

“Enjoining What is Right and Forbidding What is Wrong”

God’s Law and Justice in the Qur’an



Muhammad Al-Hussaini

Introduction to Classical Study of the Qur’an

Leo Baeck College, London

<http://www.scriptsuresindialogue.org/>

Outline

- This lecture will be short – promise! I will cover the main points in the lecture, and more detailed information in the slides is provided for reference for you to digest at leisure.
- How does the scripture of the Qur'an become the text of *fiqh* “elutriation, jurisprudence”?
- What is the relationship between *tafsir* of the Qur'an and *fiqh*, and how does this apply in the three categories of punishment in Islamic law?
- *Text Study*: Qur'anic texts on murder – the Abel and Cain narrative and the *lex talionis*

Definitions

كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ وَلَوْ آمَنَ أَهْلُ الْكِتَابِ لَكَانَ خَيْرًا لَهُمْ مِنْهُمُ الْمُؤْمِنُونَ وَأَكْثَرُهُمُ الْفَاسِقُونَ

‘You are the best of peoples, evolved for mankind, **enjoining what is right and forbidding what is wrong**, and believing in God. If only the People of the Book had faith, it would be best for them; among them are some who have faith, but most of them are dissipated transgressors.’

Al ‘Imran (Qur’an 3) 110

- *shari‘a* “way to water” (root: **ش ر ع**) is the eternal and divinely revealed Law of God (=Torah *min ha-shamayim*?), and is defined strictly as the primary source texts of the Qur’an and the *sunna* “the practice” of the Prophet as is recorded in the authentic *hadith* “news, saying” of his actions and words. And these primary source texts alone.
- *fiqh* “comprehension, grasping, elutriation” (root: **ف ق ه**) is the exegesis and commentary on the *shari‘a*, the practice of Islamic legal theory in the real world by juridical exegetes, to form the vast body of Islamic jurisprudence.
- *shari‘a* is heavenly, immutable and universal; *fiqh* is practical and particular, the human application of the divine writ according to local circumstances

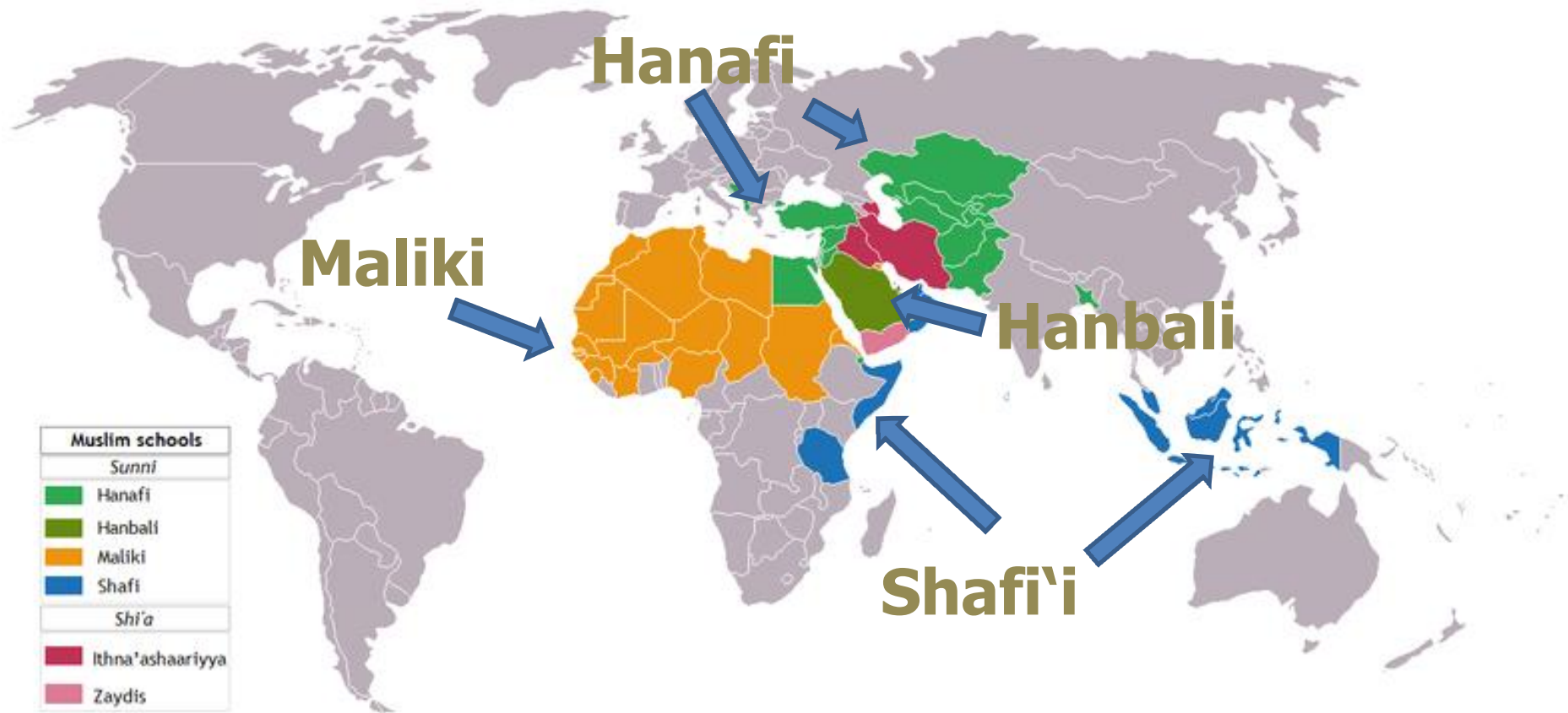
The Relationship between *Fiqh* and *Tafsir*

