

## Transcript: Sources, Shari'a

The aim of Muslims is to live their lives according to the revealed will and guidance of God as it is contained in the principal source, the Qur'an. On the surface of it, we might expect that this would make it easy to decide the right (and wrong) way to behave in every situation. Simply find one verse that mentions a particular teaching and take that as the definitive statement. In reality, it is much more complicated.

For one thing, the Qur'an was sent down upon the heart of Muhammad over a period of twenty-two years. It rarely says everything there is to say on a particular subject at any one time. It sometimes reveals divine guidance gradually. What's more, revelations are made in a particular circumstance or situation and often need to be interpreted in the light of a certain context. We can't understand the fullness of the guidance unless we know what these contexts were.

These have been recorded from the earliest days of Islam as the *asbab al-nuzul* or the occasions of revelation. To be clear what effect the Qur'anic revelation was intended to have involves the study of these occasions together with the life, times and society of Muhammad.

Of course, Muhammad was the first and best interpreter of the Qur'an. Everything he said, taught, did and approved of was a practical illustration of how his life had been shaped by the Qur'an. His life was the shining example of correct behaviour – known as the Sunna – for everyone to follow [Q. 33:21, 33:45-46].<sup>1</sup> The Sunna of the Prophet is the second source of guidance as to how human beings should live.

Whilst Muhammad was alive, he could be asked directly for his judgement on any question which might arise. After his death, new ways had to be found to resolve questions and issues which inevitably arise as times change. These had to be based on the Qur'an and Sunna.

In fact both the Qur'an and Sunna tell us that these interpretations should be worked out using our God-given faculty of reason. This is exactly what scholars have been doing down the centuries since Muhammad's death. In so doing, they have worked out a clear path of correct conduct for Muslims to follow. This path is essentially one, although there are some variations between the different schools.

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<sup>1</sup> Q. 33:21 In the Messenger of God there is certainly for you a beautiful model, for the one who hopes in God and the Last Day, and remembers God greatly.

Q. 33:45-46 O Prophet! Indeed We have sent you as a witness, as a bearer of good news and as a warner and as a summoner to God by his permission, and as a lamp spreading light.

## **Shari'a**

This code of conduct is the Shari'a, which literally means a well-trodden path leading to a definite goal. Following the Shari'a will make for a happy, fulfilled life on earth and lead to Heaven after death. The Shari'a, as developed by generations of scholars, ranges over many aspects of life: personal, family, legal, economic and social actions. Even so, following it is not something which comes quickly or easily but is part of a lifelong struggle or *jihad* towards getting closer to God in actions, thoughts and feelings.

The underlying principles of the Shari'a never change. However, these need to be applied afresh in new circumstances as they arise.

## **Interpreting the Qur'an**

The need continuously to strive for understanding of the Qur'an led to the discipline of Qur'anic commentary or *tafsir* which is practised by learned scholars. Over fourteen centuries, many *tafsir* have been written. Naturally, some differences of methodology have developed: linguistic, historical, traditional, philosophical, mystical etc. The Shi'a believe that the Imams were infallible. So they could give both definitive interpretations of the Qur'an and articulate new guidance based on it.

## **Interpreting the Sunna**

The Sunna of Muhammad is his customary practice; what he did, said, taught and the things of which he approved. In recognition of the critical importance of this, Muhammad's companions made sure to remember everything in minute detail. These records are the Traditions or Hadith of Muhammad. Muhammad made it clear when he was speaking in his own right as the Prophet and when he was conveying the revelation from God in the Qur'an. The two were quite distinct.

As each Hadith was memorised and taught to others, a chain of transmitters (*isnad*) developed. These were carefully preserved as proof of the authenticity of the Hadith. What's more, painstaking research has been undertaken to check that the connections in the chain were valid and that every person involved was of sound character and pious life so that their word could be trusted.

Malik ibn Anas (712-795) was the first to give us a written deposit of Hadith. He lived in Madina and was a descendant of one of the Companions of Muhammad. In Baghdad, Ahmad ibn Hanbal (780-855), was reported to have memorised a million Hadiths and left a collection of around forty thousand called the *Musnad*. Schools of Law were named after both of them.

