

Background article: Sources, Shari'a

Shari'a – life on the path to Paradise

It was the duty of prophets who were given a new scripture to establish a way or pattern of living that put the guidance into practice. This “established way” is called in Arabic a shari'a. The word itself means a well-beaten path that leads straight to the goal. This is like the path from a village to the well from which the people draw their water. It will be the straightest, quickest route and so well-marked that one could find it in the dark. The goal for a Muslim's life is to follow this path in obedience and thus draw closer to God.

Muhammad was not the only prophet to receive a new scripture from God and lay down a shari'a based on it (For more information, see the unit on “Revealed Books”). Earlier such book-bearing prophets included Moses and Jesus. Each laid down a way of life or shari'a: Judaism and Christianity.

Islam gives guidance for every aspect of human life: personal, family, community, society, political, economic, business and spiritual. Islamic Law covers personal, civil, commercial and criminal law. The central Islamic ethic is justice. Muslims are required to promote justice on the earth. Justice must be done, even if it goes against oneself [Q. 4:135]. There can be no favourites under justice. On one occasion someone suggested to Muhammad that he should let a guilty person go free because she came from a high-ranking family. His response was to say, “Even if it was my own daughter Fatima, she would get justice.” Justice does not carry a label. There is no such thing as “Muslim justice.” Justice is based on reason and evidence. Wherever justice is found, there is the shari'a.

The sources of the shari'a

The principal source of the shari'a is the Qur'an as it is the divine guidance and thus our best deposit of knowing how human life should be lived. However, taking guidance from the Qur'an is not a question of finding one relevant verse and then putting it into practice. To begin with, the Qur'an was sent down upon the heart of Muhammad over a period of twenty-two years. It rarely says everything there is to say on a particular subject at any one time. It sometimes reveals divine guidance gradually. What's more, revelations are made in a particular circumstance or situation and often need to be interpreted in the light of that context. We can't understand the fullness of the guidance unless we know what these contexts were. These have been recorded from the earliest days of Islam as the occasions of revelation (*asbab al-nuzul*). To be clear what effect the Qur'anic revelation was intended to have involves the study of these occasions together with the life, times and society of Muhammad.

The need continuously to strive for understanding of the Qur'an led to the discipline of Qur'anic commentary (*tafsir*), which is practised by learned scholars. Over fourteen

centuries, many hundreds of commentaries have been written. Naturally, some differences of methodology have developed: linguistic, historical, legal, traditional, philosophical, mystical etc. Contemporary scholars continue the practice of writing commentaries on the Qur'an; the text is fixed and does not change but, as human knowledge expands and societies change, further insights are explored in these *tafsir*. The Shi'a believe that the Imams were infallible. So they could give both definitive interpretations of the Qur'an and articulate new guidance based on it. Even though there is no access to the Hidden Imam today, Shi'a scholars also continue to explore and draw out new insights from the Qur'anic text in writing contemporary *tafsir*.

Prophet Muhammad was the first and best interpreter of the Qur'an. Everything he said, taught, did and approved of was a practical illustration of how his life had been shaped by the Qur'an. His life was the shining example of correct behaviour – known as the *sunna* – for everyone to follow [Q. 33:21, 45-46]. The *sunna* of the Prophet is the second source of guidance as to how human life should be lived. Guided by this understanding from the Qur'an, his companions made sure to remember elements of his *sunna* in minute detail. These records are the Traditions or Hadith of Muhammad. Muhammad made it clear when he was speaking in his own right as the Prophet and when he was conveying the revelation from God in the Qur'an.

As each Hadith was memorised and taught to others, a chain of transmitters (*isnad*) developed. These were carefully preserved as proof of the authenticity of the Hadith. What's more, painstaking research has been undertaken to check that the connections in the chain were valid and that every person involved was of sound character and pious life so that their word could be trusted.

Individual Muslims wrote down Hadith in the time of Muhammad, but Malik ibn Anas (712-795) was the first to give us a substantial written deposit. He lived in Madina and was a descendant of one of the companions of Muhammad. In Baghdad, Ahmad ibn Hanbal (780-855), was reported to have memorised a million Hadiths and left a collection of around forty thousand called the *Musnad*. Schools of Law were named after both of them.

As early as the ninth century, due to the availability of mass-produced quantities of paper, it became possible to write down great systematic collections, arranged around particular topics. The Hadith were classified into categories according to the reliability of their chain of transmission. The highest classification was for those Hadith which were sound and without defects or *sahih*. The next category down was hasan – good and reliable but not as well-authenticated as a *sahih* and so on... Further down the scale, we have classifications covering cases where there is a break or uncertainty in the chain of transmission. These are weak Hadith or *da'if* and can only be used in law as supportive evidence. There are six major collections of Sunni Hadith. The most important two are those drawn up by Al-Bukhari (810-870) and Muslim (820-875). These contain thousands of Hadith, all of which are classified as *sahih*. The other four Sunni collections were compiled by Abu Dawud (d.889), al-Nasa'i (d.916), al-Tirmidhi (d.892), and Ibn Majah (d.887)

For the Shi'a, the infallible Imams are the guarantors of the authenticity of the Hadith. Each is traced back through one of them. The confusion of the early centuries renders the tracing back of chains of transmitters to the Prophet unreliable for the Shi'a, who prefer to rely on the infallible word of one of the Imams. The great Shi'a collections of Hadith, like *al-Kafi* and *Faqih*, date from the 10th century.

