



Biblaridion

Shari'ah

This article will examine why Islam regards law as more important than theology

Introduction

Shari'ah permeates almost every side of social life and every branch of Islamic literature, and it is no exaggeration to see in it, in the words of one of the most penetrating of modern students of the subject, 'the epitome of the true Islamic spirit, the most decisive expression of Islamic thought, the essential kernel of Islam'. [\[1\]](#)

The importance that Islam places on law cannot be understood unless it is put into the wider context of man's desire for self-justification and equality with God on the grounds of his own actions. It was so from the very beginning and is still the same now, man's desire for self-determination and his insistence on his own righteousness is the hallmark of all false religion.

Societies and Law

In order to avoid anarchy all societies require moral and ethical guidance in the form of law. From Mesopotamia has come the Sumerian law code of Lipit Ishtar (19th cent. BC), the Akkadian Laws of Eshnunna of roughly similar date, the Babylonian Code of Hammurabi (18th cent. BC), and Assyrian laws

transcribed in the twelfth century BC but probably centuries older; from Asia Minor have come tablets of the laws of the Hittite Empire, in their present form fourteenth century BC but reflecting much older social customs. [2] All this reflects social customs and moral standards centuries before the Hebrew Old Testament laws and millennia before Islamic shari'ah came into existence. The employment of the *lex talionis* in all ancient systems of jurisprudence is a good example how law develops through reinterpretation. [3] The law in the Old Testament was unique in that it was not only regulatory, but also fulfilled a pedagogical function. The know character of God is to be reflected in the conduct of his people, "You shall be holy for I the Lord your God am holy" (Lev.19: 2; 20:7; 21:8). The law was meant to teach people as well as regulate their behaviour; this is what makes Old Testament law truly distinctive. [4]

In contrast to the distinctive nature of Old Testament law, Islamic law is merely regulative. Shari'ah is not subject to a higher theology but is in itself a means to an end. Arthur Goldschmidt remarks that; "Islam begins with a profession of faith, but it is manifested and elaborated by what Muslims do and what they condemn. Ever mindful of the impending Judgment Day, Muslims wish to know and to obey the rules of behaviour that will please God and maintain a harmonious society. These rules have been carefully compiled and organized into a law code called the Shari'ah" [5]

J. Schacht in his article on "Law and Justice" in the Cambridge Encyclopaedia sums it up as follows: "As recently as 1959, the then rector of al-Azhar University, Shaykh Mahmud Shaltut, published a book entitled '*Islam, a faith and a law*' (al-Islam, 'aqida wa-shari'a), and by far the greater part of its pages is devoted to an expose of the religious law of Islam, down to some technicalities, whereas the statement of the Islamic faith occupies less than one-tenth of the whole. It seems that in the eyes of this high Islamic dignitary the essential bond that unites the Muslims is not so much a common simple creed as a common way of life, a common ideal of society. The development of all religious sciences, and therefore of a considerable part of intellectual life in Islam, takes its rhythm from the development of religious law. Even in modern

times, the main intellectual effort of the Muslims as Muslims is aimed not at proving the truth of Islamic dogma but at justifying the validity of Islamic law as they understand it." [6]

For Muslims, the postulate that law, as well as other human relationships, must be subject to religion has become an essential part of the faith, even for the modernists among them.

The evolution of Shari'ah

It is important to understand that the evolution of shari'ah, similar to the evolution of Islamic theology, did not occur in a vacuum, or in isolation from other religious movements. It was particularly during the flourishing Abbasid caliphate that the Islamic post-scriptural oral tradition was formed, and Muslim jurisprudence, theology and science made significant advances. It is generally acknowledged that Islamic theology was influenced by Greek philosophy transmitted by the Nestorian churches, but few realize the influence that Talmudic Judaism must have exercised on the formation of shari'ah. The Persian Empire became the place of learning and codification of the Jewish law, not only was the institution of the exilarch to be found there, [7] but also the various *geonim*; the heads of the famous law academies. The final edition of the 2,500,000 words Babylonian Talmud was completed in the fifth century. The era following the conclusion of the Talmud until shortly before the Arab conquest is known as the Savorite era. According to Jewish tradition, the scholars (*savoraim*) who lived during this period were concerned with explaining Jewish law. [8] It is the present authors opinion that the Jewish obsession with law, manifested in centuries of debate and codification must have influenced the Islamic view of law. Early Muslims whole-heartedly followed the lead of their Jewish counterparts establishing law schools and a scribal class; the *fuqaha* (experts on the Shari'ah) and the *ulama* (the Muslim religious scholars, or literally "those who know"). The Jews had Moses as their

