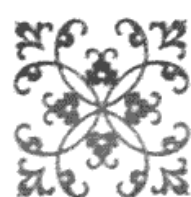


Islam

The Straight Path



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to Ibn Rushd and the philosophical tradition. Despite the accomplishments of many great philosophers, not only in philosophy but also in medicine and the sciences (for they were truly renaissance men), more often than not they were viewed as rationalists and nonbelievers. Philosophy never established itself as a major discipline. In contrast, Muslim philosophy had a major impact on the West. By transmitting Greek philosophy to medieval Europe, it influenced the curriculum of its universities and the work of such scholars as Albertus Magnus, Thomas Aquinas, Duns Scotus, and Roger Bacon.

Philosophy continued to develop, even though the Peripatetic or Aristotelian tradition of philosophy ceased to develop. The Illuminationist school, which was more Neoplatonic but also more amenable to synthesis with revelation and with mysticism, was established and hugely influential in Iran. It produced Mulla Sadra (1571–1636) the Shia Islamic philosopher and theologian. Mulla Sadra's synthesis of philosophy, theology, and mysticism led the Iranian cultural renaissance in the seventeenth century and he was regarded by many as the most influential philosopher in Iran and in the Muslim world in the last four hundred years. The philosophical tradition also continued to be influential in Sunni Muslim India, in the works of the reformer Shah Wali Allah (1703–1762), the most prominent and influential eighteenth-century Islamic scholar and reformer in South Asia, which are replete with philosophical arguments and discussions of philosophical issues, and the Ottoman Empire.

ISLAMIC LAW

Law is the primary religious science in Islam. Once committed to Islam, the believer's overriding concern and question is "What do I do; what is God's will/law?" Law is essentially religious, the concrete expression of God's guidance (*sharia*, path or way) for humanity. Throughout history, Islamic law has remained central to Muslim identity and practice, for it constitutes the ideal social blueprint for the "good society." The Sharia has been a source of law and moral guidance, the basis for both law and ethics. Despite vast cultural differences, Islamic law has provided an underlying sense of identity, a common code of behavior, for Muslim societies. As a result, the role of Islamic law in Muslim society has been and continues to be a central issue for the community of believers.

Historical Development

For the early Muslim community, following the Sharia of God meant obedience to God's continuing revelation and to His Prophet. Issues of

worship, family relations, criminal justice, and warfare could be referred to Muhammad for guidance and adjudication. Both Quranic teaching and Prophetic example guided and governed the early Islamic state. With the death of Muhammad, divine revelation ceased; however, the Muslim vocation to follow God's will did not. Knowledge and enforcement of God's law were continuing concerns. The first four caliphs, assisted by their advisers, carried on, rendering decisions as new problems and questions arose. With the advent of the Umayyad dynasty, an Islamic legal system began gradually to take shape, replacing this ad hoc approach. Part of the new administrative structure established by the Umayyads was the office of the *qadi*, or judge. The *qadi* was originally an official appointed by the caliph as his delegate to provincial governors. He was to see that government decrees were carried out and to settle disputes. In rendering a decision, judges relied on the prevailing Arab customary laws of the particular province and the Quran as well as their own personal judgment. A rudimentary legal code developed, consisting of administrative decrees and judicial decisions. The result was a body of laws that differed from one locale to another, given the cultural diversity of the empire's provinces and the independent judgment exercised by judges.

Growing dissatisfaction with Umayyad practice led to a new page in the history of Islamic law. Critics of the Umayyads charged that the development of law had become too subjective a process and resulted in a confused and often contradictory body of laws. They argued that if all Muslims were bound to submit to and carry out God's law, then Islamic law ought to be defined clearly and more uniformly. By the eighth century, such critics, eager to limit the autonomy of Muslim rulers and to standardize the law, could be found in major cities: Medina, Damascus, Basra, Kufa, and Baghdad. In time, these great early legal scholars, such as Abu Hanifa (d. 767), Malik ibn Anas (d. 796), Muhammad al-Shafii (d. 819), and Ahmad ibn Hanbal (d. 855), who came to be viewed respectively as the founders or leaders of the Hanifa, Maliki, Shafii, and Hanbali law schools, attracted followers. They began to systematically review Umayyad law and customs in light of Quranic teachings. Maintaining that Islam offered a comprehensive way of life, they sought to apply Islam to all aspects of life. These loosely organized endeavors were the beginnings of early law centers or schools.

