

Sharia – the Islamic law and basics of Islamic thinking

Islamic Political Thought (BSS474)

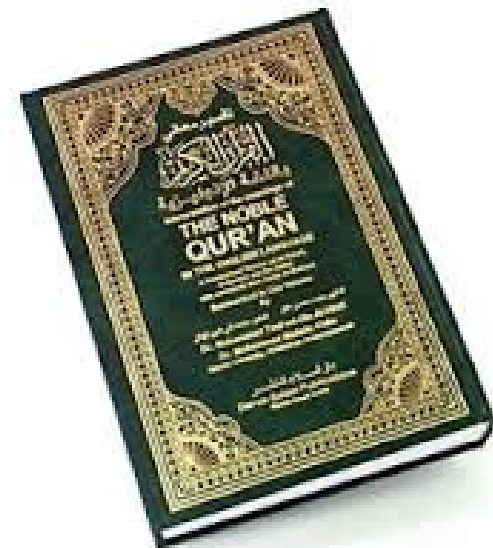
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Sources of Islamic law and thought

■ Quran

- The word of God
- Untouchable, unchangeable, codified
- Structured to chapters (surah - 114), verses (6 236), sorted from longest to shortest chapters
- Problems with translations (not codified), the effort of chronological sorting
- Absence of firm structure or continuous story
- *Tafsir* – exegesis of Quran (interpretation)



Sources of Islamic law and thought

Sunnah

- The collection of Prophet's deeds and speeches
- He was the chosen one, his behavior was according to God's rule
- Originally only oral tradition
- Collected, recorded and codified during 200 – 300 after M. death (forbidden by Umar – Quran is enough)
- Collection of particular narrations, problems with terminology
 - *Hadith / Sira* – events around M., his speech, or reliability of narration?
- Narrations verified by the methods of *ilm al-Hadith*
 - Complete chain of narrators, their credibility etc.
 - Many frauds and mystifications
 - Classification of hadiths – *sahih* (right) / *mardud* (wrong) ...

Islamic Law given by God

- Given to mankind once and for all, but not in systematic, understandable, and accessible form.
- Main topic and questions were solved, other development blocked by a method of *taqlid* – following -> rigidity, traditionalism
- *Sharia* – way to water source, covers all men behavior
 - Man-God dimension – how to worship a God properly
 - Man–man dimension – family, business... law
 - Criminal law – punishment of forbidden deeds
- Territoriality is important
 - Muslim can't be punished for breaking sharia out of *dar al-Islam*
 - Non-Muslim can be prosecuted within Islamic state, but not outside

Islamic Law given by God

- Impossibility of enforcing everything + Man-God dimension only metaphysically (annulation of prayer, going to hell, loss of honor)
- In history the sharia wasn't every fully applied on society
 - Unreachable ideal
- Abbasi era judiciary duality – criminal law enforced by police state administration instead of religious one
- Development, unification and implementation of sharia best during Ottoman empire
 - Judiciary system, hierarchy, rules based on sharia in whole empire
 - State controlled, state financed and state enforced
 - 19th cent. reformation towards Western law

Human Deeds Classification

- Western law highly limited, Islamic law tries to affect anything

Islamic law and its effort to classify deeds

Obligatory

Recommended

Neutral

Disliked

**Sinful
forbidden**

+2

+1

0

-1

-2

- Legality - lawfulness (state enforced) – public affairs
- Morality (society enforced) – public affairs
- Conscience (depends on individual) – personal affairs

Human Deeds Classification

- Deeds towards God
 - Correct / Valid
 - Unfair / Suitable, but can be improper
 - Corrupted / Unsuitable in formal perspective, can be fixed or canceled
 - Invalid / void



Islamic Law Creation

- *Ijtihad* - the mental effort of jurist (*mujtahid*) in finding a solution to a legal question – third source.
- At the first the *taqlid* (following) should be searched.
- Usul al Fiqh - principles of Islamic jurisprudence
 - A science about sources and methods of law creation (*fiqh*)
- Law sources for Sunnis
 - Quran
 - Sunnah
 - Ijtihad and following methods
 - Ijma
 - Qiyas
 - Other...



