "collective wisdom"; according to Shabestarī, this means:

...a turning towards the worth, authority and reverence for the laws of human beings; precisely because they are human beings (1395c/2017).

A move towards human rights (*ḥoqūq-e bashar*), for Shabestarī, would mean the next great transformation in Islamic religious thought (1395c/2017). The pivot of this change would be the rights of an individual.⁷

Shabestarī postulated not so much that the creation of a new progressive Muslim jurisprudence that would make it possible to re-interpret some religious texts and discard customs which are not ethical in terms of human rights, as the complete repudiation of this kind of jurisprudence. Shabestarī sees an alternative to giving up on the idea of shaping socio-political reality on the basis of Islamic jurisprudence not of a sweeping endorsement of the human-rights perspective, but in developing a new, humanistic interpretation of religion (*qerā'at-e ensanī az dīn*) (1383/2004, 60–90). In this respect, his views seem to parallel those of another Iranian thinker Mohsen Kadivar, who has long been postulating

the creation of what he calls a spiritual or intellectual Islam (*eslām-e ma'navī/nouandīshī*) that would be focused on the human being and the human intellectual ability to distinguish right from wrong; the ability which guarantees justice (1380/2001). For Shabestari, the principles of the new understanding of Islamic religious texts would be, among other things, its non-dogmatic character, openness to criticism and willingness to enter a dialogue with non-religious branches of scholarship. In one of his texts he wrote:

The interpretation of God's commandments and prohibitions is endless and the gates of *ijtihad* remain forever open. It is not allowed to pronounce final words on their subject (Shabestari 1381/2003, 180–181).

Shabestari declares that the Muslim scholars' endorsement of human rights would be an 'antidote' to the current problems within Islam (1383c/2014). Addressing his words to all Islamic scholars worldwide, he writes:

Both, official Muslim *kalām* (theology), and *fiqh* (jurisprudence) are not only defenceless in the face of these dangerous phenomena [such as *Dā'esh*], but, in fact, make it possible for them to arise and develop. 'Human rights' are what Muslim theologians and lawyers should officially endorse, by this historic decision making it possible for the culture of Islam to function in the modern world. In the current times this is for us, Muslims, a historical mission (Shabestari 1383c/2014).

Shabestari's Critics

Harsh attack on Islamic jurisprudence and Shi'a scholars as well as several other strong statements on the nature of Revelation made by Shabestari in recent years led to the increase of criticism of the scholar's ideas. Serious objections to Shabestari's theories have been articulated for example in a

book by *hojjatoleslam* 'Ali Rabbānī Golpāyegānī published in 1392/2013⁸, many others appeared in the press or have been articulated during public meetings and seminars. In some of these critical statements, the accusation of overzealousness and exaggeration toward the inefficiency of science of *fiqh* was made evident. Shabestārī has been accused of neglecting jurisprudence instead of dealing with specific solutions that would help regain its rightful place among Islamic sciences (Qorbānyān 1396/2017).

There were many voices like the one belonging to Davūd Feyrāhī, a Shi'a scholar and academic who claimed that in an Islamic society like Iran, abandoning religious jurisprudence does not really make much sense. Feyrāhī believes that there can be no logical reason behind rejecting science of *fiqh* as a whole. He claims that what is justified is just the critique of a particular enactment of law, theory or ideology developed within its framework (1396/2017).

Dispute between Shabestārī and his opponents has been also hampered by the philosophical nature of scholar's reflections, who in recent years moved his deliberations exclusively into the space of modern western hermeneutics and phenomenology. In 2016 one of his lectures at the Amīr Kabīr University in Teheran was cancelled by the university authorities, allegedly because the lecture format would have made it impossible to present different opinions on the discussed subject to the attendees. After that, a thinker issued an invitation to other scholars to public debate. He proposed the highest-ranking religious authorities could take part in a joint debate with him. Such a discussion panel would be organised at the university, as a free exchange of thought, and it would concern contemporary Islamic jurisprudence and the role of *ijtībād*, i.e. the scholar's intellectual effort in interpreting sacred texts, as applied to contemporary legislative endeavours.

In December 2016, in the article *Cherā marja' taqlīd rā be monāzere ṭalabīdam va cherā ānān nayāmadand?* (*Why did I invite religious authorities to a debate and why did these scholars fail to come?*) he stated that the *marja's* did not answer his invitation. Among the possible reasons for this state of affairs Shabestārī included the Shi'a scholars' lack of familiarity with contemporary philosophical and hermeneutical terminology, resulting in their unwillingness to enter a debate. And yet several *marja's* answered

the call, declaring themselves willing to share in the discussion. One of the scholars who expressed a wish to participate in the debate with Shabestari was Abdolḥosein Khosroupanāh, a high-ranking scholar and Muslim theologian, a philosopher of religion and Head of the Institute for the Research on Philosophy instituted in the 1970s by Sayyed Ḥossein Naṣr.⁹ Nevertheless, it became evident that shift from religious circles to the realm of secular science strengthened the gap between the thinker and other Shi'a scholars still connected to the *houzeh* and its *curriculum*.