The major development of Islamic law and jurisprudence took place during the Abbasid caliphate. Having justified their revolution in the name of Islam, the Abbasid caliphs became the great patrons of Islamic learning. Study of the Quran, traditions of the Prophet, and law excelled in the

hands of a new class of scholars (*ulama*), who sought to discover, interpret, and apply God's will to life's situations. Islamic law was not the product of government decrees or judges' decisions but the work of jurists or scholars who struggled from 750 to 900 C.E. to set out a religious ideal, to develop a comprehensive law based on the Quran. Jurists interpreted and formulated Islamic law, and judges were restricted to the application of the law. The consensus of jurists during this period produced the binding legal formulations that were to govern Muslim life down through the centuries.

Despite their common purpose and goals, differences soon arose during Abbasid times, pitting one law school against another and causing divisions within the law schools themselves. This divergence resulted from a combination of factors. The Quran is not a law book. About six hundred of the six thousand verses in the Quran are concerned with law, many of them covering matters of prayer and ritual. Approximately eighty verses treat legal topics in the strict sense of the term: crime and punishment, contracts, and family laws.³ Therefore, in many instances the doctrines of the law schools remained dependent on the interpretation or opinion of jurists who were, in turn, influenced by the differing customs of their respective social milieus. Medina and Kufa provide instructive examples of this stage in the process of legal development. The legal interpretations in both cities shared a common starting point—the Quran was interpreted in light of the precedents of the Prophet and the early caliphs. However, where the Quran was silent, jurists in each city relied on local practice in elaborating the law. The older Arab patrilineal system of Medina contrasted with the more recently established, cosmopolitan Arab and non-Arab urban society of Kufa. Legal scholars who lived in Medina tended to identify their way of life with that of the Prophet and his early companions. Thus, customary tribal law (*sunna*, trodden path or practice) became associated or equated with the practice of the Prophet (what the Prophet said, did, or permitted) and his companions. For the Medinans, law in Islam was based on the Quran and the Prophetically informed practice or local consensus of the Medinan community. This perspective was epitomized by Malik ibn Anas, who wrote the first compendium of Islamic law. Malik was a scholar of both tradition (*hadith*, written reports about the practice or Sunna of Muhammad and his companions) and law. His treatise, the *Muwatta*, is a collection of traditions and laws. Legal arguments and conclusions are justified or supported by citations from the Quran and traditions. Where differences existed, the local consensus of Medina remained authoritative. In contrast, legal scholars in the much younger community of Kufa, followers of Abu Hanifa and al-Shaybani (d. 804), relied on jurist opinion

and local law. The law of equality in marriage is a clear example of the differences that followed from this approach. Because Kufa was a far more diverse and class-conscious society, influenced by Persian practice, a husband was required to be the equal of his wife's family in terms of lineage, financial status, and so forth. However, no such law developed in the more homogeneous society at Medina.

By the end of the eighth century, Muslims again found that despite their best efforts to bring uniformity to the law, significant differences in their legal doctrines continued to exist, given the number of law schools, differences of cultural milieu, and the diversity of legal techniques or criteria employed by jurists (personal opinion, tradition, equity, public welfare). Two contending camps emerged: those who wished to bring uniformity to the law by restricting the use of reason and relying primarily on the traditions of the Prophet versus those who vigorously asserted their right to reason for themselves in the light of such criteria as equity or public interest. Into the fray stepped Muhammad ibn Idris al-Shafii (d. 819), the father of Islamic jurisprudence.