As early as the ninth century, due to the availability of mass-produced quantities of paper, it became possible to write down great systematic collections, arranged around particular topics. The Hadith were classified into categories according to the reliability

of their chain of transmission. The highest classification was for those Hadith which were sound and without defects or *sahih*. The next category down was hasan – good and reliable but not as well-authenticated as a *sahih* and so on... Further down the scale, we have classifications covering cases where there is a break or uncertainty in the chain of communication. These are weak Hadith or *da'if* and can only be used in Law as supportive evidence. There are six major collections of Sunni Hadith. The most important two are those drawn up by Al-Bukhari (810-870) and Muslim (820-875). These contain thousands of Hadith, all of which are classified as *sahih*.

For the Shi'a, the infallible Imams are the guarantors of the authenticity of the Hadith. Each is traced back to one of them. The confusion of the early centuries renders the tracing back of chains of transmitters to the Prophet unreliable for the Shi'a, they prefer to rely on the infallible word of one of the Imams. The great Shi'a collections of Hadith, like *al-Kafi*, date from the 10<sup>th</sup> century.

### **Personal Interpretation**

There have always been and will always be situations in life which pose questions that are not addressed directly by the Qur'an and Sunna of Muhammad but need to be deduced from it. In these cases, it is believed that the Prophet approved the use of personal judgement or *ra'y*. This was common in the first century of Islam and spread rapidly to cover societies far from Madina.

From it emerged a systematic procedure, based on the principle of analogical reasoning or *qiyas*. Here the process was to compare the new issue with one that resembled it, which had already been determined. A new judgement was then developed to deal with the new question. This approach was accepted in most schools of Islam as a third source of Shari'a, but it was strongly forbidden by Shi'a scholars, who prefer to use deductive logic instead.

However such judgements were one stage removed from the two principal sources and so, even for the Sunnis, future rulings could not be based solely on them but had to be rooted in the Qur'an and the Sunna of Muhammad. However, for the Shi'a, deductive logic remains an enduring source.

Professor Michot explains the Sunni preference for analogy, which avoids too much generalisation and works only with particular cases:

In Sunni Islam, analogy was considered as the best way to understand how to broaden the scope of the law without overdoing it. They had this idea, that in deductive logic you go through generalities, and there is a risk that you would go into too general statements and prohibitions, and so it's better to see how one particular prohibition, coming from the Qur'an or the Prophet, can be used to approach another particular problem, without going through general principles. We know that the Qur'an forbids alcohol, wine. Does it forbid all kinds of alcohol? Or how are we going to look at drugs, for example? They are

not forbidden literally in the Qur'an or in the Hadith. Have we got to go through a general rule? But then are we risking to forbid things that God would not have forbidden? Or are we going to proceed very carefully from one particular case to another particular case. Scholars will say wine was forbidden because it leads to an alteration of the mind. So if there is a similar alteration of the mind in drugs; by analogy, that drug will also be forbidden without going through general rules. It's just a principle of carefulness. We want to make sure that we do not forbid things that are not forbidden; without, on the other hand, considering that everything should be allowed as such. There are still things that indeed deserve to be forbidden because they are totally opposed to the kind of human life or to the ideals of humanity that the Qur'an goes for.

Shaykh Bahmanpour demonstrates the Shi'a preference for deductive logic, which leads to definite answers and avoids speculation:

Deductive logic is the sort of argument which leads us to a definitive answer and that's why in Shi'ite *fiqh*, it is only deductive logic that is acceptable, which gives definitive answers; as opposed to analogy, which involves a sort of speculation in it. Just to give a very common example – if we say every animal dies, and a horse is an animal, therefore a horse dies. This is an argument of deductive logic and the answer is quite definitive because a horse is an animal and because we know that every animal dies: therefore the answer is quite clear. Analogy is like when we say: every horse dies, a cat is like a horse in many aspects, therefore every cat dies. Well, we can say that to some extent this is true but there is room for speculation here, because it is possible that a cat is not like a horse in all aspects, including death. Shi'a jurists say that we do not need to resort to analogy to get speculative answers for our practical issues. If there is no ruling in religion, in jurisprudence, for a certain thing, then we just take it out of the realm of religious ruling and we are free to act in that respect without any restriction, without seeking to resort to speculation.

