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Shari'a

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The shari'a (*sharī'a*) is the revealed, sacred law of Islam, though the primary term for law in the Qur'an is arguably *dīn*, ordinarily translated as "religion." Law is an essential feature of revealed religion in both the Qur'an and Islamic thought in general, and the term shari'a is used with reference not only to Islam but also to Judaism and Christianity, because all three are conceived as having a divinely given law. According to later jurists, 500 verses of the Qur'an, termed *āyāt al-aḥkām* (verses of rulings), treat legal subjects, including matters relating to prayer, fasting, alms, pilgrimage, permitted food, marriage, divorce, inheritance, slavery, and trade. This represents roughly one-thirteenth of the sacred text.

Fiqh (literally, "understanding") is the term for the human effort to work out God's law on particular issues. Like shari'a, with which it is often contrasted, it is translatable as law, but whereas shari'a refers primarily to God's regulation of human behavior, and thus the ideal, *fiqh* always stands for the human approximation of this ideal, the law as actually found in the books. Because it etymologically means "comprehension," *fiqh* is often translated as "jurisprudence" in English, but usually it corresponds to law, referring to the actual rules in the books. Jurisprudence, the science or methods of interpretation through which one determines the law, corresponds more closely to *uṣūl al-fiqh* (literally, "the roots of the law"), the science devoted to the hermeneutics of Islamic law.

For the vast majority of Muslims, law has determined—and still determines today—what Islam is. This distinguishes Islam from Christianity, which does not actually have a revealed law and in which theology is the queen of religious sciences; Judaism likewise stresses the importance and centrality of the law. The "clergy" of Islam, like the rabbis of Judaism, are jurists rather than theologians, and it is their study of the law and competence in addressing legal questions that gives them authority. Many other claimants to authority have coexisted with them in the course of history, but, for more than a millennium, jurists have been among the groups most successful in gaining acceptance for their claims.

The Law in the Books

Islamic law is not embodied in a single authoritative code but rather held to reside in the vast array of legal texts, based ultimately on legal responsa issued by recognized jurists over the course of history. A responsum (fatwa) is an opinion solicited from a legal authority on a specific legal question. In the early sources, opinions are often solicited by one jurist of another ("I asked so-and-so about the case of . . .") or by a student or a layperson; in later times, fatwas were typically issued in response to questions by laypersons. Not all opinions were considered equal: the most authoritative opinions were those issued by *mujtahid*s, jurists endowed with the ability acquired through intense legal study to derive independent legal rulings directly from the sources (*ijtihād*). Of the books recording these opinions, some were (and are) considered more important than others, but no one book gained the overriding authority of a work such as the *Shulchan Aruch* (The set table) of Joseph ben Ephraim Karo (d. 1575), which has served as the nearly exclusive basis for the elaboration of Jewish law over the past four centuries.

The law books divide their subject matter into set topical chapters that, already in the ninth century, followed a standard order, with some variations, that facilitated the location of particular legal topics in relatively large works without fixed pagination and often without indexes or tables of contents. The chapters fall into three large categories: *'ibādāt* (acts of worship); *mu'āmalāt* (transactions or contracts); and *qaḍāyā* (court cases). The *'ibādāt* sections start with ritual purity (*ṭahārah*), a prerequisite for ritual prayer and other acts of devotion, and proceed to discuss prayer itself, the first act of devotion since it is performed daily; this is followed by fasting, performed during at least one month of the year, the alms tax (zakat), which must be given once a year, and the pilgrimage, which must be performed once in a lifetime by those who are able to undertake it. The chapter order in the *mu'āmalāt* section is not as rigidly fixed, but it always appears after the *'ibādāt* section. Major topics include sales, marriage, divorce, inheritance, renting, pawning, sharecropping, partnerships, agents, slavery, deposits, found property, foundlings, endowments, and so on. The third section includes chapters on crimes, judicial procedure, and court cases. The crimes known as *ḥudūd* are those for which fixed punishments are sanctioned by the Qur'an, and they are generally held to be seven in number: apostasy, adultery, false accusation of adultery, burglary, highway robbery, sedition, and drinking alcohol.

The law books regulate many matters of ritual that one could scarcely hope to enforce. Muslims are not tried in court for failing to perform ablutions properly, even though the discussion of ritual purity is usually one of the longest sections in any given law book. Most actual court cases have to do with matters governed by contracts and agreements between individuals, such as business transactions of all types. In addition, the law does not simply regulate what is forbidden, obligatory, or permissible but rather seeks to rank all human acts in moral terms on a five-tiered scale: *ḥarām* (forbidden), *makrūh* (reprehensible, discouraged), *mubāḥ* (allowed), *mustaḥabb* (recommended), and *wājib* (obligatory).

The Sources of the Law

On what did the scholars base their responsa? The substance of their rules was often indebted to existing systems, both Arabian and Near Eastern (a conglomeration of systems of diverse origin, including Jewish, Byzantine, and Sassanian law), but this does not tell us on what basis the rules were counted as Islamic. Some will have been formulated by the caliphs, whose decisions seem initially to have been accepted as authoritative. In later times this was true only of those caliphs who were also Companions of the Prophet, notably 'Umar b. al-Khattab (r. 634–44), who is held to have made important contributions to the law. The laws relating to *dhimmī*s (non-Muslim communities under Muslim rule) must also have derived from caliphal decrees, even though the documents attributed to them are not always genuine. By most accounts, however, Islamic law was elaborated by thinkers who stood outside the government and were opposed to or at least stood aloof from it and who did not accept the decrees of the caliphs as a source of law. In the earliest material, their rules often rest on nothing but their considered opinion (*ra'y*); their decision is recorded, but their reasoning is not explained. Stringent principles for the derivation of law soon made their appearance, however.

