

Sous la direction de  
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## Behold the Jurists! The Indispensable Interpreters of God in Islam

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The Andalusian jurist al-Shatibi (d. 1388) once wrote in his *Reconciliation of the Principles of Jurisprudence*:

“In instituting the commandments about social customs and religious practices, the Lawgiver has original objectives and derivative objectives. [...] Some of them are explicitly stated in revealed text, some are alluded to, while others are to be inferred by some evidence or method from revealed text. For what God revealed about these derivative objectives is meant to confirm the original objectives. [...] Therefore, we deduce from this the proof that whatever is not explicitly stated in revealed text but can be arrived at by inference is intended by the Lawgiver [...]” (al-Shatibi, Vol. 2, p. 396-397).

From these words of al-Shatibi, one reasons that God revealed two types of knowledge, which were meant to govern all aspects of human existence: one type communicated in clear language and another type in coded language thus requiring rational inquiry to decipher it.

This view is very widespread in classical Islamic thought and was adopted by most jurists. Its implication is that it makes the jurists the spokespersons for God, delegating to them the authority to interpret God’s speech because it is they who actually decide on the basis of theological tenets and hermeneutical tools which part of God’s speech is clear and which part is not and must be verified by interpretation. As such, classical jurists have been able to actively shape Islamic law by imposing their authority over all of revelation (including the Qur’an and Sunna), rather than passively follow what revealed sources literally say, as some believe today.

To return to the text of al-Shatibi quoted above, it seems rather clear to him that God’s commandments – which constitute the

elements of Shari'a as a legal system that touches all aspects of life – are not always stated, and even those stated are not always clear. It is this assumption that invited the classical jurist to impose himself as the “interpreter” of God, thus capable to determine what God “actually” meant and what is missing from God’s communication, either by examining the existing texts of revelation, by looking elsewhere to other signs, or by rational inquiry. The purpose of Shari'a, al-Shatibi argued, is to restrain the individuals from the tendency to do what is forbidden (al-Shatibi, Vol. 2, p. 109), and motivate them to worship and serve God out of volition and not only compulsion (al-Shatibi, Vol. 2, p. 168). Therefore, the believers must have the capacity to fulfill the law, and to have such a capacity, the law must be possible to fulfill and should not cause severe hardship (al-Shatibi, Vol. 2, p. 119-123). It is here that the jurist finds his calling. Without him, God’s law is flawed, and a flawed law is a danger to the believers.

That many Muslim jurists imposed their authority over God is not independent of the historical contexts in which they operated. They generally believed the purpose of the law is to relate to the conditions of people, and it is therefore a great injustice to force believers to comply with the same rules irrespective of times and conditions (climate and geography, physical and mental capacity, age, etc.). Therefore, the law requires regular reexamination in order to assure that it is understood properly, and that previous jurists did not miss anything. After all, only God knows everything, and scholars can attain some of his knowledge but never all of it.

The way to decipher God’s language and his Shari'a is by attaining expertise in the necessary fields, especially language and history. For example, the Mu'tazila theologian and Hanafi jurist al-Hakim al-Jishumi (d. 1102) contended that interpreting the Qur'an is the “most noble of the religious sciences” (al-Jishumi, in Mourad, p. 389), and it is a “binding religious obligation” to explain the Qur'an to the people so that they can follow its commands and find salvation (al-Jishumi, in Mourad, p. 393). In other words, without the exegete, Muslims will never understand God’s Shari'a, let alone put it into proper application, and are therefore ruined. It is also relevant to point here that the Mu'tazila believed for Shari'a to make sense, people must possess free will, otherwise the rewards and punishments would be absurd. But how can the exegetes properly interpret the Qur'an and

by extension God's Shari'a? Al-Jushami argued that the exegete must have expertise in the readings and orthography of the Qur'an, Arabic lexicology and syntax, history (including the occasions of revelation of verses), and jurisprudence. He left out something crucial, namely the theological tenets that determine what is acceptable and what is not acceptable. In other words, for a meaning to be acceptable, it must accord with the theological tenets of the Mu'tazila. Otherwise, God could not have meant it.

Al-Tha'labi (d. 1035), who was a very influential Sunni exegete and ideologically opposed to the Mu'tazila, said exactly the same thing about interpreting each verse of the Qur'an:

“Interpretation unveils the logic for its place in the text, its purpose, its story, its meaning and the reasons for which it was revealed. [...] Exegesis, on the other hand, [...] seeks to find all plausible meanings for a verse and scholars are not prohibited to discern them and argue their views, except that they must take the Book and the Sunna as guide” (al-Tha'labi, Vol. 1, p. 17-18).