prophet-lawgiver the Muslims had Mohammed. The Old Testament prophets and Jesus himself warned against the very human need to self-justify on the grounds of law; [9]

“This people honoureth me with their lips, but their heart is far from me. Howbeit in vain do they worship me, teaching for doctrines the precepts of men. For laying aside the commandment of God, ye hold the tradition of men” (Mk.7: 6-8).

The *Qur’ān* itself does not present a systemized jurisprudence: “The Koran is comparatively short, and even in this small book the greater part has no direct bearing on dogmatic, ritual, legal, political, and social questions. In theory, the general principles by which all these matters should be regulated are to be found in the Koran but not all of them are set out with equal clearness and detail.” [10]

It was therefore necessary to supplement the *Qur’ān* with traditions (hadith =news) attributed to Muhammad, and to verify and interpret these oral traditions by scholarly consensus. [11] This system is by its very nature open to abuse and the fact that Islam itself acknowledges that hundreds of thousand false sayings were in circulation some hundred years after Muhammad hardly inspires confidence.

J. Schacht comments; “Finally the outlines and many details of Islamic law were cast into the form of Traditions from the Prophet. In this way, one of the greatest and most successful literary fictions came into being.” [12]

The importance of Shari’ah

The importance that Islam places on law is readily observed by the unusual fact that Islamic theology lagged behind the development of jurisprudence. [13] One might well inquire how it is possible to develop laws

that are pleasing to God without first having a systemized understanding of God and the *Qur'ān*.

The law regulates every aspect of Muslim life both ritual and what the western mind would consider purely secular matters. It acts as guidance and limit (*hadd*) to human behavior (in the sense of 'legal ordinance'), Gibb sums it up succinctly: "These limits, ordained by the Wisdom and Loving kindness of God, are of two kinds, corresponding to the dual nature of man as soul and body. As soul and body complement one another in the human organism, so do the two aspects of law complement one another in the social organism. The limits ordained for the soul of man define his relations to God, i.e. prescribe the principles of religious belief and in particular the acts whereby these are given outward expression, namely, the five 'Pillars of the Faith.' Similarly, the limits set to the bodily activities of man define his relations to his fellow men. These form the subject-matter of law in the narrow sense, i.e. questions of personal status, family organization (including marriage and divorce), holding and disposal of property, commercial activities, and penal law, although the Western distinctions between civil, penal, private, and other kinds of law are not recognized in the Muslim law-books. The consequence of this was that Law was never quite separate in conception from Duty, and never became fully self-conscious. As the standard definition put it: 'The science of law is the knowledge of the rights and duties whereby man may fitly conduct his life in this world and prepare himself for the future life.' [\[14\]](#)

For Muslims, religion is a corporate experience, a community of believers bound together by adherence to a common set of laws and beliefs, rather than a private and personal relationship between each person and his maker.

The limitations of Law

Law, as a vehicle for redemption is limited in what it can achieve, for its very nature and premise is based on mans inability to control himself. If humankind were inherently righteous there would be no need for law. The law is only necessary were lawbreakers are present. In the final analysis law can only serve to condemn men and women and highlight the miserable state in which humanity finds itself. Adherence to law is very subtle in that it allows men a façade of outward holiness that they do not truly possess. The apostle Paul, himself a lawyer, understood this as did his master, the Lord Jesus Christ, for the law cannot legislate against internal sins such as hatred and covetousness. The only man to have ever fulfilled both the outward ethical aspects of the law and the inward spiritual demands was Jesus Christ, and he refused to be called "good" (Mtt.19: 17).