The science of the *uṣūl al-fiqh* proposed that the law must be derived from an ordered series of sources, of which most Sunni jurists eventually accepted four: (1) the Qur'an; (2) the sunna (the customary way of the Prophet Muhammad), which was understood to be preserved in the hadith (recorded reports about the Prophet's words and deeds); (3) consensus (*ijmā'*); and (4) legal analogy (*qiyās*) or the exhaustive independent consideration of a legal question (*ijtihād*). The idea of an ordered list of sources originated in the eighth century and is seen in checklists presented in instructions for judges. The first extant work of *uṣūl al-fiqh*, the *Risala* of Shafi'i (d. 820), presents a sophisticated system of legal hermeneutics, but his system is based on the idea that there is only one source of the law: revelation. Revelation includes both the Qur'an and the corpus of prophetic hadith, but to Shafi'i they combined to form a coherent whole. This is quite a bit different from the later four-source theory. Jurists writing after Shafi'i interpreted his work anachronistically, in some cases even rearranging the text in order to bring it in line with the later conventions of the *uṣūl al-fiqh* genre. As the four-source theory gained ground, "considered opinion" as a basis of the law was eclipsed and suppressed in favor of a stricter reliance on texts; "opinion" came to be associated with whim or wild speculation. It survived in a disciplined form as *qiyās*, analogical reasoning from a known, determined case to a similar, undetermined case, but some jurists continued to oppose that too.

Consensus is usually negative and retroactive: the lack of dissenting opinions over the past generation is a sign that consensus exists. The body of acceptable opinion is thus made up of two parts, consensus and disputed points (*khilāf*), both within a particular legal school and between them, for variant opinions are allowed on those points of law for which a consensus does not exist. Lists of the requirements of a master jurist often stress that he must be aware of areas of consensus in the law—this is similar to a call for the necessity of examining relevant precedent before deciding a case.

*Madhhab*s and Madrasas

Two institutions that contributed to making the law central to Islamic societies and creating continuity over space and time are the *madhhab*, or the legal school (in the sense of a tradition of legal study based on a stable body of doctrine), and the madrasa, or college of law. The circles behind the legal schools organized and regularized the transmission of legal knowledge and interpretive authority, which have survived until the present day, and their activities represent a significant step in the professionalization of the jurists as a class. They solidified in the course of the ninth and tenth centuries, and four Sunni schools survive to this day: the Hanafi, named after Abu Hanifa (d. 767); the Maliki, named after Malik b. Anas (d. 795); the Shafi'i, named after Shafi'i (d. 820); and the Hanbali, named after Ahmad b. Hanbal (d. 855). But there were others as well, including the Dawudi *madhhab*, named after its founder Dawud b. 'Ali b. Khalaf al-Isfahani (d. 884), which was also called the Zahiri *madhhab* on account of the principle of reliance on the prima facie reading (*ẓāhir*) of revealed proof texts, and the Jariri, named after Muhammad b. Jarir al-Tabari (d. 923). In addition to these six, several non-Sunni legal schools arose. These included the Twelver Shi'i school, called the Imami *madhhab*, after their adherence to the teachings of their 12 imams, or Ja'fari, in reference to the sixth imam, Ja'far al-Sadiq (d. 765); the Zaydi Shi'i *madhhab*, named after the martyred rebel imam Zayd (d. 740); and the Ibadi Khariji school, named after 'Abdallah b. Ibad (d. 708), all of which were established by the 11th century, making nine in total. The Zahiri and Jariri schools had died out by the 12th century and were absorbed into the Shafi'i school, leaving the Imami, Zaydi, Ibadi, and the four well-known Sunni schools: Hanafi, Maliki, Shafi'i, and Hanbali. Isma'ili Shi'is developed their own legal tradition under the Fatimid caliphate (909–1171), chiefly in the work of the outstanding jurist Qadi al-Nu'man (d. 974), but their legal *madhhab* differs from the others in institutional terms because of continued access to and dependence on the teachings of an inspired imam. While the Shi'i and Khariji legal traditions preserved early doctrines that differed from those of the Sunni schools, such as the Twelver Shi'is' acceptance of *mut'a* or temporary marriage, the professionalization of the jurists as a class and the institution of the *madhhab* had the effect of making their systems of legal education and interpretation resemble those of the Sunnis more and more over time.

The main centers of formation of the schools were Fustat in Egypt and Baghdad in Iraq. The Hanafi school was supported by the Abbasid caliphs and associated with their rule until the late 12th century (when several caliphs adopted the Shafi'i school); later, it became the preferred school of all major Turkish dynasties, spreading in Central Asia, Anatolia, and India and in Syria and Egypt under the Ottomans. The Shafi'i school was strong in Iraq, Syria, Egypt, Arabia, and, later, Indonesia; that of the Malikis was strong in Egypt and dominant in North Africa, sub-Saharan Africa, and Andalus, where the Umayyad rulers supported it. The Hanbali school, more limited in scope, boasted adherents in some towns of Palestine, Syria, and Iraq. In modern times, it was chosen by adherents of the Wahhabi movement that grew in tandem with the Saudi state and through them became influential throughout the Islamic world. Iran was split between Hanafis and Shafi'is until the Safavids succeeded in converting most of the populace to Shi'i Islam. The remaining Sunnis—for the most part Kurds—are Shafi'is. The Twelver, Zaydi, and Khariji *madhhabs* developed primarily in Iraq and Baghdad in particular, gained ground during the Buyid period (945–1055), and spread to Iran and other areas from there. *Madhhab* allegiance has remained to this day a matter of region and has been influenced in many cases by political rule, illustrating the dictum that "people adopt the religion of their rulers."