This scholarly intellectual activity continued in the Sunni schools with one scholar refining the reasoning of another until a consensus or *ijma* on legal matters was reached. This consensus of the scholars eventually led to a wider, more general agreement, the consensus of the community. This consensus was considered to be a solid foundation for Sunni Islamic law on which later generations could build, a position supported by a Hadith of Muhammad saying that the Muslim community would never agree on an error. In the Sunni schools, during the time when a consensus is emerging, there is a legitimate diversity of interpretation. Where there is no universal consensus, the rule is to accept the legitimate diversity.

Shaykh Bahmanpour explains further the scope for legitimate diversity within Islam:

Consensus is possible only on very broad concepts and issues. You never can have consensus on very narrow issues and therefore diversity would always be there. That's why in Islam anyone who utters that "there is no god but God and

Muhammad is his Messenger” is regarded to be a Muslim, no matter what type of conception of God they have, what type of idea about Muhammad they have, what type of jurisprudence they follow, what type of theology they have. It’s all included in these two very broad concepts, about which consensus is necessary in a Muslim society or in a Muslim community; that is, the unity of God and that Muhammad is his Messenger. If we have this concept, which we have, and if we really emphasise it, I think we can have great diversity in Muslim societies. And this is what historically has been perceived in different areas, in Muslim countries, in Muslim societies. They had different cultures, they had different types of practice, they had different types of theology even, but they still all regarded themselves to be brothers and to be regarded as Muslims.

For the Shi'a, *ijma* is only an indicator and has no abiding weight. In the absence of the infallible Imam, guidance is found through rigorous, rational examination of the two sources, which is practised by the most learned religious scholars, whose teaching is then followed by the people.

### **Classification of actions**

Drawn from these sources, Islamic law came to recognise five categories of actions. These are:

- Those actions that are obligatory
  - for every Muslim individually or *fard 'ayn*
  - for the community but which can be performed by a group on behalf of the whole or *fard kifaya*
- Those recommended acts that carry a reward if performed but do not involve punishment if omitted or Sunna.
- Neutral acts which carry neither punishment nor reward as people are free to choose – or *mubah*
- Actions that are disapproved of but attract no specific punishment or *makruh*
- Any action that is clearly forbidden and carries a punishment if it is committed is classified as *haram*.

### **Example actions**

Let’s see how these classifications work out in practice. First, *fard 'ayn*, that is something obligatory for every Muslim, for example, the regular rhythm of prayer, and fasting during the month of Ramadan. Then, *fard kifaya*, those actions that a group can perform on behalf of everyone, such as looking for the new moon or taking part in funeral prayers. Examples of recommended or Sunna actions would be exchanging the greeting *salam alaykum*, performing additional *rak'at* before or after obligatory prayers, and visiting the sick. Things that are neutral or *mubah* would include styles of dress, types of diet, or tastes in literature. Smoking would be disapproved or *makruh*. And drinking alcohol, *haram* or forbidden.

Naturally, there are some variations of opinion regarding the three middle categories. Also, as time goes on and knowledge advances, some actions may well be re-classified. For example, some would classify smoking as forbidden, as it is now known seriously to damage health.

## **Schools of Law**

As Islam spread rapidly during the first century after Muhammad, it encountered different cultures. As a result, considerable variations arose in the way the Islamic code of conduct and the Shari'a developed. A number of Sunni Schools of Law, or pathways to be followed, or *madhhabs*, sprang up at different times and in different locations. Eventually these resolved into the four existing Sunni Schools, which are associated with the influential scholar after whom they were named. For Twelver Shi'a, the Shari'a was largely drawn up by Imam Ja'far al-Sadiq.

### **Hanafi School**

The Hanafi School was founded by Abu Hanifa (700-767), who lived in Baghdad. It was the first *madhhab* established and developed *qiyas* and *ra'y* as legal principles. It spread to become the dominant School in the Indian subcontinent, Central Asia, Turkey (and formerly the Ottoman Empire) and parts of Egypt.

### **Maliki School**

The Maliki School was founded by Malik ibn Anas (712-795), who lived in Madina, where he became the principal imam. Thus it has a strong sense of the connection to the living tradition of Islamic practice in Madina. It is found today in North Africa, parts of Egypt and parts of Sub-Saharan Africa.