Conclusions

The Islamic obsession with law or shari'ah (way) is as old as man himself. Law is not the way to God; it is the way to condemnation and death. There is only one way to God:

"Jesus saith unto him, **I am the way** (shari'ah), the truth and the life: no man cometh unto the Father, but by me." (John 14:6).

Christians stand in a new and living relationship with God, not under law, but under grace. This does not mean that Christians have a licence to sin, nor does it mean that they will not be judged by their actions, for the Christian life should be one of self-denial. The true Christian relies on the righteousness provided by God instead of his own "goodness," the Spirit should transform his inner life, for he lives under the "perfect law of liberty." Should the Christian

sin, he does not automatically fall under condemnation, but has a means of access and reconciliation not available to those under the “curse” of law. The law can only legislate for wrongdoing and therefore its outcome is always negative:

“But if ye are led by the Spirit, ye are not under the law...the fruit of the Spirit is love, joy, peace, longsuffering, gentleness, goodness, faith, meekness, temperance: **against such there is no law.** (Gal.5: 16-23).

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Notes

[1] G. Bergsträsser's *Grundzüge des Islamischen Rechts*, p. 1,(edited by Joseph Schacht).

[2] Robert Davidson, *The Old Testament* (Hodder and Stoughton, 1964).

[3] Comparison of the *lex talionis* in different law codes.

[D.O.T.T. = *Documents from Old Testament Times*, ed., D.Winton Thomas (Thomas Nelson and Sons Ltd., 1958)]

Hammurabi 18 th century BC	Book of the Covenant 13 th-11 th cent. BC	Sermon on the Mount 1 st century AD	Qu'ran 6 th century AD
<p>If a citizen has destroyed the eye of one of citizen status, they shall destroy his eye. If he has broken the bone of a citizen, his bone shall they brake.</p> <p>(D.O.T.T. p.196,197 and 199)</p>	<p>If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound stripe for stripe.</p> <p>(Ex.21:23-27)</p>	<p>Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth: but I say unto you, that ye resist not evil: but whosoever shall smite thee on the right cheek turn the other also.</p> <p>(Mtt.5: 38-39)</p>	<p>Retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman, and the slave for the slave, and the female for the female. (Sura ii: 178)</p> <p>The life for the life, and the eye for the eye.etc</p> <p>(Sura v.45)</p>

The law code of Hammurabi is very harsh, but the OT adaptation of this is equitable and not to be understood literally. John Wenham comments: We do not know much about the operation of the *lex talionis* in OT times. It seems unlikely that it was intended, except in the case of murder, to be taken literally. The whole of Ex.21: 18-36 suggests that the payment of damages

was envisaged. In most forms of Islamic law it is taken as a limiting concept. The 'heirs of blood' must exact not more than equivalent damage or injury, because there is no way of ensuring exact equivalence. Instead a tariff of payments is used. The folly of tribal revenge is seen most clearly when one tribe considers itself superior to another (which it usually does). It will then demand two or three deaths in return for one. [John Wenham, *Christ and the Bible*, p.197. note 13] H.A.Whittaker also understands it as establishing the legal principle of compensation, which would be determined by the judges (see Ex.21: 22,23) and not to be applied literally. [*Studies in the Gospels*, p193]. The practice of private revenge and family feud was to be replaced by strictly fair and impartial public administration of justice. Jesus develops the ethical dimension of the *lex talionis* still further. According to Wenham Jesus was warning against abusing the stern principle of judicial retribution for personal revenge, the very thing it was supposed to abolish (Ibid. p.42). D.Daube, following S. Schechter, points out the close relation between the introductory formulae in the Sermon on the Mount and rabbinic formulae to the effect, "Ye have understood literally" –i.e., superficially (*The New Testament and Rabbinic Judaism* [1956] pp.55-62), and M. McNamara proposes on the basis of this that "the formula may then introduce not a biblical citation, but rather a false, narrow, understanding of it" (*The New Testament and the Palestinian Targum to the Pentateuch*, p.127). For a fuller explanation see note 20 p.58, *Biblical Exegesis In The Apostolic Period*, R.N. Longenecker.