Born in Mecca, al-Shafii studied with Malik ibn Anas at Medina. He spent the early part of his career traveling through Syria and Iraq, thoroughly familiarizing himself with the legal schools and the thinking of his time before settling in Egypt. It was here that his own thought crystallized, and he emerged as the champion of those who sought to curb the diversity of legal practice. Al-Shafii was primarily responsible for the formulation that, after great resistance and debate, became the classical doctrine of Islamic jurisprudence, establishing a fixed, common methodology for all law schools. According to al-Shafii, there are four sources of law (*usul al-fiqh*, roots or sources of law): the Quran, the example (Sunna) of the Prophet, consensus (*ijma*) of the community, and analogical reasoning or deduction (*qiyas*).

Al-Shafii taught that there were only two material sources of law: the Quran and the Sunna of the Prophet, as preserved in the *hadith*. He maintained that Muhammad was divinely inspired, and thus his example was normative for the community. He restricted the use of the term *sunna* to the Prophet. Henceforth, it came to be identified solely with the divinely inspired practice of Muhammad and no longer with tribal custom or the consensus of law schools. Al-Shafii also transferred the authority for legal interpretation from individual law schools to the consensus of the community. Basing his opinion on a tradition of the Prophet—"My community will not agree upon an error"—the agreed-on practice of the community (*ijma*) became the third infallible source of law. Finally, the role

of personal reasoning in the formulation of law was restricted. Where no explicit revealed text or community consensus existed, jurists were no longer free to rely on their own judgment to solve new problems. Instead, they were to use deductive reasoning (*qiyas*) to seek a similar or analogous situation in the revealed sources (Quran and Sunna), from which they were to derive a new regulation. Reasoning by analogy would eliminate what al-Shafi'i regarded as the arbitrary nature of legal reasoning prevalent in the more inductive approach of those who relied on their own judgment.

The foundations of Shii law can be traced to the influential scholar Jafar as-Sadiq (699–765), considered by Twelver Shii, who comprise the majority of Shii, as their sixth imam and the founder of the most prominent Shii school of law. Jafar was a scholar of *hadith* and *fiqh* whose influence extended well beyond the confines of the Shii community. He counted many important Sunni scholars among his students, including two of the founders of the four schools of Sunni law, Abu Hanifa and Malik ibn Anis. Jafar was also a major spiritual teacher and Sufi whose name appears in practically all Sunni Sufi "chains of transmission." Traditional Sufi orders or schools trace their origins or "chains of transmission" back to the Prophet Muhammad, either through his cousin and son-in-law Imam Ali ibn Abi Talib or through his early companion and the first caliph, Abu Bakr. Jafar's prominence in the Sunni tradition also indicates that in the early formative Islamic period, divisions between Sunni and Shii only developed gradually and were not as apparent as they would later become. Politically, like most other major Shii figures, he chose a quietist view in which the Imam should only seize power when circumstances were ripe and otherwise devote himself to religious guidance.

The Sources of Law

The literal meaning of Sharia is "the road to the watering hole," the clear, right, or straight path to be followed. In Islam, it came to mean the divinely mandated path, the straight path of Islam, that Muslims were to follow, God's will or law. However, because the Quran does not provide an exhaustive body of laws, the desire to discover and delineate Islamic law in a comprehensive and consistent fashion led to the development of the science of law, or jurisprudence (*fiqh*). *Fiqh*, "understanding," is that science or discipline that sought to ascertain, interpret, and apply God's will or guidance (Sharia) as found in the Quran to all aspects of life. As a result of al-Shafi'i's efforts, classical Islamic jurisprudence recognized four official sources, as well as other subsidiary sources.

Quran

As the primary source of God's revelation and law, the Quran is the source-book of Islamic principles and values. Although the Quran declares, "Here is a plain statement to men, a guidance and instruction to those who fear God," it does not constitute a comprehensive code of laws. Although it does contain legal prescriptions, the bulk of the Quran consists of broad, general moral directives—what Muslims ought to do. It replaced, modified, or supplemented earlier tribal laws. Practices such as female infanticide, exploitation of the poor, usury, murder, false contracts, fornication, adultery, and theft were condemned. In other cases, Arab customs were gradually replaced by Islamic standards. Quranic prescriptions governing alcohol and gambling illustrate this process. At first, the use of alcohol and gambling had not been expressly prohibited. However, over a period of years, a series of revelations progressively discouraged their use. The first prescription against the old custom is given in the form of advice: "They ask thee concerning wine and gambling. Say: in them is great sin and some use for man; but the sin is greater than the usefulness" (2:219). Then, Muslims were prohibited from praying under the influence of alcohol: "Approach not prayer with a mind befogged until you can understand all that you say" (4:43). Finally, liquor and gambling were prohibited: "Satan's plan is to incite enmity and hatred between you with intoxicants and gambling, and hinder you from the remembrance of God and from prayer: Will you not then abstain?" (5:93).

