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What is Sharia?

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The same religion has He established for you as that which He enjoined on Noah - the which We have sent by inspiration to thee - and that which We enjoined on Abraham, Moses, and Jesus: Namely, that ye should remain steadfast in religion, and make no divisions therein: To those who worship other than God, hard is the way to which thou callest them.

God chooses to Himself those whom He pleases, and guides to Himself those who turn to Him.

(Koran, chapter: Consultation, 42, 13, translated by A.Y. Ali)

The Archbishop of Canterbury, in his historic lecture at the Royal Courts of Justice last week, referred to "Abrahamic" verses such as the above, where "establishment" (Arabic: shar') of religion refers to the essence of all religion: the love and worship of the Divine. Related words, pregnant with meaning, are shari', meaning both "lawgiver" and "road" (road signs in the Arab world proclaim a shari' at every corner), and shari'a, a path or way; in classical Arabic this particularly meant a path to water in the desert and hence the Sacred Law of Islam, the moral code and ethical path to God, who alone quenches all thirst with mercy.

The Sharia is based on both universal and specific texts, principles and judgments from the Koran and the Sunnah, the example of the Prophet, peace be upon him. Far from being set in stone, the problem of specifically applying universal principles in Sacred Law has led to a vigorous debate throughout Islamic history and the complex evolution of an extremely diverse body of legal schools and opinions. Within three centuries of the founding of Islam, there were dozens of legal schools, of which about seven remain influential across the Islamic world, both Sunni and Shia. An important early debate that continues today was between traditionalists and rationalists over whether the universal principles of God's law were to be known by revelation or reason, or both. The four main areas covered by classical Sharia were: ibadat (ritual worship), mu'amalat (economics), munakahat (marriage, divorce and family) and jinayat (crime and punishment).

A significant development in Islamic law between the 11th and 14th centuries CE was the approach to legal purpose known as the Maqasid theory. Imam Ghazzali (died 1111) argued from a holistic reading of the Koran that the purpose of Sharia was fundamentally to preserve five matters: faith, life, wealth, intellect and family. This development occurred six centuries before John Locke's articulation of a similar approach to law in England. Over the next three centuries after Ghazzali, theologians such as Ibn Taymiyyah added a number of other "fundamental purposes" of law: preservation of reputations, neighbourhoods and communities; fulfilment of contracts; moral purity; trustworthiness; the love of God. The culmination of this theory came with Shatibi (of Jativa, Andalusia, died 1388), who explicitly synthesised traditionalist and rationalist approaches. But Islamic legal theory and practice, once centuries ahead of other civilisations, fell into relative decline for the next half-millennium.

The last century of Islamic legal thinking carries more hope, however. Recent thinkers such as Tariq Ramadan in Europe and Hashim Kamali in Malaysia have suggested that the following are "legal purposes" that must be protected and promoted by Sharia: fundamental human rights and liberties; public welfare; education; scientific and medical research; the environment.

Anyone familiar with this rich history of Sharia is left bemused by the ignorant and prejudiced notions that often dominate debates about it, especially the strange assumption that the last of the Abrahamic faiths has values that are somehow radically different from those of Judaism or Christianity.

Returning to the Archbishop's lecture, I'd like to illustrate one of his key points, that of cultural and faith loyalties, with the example of marriage. Many people in this country, perhaps the majority, will not be too excited about a register-office wedding, but would love to have their dream wedding in a church, mosque, synagogue or temple. It is only right and proper that the law of the land recognises all such marriages. Over the past few years mosques have finally begun to be registered as public buildings suitable for the solemnisation of marriages.

Within the past decade an aspect of Jewish divorce law was accommodated within UK civil law to protect the rights of Jewish women after lobbying by the Beths Din. An exactly analogous situation exists with Muslim women and Sharia councils, and this disparity between Jewish and Muslim communities must be rectified. Because the principles of marriage and divorce are very similar in Sharia and English law, one procedure should cover both legal systems. In the end, I do not believe in a distinction between the civil and religious, the secular and sacred, because we are always in the Divine Presence, and “to God do all matters return”.

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