### **Shafi'i School**

The Shafi'i School was founded by Al-Shafi'i (767-820), who studied under Malik in Madina, practised law in Baghdad alongside the Hanafi School, and later settled in Egypt. He is credited with developing the principles of systematisation of Sunni Law, later widely adopted by all Sunni schools. It developed the importance of the Hadith of Muhammad as the second source of Shari'a and greatly enhanced the status of *ijma* and analogical reasoning. Today it is the dominant School in Indonesia, Malaysia, East Africa, parts of Egypt and in most Arab countries.

### **Hanbali School**

The Hanbali School was founded by Ahmad ibn Hanbal (780-855), who was a monumental collector of Hadith. It emphasises reliance on the Qur'an and Hadith as the principal sources of Shari'a and gives little room to speculative reasoning. It had a profound influence on reformed puritanical movements, e.g., the Wahhabis, initiated by Ibn Abd al-Wahhab (1703-1792), which aimed to purge Sunni Islam of what they

considered to be innovations (*bid'a*). Today the Hanbali School is dominant in Saudi Arabia.

### **Ja'fari School (Shi'a)**

The only School within Shi'a Islam, for those who recognise a line of twelve Imams, is the Ja'fari School. Most of its the rulings are traced back to Imam Ja'far al-Sadiq, the Sixth Imam (699-765). The principal sources are the Qur'an and the Hadith as in the Shi'a collections. The Imams provide an additional 300 years of infallible guidance and interpretation of the Qur'an and Sunna. Shi'a scholars of the highest rank today have the responsibility, in the absence of the Hidden Imam, to guide the people. It has a highly developed place for legal reasoning within its system.

Within Islam, there is general agreement between all schools on most of the main aspects of the Shari'a. The school to which a Muslim belongs is largely determined by their family and place of birth.

### **Contemporary Situation**

As times change, new situations arise which pose new challenges for Muslims – just as they do for all of us. Advances in science and developments in society in particular can create moral and ethical dilemmas. When this happens, Muslim scholars examine the question by making a profound study of the principles of jurisprudence or *usul al-fiqh*, before going on to study the body of knowledge within their particular school. A scholar of Islam is called an *alim* (plural, *ulama*) and one who specialises in the study of Islamic law is called a *faqih*. The science of law in Islam is known as *fiqh*, which means originally to understand “the path,” that is the Shari'a.

If an ordinary Muslim is confronted with a question of how to live a Muslim life, then the normal thing to do would be to seek the guidance of a local *alim* or *faqih*. This can be done today via a recognised helpline or the internet. A simple query that has been dealt with by the body of scholars can be answered ‘off the shelf’. If the problem is something that needs original research and a ‘learned opinion,’ then the question must be referred to a *mufti*, in the Sunni tradition, or a specialist *ayatollah*, in the Shi'a tradition, these are *ulama* of outstanding learning. A *mufti* or *ayatollah* is capable of using personal judgement to apply the principles of *fiqh* to a new question.

This personal judgement would be given in the form of a *fatwa*, which is not to be confused with the ruling of a court. This is a learned opinion and must be respected as such, but it is not necessarily the last word. The same question can be presented to another *mufti* or *ayatollah* and that may bring forward another *fatwa* or it may reinforce the earlier opinion. All authority is based on knowledge; not on political or priestly power. In Muslim societies, there is a legal officer called a *qadi* or judge, who sits in a court and dispenses justice.

A contemporary British example of seeking a *fatwa* is the question of the acceptability of organ transplants for Muslims. A *fatwa* was developed and agreed by a body of scholars. Their guidance is that this is an acceptable practice provided that the organ donor is already certified as being dead.

Most scholars would agree that although there are some countries in the world that use the title 'Islamic' in their names, there are no countries today that are guided fully by the principles of Islamic law. An Islamic State would be shaped by establishing a system based on the whole spectrum of Islamic Law in which the guidance of God would be implemented within all aspects of society.

Dr Buaben discusses the contemporary issue of genetically modified crops:

Genetically modified crops is one of the new scientific controversies amongst people, I mean amongst Muslims. People are always debating as to the morality or the ethical issues regarding genetically modified crops. Many people are a little bit concerned that scientists will be "playing God". The general understanding among Muslim scientists is that the rationale behind this, the ultimate rationale, is to save human life. To produce enough food in order to feed the millions of people who, probably because of what has happened to our environment, might not be able to grow enough crops to survive. And therefore, since the ultimate rationale is to save life, and saving life is of particular importance to Islamic faith, then in principle, genetically modified crops are permissible. However if the basic rationale of the science is just to make profit, then it has consequences to human life in the long-run, then of course there are questions to be sorted out. But in general, genetically modified crops are acceptable in Islam.