Much of the Quran's reforms consist of regulations or moral guidance that limit or redefine rather than prohibit or replace existing practices. Slavery and women's status are two striking examples. Although slavery was not abolished, slave owners were encouraged to emancipate their slaves, to permit them to earn their freedom, and to "give them some of God's wealth which He has given you" (24:33). Forcing female slaves into prostitution was condemned. Women and the family were the subjects of more wide-ranging reforms affecting marriage, divorce, and inheritance. Marriage was a contract, with women entitled to their dower (4:4). Polygamy was restricted (4:3), and men were commanded to treat their wives fairly and equally (4:129). Women were given inheritance rights in a patriarchal society that had previously restricted inheritance to male relatives.

Sunna of the Prophet

Quranic principles and values were concretized and interpreted by the second and complementary source of law, the Sunna of the Prophet, the normative model behavior of Muhammad. The importance of the Sunna is rooted

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in such Quranic injunctions as "obey God and obey the Messenger. . . If you should quarrel over anything refer it to God and the Messenger" (4:59) and "In God's messenger you have a fine model for anyone whose hope is in God and the Last Day" (33:21). Belief that Muhammad was inspired by God to act wisely, in accordance with God's will, led to the acceptance of his example, or Sunna, as a supplement to the Quran, and thus, a material or textual source of the law. Sunna includes what the Prophet said, what he did, and those actions that he permitted or allowed.

The record of Prophetic deeds transmitted and preserved in tradition reports (*hadith*, pl. *ahadith*) proliferated. By the ninth century, the number of traditions had mushroomed into the hundreds of thousands. They included pious fabrications by those who believed that their practices were in conformity with Islam and forgeries by factions involved in political and theological disputes. Recognition that many of these traditions were fabricated led to the development of the science of tradition criticism and the compilation of authoritative compendia. The evaluation of traditions focused on the chain of narrators and the subject matter. Criteria were established for judging the trustworthiness of narrators—moral character, reputation for piety, intelligence, and good memory. Then a link-by-link examination of each of the narrators was conducted to trace the continuity of a tradition back to the Prophet. The process required detailed biographical information about narrators: where and when they were born, where they lived and traveled, and so forth. Such information might support or refute the authenticity of a narrator. For example, it might be shown that a reputed narrator could not have received a *hadith* from his predecessor because they did not live at the same time or because they neither lived nor traveled near each other.

The second criteria, evaluation of a tradition's subject matter, entailed an examination to determine whether, for example, a tradition contradicted the Quran, an already verified tradition, or reason. After traditions had been subjected to both external (narrators) and internal (subject matter) examination, they were categorized according to the degree of their authenticity (authority) or strength as sound, good or acceptable, and weak.

Throughout the ninth and tenth centuries, scholars traveled throughout the Muslim world collecting traditions and gathering information on their narrators or transmitters. Faced with the enormous corpus of traditions that had grown up, they sought to study and sift through them to authenticate and compile those traditions worthy of being conserved and followed by the Muslim community. Six collections came to be accepted as authoritative: those of Ismail al-Bukhari (d. 870), Muslim ibn al-Hajjaj

(d. 875), Abu Dawud (d. 888), al-Nisai (d. 915), al-Tirmidhi (d. 892), and Ibn Maja (d. 896). Among these, the collections of al-Bukhari and Muslim have enjoyed an especially high status as authoritative sources.

Shii *hadith* developed separately but along similar lines to Sunni *hadith*. The principal differences between the two are: (1) in addition to traditions of the Prophet, reliance on narrative reports or traditions of Muhammad's family and descendants (*ahl al-bayt*), regarded as the true successors and leaders, Imams, of the community; and (2) an emphasis on *hadith* related to Shii doctrines, particularly those concerning the family of the Prophet. Four major books or collections of *hadith* became authoritative for Shii.

