

Islamic Law And Muslim Life

Islamic law or shari'ah performs various functions, and these functions have altered over the centuries. Even within a given time period, the shari'ah plays different roles for different Muslim communities. Throughout the middle ages, the shari'ah functioned not only to prescribe ritual orthopraxy, but it also functioned as penal code, commercial law, and as a kind of international law among Muslim countries.

The jurisdiction of the civil law of Islam was often challenged by another law: the law of the courts of the caliphs, amirs and sultans. In addition to the qadis, who administered and judged according to the shari'ah, the caliphs also had lawyers concerned with nonreligious law by which many of the punishments were handled and taxes levied.^{[1](#)}

Nevertheless, Islamic law held precedence in these areas. If the ruler imposed some law or issued a decree which was blatantly in violation of the shari'ah he would have to face the opposition of the ulama, and the support they commanded. Another overlapping of jurisdiction could be found in common law and Islamic law.

Islamic law often explicitly condones 'urf or custom, and one of the questions which the Muslim legal scholars have debated is whether the references to custom should be taken to refer specifically to the custom at the time of the Prophets, or more generally to whatever customs are current in society.

With the eclipse of the caliphates and the intrusion of colonial powers into Muslim lands and the subsequent emergence of Muslim nation states, the shari'ah came to be increasingly restricted. Pious Muslims reacted in several ways. Some, like the Egyptian theologian Muhammad 'Abduh (d.1905), who are called modernists, admitted that the way in which Islamic law had come to be interpreted needed revision in order to accommodate the demands of modern life.

Others sought the implementation of Islamic law as traditionally understood but within the context of the modern nation state. Both the conservatives and reformists were in agreement, however, that the displacement of Islamic law by the colonialists and secularists had to be reversed.

The conviction that Islamic law, either in a reformed guise or in its traditional regalia, can and must be

implemented in modern Muslim societies is the single unifying feature of the Islamic movement that developed in the post colonialist period, championed by such diverse leaders as Jamal al-Din al-Afghani (d. 1896), Mawlana Mawdidi (d. 1979), Iqbal al-Banna and Sayyid Qutb, to mention just a few.

The call for the implementation of the shari'ah has served to rally Muslims ever since into a revivalist movement pejoratively termed "fundamentalist" by the Western press.²

Opposed to the revivalists are those who hold that beyond the realm of the rituals of worship, Islamic law is outmoded, an anachronism which has outlived its usefulness, an obstacle to "progress and development".

It is this attitude which was most vehemently implemented in Kemal Ataturk's rule in Turkey (1923–1938), but which has advocates among those who claim to be defenders of Islam, as well. The Islamic opponents of revivalism emphasize the personal, inward dimensions of Islam, and hold that the only proper function of the shari'ah in modern society is the delineation of ritual law.

International law is to be legislated, they hold, in the United Nations; commercial law must be subject to the pressures of international economics; penal codes are to reflect the "enlightened" moral sensibilities of groups like Amnesty International, the framers of declarations of human rights, or even the American Civil Liberties Union.

Other areas of law are more controversial. Family law, for example, was one of branches of law which the colonialists were prepared to concede to traditional Muslim jurisprudence, fiqh, and some Muslim opponents of revivalism would allow family law to continue to be governed by the shari'ah.

Regardless of one's stance toward the issues mentioned above, there is no denying that these issues are the most controversial in contemporary Muslim societies. Emerging from this controversy there is a new function being performed by the shari'ah, for perhaps more than ever before, one's concept of oneself as a Muslim and what one takes it to mean to be a Muslim are intertwined with one's understanding and attitude toward Islamic law.

In Islam, the position of man and his responsibilities to God and other men are determined by the law rather than by theology per se. There are two essential questions debated in this regard, one of scope and one of content. The question of scope is the question of the areas over which Islamic law is taken to have jurisdiction.

Is it to be relegated to the personal aspects of ritual observance, or is it to be the law of the land, governing commerce, international relations and the criminal justice system? The question of content is the question of what the law of Islam actually prescribes. Is the shari'ah that which was formulated by the medieval jurists, or is the interpretation of Islamic law by contemporary reformers to be accepted as being in closest conformity to the command of Allah?

The questions of scope and content are often confused because would-be reformers sometimes give an interpretation of Islamic law that seems to differ very little from currently accepted secular law. While they affirm the need to implement Islamic law, the vision of Islamic law of which they approve is closer to European civil law than to the formulations of Islamic law developed by the fuqaha.

If such is one's understanding of Islamic law, the difference between the implementation of a reformed Islamic law and the replacement of Islamic law by civil law would be purely theoretical. Of course, not all programs for the reformation of the understanding of Islamic law are to be dismissed as poorly disguised attempts to replace Islamic law by European law.

