

## Islam, law and finance: the elusive divine

By Fred Halliday,  
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A controversy over the relationship of what is termed *sharia* or "Islamic law" to wider legal systems was ignited on 7 February 2008 from an unlikely source: an academic lecture by the spiritual head of England's established church. The Archbishop of Canterbury's [address](#) [1] explored the landscape of "plural jurisdiction" in Britain and considered with sympathy "what degree of accommodation the law of the land can and should give to minority communities with their own strongly entrenched legal and moral codes".

The message conveyed from a text replete with caveats and circumlocutions was (in the words of Rowan Williams's preceding BBC [radio interview](#) [2]) that "as a matter of fact certain provisions of *sharia* are already recognised" in society and law, and that their application is "unavoidable".

The media furore that has ensued is as predictable as it is founded on widespread ignorance of the ostensible substance of the argument (see Tina Beattie, "[Rowan Williams and sharia law](#) [5]", 12 February 2008). In this it is part of a wider pattern whereby news stories about aspects of "Islamic" activity and social practice - "Islamic law" or "Islamic banking" or "Islamic dress", for example - come to prominence and are circulated without a proper examination of the provenance and meaning of these terms.

In many European countries in particular (the Netherlands, France, Denmark and Germany, as well as Britain) "Islam"-related issues connected to the veil, medical hygiene, or religious imagery become the trigger for entrenching opinion, drawing battle-lines and fomenting indignation. If the pattern is to be broken and a more constructive form of public discourse conducted, it can only be done by informed reason, including historical and linguistic clarification.

### The mirage of fixity

A vital step is to note what lies beneath the surface of controversy and what is seldom taken into account. In this case, to pose the question as being in favour of or opposed to something called "Islamic law" is to start from the wrong place. The assumption of both sides of the argument is that *sharia* - for it or against it - is a given text, a code available in set form to which jurists and believers may or may not relate.

This assumption of fixity is, on closer examination, on three accounts quite false. First, "Islamic" law - or more properly, legal practice in the fifty-seven Muslim countries - is, like any other

Also in **openDemocracy** on the *sharia* controversy in Britain:

Tina Beattie, "[Rowan Williams and sharia law](#) [2]" (12 February 2008)

[OurKingdom](#) [3], the conversation on the future of the United Kingdom, features posts and debate about the *sharia* controversy [here](#) [4] and [here](#) [5]

system, plural and multivocal: the result of centuries of inherited practice and precedent, allowing of many different interpretations. There is no fixed legal code [6], and never has been.

Second, the interpretation of law, and the selection of which precedents or past cases to invoke - including which bits of a supposedly sacred text to use - are a function of contemporary power relations (whether of class, state or religious establishment).

Third, and most important of all, the very term so often fought over - *sharia* - is a misnomer; for it is not a legal or sacred code at all, but a political slogan and modern invention of 19th-century neo-Wahhabi reformers. In fact, *sharia* is no more specific than the terms "British way of life" or "the Italian way" or "American values". The scholarly authority Aziz al-Azmeh [7] has noted that *sharia* is more akin to generic terms like *nomos* or *dharma*: it cannot serve as the basis for any decisions on legal codes or practices.

## The paper trail

What do the texts say? The Qur'an [8], the only part of the Muslim tradition that is divinely sanctioned, contains around 6,000 verses, of which less than a hundred are concerned with matters of a legal nature; nearly all relate to personal and family matters. In no way can this legacy, supposedly immutable and definitive, form the basis for a modern legal code. The word *sharia* occurs only four times in the Qur'an; it denominates, in a general way, "the right path" (indeed each community, be it Muslim, Jewish or Christian is to have its own such "path").

A common confusion is made between sharia [13] and *fiqh* (Islamic jurisprudence) - the corpus [14] of law which has arisen over centuries and which forms the basis for law in many Muslim countries, and is obliged like any modern legal system to pronounce on all matters, from the personal to the commercial. This is not divinely sanctioned. Indeed the only parts of Islam that have such sanction are classified as *deen* (religion).

*Fiqh*, therefore, is a system of conventional law, without divine sanction, and allowing of many interpretations. Beyond the fact that the *Sunni* world has four main schools of *fiqh* - Maleki, Shafei, Hanbali, Hanafi - each reflecting developments in medieval Islamic society and politics, the *Shi'a* have their own, distinct, system. Where the confusion has arisen - and where both Islamic fundamentalists and well-meaning but ill-informed western observers like the Canterbury archbishop have contributed to the problem - is in pretending that there is one single legal text (*sharia*) and that this supposedly univocal code carries divine authority. Nothing could be further from the truth.

## The interest at stake

A similar ideological slippage, and abandonment of a comparative common sense, arise in regard to the issue of Islamic "economic principles" and in particular of "Islamic banking". A dose of economic realism, and firsthand knowledge of the region, may also help to dispel some of the effusions that have been circulated in recent years about a supposedly different basis for conducting economic life in the Muslim world

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Fred Halliday's "global politics" column on **openDemocracy** surveys the national histories, geopolitical currents, and dominant ideas across the world. The recent articles include:

"A 2007 warning: the twelve worst ideas in the world [11]" (8 January 2007)

(from the "Islamic economics" of the Iranian revolution, to the current vogue [15] for "Islamic banking"). These fashions reveal - as much as do the straight exercise of political power or the subjugation of women - the way that supposedly religious or cultural values are used to rebrand or disguise what are on closer examination universal forms of resource- and power-manipulation.