[4] The apostle Paul states that the law was "a schoolmaster to bring us unto Christ" (Gal.3: 24). The law, even in its minute detail, taught the people important lessons, for example, the idea of "holiness" or separateness extended to every aspect of life, even agricultural practices were regulated to demonstrate and reinforce this principle. "Do not mate different kinds of animals. Do not plant your field with two kinds of seed. Do not wear clothing woven of two kinds of material" (Lev.19: 19). For the ancient Israelite there was no distinction between worshipping God and living daily life, this should be the same for Christians. The Israelite was not allowed to "mix different kinds" nor were they allowed to intermarry with the surrounding nations, or adopt

their sexual and cultic practices. In particular, the feasts proscribed by the law had an important pedagogic function, for they were instructed to *teach their children* [i.e. the meaning of the feast Ex.13: 26] and the Passover feast itself (as well as all the other sacrifices), fore shadowed and typified the sacrifice of Christ. The law was not merely a "set of rules" or a "moral guidance" but an integral part of God's divine purpose. The faithful Jew who was looking for the consolation of Israel (the messiah) would have understood it as such.

[5] Arthur Goldschmidt, Jr. *A Concise History of the Middle East*. Chpt. 8. Islamic Civilization.

[6] J. Schacht, "*Law and Justice*" from the Cambridge Encyclopaedia of Islam, vol. II, pt. VIII/chpt. 4, beginning with pg. 539.

[7] The institution of the Exilarch traced its origins back to Jehoiachin (Jer.52: 31) and he claimed to be a direct Davidic descendant, and was therefore in charge of the Jews who were in exile in Persia (Iraq). The exilarch was granted a large degree of autonomy (even after the Islamic invasion) and existed in different forms until the fourteenth century.

[8] Dan Cohn-Sherbok, *Atlas of Jewish History*, (Routledge, 1994) pp.62-66.

[9] The prophet Zechariah saw a vision in chapter 5 (approx. BC 550-600) of the destruction of the temple. A scroll with a curse on it (the book of Revelation?) flew into the "*house of the thief* (you made it a den of thieves Mtt.21: 13) *and the house of them that swore falsely*" (Jesus accuses the Pharisees of swearing falsely Mtt.23: 16-22). The temple had become unclean (*cf.* Lev.14: 43-45; Jesus was the inspecting priest - Mk.11: 11) and was therefore destroyed in AD 70 (*your house* left desolate Mtt.23: 38). After the destruction of the temple, the Jews established Babylon as the seat of learning for the law. "*Whither do these bear the ephah?* [The basket containing the woman called wickedness or lawlessness] *And he said unto me, To build her an*

house in the land of Shinar (Babylon): and it shall be established, and set there upon her own place” (Zech.5: 11). So we learn from the mouth of the prophet, some 500 years before it occurred the temple would be destroyed (again) and that this event would not deter or limit man’s desire for self aggrandizement. The very place where the tower of Babel had been built [to make a name for ourselves-Gen.11: 4], the place where the Jews had been sent into captivity for disobedience, would experience a renewed effort to turn the law (and therefore man) into a god.