- These two sciences of interpretation of Scripture are very closely linked and the methodological interfaces blurred, both connected as sciences of Qur'anic exegesis and both use expansions on the oral tradition of *hadith*
- Early *fiqh* involved direct application of Qur'anic texts and early compilations of juristic hadith – notably *al-Muwatta* of Malik b. Anas (715-716), representing the “well-trodden path” of the people of Medina
- The father of classical Islamic jurisprudence is Muhammad b. Idris al-Shafi'i (767-820) who established in his book *al-Risala* the '*usul al-fiqh* or “roots of deep understanding”, the canons of interpretation of God's Book and Law.
- al-Shafi'i's four “roots” or sources of Islamic jurisprudence are: 1) Qur'an 2) the *sunna* “practice” of the Prophet 3) *ijma'* “the consensus of the community” [generally understood as the community of the '*ulama* “scholars”] 4) *qiyas* “analogy”, analogous reasoning to apply a ruling to different cases under varying circumstances
- The “roots” of legal theory grow *furu'* “branches” of substantive law applicable as marriage law, inheritance law, laws of financial transactions...

The Formalising of Islamic Law

- The preoccupations of Islamic law are rulings in relation to *'amaliyya* “actions” – *fard* “obligation”, *mandub* “recommendation”, *mubah* “permissibility”, *makruh* “disrecommendation”, *haram* “prohibition”
- and rules in relation to *wadi'a* “circumstances” – *shart* “condition, contingency”, *sabab* “cause”, *m'ani* “preventor”, *rukhsah* vs *azimah* “permission vs enforcement”, *sahih* vs *batil* vs *fasid* “sound vs invalid vs corrupt”, *ada'* vs *qada'* vs *i'ada'* “timely, debt, repetition”
- The historical evolution of four Sunni *madhahib* (plural of *madhhab* “way”), namely schools of Sunni jurisprudence from 8th Century onward which mutually recognise each other as “right guidance”, but differ in their acceptance of the authenticity of one hadith over another in deciding a ruling, and also in the relative weight they give to *qiyas* “analogical reasoning”
- Shi'ites, Zaydis and others have their own schools of law.
- A vast literary discourse based on the *fatwa* “ruling” universal to all Muslims, and *qada* or *hukm* “judgement” in a court of law for a specific case, and a large and diverse apparatus of Muftis, Qadis, religious courts, and modern state-sponsored religious-juristic institutions

Geography of the *Madhahib*



- Hanafi – Founder Abu Hanifa (669-767) in Kufa, Iraq; most distinctive in its use of *qiyas* “analogous reasoning”
- Maliki – Founded by followers of Malik b. Anas (715-796) in Medina
- Shafi'i – Founded by Muhammad b. Idris al-Shafi (767-820); student of Malik
- Hanbali – Founded by Ahmad b. Hanbal (780-855), most recent, least use of *qiyas*