There are criticisms of past interpretations of the law which arise even from within the ranks of the traditionally trained 'ulama. Shahid Baqir Sadr, may Allah have mercy on him, for example, suggests a number of innovations to the understanding of the principles of Islamic jurisprudence (uwul al-fiqh) that have become quite influential among contemporary Shi'i jurists, but which by no means compromise with European sensibilities.

Imam Khomeini, may his spirit be sanctified, also introduced a number of reforms to the understanding of Islamic law, most famously, regarding Islamic government.

The usual categorizations of Muslim thinkers into fundamentalist, modernist and occasionally, traditionalist, are misleading. A more useful approach to classification would attend to the position taken on the scope of Islamic law and the extent and kind of reform advocated within the scope that law is recognized to have.

In Iran, for example, there was at one time an organization called Anjoman Ijlatiyah, which advocated strict observance to medieval formulations of ritual law and abstention from political affairs until the reappearance of the twelfth Imam (may Allah hasten his manifestation). This group would allow a very restricted scope to Islamic law during the present period of the Major Occultation of the Present Imam, but within what they took to be the scope of Islamic law, ritual practice, little need for reform was seen.

Some contemporary Muslim intellectuals hold a similar position, advocating a Western style of liberalism in politics, but personal devotion in accordance with traditional practice. Those who want to see something comparable to the Protestant Revolt in the context of Islam promote such intellectual movements as opening the way for a Protestant Islam compatible with the secularism which dominates the Western world.

On the other hand, there are those who, like Dr. 'Ali Shari'ati, champion the breadth of the scope of Islam, but who interpret this much differently than do those trained in the Islamic seminaries (hawzah).

Shari'ati's vision would allow a comprehensive scope for Islamic law, but only after it had become "reformed" in accordance with the sort of ideology for which he became popular. This ideological reform of the law would have had severe consequences, had it ever been formulated, for Shari'ati had sympathy

for neither the traditional approaches to fiqh nor for such formulations of devotion as may be found in the famous Shi'i prayer book, *Mafati al-Jinan*.

Then again, if we turn to Mawdidi, we find that he grants a comprehensive scope to Islamic law, although he would interpret it in such a way as to accommodate the exigencies of the modern nation state, modeled, as far as possible, on the Prophet's Madinah.

Those who would limit the scope of Islamic law offer several arguments for their position. Some, like the *Anjoman Ijlatiyah*, argue on theological grounds that Islam cannot have wide scope in the time of the Major Occultation. It is the refutation of this argument that is the focus of much of Imam Khomeini's work on Islamic Government, *lukumat Islamiyyah*.

Dr. Shari'ati also argued vehemently against this kind of quietism which he described as being characteristic of the *murja'iyyah*, early Muslims who responded to the difficulties of the Muslim community following the death of the Prophets by retiring to the mosques and occupying themselves with prayer.

Some pseudo-sufis, *mutasawwifin*, claim that political affairs are ignoble and that one who would tread the spiritual path should abstain from politics. In response, it should first be noted that this is a distortion of the spiritual way of Islam, whether known as *tasawwuf* or *'irfan*. The *salik*, one who treads the path toward God, is not to abstain from politics as such, but from the deception and corruption which foul so much of the political arena today; and furthermore, the *salik* must not use any claim to spiritual station or rank in order to advance his political aspirations.

The functions of government, like those of household economics, are subject to the shari'ah, while the province of *'irfan* is spiritual wayfaring. One is not to advance political claims on the basis of *'irfan*, no more than the *'arif* can advance any other claim having to do with the outward elements of Islam on the basis of mysticism (although, of course, if the *'arif* happens to be a *faqih* as well, he may well issue legal decisions as do the other *fuyuhah* but this would be on the basis of his expertise in fiqh and not on the basis of his *'irfan*).

Indeed, according to the greatest *'urafa* and sufis, adherence to the shari'ah has always been an unquestionable standard, as was expressed in the slogan, "No tariqah without shari'ah." The higher is not to be put into the service of the lower, but rather all the aspects of life, no matter how worldly, are to be sanctified by their being put at the service of the divine.

Unless the shari'ah is given wide scope, the context for the development of the deeper sanctification of life sought by the sufi will be missing. Secondly, even if, for whatever reason, one deems it unsuitable to engage in political affairs, this does not mean that religious law has no bearing on them, just as one's decision not to become a butcher does not mean that religious law has no bearing on that profession. The bearing of the shari'ah on politics is a question of fiqh and as such must be determined by those with expertise in that field, the *fuyuhah*.