Authenticity of Tradition Literature. Modern Western scholarship has seriously questioned the historicity and authenticity of the *hadith*, maintaining that the bulk of traditions attributed to the Prophet Muhammad were actually written much later.⁶ Joseph Schacht, the most influential modern Western authority on Islamic law, building on the work of his European predecessors, concluded that the term "Sunna of the Prophet" developed for the first time in the eighth century due to the influence of the Traditionist Movement and under the aegis of al-Shafii, and that this usage gave legal authority to later customary practices and traditions. On the basis of his research, Schacht found no evidence of legal traditions before 722, one hundred years after the death of Muhammad. Thus, he concluded that the Sunna of the Prophet is not the words and deeds of the Prophet, but apocryphal material originating from customary practice that was projected back to the eighth century to more authoritative sources—first the Successors, then the Companions, and finally the Prophet himself.

Most Muslim scholars, although critical of some Prophetic traditions, take exception to Schacht's conclusions.⁷ To state that no tradition goes back prior to 722 creates an unwarranted vacuum in Islamic history. Schacht's "first century vacuum" with regard to the existence of Prophetic traditions is a theory or conclusion that completely overlooks or dismisses the Muslim science of tradition criticism and verification and does violence to the deeply ingrained sense of tradition in Arab culture, which all scholars, Muslim and non-Muslim, have acknowledged. As Fazlur Rahman notes:

The Arabs, who memorized and handed down the poetry of their poets, sayings of their soothsayers and statements of their judges and tribal leaders, cannot be expected to fail to notice and narrate deeds and sayings of one whom they acknowledged as the Prophet of God.⁸

Accepting Schacht's conclusion regarding the many traditions he did examine does not warrant its automatic extension to all the traditions. To consider all Prophetic traditions apocryphal until proven otherwise is to reverse the burden of proof. Moreover, even where differences of opinion exist regarding the authenticity of the chain of narrators, they need not detract from the authenticity of a tradition's content and common acceptance of the importance of tradition literature as a record of the early history and development of Islamic belief and practice. As H.A.R. Gibb observed regarding the significance of tradition literature:

It serves as a mirror in which the growth and development of Islam as a way of life and the larger Islamic community are truly reflected. . . . [It] is possible to trace in *hadiths* the struggle between the supporters of the Umayyads and the Medinan opposition, the growth of Shiism and the divisions between its sects . . . the rise of theological controversies, and the beginnings of the mystical doctrines of the Sufis.⁹

Analogical Reasoning

Throughout the development of Islamic law, reason had played an important role as caliphs, judges, and, finally, jurists or legal scholars interpreted law where no clear, explicit revealed text or general consensus existed. The general term for legal reasoning or interpretation was *ijtihad* (to strive or struggle intellectually). It comes from the same root as *jihad* (to strive or struggle in God's path), which included the notion of holy war. The use of reason (legal reasoning or interpretation) had taken a number of forms and been described by various terms: personal opinion, jurist preference, and analogical reasoning (*qiyas*). Reasoning by analogy was a more restricted, systematic form of *ijtihad*. When faced with new situations or problems, scholars sought a similar situation in the Quran and Sunna. The key is the discovery of the effective cause or reason behind a Sharia rule. If a similar reason could be identified in a new situation or case, then the Sharia judgment was extended to resolve the case. The determination of the minimum rate of dower offers a good example of analogical deduction. Jurists saw a similarity between the bride's loss of virginity in marriage and the Quranic penalty for theft, which was amputation. Thus, the minimum dower was set at the same rate that stolen goods had to be worth before amputation was applicable.

Consensus of the Community

The authority for consensus (*ijma*) as a fourth source of law is usually derived from a saying of the Prophet, "My community will never agree on

an error." Consensus did not develop as a source of law until after the death of Muhammad, with the consequent loss of his direct guidance in legislative matters. It began as a natural process for solving problems and making decisions; one followed the majority opinion or consensus of the early community as a check on individual opinions. However, two kinds of consensus came to be recognized. The consensus of the entire community was applied to those religious duties, such as the pilgrimage to Mecca, practiced by all Muslims. But despite al-Shafii's attempt to define the fourth source of law as this general consensus, classical Islamic jurisprudence defined the community in a more restricted sense as the community of legal scholars or religious authorities who act in behalf of and guide the entire Muslim community.