Islamic Law Creation

Ijma – consensus or agreement

- Absolute consensus of religious and law experts over problem
- Differences in constituency of decision makers
 - (whole community X one Islamic center of thought
Ibn Hanbal limits consensus to Muhammad's party only)
- For Sunnis only, Shi'as refuse it, never participated
- *Ijma* protects proper interpretation of Quran and Sunnah
- Derivation of other laws should refer to *ijma* (source)
 - Formulation of resolution by *fatwa* (religious edict)

Islamic Law Creation

Qiyas – analogy

- The weakest method (source), used only if other fail
- Searching for similarities between two cases based on sources (Quran, Sunnah)
- Mainly expansion of rule to similar cases
- Creation of rule to new case
- Shi'as highly skeptical about this method
 - Some refuse it at all – It is written in Quran, or pure speculation
 - Instead using of method of *aqI*

Islamic Law Creation

Other Sunni methods (very weak)

■ *Istihsan* - juristic "preference"

- Muslim scholars express their own preferences and personal judgment
- Sometimes refused due to disrespecting of Sources (mainly by Shafi'a)
- Supporters claims istihsan only completes qiyas and adapts law to local conditions
- Based on primary sources
- Used in case of *maslaha*

■ *Maslaha* - public interest

- Serves the common good or public welfare
- Humans should look for the best public solution
- Protecting values – religion, life, family...
- Usually used by modernists (also by fundamentalists)

Islamic Law Creation

Shi'as methods, attitude and thought

- *Aql* – reason
- Secondary rule – in favor of life, health and prosperity
 - Similar to *maslaha*
 - Possible to overcome sharia if necessary
- Islamic law according to place and time (less sources)
 - Different time, different place, different law
 - High level of flexibility
 - Shi'a Salafism? – nonsense
- Institute of *marja-e taqlid* – the third source of law
 - Declares fatwa or *hokm* (*hukm*)

[Marja-e taqlid]

- Representative of hidden Imam in the world
- Have to be *mujtahid* first
- „Church“ hierarchy – *hojatoleslam* (prove of Islam) -> ayatollah (sign of God) -> great ayatollah = *marja*
- Issue fatwa, answer questions (*estefta*)
- Different regulations of different *marja*
- In unresolved or undogmatic topics



[Sunni-Shi'a differences]

- Same Quran
- Different Sunnah
- Sunnis obey caliphs, Shi'as obey Imams
 - Traditions of Imams sources of Islamic law for Shi'as
- Different methodology
 - Sunnis – qiyas, ijma
 - Shi'as – aql, secondary rule
- *Marja-e taqlid* as a source of law for Shi'as