Three Categories of Punishment in Relation to the Qur'an

- *hadd* – six defined corporal or capital punishments explicitly present in the Qur'anic text for: 1) *zina* “all forms of unlawful sexual intercourse” (divided according to whether the offender is unmarried or married) 2) *qadhf* “unproven allegation of sexual wrongdoing” 3) *sariqa* “theft” 4) *hiraba* “brigandry” 5) *ridda /irtidad* “apostasy” 6) *sharb al-khamr* “wine drinking”; the rules of evidence demanded by classical juridical scholars are very strict indeed for these very harsh punishments, which traditional scholars state are intended rarely to be executed, and are affirmed as being more a social deterrent
- *qisas* – tort for injury and murder, the *lex talionis* ; in these cases the right lies with the injured victim or family of the murdered victim to determine whether 1) to exact retaliation in kind 2) to accept *diya* “blood money” compensation, or 3) *kaffara* “forgiveness, expiation”
- *ta'zir* – discretionary punishment at the judgement of the jurist (eg. fine or imprisonment), which may never be a capital penalty

A Verse in The Heifer on the *Lex Talionis*

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ
بِالْعَبْدِ وَالْأُنثَى بِالْأُنثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ
إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنْ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ
أَلِيمٌ 178

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ 179

‘O you who believe! The law of equality is prescribed to you in cases of murder – the free for the free, the slave for the slave, the female for the female; but if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude; this is a concession and a Mercy from your Lord. After this, whoever exceeds the limits shall be in grave penalty. 178

In the Law of Equality there is life to you, O you men of understanding; that you may restrain yourselves.’ 179 *The Heifer (Quran 2) 178-179*

Some Questions for Islamic Law

- What is the relation between pre-Islamic tribal custom and the writ of Islamic law, since the two continue to exist side by side? According to the classical commentaries, the purpose of *qisas* the *lex talionis* was to end the blood vendettas between tribes, and the bloody tit for tat escalation thereby (eg. “for killing one son of my tribe I want the life of ten *sharifs* of yours”). But the tribal law still has primacy among tribes in the Arabian Peninsula and Yemen, in Pakistan, Afghanistan
- Is the Qur’anic *hadd* prohibition on drinking of *khamr* “grape wine” applicable to date wine *nabidh* “date wine” and to chewing *qat*, smoking and other traditional Arab or African intoxicants? Many local legal authorities in tribal areas say not. Given the clear scriptural context in the Qur’an for prohibition of wine and gambling (divining with arrows) for reason of their being harmful, is this not a case of pre-Islamic tribal custom and local practice overriding Islamic analogous legal reasoning?
- The Qur’an only explicitly mentions confinement as the *hadd* punishment for *zina* “extra-marital sexual intercourse” – why then is the hadith of the Prophet ordering the stoning of Jewish adulterers according to the law of the Torah, used to establish the law of stoning of adulterers (offenders who are married and *muhsan* “fortified”) in Islamic law (fornication by unmarried offenders continues to be punished with flogging and confinement)? Does this not blasphemously override the Qur’an?
- Jews and Christians are entitled to be governed by their own religious laws. How far does this extend in practice? How much has *halakha* been a source of Islamic *fiqh* ?

Summary

- The concept of the divinely revealed Scripture being the source of God's eternal and sacred law which governs all facets of personal and social conduct. The imperative to “enjoin what is right and forbid what is wrong, and believe in God”.
- The concept of *shari'a* as the primary source texts of God's Law, and its relationship to *fiqh* as secondary jurisprudence and jurispraxis
- The intimate relationship between the two interpretative sciences of *fiqh* and *tafsir* and their mutuality with respect to use of the Qur'an and use of the oral hadith tradition as an interpretative tool
- Qur'anic and extra-Qur'anic principles being brought to bear in the formulation of the three categories of punishment under Islamic law – *hadd* “defined Qur'anic edict”, *qisas* “lex talionis” and *ta'zir* “discretionary punishment”
- Tribal, cultural and customary influences shaping Islamic law, and thereby the exegesis by Muslims of their most sacred Scriptures