

ISLAM AND SHARIA

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The *fatwa* against Simon Rushdie awoke large parts of the western world to a different approach to law in the Islamic world. In that world there are two main sources of *Sharia* or law, The *Quran* and the *Hadith*. As the traditional *Sharia* is uncodified, interpretation of the *Quran* and *Hadith* has rested with the opinion of jurists not through government legislation or case law. That the interpretations from great jurists of the past are fixed and to be accepted as divine is rejected by many. It is believed that these interpretations were the product of human reasoning and can and must be changed with changing circumstances. Such an argument is not accepted by all and with a multiplicity of sects within Islam can result in a multiplicity of interpretations from a multiplicity of authorities.

The Prophet was probably illiterate and did not write the Quran. Rather he recited the words the Archangel Gabriel told him to repeat. These sermons were recorded by his listeners on whatever material they had available. In an oral society the recorded words can be expected to be close if not identical to the words spoken. The diverse and fragmentary collection of written versions were put in their present form under instructions from the Caliph Uthman in about 650¹ who is reported to have ordered the destruction of all variant texts. The *suras* or chapters vary greatly in length and represent separate sermons. They are ordered by length rather than by subject or chronology. Islamic scholarship can differentiate those sections that belong to the Mecca period and those from the Medina period. In the first the Prophet was concerned with mainly religious matters. In Medina he was also the ruler. From that time what we might call civil law is also included.

Muslims started to believe in the Quran as a pre-existing emanation from God – a *logos*. Was the Heavenly Quran pre-existent or created? This has given rise to a whole complex of scruples as to how the book can be handled.²

The Hadith is a collection of the Prophets answers to questions explaining or interpreting the text of his sermons, often applying them to particular circumstances. Once again these were originally transmitted orally. Ibn Ishaq the original collector of these saying quotes his source and the chain of transmission if he has no recourse to the original auditor. With many parallel traditions of the same incident the verification was a long process. In time the collection of Hadith became more formalised where the chain of transmission is complete and continuous.³

The Prophet was a religious leader, a civic leader and often a military leader. These three roles were also exercised by his successors. As Islam spread and tribes adopted Islam, the

¹ Cf. Brown. Daniel 2004, *A New Introduction to Islam*, Blackwell, Oxford. p 55.

² Ibid. p.61.

³ Ibid p 85f.

tribal leader commonly became the local leader adopting these roles. Local tribal customs became absorbed into the practice of Islam and religion was used as a control measure by the leader. The all-enveloping chador is an example. The prophet prescribed this dress only for his wives, not the general population. Perhaps the pious adopted it in simulation. Dio Chrysostom reports its use in the region of Tarsus in the second century CE but it seemingly goes back to the original indigenous population.⁴ There are other examples of tribal custom becoming part of local Islamic usage and sanctified as part of the religious observance even while being local and not part of the wider observance. As is seen too often local authorities can and do use religion as a control mechanism.

Dissention arose early in Islam. Umar the second caliph was assassinated and with the fourth Ali began the Shia-Sunni split. Many more followed, with the leader of each sect assuming supreme authority. Who then can give authoritative guidance to the interpretation and application of the Quran and the Hadith?

A Religious Ruling or *fatwa* needs to come from a Competent Authority. These will often be as a result of a posed question. It could be as simple as “Is this meat *Hallel*? That is has it been slaughtered in accordance with the Islamic ritual, that would make it suitable for consumption? Naturally then there are many levels of this competent authority depending on specialisation and academic qualifications? The Rushdie *fatwa* would have come from a question such as “Has by his writing he apostatised and become eligible for execution?

A 1990’s *fatwa* from a Shia mullah in Pakistan forbad the education of girls. “Three Cups of Tea”⁵ tells of the successful efforts to have this *fatwa* removed by higher Shia authority in Iran. A 2002 ruling from a Saudi scholar forbad wishing others a Merry Christmas⁶. An historic example is that of coffee and coffeeshouses in the sixteenth century.⁷ This ban did not endure. So where do we find a competent authority?

Traditionally the Islamic ruler would appoint a noted scholar as the interpreter. More recently a group of scholars have performed this task most notably the Sheikks of the Al-Azhar Islamic university in Cairo. A similar body exists for the Shia in Iran. In some places a Mufti or leader is elected who fulfil this task, too often unfortunately the scholar is self-appointed. In specialised areas a religious scholar alone would not have the technical skill to give a proper opinion. Councils of secular and religious scholars are being formed in Muslim countries and there is a “European Council for Islamic Rulings and Research” based in London.⁸ For the Muslim, *Sharia* applies in all areas, so it includes what the westerner would label as Contract, Criminal, Marriage and any other specialisation you name.

For a modern and local introduction I would recommend “Islam - Its law and society “ by Jamila Hussain (See the Bibliography). She is a lecturer in Law at UTS (University of Technology Sydney) and holds Australian and Malaysian Law degrees. She presents a text easily comprehended by a local reader.

⁴ Cf. Murphy-O’Connor. Jerome 1997. *Paul a Critical Life*, OUP. Oxford. p.34.

⁵ Cf. Mortenson. G & Relin. D.O., 2007. *Three Cups of Tea*. Penguin. Camberwell. p184f.

⁶ Cf. Brown p227f.

⁷ Ibid. p116f.

⁸ Cf. Hussain. Jamila, 2004. *ISLAM Its law and society*, The Federation Press. Leichhardt. P44.

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