The madrasa represents another milestone in the professionalization of the jurists. The madrasa originated in Khurasan—eastern Iran—in the tenth century and traveled west into Iraq, Syria, Egypt, North Africa and east into Central Asia, India, and beyond. It was an organization embodied in a physical building dedicated to legal education through the establishment of an endowment. Agricultural land or rental properties that produced an annual income were placed in a charitable endowment in perpetuity, and the funds were used to pay for the maintenance and upkeep of the building, for the salary of a law professor (*mudarris*), and for monthly stipends for law students. Like the European universities, such as that of Bologna, it grew out of the needs of out-of-town law students. Previously, many prominent jurists had taught their lessons in a mosque, and an adjacent inn provided convenient lodging for students who were not local. This often continued to be the case, but the madrasa combined these two functions: a typical madrasa was a two-story building with an open courtyard. Lessons would be held on the ground floor in alcoves designed for teaching purposes, and the upper floor served as a dormitory for the stipendiary students and sometimes the *mudarris*. By the late 11th century, a number of madrasas had been founded in Baghdad; the most impressive of them was the Nizamiyya, one of a series of such institutions founded by the famous Seljuq vizier Nizam al-Mulk. The Zengids and Ayyubids made the madrasa a prominent feature of the major cities of Syria and Egypt, where they spread its influence in the 12th century. It continued moving west, and the Marinids established numerous madrasas in Morocco in the 14th century. At the same time, madrasas also spread into Anatolia, Central Asia, India, and beyond.

The spread of the madrasa did not initially change the nature of legal study, for the curriculum, stages of study, and methods of teaching apparently remained

the same. They did, however, serve visibly to increase the power and prestige of jurists by raising the status of the *mudarris*, and they increased societal support for legal education as a whole, especially on account of the stipends accorded to law students. In addition, they bolstered the institution of the legal school, since each madrasa was devoted to the teaching of the law according to a single school, with one law professor teaching stipendiary students belonging to the same school. Over time, the madrasa came to dominate legal education, and access to the judiciary came to be controlled primarily by the law professors, who would recommend their students to the chief judge of the district for patents of probity—essentially, a document from the local judge attesting that a student was of good character and had a clean moral record and was thus not barred from holding positions of legal responsibility—and then, probably, for the certificate of permission to teach law and grant legal opinions.

Legal Education and Careers

The study of the law in the 10th to 14th centuries was divided into three stages: preparatory studies, including Arabic grammar, rhetoric, and logic; the legal doctrine of the particular school to which one belonged, studied in epitomes; and the disputed points of the law, legal hermeneutics, and dialectic—the rules of legal debate. Advanced students often became the disciples of a master jurist, studying with him for many years and eventually composing a commentary called a *ta'līqa*, based on the lectures of the professor. In recognition that a student had completed his legal education, the master jurist conferred on him a diploma termed *ijāzat al-tadrīs wa-l-iftā'* (certificate to teach law and grant legal opinions). This diploma established the student's qualifications as a jurist or *faqīh* able to analyze legal questions, as a mufti or jurisconsult entitled to answer legal questions from the lay public, and as a scholar of law able to teach law students of his own.

One of the functions of the system of legal education was to provide legal experts to serve in the judiciary. At a low level, a scholar who had a good basic knowledge of the law and a patent of probity could obtain work as a private notary who drew up documents such as marriage, divorce, sales, and other contracts or as an official witness, notary, or clerk attached to a judge's court. A more experienced jurist could serve as a deputy judge and eventually as a judge in his own right. After the 11th century, more and more salaried positions as law professors (*mudarris*) or repetitors (*mu'īd*, essentially an assistant professor) became available. Jurists who had a good knowledge of mathematics could also make a living as inheritance law experts (*faraḍī*), who, like notaries for marriage and divorce contracts, were often in high demand.

The relative ranking of the jurists within a given legal school in a city was generally known, though it was not official. A pecking order was established not only by debate, authorship, teaching, and serving as judges but also by the public activity

of granting fatwas and endorsing, revising, correcting, or denouncing the fatwas of other jurists. The top living jurist within a given *madhhab* was termed *ra'īs* (chief) or foremost jurist. The hierarchy was theoretically independent of specific offices such as that of chief judge, but rank and office often tended to go together. The endowment deeds of a number of madrasas specified that the law professor at the madrasa should be the top Shafi'i legal scholar of the time. Related to this juristic hierarchy was the controversy over *ijtihād*. Theorists such as Yahya b. Sharaf Nawawi (d. 1277) wrote that the jurists were to be ranked according to various levels of *ijtihād*, often with one or more of the top ranks empty. While the texts of jurisprudence present this as a theoretical exercise about past jurists, it also reflects an understanding that contemporary jurists form a hierarchy of authority.

Rival Authorities

The legal schools served not only to establish regular methods of textual transmission and legal education but also to exclude other groups from participation in the elaboration of law. In the ninth and tenth centuries, the main contenders for religious authority among the scholars were the theologians (*mutakallims*). The jurists took the view that every believer should know a basic catechism: there is one God, the Prophet Muhammad is the messenger of God, the Qur'an is God's word, and so on. Beyond that, theology was necessary only to defend Islam from heretics, and an advanced knowledge of theology was not required for the populace at large or important for their daily lives and worship. The theologians, by contrast, held that the law merely treated details whereas theology dealt with the large, important questions. Mu'tazili theologians explicitly stated that the study of hadith and law were subordinate to the study of theology.