Main Schools of Islam

SUNNI

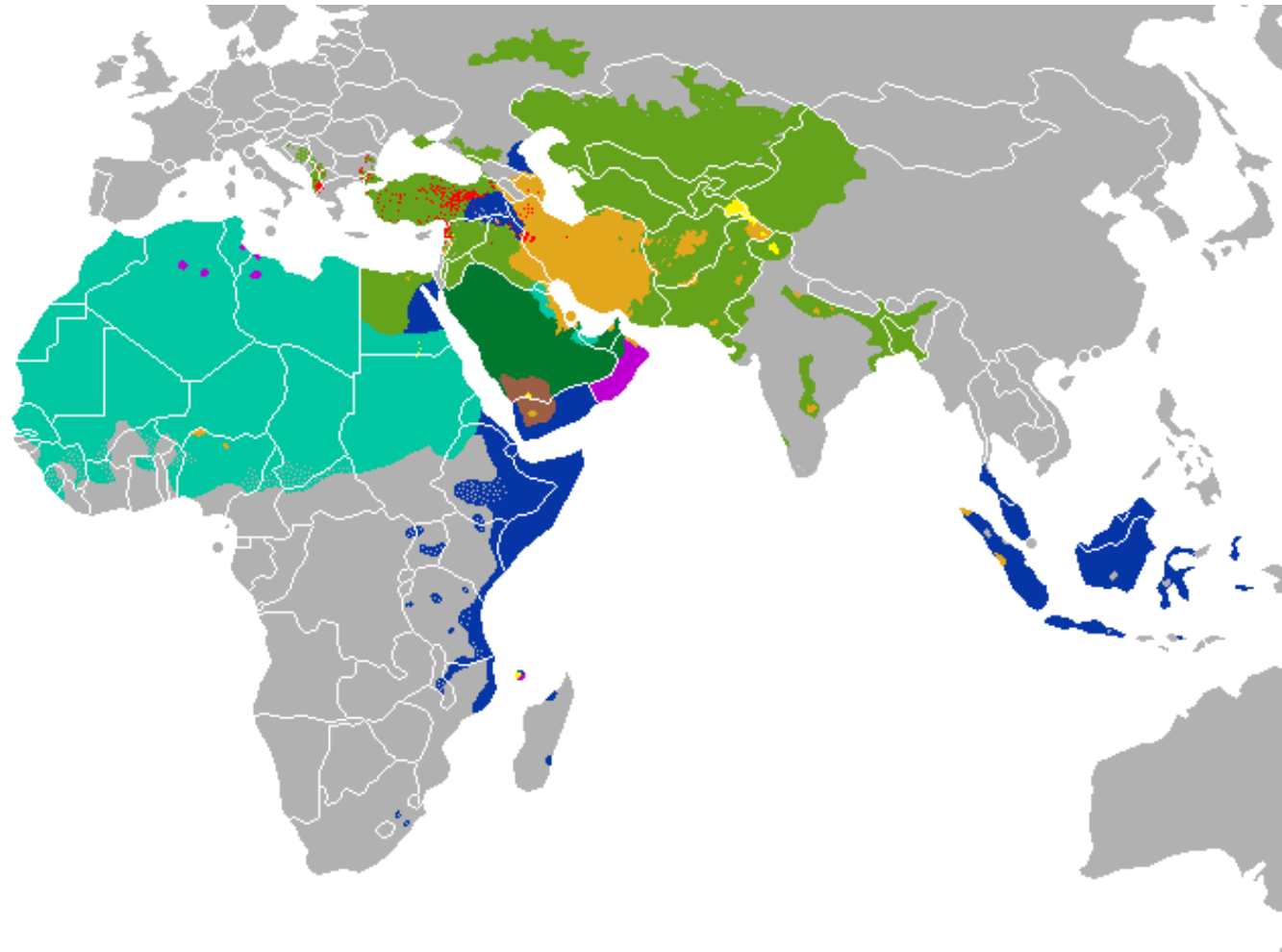
-  HANAFI
-  HANBALI
-  MALIKI
-  SHAFI'I

SHIA

-  ISMAILI
-  JAFARI
-  ZAIDI
-  OTHER

OTHER

-  IBADI



Main Schools of Islam

Many differences based on sources and methodology
+ incorporation of local habits and traditions

- Shafi'i (Muhammad al-Shafi'i) – no local consensus, no *istihsan*, only by a whole community (impossible), emphasis on sources (less space for analogy and reason)
- Hanbali (Ibn Hanbala) – rejection of reason, only sources (more collectors than lawyers)
- Maliki (Malik ibn Anas) – high influence of local traditional law, judges make choice if Sharia or tradition (in contrast to Hanbali / Saudi Arabia), *ijma* method
- Hanafi (Abu Hanifa) – *istihsan* (preference) method

Differences among Schools

■ Hanafi X Maliki X Shafi'i X Hanbali

Men wearing red:

repulsively X legal X illegal X repulsively

Men wearing yellow:

illegal X legal X illegal X illegal

Yawn during praying nullify it:

yes X no X yes X yes

Can woman participate in hajj without man's accompany?:

no X yes X yes X no

Principals of Forbidden and Permissible

- The most important for Islamic law is defining forbidden (haram) and permissible (halal).
- What Allah has created for human welfare is good.
- Nothing is forbidden except explicit things (Quran, Sunnah)
- What A. forbid is forbidden, what permitted is permissible, what did mentioned si given to men and is allowed.
(not in case of man-God relations)
- Only God has to right to forbid and permit things
 - Those who do that over God's rule commit sin similar to *shirk*.

Principals of Forbidden and Permissible

- If something is forbidden, it is bad and harmful
 - Harmful things are *haram*
 - Beneficial are *halal*
 - Mainly harmful – *haram* / Mainly beneficial – *halal*

- Forbidden things are always replaceable
- Everything leading to forbidden is forbidden
- Good intentions don't make forbidden permissible

- It is better to avoid uncertain things, and be distant
 - Lack of knowledge and information is not automatically a sin

- Exceptions in case of emergency are permissible

[Thank you for your attention!]

علم غیب کیا ہوتا ہے

Allah Knows Better

○ Time for Q&A