Another argument begins with the fact of divergence of opinion about the law. Since there is no universal agreement about the proper interpretation of the law, it is argued that the law must be enacted by a democratically elected legislature. The conclusion of this argument does not follow from the premise. To argue this way is like claiming that since there is no universal agreement about the laws of physics, they should be legislated.

The law of God can no more be legislated than the laws of physics. Disagreements about the content of the law, like disagreements about the laws of physics, are to be resolved through investigation, although while investigation into the laws of physics makes use of experimental evidence, investigation into the laws of Islam requires historical and textual evidence, and it is this which constitutes the research for which the 'ulama are trained.

Unfortunately, there are many today, even in the Muslim world, which has become so enamored with Western science that they imagine it to be built on a solid foundation of experimental evidence independent of philosophical thought. However, it is a rare point of nearly universal consensus in the philosophy of science since the decline of positivism that experimental evidence is not a sufficient standard for the evaluation of competing theoretical claims.

This does not imply, however, that one view is as good as any other, for although the differences among theoretical physicists are certainly more divergent than those to be found among the mujtahids, in both cases the resolution of differences requires research, analysis and critical argumentation about the significance of various findings and claims to explanatory strength and comprehension. To engage in this sort of argumentation and research about Islamic law is precisely what it means to be a mujtahid.

Sometimes an appeal is made to claims found in the traditions of Western hermeneutics and literary theory to the effect that every text is open to multiple interpretations, and on this basis it is argued that the reading of the Qur'an and ahadith given by the ulama represents only one way of dealing with the text, which can mean other things to other people.

This much is not very controversial, but from this it is concluded that one reading of the texts is as good as another and that a democratic approach should be taken to the understanding of scripture. The conclusion is preposterous.

Should a vote be taken on the meaning of controversial passages? The fact of the multiple meanings that can be given to sacred texts is not something which had to be learned from Western literary theorists anyway, for one of the most salient features of the Islamic tradition is the way in which various levels of meaning have been posited for its texts.

The fact that texts can be interpreted in different ways does not mean that the texts cannot serve as a solid foundation for a comprehensive system of law.

The absurdity of Islamic Protestantism becomes even clearer when one considers the nature of the

Protestant Reformation in Christianity and the relevant differences between Christianity and Islam. The Christian Protestants were protesting against the claim made by the Church that it was the sole vehicle to God because only its priests could perform certain sacraments by which one could acquire grace.

To the contrary, the Protestants claimed that the Holy Spirit could fill anyone with grace often manifested in ecstatic states, and they emphasized the direct relation to God by having the scriptures translated into vernacular languages. Opposing the Catholic emphasis on the sacraments, Luther proclaimed that by faith alone shall man be saved. In Islam, however, the ulama are not priests; their authority does not stem from permission to perform sacraments, but from knowledge of the law.

Grace is not obtained in Islam by partaking in the sacraments, but by submitting entirely to Allah in faith and works, which are repeatedly mentioned together in the Qur'an:

In the Name of Allah, the Merciful, the Compassionate

By the time!

Surely man is lost

Except those who believe and do good

and enjoin each other to the truth

and enjoin each other to patience.

(Surah 103)

Hence, the grounds for protest that existed in Christianity at the time of the Reformation simply do not exist in Islam. The Christian Protestants challenged the authority of the Church with the claim that the grace that comes from the sacraments could be achieved by a direct personal relation with God without the need of priestly intermediaries.

The rites performed by Muslims, on the other hand, do not involve any priesthood. Individuals perform the five daily prayers, the fast of ramadhan, the hajj, zakah and the bearing witness without need for the clergy. The function of the ulama in these as in all religious affairs is to specify the law, that is, to explain how to perform the prayers, Hajj, etc.

So, the would-be Islamic Protestants cannot muster the rationale which is to be found behind the Protestant revolt. They cannot argue that the ulama are unnecessary for a direct relation with God or for the performance of sacraments because Islam has a anomic rather than a sacramental orientation.

As for ecstatic states and the grace that come from direct encounter with the divine, the Christian Protestants thought this could be achieved by simply allowing oneself to be "filled with the Spirit", while in Islam, the sufis built their own sacramental hierarchy and discipline for union with the Beloved in what

Ernest Gellner has described as a "reformation in reverse".³

There could be a sort of Islamic Protestantism directed against tasawwuf, and Muḥammad Iqbal's (d. 1938) objections to "pīr worship" on the Indian subcontinent might be compared to Protestant objections to "Papism", but this would have no bearing on commonplace Islamic piety and its focus on the shari'ah.