The conflict between the two groups, jurists and theologians, is nowhere more evident than in the *miḥna* (literally, trial, tribulation, often called "inquisition") of the mid-ninth century, in which the theologians in cooperation with the caliph Ma'mun and his successors sought to impose the doctrine that the Qur'an was created by God at a particular point in historical time (rather than being eternal) on the officials and prominent scholars of the empire. The theologians lost this battle, but they regained ground through the patronage of later rulers. By the tenth century, however, the legal schools had grown so powerful that the theologians had to declare allegiance to one of them in order to legitimate their scholarship. In general, the Mu'tazilis chose the Hanafi school, while the Ash'aris chose that of Shafi'i. A tenth-century Mu'tazili is said to have encouraged his students to join different schools in order to populate them all with proponents of Mu'tazilism. The Mu'tazili school of theology waned in the 11th and 12th centuries, and with it, the authority of theologians in general. It lived on in part in the Twelver and Zaydi Shi'i traditions, whose leading scholars were profoundly influenced by Mu'tazili theology between the 9th and 11th centuries, but in those traditions as well, religious

authority came to be based on the study of law rather than theology. While theology continued to be an important Islamic science, it was relegated to a subordinate and ancillary position.

There was also some conflict between jurists and hadith experts. The *ahl al-ḥadīth* were scholars of reports concerning the words and deeds of the Prophet Muhammad, which they examined in order to determine his exemplary or normative behavior, or sunna. They believed that these rules determined the law for contemporary Muslims. They rejected the use of rational inquiry independent of such texts for the elaboration of the law, and they were able to maintain a distinct authority in the ninth and tenth centuries, compiling many legal works termed *Sunan*, which arranged hadith reports by legal chapter. Jurists who were more inclined to rational inquiry decried the *ahl al-ḥadīth* as uncritical, simple-minded collectors who were incapable of understanding the implications of the texts they transmitted. By the end of the 11th century, the hadith scholars had lost much of their former authority and came to be subsumed under the legal scholars. Signs of this development include statements that the fully qualified jurist need not have memorized hadith reports but should know where to look them up in standard reference works.

Other rivals of the jurists were the philosophers and Sufi masters (who were rivals themselves). Both groups tended to see themselves as elites, holding that their understanding of the world was only accessible to a few; those who were not adept at rational analysis (according to the philosophers) or not sensitive to the spiritual world of the unseen (according to the Sufis) could make do with following the dictates of the jurists and simply performing their religious obligations in the ordinary fashion. This identified the jurists as low-level leaders, somewhat like school teachers in relation to professors. The jurists responded by often denouncing the philosophers as unbelievers, but the Sufis were a more prevalent and persistent threat. Their claim to access to divine knowledge through paths other than study of the law threatened to undermine the jurists' authority, leading one 16th-century scholar to remark to a Sufi friend that the jurists and the Sufis were mentioned right next to each other in the Qur'an, in the verse that reads, "Are the two equal: those who know and those who do not know?" (Q. 39:9); he obviously took "those who know" to mean the legal scholars. The jurists did come to terms with Sufis who adhered to the law, and they often joined them, too, but they vigorously condemned those who claimed that the ordinary rules concerning religious obligations did not apply to them because they were in direct communion with the divine, often charging them with antinomianism—categorical disregard for the law—and belief in reincarnation and divine immanence. They also accused Sufis of vices such as laziness, excessive dependence on others, dancing and singing, and pederasty and tended to react adversely to their apparently blasphemous ecstatic statements. Fierce debates raged over the mystical poetry of Ibn al-Farid (d. 1235), which many jurists declared heretical. Defenders of the poetry, who also included jurists, insisted that one could not interpret the ecstatic and inspired statements of the Sufis literally, for the true meaning was incomprehensible to the uninitiated. Sufism has continued to

be extremely influential in many areas in the Muslim world, and Sufi groups continue to risk conflicts with representatives of juristic authority, such as in Pakistan, where their shrines have been bombed by Salafi zealots, or in Iran, where the Islamic Republican government has disbanded several Sufi orders in the last decade.

Caliphs

The jurists' most important rivals in the first centuries were the caliphs, who claimed religious authority in legal and theological matters alike. The rivalry between them came to a head in the "inquisition" of the mid-ninth century, a battle that the caliphs lost along with the theologians. Nonetheless, they never lost their religious authority completely. They retained some room for maneuver through their control of the judiciary, the main institution that applied the law; the chief judges (*qādī al-quḍāt*) they appointed were prominent ideologues with authority throughout the empire and had tremendous influence on legal doctrine and practice. In the late 10th and early 11th centuries, the caliph Qadir (991–1031) made a number of attempts to enhance his religious authority and was particularly active in denouncing the public presence of Mu'tazili theology and Twelver and Isma'ili Shi'ism. In league with Hanbali and other conservative Sunni theologians, he repeatedly and publicly promulgated, in 1018 and subsequent years, the Qadiri Creed, a document that declared Mu'tazili and Shi'i theology heretical and prohibited debate with their scholars. His policy was continued by Qa'im, his son and successor. Even until the late Abbasid period, dynasts throughout the central Islamic lands regularly sought the caliph's recognition of their position and even his sanction for their military campaigns against the Byzantines and others. The idiosyncratic caliph Nasir (r. 1180–1225), who endeavored to revive the glory of the early Abbasid caliphate by placing himself at the pinnacle of all societal structures of authority, wrote four *ijāzah*s or certificates authorizing the activities of the four Sunni schools, granting one to the leading jurist of each one of them. Much later, in the Treaty of Kuchuk-Kainardja, signed in July 1774 between the Ottoman sultan Abdülhamid I (1774–89) and the Russian empress Catherine the Great (1762–96), the Ottomans recognized the independence of Crimea but insisted that the sultan remained the spiritual leader of the Tartars on the grounds that he was the caliph of the Muslims. This may be seen as a move to counter Russian and French claims to represent the cause of Christian minorities within the Ottoman Empire, similarly claiming jurisdiction over Muslims outside the official boundaries of Islamdom. Whatever the reasoning behind it, the condition nevertheless indicates a strong claim to religious authority on the part of the caliph many centuries after the heyday of the Abbasids.