Consensus played a pivotal role in the development of Islamic law and contributed significantly to the corpus of law or legal interpretation. If questions arose about the meaning of a Quranic text or tradition or if revelation and early Muslim practice were silent, jurists applied their own reasoning (*ijtihad*) to interpret the law. Often this process resulted in a number of differing legal opinions. Over time, perhaps several generations, certain interpretations were accepted by more and more scholars, and endured the test of time, whereas others disappeared. Looking back on the evolving consensus of scholars, it was concluded that an authoritative consensus had been reached on the issue. Thus, consensus served as a brake on the vast array of individual interpretations of legal scholars and contributed to the creation of a relatively fixed body of laws.

Although all came to accept the four sources of law, Islamic jurisprudence recognized other influences, designating them subsidiary principles of law. Among these were custom, public interest, and jurist preference or equity. In this way, some remnant of the inductive, human input that had characterized the actual methods of the law schools in their attempt to realize the Sharia's primary concern with human welfare, justice, and equity was acknowledged. However, the ultimate effect of the acceptance of al-Shafii's formulation of the four sources of law, with its tendency to deny independent interpretation and derive all laws directly from revelation, the inspired practice of Muhammad, or the infallible consensus of the community, was the gradual replacement of the real by the ideal. The actual, historical development of the law was forgotten.

By the tenth century, the basic development of Islamic law was completed. The general consensus (*ijma*) of Muslim jurists was that Islamic law (Islam's way of life) had been satisfactorily and comprehensively delineated in its essential principles, and preserved in the regulations of the law books or legal manuals produced by the law schools.

This attitude led many to conclude that individual, independent interpretation (*ijtihad*) of the law was no longer necessary or desirable. Instead, Muslims were simply to follow or imitate (*taqlid*) the past, God's law as elaborated by the early jurists. Jurists were no longer to seek new solutions or produce new regulations and law books but instead study the established legal manuals and write their commentaries. Islamic law, the product of an essentially dynamic and creative process, now tended to become fixed and institutionalized. While individual scholars like Ibn Taymiyya (d. 1328) and al-Suyuti (d. 1505) demurred, the majority position resulted in traditional belief prohibiting substantive legal development. This is commonly referred to as the closing of the gate or door of *ijtihad*. Belief that the work of the law schools had definitively resulted in the transformation of the Sharia into a legal blueprint for society reinforced the sacrosanct nature of tradition; change or innovation came to be viewed as an unwarranted deviation (*bida*) from established sacred norms. To be accused of innovation—deviation from the law and practice of the community—was equivalent to the charge of heresy in Christianity.

There is a danger in overemphasizing the unity and fixed nature of Islamic law. First, although an overall unity or common consensus existed among the law schools with regard to essential practices such as the confession of faith, fasting, and pilgrimage to Mecca, the divergent character of the law schools was preserved by differences in such areas as the grounds for divorce, the levying of taxes, and inheritance rights. Acknowledgment of this diversity within the unity of law was sanctioned by the reported saying of the Prophet, "Difference of opinion within my community is a sign of the bounty of Allah." This diversity continued in practice as judges applied the laws of the various law schools in their courts. Second, some limited legal development and change did occur where scholars interpreted and clarified details of legal doctrine. This was especially true as regards the activity of the *mufti*, a legal expert or consultant. These experts advised both judges and litigants on matters of law. Their formal, written legal opinions (*fatwa*), based on their interpretation of the law, were often relied on in judicial matters. Many of the more important opinions became part of collections of *fatwas*, which became authoritative in their own right.

Schools of Law

Although there had been many law schools, by the thirteenth century the number became stabilized. For Sunni Islam, four major schools predominated: the Hanafi, Hanbali, Maliki, and Shafii. Today, they are dominant in