The Iranian revolution of 1979 [16] proclaimed a new set of "Islamic economic principles", based on some vague extrapolation of the principle of *zakat* (charity), one of the five duties of the Muslim. It succeeded, however, only in creating a perfectly recognisable ramshackle rentier economy, laced with corruption and inefficiency; in short, a conventional product of "development" in what was known as the "third world", and little different from its oil-producing counterparts Nigeria, Venezuela [16] and Indonesia.

The resurgence of "Islamic banking [17]" - a practice and idea that has spread from Malaysia to Turkey, Egypt and the Gulf - is now expected to account for assets reaching \$1 trillion by the year 2010. Such western institutions as HSBC, Dow Jones, Citibank, BNP Paris and others have all signed up to this parade of corporate piety. The financial press of the middle east is full of articles concerned about the shortage of "experts" and "appropriately qualified scholars" in Islamic finance. But all this needs to be taken with a pinch of salt, good secular salt at that. Anyone who has studied the economic history of the Muslim world - from the trading activities of the Prophet Mohammed [17] in Mecca and Medina in the 7th century to the banks and finance houses of the Arab Gulf today - will know that business is conducted as it is everywhere on sound capitalist principles.

There is no basis for the supposed textual or canonical theory of "Islamic banking". The late Maxime Rodinson [17] - the greatest authority on this matter - showed in his great work *Islam and Capitalism* that there is, in fact, no Qur'anic or authoritative prohibition on the taking of interest; there is only (as in most religions) a condemnation of *riba'* (excess, or profiteering). Muslim writers have long differed on what *riba'* means; some confine it to profiteering in essentials like foodstuffs.

Nor, in the end, do the supposedly "Islamic" banks of today provide a fundamentally different service. They do two things: first, offer a degree of local affiliation or allegiance to investors (much as does in principle the Bradford & Bingley building society, or the Chase Manhattan bank); second, serve as a more friendly recipient for investors with cash (especially in the sense of asking fewer questions about the origin of the funds than do - in this era of client identification and post-9/11 controls - many other financial institutions in the west). Islamic banking is capitalist banking with a different cover [18]: a way in the end to ensure that more money - whether it comes from the exports of the oil producers, drugs production in Afghanistan, or the hard-earned toil of minimum-wage service-workers in Europe's cities - is put into circulation. It is, as the British ambassador to one Gulf state put it to me, "a means of getting the money out from underneath the bed". Its relation to tradition, sanctity, the Qur'an and all that is purely presentational.

Moreover, the supposedly compulsory ban on profiteering does not apply when interests of state are involved: if Islamic authority and what is often misleadingly called "*sharia*" prohibit excess profits, then where are the voices of criticism when it comes to exorbitant and (in terms of production costs) wholly unjustified increases in the price of oil? If ever there was a case of *riba'*, one to which all Islamic oil producers subscribe, it is the rent that Opec (and its free-riders like Russia) extract from the sale of oil. Here, as in so many other matters, it is religious text and tradition that serve capital (when not greed) and not the other way around.

## **The fist of "tradition"**

Much of the controversy about Islamic law, as in the current British uproar over the remarks of the [Archbishop of Canterbury](#) [19], leads those proposing a compromise with *sharia* to allow "some" elements of it, but to condemn its "inhuman" or "barbarous" (to cite two familiar adjectives of choice) side such as stoning, or denial of the legal equality of women. But this is not the fundamental issue, which is respect for tradition itself (and, a closely related factor, the official obsequiousness towards bearded patriarchs of all religions who today claim to own and be able to interpret it).

The supposed authority of Islamic text and tradition is the greatest of all fallacies underlying this moving theatre of Islamic banking and finance, as of the misconceived [debate](#) [20] on *sharia*. Similar sleights of authoritarian hand occur in Judaism and Christianity, in regard to such issues as the status of women, the rights of gays, and the celibacy of the clergy. A lot of forgetting is necessary to uphold reverence for such traditions, which are based often on medieval practice (e.g. the principle of a celibate clergy must suppress the fact that St Peter and many of his successors were married).

In any event, the reverence for tradition is only the other side of power-interests seeking expression and consolidation. The word "tradition" should alert a person to the very modern forces it connotes, and often conceals.

[Sharia: practice of faith, politics of modernity](#) [22]  
from **openDemocracy** on Fri, 2008-02-22 18:45

The furore in Britain over the Archbishop of Canterbury's cautious references to the sharia and law in his lecture in London on 7 February 2008 has been extensively discussed by a number of openDemocracy writers and from a variety of perspectives: am

[Multicultural citizenship and the anti-sharia storm](#) [23]  
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An intense public debate and media controversy was triggered in Britain after a lecture delivered by the Archbishop of Canterbury - the spiritual head of the Church of England - on 7 February 2008. The speech - entitled "Civil and Religious Law in E

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The response to the Archbishop of Canterbury's lecture on 7 February 2008, "Civil and Religious Law in England: a Religious Perspective", has included discussion of the character of the "sharia" that formed an important part of t

[Multicultural citizenship and the anti-sharia storm](#) [25]  
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