As far as the caliph's relations with the jurists are concerned, it could be said that a compromise was reached whereby the jurists claimed direct jurisdiction over private law while recognizing the caliphs' (and eventually other rulers') control over public law; the jurists publicly supported the legitimacy of the government, while

the rulers supported the jurists as a class. This was possible because the shari'a leaves large parts of the law relatively undeveloped, particularly public law (except for taxation, a constant bone of contention). Rulers thus had some freedom to act, and they imposed a wide variety of systems of civil, criminal, and even tax law throughout Islamic history. The most famous is the *Qanun* of the Ottoman sultans. Collected by Mehmed the Conqueror in the mid-15th century, this code was revised in 1501 and again in the mid-16th century by Sultan Süleiman; it dealt primarily with the organization of government and the military, taxation, and treatment of the peasantry.

Jurists periodically attempted to assert broader control, arguing that the ruler, even when acting on his own, was required to adhere closely to the dictates of the shari'a. They made such arguments in works under the generic rubric of *siyāsa shar'iyya* (public policy that conforms to the shari'a), including such works as *al-Siyasa al-Shar'iyya* (The book of governance according to the shari'a) by Ibn Taymiyya and *al-Turuq al-Hukmiyya* (Methods of rule) by Ibn Qayyim al-Jawziyya. Such works stressed the authority of the jurists as a professional class and the obligation of the caliph or ruler to heed their advice and carry out their dictates. They occasionally admitted that the caliph could decide legal questions on his own, but only if he were himself a qualified jurist.

Similarly, many premodern reform movements emphasized the importance of adherence to the law on the part of the ruler and/or the populace in general, or the necessity of ridding society of beliefs and practices that were inauthentic accretions contradicting the law in its pure form. Such movements included the Almohad movement that held sway in North Africa in the 12th and 13th centuries, the Wahhabi movement founded in central Arabia by Muhammad b. 'Abd al-Wahhab (d. 1792), the Sanusi movement in 19th-century Libya, the thought of Indian Muslim reformers such as Shaykh Ahmad Sirhindi (d. 1624) and Shah Waliullah (d. 1762), and so on. The same logic led to public expressions of repentance and atonement on the part of rulers who promised to turn over a new leaf, giving up wine drinking, dancing girls, illegal taxes, and other un-Islamic practices. One dramatic example of this was the Edict of Sincere Repentance promulgated by the Safavid monarch Shah Tahmasp in 1556, in which he forswore not only alcohol and other vices but also the patronage of painting and other secular arts.

Judges and Muftis

Judges (qadis) theoretically arrived at their verdicts independently of outside interference, but they were appointed directly by the ruler, and thus in a sense they were his representatives and beholden to him. The position of judge was considered morally dangerous by many, not least of whom were the jurists themselves. A judge was often under considerable pressure to violate the law in order to enforce the ruler's will or justify his actions or those actions of influential and powerful viziers or army commanders, and stories abound of prominent scholars refusing the office

in order to avoid such a predicament. Many jurists were also reluctant to accept a salary that could have been acquired through illegal taxes or through seizure or extortion. In addition, the office presented many opportunities for increasing one's income in less than honest ways. The judge and other court officials often lined their pockets by charging various fees for hearing cases and processing documents, not to mention by accepting gifts and bribes to influence the outcome of cases. A judge was often in charge of the property of orphans and other individuals who were wards of the court, lost property, unclaimed estates, and so forth and could divert funds for his own benefit or that of his accomplices. He often became the trustee of endowments, a position that usually paid 10 percent of the annual endowment income, or he could appoint relatives or friends as trustees or sell these positions for bribes or kickbacks. The same was true of various salaried positions funded by endowment income, such as professorships at madrasas and positions as Qur'an readers and imams at mosques. Many judges accumulated a large number of such endowed positions in the course of their career and had deputies carry out the duties associated with them. Perhaps the largest income, though, came from selling deputy judgeships for the various subdistricts within his territory. Aspiring judges were often ready to pay large sums for such deputyships because they knew they would be able to recoup their investment in a short time. In short, if they could stay in office for a considerable period, chief judges could accumulate vast fortunes, and it is likely that many appointees paid a huge fee or bribe to the ruler for the office. Indeed, the sums involved were so significant that the later Fatimid caliphs' urgent need for funds was provided, to a large extent by the payments involved in a rapid succession of appointments to the position of chief judge. A judge who remained unsullied by venality was deserving of comment.

Judges adjudicated cases that appeared before them but did not investigate and bring cases to trial unless a private citizen filed a suit. Another legal arm of the government was the *muḥtasib* or "market inspector," who was in charge of inspecting weights and measures, preventing fraud in economic transactions, setting prices, and preventing hoarding and price gouging for basic commodities. He was also in charge of public morality and was responsible for closing down wine taverns and houses of ill repute. Also important were the *shurṭa* or police, who actively sought to prevent crime, investigate incidents of crime, and bring criminals to justice. Grievance courts were a standard feature of Islamic governments and were intended to be an avenue for the redress of wrongs committed by government officials and the like. This court was ideally presided over by the ruler himself, but a specific judge was often appointed to represent him. While the official appointed as judge of the grievance court was often a qualified jurist, he was not required to apply Islamic legal rules in a strict fashion and often had wide discretion to resolve disputes as he saw fit.

Jurisconsults (muftis) remained relatively freer of government control than judges, but eventually they too became government-appointed officials. Muftis were (and are) supposed to grant fatwas to lay Muslims on legal questions having to do with personal devotion, ritual practice, marital issues, commercial disputes, or other

issues. Since such consultation should ideally be free of charge and accessible to all, Mirrors for Princes regularly suggest that the ruler should pay stipends to muftis so that they could carry out their service without asking for payment; from the 12th century onward, the Zengid, Ayyubid, and Mamluk rulers of Syria and Egypt provided state-appointed muftis to answer the legal questions of the public at large.