For more detailed information on the Hadith, see the unit on "Hadith and Sunna."

A third source

Muhammad wanted to send a man as governor to the Yemen. He called the man that he wanted and asked him how he would give guidance on the Islamic way of life to the people there. He replied that he would use first the Qur'an and then the *sunna*. "And then?" said Muhammad. "I will use my own reason," he replied. The Prophet approved of his reply. Using human reason is the way that the guidance must be applied based on the Qur'an and *sunna*. This personal judgement, based on human reason, is known as *ra'y*. This is called *ijtihad* (intellectual struggling). This is what scholars have been doing down the centuries since Muhammad's death. In so doing, they have worked out a clear path of correct conduct for Muslims to follow. This path is essentially one, although there are some variations between the different schools.

The Sunnis exercise personal judgement when faced with a new question through analogical reasoning or *qiyas*. This involves looking for something similar that has already been decided and then reasoning out an answer for the new question based on the already agreed earlier position. One of the first examples in history was about wine. The verses in the Qur'an that we usually think of as referring to alcohol [Q. 4:43; 2:219; 5:90] actually speak about grape-wine. The Arabs also made wine from dates; was that forbidden too? The scholars reasoned that grape-wine makes people lose self-control and changes the balance of the mind. Date-wine and grape-wine are similar in the way that they work, thus date-wine was also forbidden. The ruling was thus extended to all forms of alcohol. What we generally call "drugs" have a similar effect, therefore they are forbidden too. However such judgements are one stage removed from the two principal sources and so future rulings could not be based solely on them but had to be rooted in the Qur'an and the *sunna* of Muhammad.

This scholarly intellectual activity continued in the Sunni schools with one scholar refining the reasoning of another until a consensus or *ijma* on legal matters was reached. This consensus of the scholars eventually led to a wider, more general agreement, the consensus of the community. This consensus was considered to be a solid foundation for Sunni Islamic law on which later generations could build, a position supported by a Hadith of Muhammad saying that the Muslim community would never agree on an error. In the Sunni schools, during the time when a consensus is emerging, there is a legitimate diversity of interpretation. Where there is no universal consensus, the rule is to accept legitimate diversity, that is, interpretation

based solidly on the Islamic sources, hence 'legitimate,' even if it is something about which others disagree.

Shi'a scholars do not approve of the use of analogical reasoning but prefer to use deductive logic instead. This involves establishing agreed general principles that can then be applied with a degree of precision. We could take the general principle that eating any animals that eat dead animals (carrion) is forbidden. Then, when faced with a question about hyenas, one can determine that they eat dead animals and therefore they are forbidden for Muslims to eat. This can be expressed as a syllogism:

Animals that eat dead animals are forbidden for Muslims to eat (*haram*)

Hyenas eat dead animals

Therefore Hyenas are forbidden

Because it goes through timeless general principles, for the Shi'a, deductive logic remains an enduring source. However, in Shi'a understanding, *ijma* is only an indicator and has no abiding weight. In the absence of the infallible Imam, guidance is found through rigorous, rational examination of the two sources, which is practised by the most learned religious scholars, whose teaching is then followed by the people.

Classification of actions

Drawn from these sources, Islamic law came to recognise five categories of actions. These are:

- Those actions that are obligatory (for *fard* we can also say *wajib*)
 - for every Muslim individually (*fard 'ayn*) e.g., prayer, fasting
 - for the community but which can be performed by a group on behalf of the whole (*fard kifaya*) e.g., taking part in funeral prayers
- Those recommended acts that carry a reward if performed but do not involve punishment if omitted (*sunna* or *mustahabb*) e.g., visiting the sick
- Neutral acts which carry neither punishment nor reward as people are free to choose (*mubah*) e.g., types of diet, styles of dress
- Actions that are disapproved of but attract no specific punishment (*makruh*) e.g., smoking
- Any action that is clearly forbidden and carries a punishment if it is committed (*haram*) e.g., drinking alcohol.

Only relatively few acts are classified as *fard* or *haram*, the vast majority of human acts are neutral (*mubah*). Human life is much more inspired by good etiquette and manners, rather than prohibition or obligation. The role model for Muslim etiquette and manners is Muhammad himself. Naturally, there are some variations of opinion amongst scholars regarding the three middle categories but there is a principle that nothing that God has made *haram* (forbidden) can be made *halal* (permitted) and vice-versa. As time goes on and knowledge advances, some actions in the middle categories may well be re-classified. For example, some scholars would today classify smoking as forbidden, as it is now known seriously to damage health. The rulings derived from the Qur'an and *sunna* are a blessing from God as they guide human beings on the path of flourishing in this life and lead to the reward of paradise.