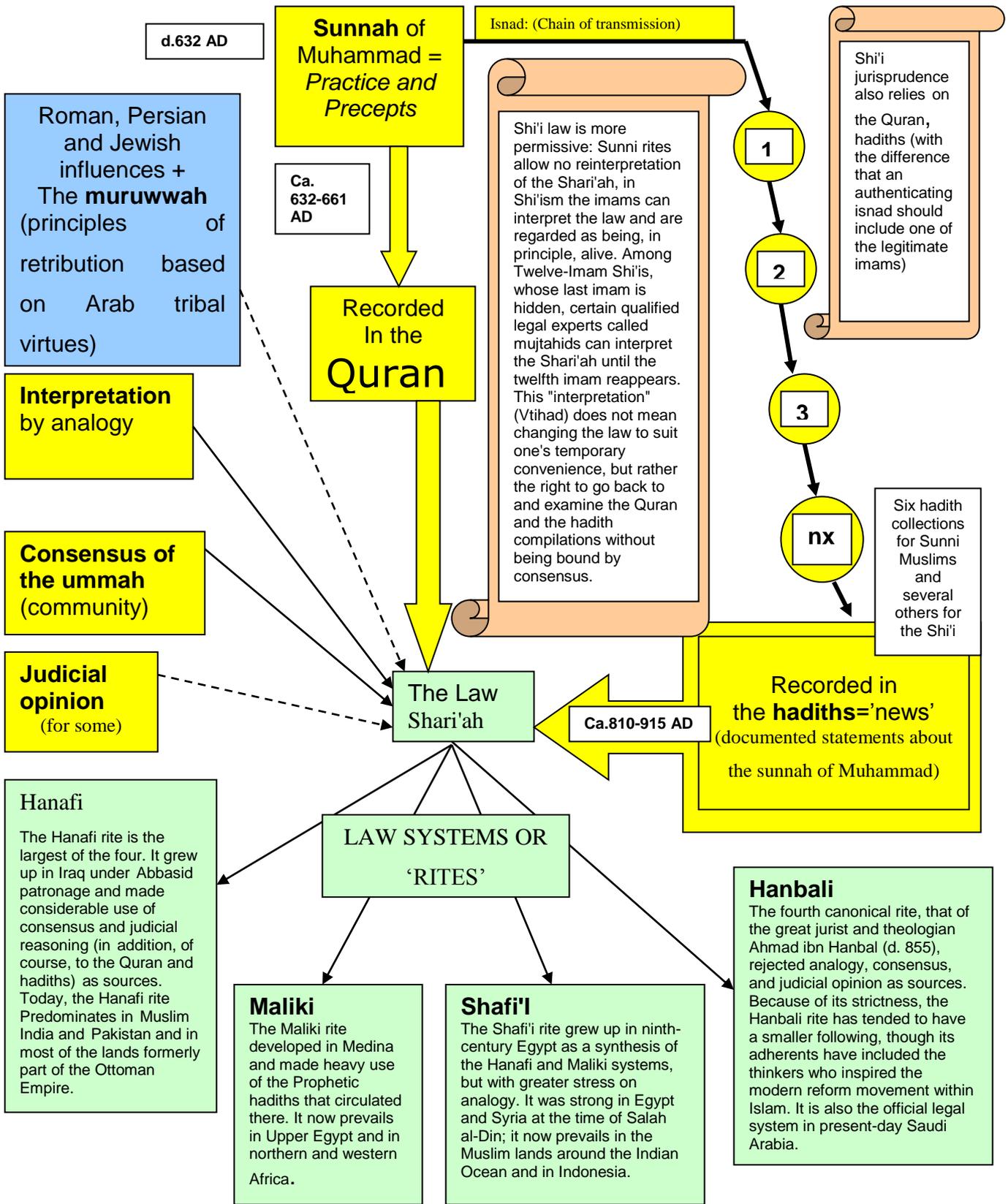
[\[10\]](#) *Mohammedanism, An Historical Survey* H.A.R. Gibb, London: Oxford University Press, [1950] (pages 72-84).

[\[11\]](#)

Development of Jurisprudence

By the time the Abbasids took power in 750, Muslims were starting to study the meaning of the Quran, the life of Muhammad and the sayings and actions ascribed to him by those who had known him. A specifically Islamic science of right versus wrong, or jurisprudence, thus evolved. Its Arabic name, fiqh, originally meant "learning," and even now a close relation exists in the Muslim mind between fuqaha (experts on the Shari'ah) and the ulama (the Muslim religious scholars, or literally "those who know").

Development of Jurisprudence



[13] The rise of systematic theology (*kalām*) occurred during the seventh to ninth centuries, the Mu'tazilite doctrine concerning free will (*qadar*) as opposes predestination (*jabr*) is probably the most well known, and crucial to understanding the role of law – for determinism negates mans responsibility before God.

[14] Ibid. note 10.