In tenth-century Khurasan, prominent jurists began to be recognized as the leading muftis of their cities, each one of them under the title of shaykh al-Islam (master of Islam). At first an informal position, it became an official government appointment in later centuries and spread throughout Iran, Central Asia, India, Anatolia, and then to Syria and Egypt. The shaykh al-Islam of the capital city came to wield enormous power and was viewed as the highest legal authority in the realm under such dynasties as the Ottomans, Safavids, Uzbeks, and Mughals. He not only answered thousands of petitions from the laity but also oversaw all the shaykhs al-Islam in the cities of the empire and sanctioned the policies and actions of the ruler. In the 16th century, the position of the Ottoman shaykh al-Islam was integrated fully into the government bureaucracy, and along with him the entire network of shaykhs al-Islam in provincial cities. Many Muslim states such as Egypt and Pakistan continue to appoint grand muftis who are responsible for answering questions of public import.

In the Twelver Shi'i system, the jurists successfully maintained more independence from the government, in part because they were less dependent on the income of endowments, which could more easily by confiscated or controlled by the government. Instead, the Shi'i scholarly establishment was supported by the payment of the *khums* (literally, "fifth"), an income tax paid by lay believers directly to the leading Shi'i scholars, which often crossed borders and remained inaccessible to rulers. Even though religious authority is understood to reside in the imam, the authority of Twelver jurists has grown steadily since the tenth century, when the Twelfth Imam was said to have gone into occultation. In 874 the 11th imam died in Samarra, Iraq. A series of four representatives maintained contact with his son, the Twelfth Imam, who remained in hiding, during a period known as the Lesser Occultation. In 941 the last of the four representatives died without designating a successor, and it was held that the Twelfth Imam was now in Greater Occultation: ordinary communication with the Twelfth Imam was cut off, as he circulated incognito among the believers. Since then, Twelver jurists gradually arrogated to themselves many of the prerogatives of the Twelfth Imam, making ever-stronger claims concerning their own religious authority. In the 13th century, they accepted the concept of *ijtihād*, claiming the exclusive right to determine the correct rulings on legal questions through legal study and investigation. In the 16th century, the theory developed that the leading jurists' authority derived from the fact that they had been designated the general representatives of the Hidden Imam. A hierarchy was established among the jurists in which the top rank is occupied by a *marja' al-taqlid* (reference for adoption of opinions), who serves as an authority for lay believers and is now termed *āyat allāh 'uẓmā* (a greater sign of God). This process

culminates in Ayatollah Khomeini's theory of the comprehensive authority of the jurist (*wilāyat al-faqīh*), according to which the leading jurist is actually responsible for political rule, which goes against the theories of many earlier Shi'i legal thinkers, who argue that certain prerogatives of the Hidden Imam, such as direct political rule, the conduct of jihad, taxation, and the establishment of Friday prayer, are in abeyance until he reveals himself.

The Law and the Family

Unsurprisingly, the shari'a assumes a patriarchal system in which the head of the family is male. Paternity determines what family one belongs to, and in Sunni law a person's male agnatic relatives form part of the extended family. The law of inheritance grants them the remnant of the estate when it is not exhausted by the fixed shares (a rule rejected in Shi'i law), and they are also responsible for paying blood money for injury or death (except in Hanafi law). Laws regarding child custody are based on the premise that the natural allegiance of a child is to the father's side of his or her family, and custody always reverts to the father even though very young children may remain with their mothers temporarily.

Men are generally dominant over women. While men and women are held to believe in the same way and to have roughly equal religious obligations, one may argue that in a blunt, practical sense, a woman's value is half that of a man of similar status. According to the traditional system of blood money payments, which likely goes back to pre-Islamic customs in pagan Arabia, a free Muslim woman is worth 50 camels, exactly one-half the price of a free Muslim man and equal in value to a Jewish or Christian male or a male slave. Similarly, a daughter's share of inheritance from her parents is half that of a son, and the testimony of a woman in court is worth one-half of the testimony of a man. Nevertheless, women have many rights under Islamic law, including the right to own and dispose of property without the interference of their husbands, something that women in Western societies did not have until quite recently. Husbands are required to pay for the food, shelter, clothing, and upkeep of their wives and children, while wives are not required to use any of their own property or income, even if it is vast, to support the family.

Slavery is accepted as a legitimate institution, though there are rules for the humane treatment of slaves, and slaves are not merely property but also individual agents. They can be Muslims and have the same religious obligations as other Muslims, such as fasting and regular prayer. They may marry and they may own property, though, technically, until they gain their freedom, their property belongs to their master. Many apologists claim that Islam set out to abolish slavery gradually, basing this idea on the Qur'anic verses that urge emancipation of slaves as a means to atone for infractions of religious obligations.

All free men are generally awarded the same rights and duties, but there are a few exceptions. The law of marriage equality (*kafā'a*, literally, "suitability") stated

that a man had to be of appropriate status to marry a woman of high status and could be used to annul the marriage of an heiress who ran off with a servant or the local butcher. Some held that a non-Arab was not a suitable partner for an Arab woman, nor an ordinary man for a woman descended from the Prophet. The descendants of the Prophet (termed *sayyids* or sharifs) are also distinguished from other Muslims in some other respects, but the vast respect they enjoyed in medieval Muslim society had little to do with the law.