Islamic and Christian Protestantism are similar only in that both would limit the sacred realm to expand the secular. So, we should ask why this happened in Christian Protestantism and whether something similar would be appropriate in an Islamic setting.

There are two major reasons for the rise of secularism following the Protestant Reformation, one theoretical and one practical. The theoretical reason is the emphasis on faith as opposed to works already mentioned. As religion became increasingly personal, the public realm became secular.

In Islam, the same sort of communal personal split does not occur because an emphasis on imān (faith) is not seen as something in contrast to an emphasis on works, but as an attempt to go beyond the requirements of the law with attendant supererogatory deeds, which are also defined by the law.

In short, there is no getting around the importance of the law by championing faith. The practical reason for the rise of secularism was the proliferation of Protestant sects. As the power of the Church declined, there was no single Protestant alternative, although on a local level some were able to acquire political might, as in Calvin's Switzerland and Anglican England.

The immediate result of the power vacuum was religious war, and religious Christians largely accepted liberal secularism after the Reformation as a way to avoid continual warfare. Once again, there is no counterpart in Islam, and again, this is because of the centrality of the law.

Wars among Muslims have typically been fought because of differences regarding the question of who should administer the law, while differences over the question of what law was to be administered were relatively minor.

The very thought that the scope of the shari'ah should be restricted was inconceivable until the British attempted to supplant the law of God by the law of the crown in the Muslim lands which had come under their imperial control. In any case, neither the theoretical nor the practical reasons for the rise of liberal secularism apply in the case of Islam, whether in Iran, Algeria, the Sudan or any other Muslim country.

The next argument of the Islamic Protestants is a direct challenge to the training of the 'ulama. It is claimed that since the 'ulama are not trained in the modern physical and social sciences, they are not qualified to issue rulings in such specialized areas as government or economic policy. Once again, the premises are not sufficient to establish the conclusion of this argument.

The fact that an 'alim is not trained in contemporary economics does not detract in the least from his religious ruling that riba is haram. On the other hand, such questions as whether the contemporary

banking system in a particular country is infected by *riba*, whether any form of interest is *riba* and the like require familiarity with contemporary economics.

The situation is rather like that of a chemist who knows that an explosive reaction will result from the mixture of two chemicals. If he does not know what chemicals are present in two different containers, he will not be able to determine whether they can be safely combined.

This does not mean that his knowledge of chemical theory is in any way lacking, but that the application of chemical theory in a particular instance may require consultation with those who have knowledge of the particular circumstances in question.

Similarly, those who seek to implement the *shari'ah* in modern Muslim societies rely upon the expertise of those with training in the various fields to which the *shari'ah* is to be applied, often appointing Western trained experts in high administrative positions concerned with banking and commerce, for example: What is needed here, if the implementation of the *shari'ah* is to be successful, is a genuine cooperation between the experts and the *ulama*.

The danger is not the unlikely prospect that modern societies will return to the practices of the Middle Ages, as so many Western reporters imagine and the Islamic Protestants allege, rather the danger is that the real work of trying to implement Islamic law will be abandoned in deference to the opinions of the technocrats.

The argument becomes deeper, however, with the claim that all knowledge is interrelated, and that the lack of familiarity on the part of the *ulama* with contemporary sciences distorts their knowledge of *fiqh* itself. The problem with this claim is that its exponents fail to appreciate the full implications of their claim of mutual interrelatedness.

For if all knowledge is truly interrelated, then social scientists could just as well be condemned for their lack of familiarity with the traditional Islamic sciences.⁴ And indeed, a number of Muslim thinkers have called for the Islamization of the sciences which they hold to have been corrupted by disbelief, *kufr*.

The doctrine of epistemological holism, that all branches of knowledge are interrelated, does not actually fit well with the views of those who would limit the *shari'ah* to ritual practices, for if all forms of knowledge are truly interrelated, there will be no basis on which to limit the relevance of the knowledge of the *ulama* to the details of worship.

One of the most frequently voiced arguments for a restriction of the scope of Islamic law is the rationalist argument that God has endowed man with reason in order that he may solve the problems of life on his own, and that to seek the solution to all life's problems in religious injunctions is thus itself to violate the will of God.

In response it is to be observed that it is no disparagement of reason to hold that God would provide

reason with guidance in the form of a law revealed through His prophets. The acceptance and submission to divine guidance in the form of a sacred law in no way diminishes the need for the exercise of reason.

Islam should not be seen as a simple solution to all life's problems, but as an orientation toward those problems, an orientation which requires the attempt to live in accordance with the will of Allah, and which itself raises its own practical and intellectual problems.