An interesting contribution to the dispute has been provided by a reform-minded Shi'a cleric Moḥammad 'Alī Ebṭāḥī who introduced himself as a great supporter of Shabestari's reflection from the very beginning of his public presence but at the same time expressed his disappointment in the way the thinker directed his interests and shaped his reflection. Ebṭāḥī appeared to blame Shabestari for withdrawing from the religious environment and moving to a secular one, as he explained it himself "Shabestari threw off his religious clothes and *hojjatolelām* Moḥammad Mojtahed Shabestari became professor Shabestari" (1396/2017). In his opinion, this deprived religion and religious circles of an important voice. What Ebṭāḥī probably meant was that any change of Shi'a religious thought including establishing new approaches to jurisprudence would be tolerated better if they came from within not from outside religious circles.

Conclusion

Moḥammad Mojtahed Shabestari, undoubtedly an influential religious scholar of contemporary Islam has been the first one to introduce modern philosophical hermeneutics into the field of Quranic exegesis in Iran. In his works, he frequently questioned the traditional perception of Revelation and made an attempt to redefine some fundamental concepts of traditional approach to religious scriptures. His lessons on modern philosophical hermeneutics attract a wide range of listeners and, though daring and not widely accepted, even among progressive scholars, his thought has already influenced the dispute on Quranic exegesis and the nature of Revelation at least in Iran. His publications are sometimes met with harsh criticism, which may indicate that Shabestari's texts are read also by his opponents.

By claiming that hardly any law stems from the text of the Revelation, Shabestari also questioned the foundation of Islamic jurisprudence and touched upon a serious issue of the state of current law in Islamic Republic of Iran. It is not easy to determine whether his opinions on the subject are just part of current trend of the so-called new *ijtihad* as it has been referred to by Liyakat Takim, or it should be considered an agent that initiated this debate. It seems obvious however, that his thought will imprint a mark on the development of contemporary Iranian Shi'a religious thought and legal thinking in Islam at least because it will motivate other scholars to answer his ideas and propose other approaches to Islamic jurisprudence which is undoubtedly in crisis.

Notes

1 Work on this article was supported by the Polish National Science Centre, grant 2018/02/X/HS1/02039.

2 As the study discusses the Iranian context terms are used in a transcription from Persian language.

3 Shabestari's views are known to Western experts on contemporary Iran; his name appears in most publications dealing with reforms in Islam in contemporary Iran and Middle East. Special attention to Shabestari's thought was given among others by Vahdat (2000, 2004), Seidel (2006), Kamrava (2011), Goldberg (2011), Amirpur (2015), and Badamchi (2017).

4 What seems important, some of those legal rulings, when Western categories are applied can be viewed as progressive or even liberal even though they have been issued by scholars considered as conservative. Cases in point are the decree of Ayatollah Khomeini dating from some decades ago, which permits state-funded sex reassignment surgery for transsexuals or a decree which pronounces the use of psychedelic substances by Shi'ites to be *halal*, i.e. legally and ethically allowed.

5 In the letter, he sent to the Council managing the religious centres at Qom in May 1989 indicates that at the same time he did consent to the use of new methods in interpreting sacred texts: "We cannot forget that the solid pillars of jurisprudence and principles disseminated at religious centres (*houzeh*) should under no circumstances be undermined. At the same time, however, apart from categorically advocated intellectual effort of the scholars, the use of sciences and methods is allowed" (Khomeini 1368/1989, 380-81).

6 The shift from secular jurisprudence to traditional Islamic one has been justified by Ruhollah Khomeini as follows: "I am persuaded in favour of traditional jurisprudence

and intellectual exertion (*ijtehad*) on the path of developing the principles of the law, and to abandon them I consider prohibited” (1372/1993, 198).

7 Mohsen Kadivar is another Iranian cleric who similarly to Shabestari is convinced that in many instances the traditional exegesis of sacred texts is contrary to human rights (cf. Kadivar 1386/2007).

8 The book title was *Naqd-e ārā-ye hermeneutikī-ye Mojtabeh Shabestari* (*The Critique of Mojtabeh Shabestari's Opinions*).

9 In the recent years, the Institute has been involved in a project concerning dialogue between religions; as part of its activity, it organises meetings, study visits and conferences pertaining to the dialogue between Islam and Christianity. In November 2016, an Iranian delegation under his leadership visited the Vatican and held a conference with Pope Francis.

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