Modernity

During the 19th and 20th centuries, most of the Islamic world came under the direct rule of colonial powers, especially France and Britain but also Holland, Italy, Portugal, and Russia (later the Soviet Union). Colonial rule and the modern nation-states that followed in the mid-20th century had far-reaching effects on the law enforced in those areas. From 1850 onward the traditional legal system was increasingly replaced by codes based on European models, and traditional Islamic law was largely restricted to ritual, family, and inheritance law. With the new codes came a system of law depending on constitutions, codes, and statutes, together with a new system of secular legal education and a new class of legal professionals; Saudi Arabia was the only country to have a shari'a court system in 2011. The jurists in the traditional system lost their monopoly on organized education and saw their social power and status plummet. In nearly every nation in the Muslim world, the endowment properties that had funded most of the institutions of Islamic legal education were confiscated by the colonial powers and then the modern nation-state. Most members of the class of jurists, including the top religious authorities, became government employees.

In colonial India, the British sought to apply the law of the various religious communities to their members and thereby prevent the unfair imposition of Hindu law on Muslims, so that they created "Anglo-Muhammadan law" for the Muslims. In so doing, they inadvertently turned Islamic law into code law, for they chose the Hanafi work *al-Hidaya* by Burhan al-Din al-Marghinani (d. 1197) for the administration of Hanafi Muslims in India, translated it into English, and used it as the nearly exclusive reference for Islamic law. Similar developments occurred in Dutch Indonesia and elsewhere.

The modern period witnessed many attempts to change Islamic law and debates about how it could be done. Muslim reformers such as Muhammad 'Abduh (d. 1905) and Rashid Rida (d. 1935) argued for modern jurists' freedom to adapt rules from other legal schools to those of their own, a process called *talfiq* (piecing together). A prominent example of *talfiq* put into practice was the use of principles borrowed from Maliki law to reform the Hanafi law of divorce in the Anglo-Muhammadan legal system. Another method was *takhayyur*, granting jurists the freedom to choose from all the opinions found in the traditional corpus, including

those of other schools and minority views within one's own. This generated the new field of *fiqh muqāran* (comparative law), the study of similar issues across the different schools.

Others argued for a rethinking of the hermeneutics of Islamic law, generally presented as a form of *ijtihād*, which takes on here a new sense allowing traditional rules to be set aside and permitting those with secular education to participate. Muhammad 'Abduh argued that laws should change with the times and the conditions of the societies to which they apply; since reason and revelation are intended to be in harmony, independent rational inquiry should be used to revise and reform the law as needed. Many liberal proposals have involved the rejection or limitation of one or more of the "sources" on which law was based. 'Ali 'Abd al-Raziq (d. 1966) and others argued for the rejection or limitation of consensus; some, such as the Shi'i thinker Murtada Mutahhari (d. 1979), denounced *qiyās*; Ahmed Mansour, leader of the contemporary Ahl al-Qur'an movement in Egypt, has argued for the rejection of hadith, seeking the law in the Qur'an alone; and some would even limit the sources to the suras, or chapters of the Qur'an, revealed at Mecca (which would yield almost complete freedom, since they contain practically no legislation). Radical proposals of this sort have met with limited success and have often been vehemently rejected.

Strategies for reform that do not throw out any of the traditional bases of the law but rather urge an emphasis on lesser-known aspects of medieval Islamic legal hermeneutics have met with better acceptance from traditional legal authorities. Proponents of these strategies have championed a more expansive and aggressive use of the concepts of public interest (*maṣlaḥa*) or "the objectives of the law" (*maqāṣid al-sharī'a*). Frequent recourse is also had to the traditional principle of *al-barā'a al-aṣlīyya* (original permissibility), according to which something is considered permissible unless a text states that it is not.

Political Islam

The late 20th century has called for the application rather than change of the shari'a that multiplied throughout the Muslim world, becoming the basis for myriad political campaigns, resistance movements, and even revolutions. This is usually seen as a response to the failure of secular nation-states to keep up with the economic aspirations of Muslim populations, and it was also seen as an attempt to return to culturally authentic forms of government, social organization, and regulation of public behavior in the face of a perceived cultural invasion from the West. Drawing on leftist anticolonialist thinkers from Europe, the new leaders couched their push for the application of the shari'a in terms of a resistance struggle, believing that the shari'a would guarantee social and economic justice by replacing despotic, self-interested rulers with pious officials reined in by the revealed law. Khomeini and many other activists stressed the corruption and predatory nature of the secular

rulers in the Islamic world, who were enriching themselves at the expense of the Muslim populace and not using oil wealth and other resources to improve the lot of the common people, something they claimed a return to Islamic law would change. Modern reformers and activists claim that Islamic law provides an answer to all possible questions, an idea captured in the common slogan *al-Islām huwa al-ḥall* (Islam is the solution).

In a number of ways, these calls for the implementation of shari'a are quite different from the periodic insistence of premodern reform movements that the ruler should adhere strictly to the sacred law; they cannot be interpreted as pure traditionalism, for the Muslim world has irrevocably changed. The modern, bureaucratic nation-state exerts a level of invasive control over the populace that its premodern precursors never had; modern education and administration have depersonalized the context in which the law used to be studied and applied. Just as the veils required for women in Iran do not resemble those worn by their precolonial counterparts, so the Islamic regime imposed on them differs starkly from a traditional Islamic state. Similarly, when Zia-ul-Haq (d. 1988) undertook a series of Islamizing reforms to appease Islamists in Pakistan, including a new law that required banks to deduct zakat automatically, this was something unprecedented in Islamic history. In addition, Western concept categories and modes of thought have indelibly affected those of Muslims, who are reacting to this "colonization of their minds" by seeking their identity in Islam. Jihad, traditionally a duty to expand and defend the borders of the Islamic world, is now understood as part of a broader defense of Muslims against cultural imperialism.