The understanding of the divine law itself and how to implement it will still require the employment of reason, but the reason celebrated in Islam is not the merely instrumental faculty discussed by Hume and those who have followed him in Western philosophy, but a divinely enlightened faculty which by its very nature conforms to the commands of Allah.⁵

Reason itself is not a neutral observer here, for our understanding of the nature of reason itself depends upon the traditions from within which reason is employed and itself observed.

Once again, the issues of scope and content must be distinguished. One may well argue for reform in the application of the shari'ah on the grounds that relevant information has become available that should be taken into consideration when issuing legal rulings, but this is to remain within the mainstream of revivalist Muslim thought, and not to stray into the offshoots of thought that would deny the jurisdiction of Islamic law in various important realms of Muslim life.

Regardless of the difficulties applying the shari'ah in the context of modern life, the comprehensive character of its scope is essential. One reason for this has to do with the nature of Islam itself. To make progress in Islam is to bring oneself ever more completely into submission to Allah.

It is because of this understanding of piety that Muslims have always been so intensely interested in the commands of Allah, the divine law, the shari'ah. To the extent that a Muslim is God-fearing, muttaqi, he will attempt to bring all the aspects of his life into conformity with the will of Allah.

Those who ridicule the comprehensive quality of the divine law object that there is no such thing as Islamic sports, Islamic engineering, Islamic mathematics, etc. But even where the divine law allows for freedom of thought and action, the freedom allowed is not the freedom of autonomy, an independence where the self dominates, but rather it is an oriented freedom, a freedom to find one's own way toward the divine light.

This freedom operates within the liberating constraints of the shari'ah. Sports are to take place with their own Islamic 'adab, there must be fair play and no gambling. Engineering and mathematics, as well, are considered to be neutral activities (mubah) by the law, although they are to be undertaken in conformity with the law, without any violation of contracts or usurpation of the rights of others.

One of the chief sources of confusion in this area has to do with the label "Islamic". By the "Islamic

sciences" is often meant those sciences that developed within the context of medieval Islamic cultures. But the term "unislamic" is used for that which is in violation of the shari'ah.

This leads to the mistaken impression that there is something wrong from the point of view of Islamic law with the sciences which have developed in the West. Students of these modern sciences are then attracted to the view that their fields of study fall outside of the scope of the shari'ah, which should be restricted to matters of worship.

Unfortunately, this confusion is augmented by the fact that some who would defend the Islamic character of the traditional sciences are willing to foster the impression that it is only these sciences which truly conform to Islamic law.

Perhaps one way out of this confusion is to distinguish between islam, iman and ihsan, submission, faith and goodness. In all of the pursuits of the Muslim, these three should be kept in mind. At a minimum the Muslim should see to it that his activities do not violate the law, that the shari'ah is heeded.

But furthermore, the Muslim should also be a mu'min and attempt to let his deeds be an expression of his faith, and thus by putting his faith into practice to be muhsin. Such attempts were made during the classical period of the development of the so-called Islamic sciences, so that these sciences were integrated into an overarching world-view in which natural science, mathematics, grammar, religion and philosophy were brought into harmony.

The resultant system is exemplary, but this does not mean that it maintains its credibility, or still less, that anything contrary to it is in violation of Islam. Today, there is a need to become engaged in pursuits in fields as diverse as politics and physics, aspects of which are completely foreign to that with which the great Muslim scholars of the classical period were familiar.

This does not mean that such pursuits are in violation of the shari'ah, nor that the divine law has no jurisdiction over such pursuits, nor even that the work of the early Muslim scholars is completely irrelevant, for like those scholars, contemporary Muslim thinkers must also aspire to express their faith in all their pursuits, to make them good, true and beautiful, or, in a word, ahsan.⁶

¹. See Annemarie Schimmel, *Deciphering the Signs of God* (Albany: SUNY Press, 1994), p. 207–208.

². The term "revivalist" was suggested by Ali Abadi, an Iranian sociologist whose work on Islam and modernisms being written in New York.

³. Ernest Gellner, "Doctor and Saint", in Nikkie Keddie, ed., *Scholars, Saints and Sufis*, (Berkeley: University of California Press, 1972), p.307–326; cited in Schimmel, *ibid.*, p. 212.

⁴. I owe this argument to Dr. Sa'id Zibakalam, of the Faculty of the History and Philosophy of Science at the Institute for Cultural Studies and Research, Tehran.

⁵. See *Usul al-Kdfl*, Book I, on 'aql, in which the creation of the intellect and its complete obedience to Allah are described in a report attributed to the Imams.

⁶. On ihsan see Sachiko Murata and William C. Chittick, *The vision of Islam* (New York: Paragon House, 1994), 265ff.

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