## **Punishment**

The Qur'an and Hadith stipulate punishments for a limited number of major crimes. These are crimes which threaten to undermine the rule of law and the stability of society – such as murder, theft, perjury, sexual misconduct and drinking alcohol. In specifying the punishments for these, the Qur'an refers to limits or boundaries, using the term *hadd* [Q. 2:178].<sup>2</sup>

In traditional societies, imprisonment did not exist as a form of punishment. Instead they practised corporal punishment or financial compensation to the victim's family

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<sup>2</sup> Q. 2:178 O you who believe! Retaliation is prescribed for you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. For the one who is forgiven somewhat by his [injured] brother, let there be an honourable follow-up, and compensate him nicely; this is a lightening of the burden by your Lord and a mercy. After this whoever exceeds the limits shall receive a painful punishment.



[Q. 4:92].<sup>3</sup> Corporal punishment took the form of a beating or, for the severest cases of theft, amputation [Q. 5:38].<sup>4</sup> These were carried out in public. The humiliation of the guilty person and the example set to the crowd were as important as the pain endured [Q. 24:2].<sup>5</sup> In the case of thieves, a hand amputated would serve as an example to everyone who saw them for the rest of their lives.

The use of an awesome punishment to drive home the serious nature of a crime can be seen in the case of adultery for which, under certain circumstances, according to the Hadith, the *hadd* is death.

The awesomeness of such punishments underlined the serious nature of the act and was intended to act as a powerful deterrent. To many people outside Islam, they may seem to be harsh. However, it is worth reflecting on the fact that some scholars interpret the *hadd* as mandatory, whilst others see it as a maximum, with the actual punishment being at the discretion of the judge taking into account the individual circumstances and degrees of evidence.

In addition, very high standards of evidence are required. For instance, in the case of adultery, there have to be four adult eyewitnesses who can testify to seeing the actual sexual act and the testimonies must agree – or the persistent confession of the guilty person [Q. 4:15].<sup>6</sup> Naturally the judge would want to know that the confession was the product of a sound mind and had not been obtained under duress. One can reasonably ask what sort of eye-witnesses would stand by and observe such an act of adultery and why some of them had not acted earlier to prevent it happening. A

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<sup>3</sup> Q. 4:92 Never should a believer kill a believer; except if it happens by mistake. If one kills a believer [by mistake], it is decreed that he should free a believing slave, and pay compensation to the deceased's family, unless they let you off out of charity. If the deceased belonged to a people at war with you, and he was a believer, the freeing of a believing slave [is enough]. If he belonged to a people with whom you have a treaty of mutual alliance, compensation should be paid to his family, and a believing slave freed. For those who find this beyond their means, a fast for two consecutive months [is prescribed] by way of repentance to God, for God is All-knowing and All-wise

<sup>4</sup> Q. 5:38 As for the thief, man or woman, cut off their hands as a punishment for what they have done. [That is] an exemplary punishment from God, and God is All-mighty, All-wise.

<sup>5</sup> Q. 24:2 As for the female and male fornicator, strike each of them a hundred lashes, and let not pity for them overcome you in God's law, if you believe in God and the Last Day, and let their punishment be witnessed by a group of the believers.

<sup>6</sup> Q. 4:15 Should any of your women commit an immoral act [adultery], produce against them four witness from yourselves, and if they testify, keep them in [their] houses until [natural] death takes them, or God makes another way for them.

severe beating was prescribed by the Qur'an, for anyone found guilty of giving false or insufficient evidence in such a case [Q. 24:4].<sup>7</sup>

Before we let the actions of some Muslim people or governments around the world lead us into hasty judgements about Islam, it's worth reflecting on the way Muslims in these societies perceive more 'liberal' countries. Through TV and films they see a picture of a rich but morally decadent society corrupted by alcohol, drugs, family breakdown, crime, abuse of sex, and economic exploitation, with many innocent victims, often women and children. Naturally, these are things they want to prevent from entering their societies.

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<sup>7</sup> Q. 24:4 As for those who accuse chaste women and do not bring four witnesses, strike them with eighty lashes, and never accept any testimony from them after that, and they are great sinners.