The urge to find culturally authentic forms is prominent in the continuing attempts to apply Islamic law to modern economic institutions, including corporations, bank accounts, mortgages, stock exchanges, and insurance of all kinds, throughout the Islamic world. These present a challenge for several reasons. The corporation, an economic entity that can act as a fictional person, does not exist in Islamic law, which assumes that all economic actors are individuals, partnerships, or agents for individuals or partners. Islamic law traditionally forbids both the taking and payment of interest, termed *ribā*. It forbids the unequal assumption of risk, such as the buying or selling of something the value of which is unknown because of contingency for a fixed price, as this is akin to gambling. It is understood in medieval legal texts that one lends money as a favor or act of piety in order to help a fellow believer and should expect no profit in return. This created, and continues to create, an economic problem, as the use of loans is a necessary part of any economic system. One avenue of reinterpretation of the traditional laws is to argue that *ribā* in the Qur'an and hadith did not refer to all interest but rather to exorbitant interest or usury, so that reasonable interest is excluded from the prohibition. For bank accounts, theorists have often resorted to the concept of *muḍāraba*, a type of sleeping or limited partnership, whereby the account holder essentially shares in the profit of the bank's investments. Of course, this arrangement is often understood to require, though, that the interest rate not be fixed and that the account holder lose money

if the bank's investments are not profitable. Similar shari'a-compliant banking and financial instruments have become a major area of investigation and legal innovation and interpretation, and economic globalization is having an enormous effect on traditional business structures, from halal pizza chains to banking conglomerates and multinational corporations.

The calls for the application of shari'a have had major political effects starting in the 1970s, when the Egyptian and Syrian Constitutions were amended to name Islamic law as their basis. The Iranian Revolution of 1979 and the subsequent establishment of the Islamic Republic was a watershed, for they proved that it was possible to topple a secular regime and replace it with a theocratic Islamic one. It was also in 1979 that Zia-ul-Haq began his Islamicizing reforms, establishing benches charged with delivering verdicts in accordance with Islamic law, reviving the amputation of the hand for theft; the stoning of married adulterers; the flogging of unmarried fornicators; and a fine of 5,000 rupees or imprisonment, or both, for Muslims who sold or drank alcohol. He also instituted a blasphemy law prohibiting disparagement of the Prophet, his family, his Companions, and other prominent symbols of Islam; forbade the Ahmadis to call themselves Muslims or use Islamic rituals; and prosecuted Shi'is and Pakistani Christians under the blasphemy law. These laws remain on the books.

Forms of the shari'a have likewise been instituted in Saudi Arabia, Iran, Sudan, northern Nigeria, and Afghanistan, where Mulla Muhammad 'Umar, the leader of the Taliban movement, became de facto head of state during Taliban rule (1996–2001), styling himself Commander of the Faithful. All these cases of Islamization of the law are primarily symbolic, focusing on visible issues associated with Muslim identity and morality such as women's clothing in public and the enforcement of *ḥudūd* punishments. Entire new codes of law have not been introduced. Even in Iran, where an ideologically based theocratic regime is in place and new legislation is checked for violation of the shari'a by the Council of Experts, the laws already on the books remain unchanged until they are challenged for some other reason.

Calls to implement the shari'a meet with resistance from various quarters, including women's organizations and advocates of human rights and religious freedom. Muslim minorities such as Shi'is in Afghanistan and Pakistan or Baluchi and Kurdish Sunnis in Iran have in fact been subject to regular abuse by regimes intent on applying shari'a law, and Coptic Christians look upon the application of shari'a in Egypt with some trepidation, since it threatens to strip them of gains they made under colonial regimes and later nation-states in favor of the restrictions associated with *dhimmī* status. Indeed, their perception is that their Muslim compatriots are already treating them according to many of the medieval rules associated with *dhimmī* status, even though this contradicts the Egyptian Constitution and other laws.

Discussions of the merits or flaws of Islamic law often suffer from a failure to distinguish between several levels of what may be held to represent "Islam" or Islamic legal rules, conflating (1) what is stated in the Qur'an, (2) what is stated in the legal works of one or more legal schools, (3) the idealized or exemplary

behavior of Muslims, (4) the actual or nonexemplary behavior of Muslims, and (5) local customs in a particular area inhabited by Muslims, which often diverge from Islamic law. In some cases, the problems do not arise from the law itself but rather from the way it functions. For example, Islamic law provides a wife with a right to her entire dower (*mahr*), including any deferred amount, in case of a divorce initiated by the husband. Requiring a large deferred dower in the contract is a way for a bride's family to provide a sort of divorce insurance for her or to provide for her significant wealth to support herself in case divorce actually occurs. In practice, though, a husband who decides to divorce his wife but does not wish to pay an enormous deferred *mahr* to her may simply mistreat her until she promises to relinquish her claim to the *mahr* in exchange for being released from the marriage. Ensuring that the law function as it should is a problem whatever the legal system may be.

Throughout Islamic history, the shari'a has played a crucial role in defining Islam, determining the boundaries of Islamic orthodoxy and shaping societal institutions, including political rule. Its hegemony has not been total, however, and it has had to contend with and adapt to other systems of thought and social and political organization. The impact of colonialism and the rise of the secular nation-state in the Islamic world did much to limit the purview of the shari'a, and some observers in the 20th century imagined that its influence, along with that of religion in general, would steadily decline. However, the failure of secular nationalisms to support steady material progress and to keep up with the expectations of the populace led to a turn toward religion, and adherence to the shari'a became a key component of identity politics in the modern Muslim world. It is bound to remain an important feature of political movements in Muslim nations that stress cultural authenticity and independence in the face of Western political, economic, and cultural dominance. The shari'a, though, is not a monolithic and static category: governments are defining and applying it in diverse ways, and modern thinkers are revising and formulating its concrete rules and its hermeneutic methods, drawing both on the rich historical legacy of Islamic legal thought and on Western theories and legal models.

Further Reading

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