Schools of Law

In the first few centuries of Islam, in different regions of the growing Islamic Empire, various ways developed to give detailed guidance on living the Islamic shari'a. Over time, five main Schools of Law (sing. *madhhab*) were accepted within the community. The vast majority of Muslims follow one of these schools; although a few choose to take their guidance directly from a literal reading of the Qur'an and *sunna*, thus relying on the earliest generations of Muslims rather than later scholarly reasoning. The schools agree on a huge amount but there is room for difference of opinion. These differences are seen as a blessing and not a weakness. The shari'a has the ability to accommodate legitimate diversity as an enrichment.

The five schools are named after a founding influential scholar. The Shi'a who recognise twelve Imams follow the Ja'fari School, named after the sixth Imam, Ja'far al-Sadiq (699-765). The four Sunni schools are the Hanafi (Abu Hanifa 700-767), Maliki (Malik ibn Anas 712-795), Shafi'i (Al-Shafi'i 767-820) and Hanbali (Ahmad ibn Hanbal 780-855). They are traditionally rooted in certain parts of the world. If a Muslim was born in North or West Africa, for example, she would be likely to follow the Maliki School. The Hanafi predominates in Central Asia and the Indian subcontinent, the Shafi'i in most Arab countries, East Africa, Indonesia and Malaysia, and the Hanbali in Saudi Arabia. With modern transport and the movement of peoples, there is more mixing. It is permitted for a Muslim to change from one Sunni school to another for good reasons, either permanently, or for a period of time on certain matters, such as adopting the laws about eating sea creatures when moving from a land-locked environment to an island that lives from the produce of the sea.

Contemporary Situation

As times change, new situations arise which pose new challenges for human beings. Advances in science and developments in society in particular can create moral and ethical dilemmas. When this happens, Muslim scholars examine the question by making a profound study of the principles of jurisprudence (*usul al-fiqh*), before going on to study the body of knowledge within their particular school. A scholar of Islam is called an *alim* (plural, *ulama*) and one who specialises in the study of Islamic law is called a *faqih*. The science of law in Islam is known as *fiqh*, which means originally to understand "the path," that is the shari'a.

If an ordinary Muslim is confronted with a question on how to live a Muslim life, then the normal thing to do would be to seek the guidance of a local *alim* or *faqih*. This can be done today via a recognised helpline or the internet. A simple query that has been dealt with by the body of scholars can be answered "off the shelf." If the problem is something that needs original research and a "learned opinion," then the question must be referred to a *mufti*, in the Sunni tradition, or a specialist *ayatollah*, in

the Shi'a tradition, these are *ulama* of outstanding learning. A *mufti* or *ayatollah* is capable of using personal judgement to apply the principles of *fiqh* to a new question.

This personal judgement would be given in the form of a *fatwa*, which is not to be confused with the ruling of a court. This is a learned opinion and must be respected as such, but it is not necessarily the last word. The same question can be presented to another *mufti* or *ayatollah* and that may bring forward another *fatwa* or it may reinforce the earlier opinion. All authority is based on knowledge; not on political or priestly power. In Muslim societies, there is a legal officer called a *qadi* or judge, who sits in a court and dispenses justice.

Criminal Law

There are 350 specifically legal verses in the Qur'an out of a total of 6235. Of these 350, only 30 verses speak about criminal law. A few of the most serious crimes that destroy the balance of society are mentioned with particular punishments; these are called the *hudud* (sing. *hadd*, literally: "the limit") [Q. 2:178]. Some scholars interpret the *hudud* as mandatory; whilst others see them as a maximum or 'highest tariff,' with the actual punishment being at the discretion of the judge taking into account the individual circumstances and degrees of evidence. There were no prisons in seventh century Arabia, so punishments were physical or financial [Q. 4:92]. Corporal punishment took the form of a beating or, for the severest cases of theft, amputation [Q. 5:38]. These were carried out in public. The humiliation of the guilty person and the example set to the crowd were as important as the pain endured [Q. 24:2]. In the case of thieves, a hand amputated would serve as an example to everyone who saw them for the rest of their lives.

Muhammad taught that the *hudud* punishments are to be avoided if there is any room for doubt. An extremely high level of proof is needed. Let us take the case of adultery, which under certain circumstances, following the Hadith, can carry the death penalty. To find someone guilty would require the evidence of four adult eye-witnesses [Q. 4:15]. They would need to have seen the actual act itself in detail. All their evidence would have to agree and stand up to investigation and cross-examination. They would have to stand by their evidence until witnessing the execution. If less than four witnesses came forward, the case would be dismissed through lack of evidence. The witnesses would be beaten for destroying the person's honour [Q. 24:4]. If witnesses changed their evidence, they would be beaten and never accepted as witnesses in future. Even after all this, one needs to ask what kind of people stood by and watched such an act and why did they not attempt to stop it. It is also possible to convict someone on the basis of their own confession, which they keep repeating over a period of time. Here the judge would have to question whether the person is sane and free from any kind of pressure to make such a confession. The law applies equally to both men and women.