Thus, the Qur'an can have multiple sanctioned meanings as long as they adhere to the general tone of the Qur'an and Sunna. But who determines that? It is the exegete, based on the presuppositions of his school, for there is no theological unity among Muslims or a set of standards on which they all agree.

The views expressed by al-Shatibi, al-Tha'labi and al-Jishumi were also echoed by earlier jurists. Al-Shafi'i (d. 820) – the eponym of the Sunni Shafi'i school – was one of the most influential early Muslim jurists and authored the first manual of Islamic jurisprudence. He classified knowledge into two types: one type of knowledge must be taken as is. It is attainable by any person of sound mind who has reached maturity. The second type of knowledge requires interpretation and is grasped by analogy. This second type of knowledge the public does not have access to it. Only those of select mind can attain it, and as long as some among them do so, the rest are not required to know it (al-Shafi'i, p. 258-261).

Al-Shafi'i elucidated these two types by giving the example of the commandments about jihad. He said that “God imposed the obligation of jihad in his Book and by means of his Prophet” which is confirmed in many verses such as verse 9.111: “God has bought from the believers

their persons and their possessions for a price that Paradise will be theirs. They will fight in God's way and will kill and be killed [...]"

Therefore, it is possible, al-Shafi'i argued, that jihad is an obligatory individual duty, like prayer, that every person must fulfil and no one can do it on behalf of another. But he then reversed himself and contended that jihad is actually a "communal duty" and God "intended for the obligation to be undertaken by a sufficient number of people" in order for the rest not to fall in sin (al-Shafi'i, p. 262-263). One concludes that the second type of knowledge requires a class of scholars to discern it in order for society to follow the law correctly and not be doomed.

For Shi'is, this type of scholars is rather well defined. They are the Imams (a specific lineage that traces its origin to prophet Muhammad and fourth caliph 'Ali who was one of Muhammad's sons-in-law). Al-Qadi al-Nu'man (d. 974), chief-judge of Egypt under the early Shi'i Fatimid caliphs, alleged that:

"God revealed his Book, gathered together in it all the religious obligations that he imposed on the worshipers, clarified in it that which he saw fit to clarify, and left ambiguous in it that which he saw fit to leave ambiguous. He did this in order to compel the worshipers thereby to need those whom he made superior to them and obedience to whom he imposed as an obligation of the faith, and in order to guide them to the Imams. He taught the Imams exclusively knowledge of the religion, and caused the believers to need the Imams in that regard" (al-Qadi al-Nu'man, p. 44-45).

Thus, according to al-Qadi al-Nu'man, only the Imam knows God's law, including the commandments stipulated in the Qur'an, the clear therein and the coded. Only he can explain it to the believers, and the world cannot exist without an Imam. It is therefore not a surprise that Shi'ism requires as condition of faith the belief in the divine role of the Imams. In the words of the Twelver-Shi'i theologian and jurist al-Nawbakhti (d. between 912 and 922), the absence of Imam (called the Proof of God) is synonymous with the absence of law:

"If there were only two people on earth, one of them must be the Proof of God so that God's command would persist. If one of them died, the one who survived would be the Proof so that God's commands and prohibitions would continue to be maintained in his creation" (al-Nawbakhti, p. 90).



This religious authority and centrality that the Shi'is invested in their Imams, other Muslims who later became known as Sunnis assigned it to the caliph, whom they also called imams. But starting in the eighth century, the religious authority of the caliph started to fade and the members of the scholarly community (*ulama*) were able to take it over. They became gatekeepers of Shari'a and the religious sciences. But aside from the claim that they, based on expertise and learning, were better qualified to interpret God's commandments and messages, they disagreed as to the way their authority was to be defined, on what sources it ought to be based, and what were its limits.

Some, like al-Jishumi mentioned above, took their cue from verse 3.7, which proclaims:

"It is he who sent down the Book upon you. In it are verses precise in meaning: they are the essence of the Book. Others are ambiguous. [...] none knows its interpretation save God and those deeply rooted in knowledge. They say: 'We believe in it. All is from our lord.' Yet none remembers save those possessed of minds".

Al-Jishumi contended that this verse "shows that truth is attained by rational inquiry" and God specifically intended the *deeply rooted in knowledge* "because they are under obligation" to interpret the Qur'an because they alone can decipher its meaning (al-Jishumi, in Mourad, p. 393).

The famous Andalusian philosopher and Maliki jurist Ibn Rushd (Averroes) reached the same conclusion as that of al-Jishumi. He commented on verse 3.7 in this way:

"If the people of knowledge do not know interpretation, they would not possess a valid distinction that affirms their qualification as believing in it (revelation) and which is different from those who are not people of knowledge. But God already described them as believers in it and that means belief based on proof, which is only possible by way of the knowledge of interpretation" (Ibn Rushd, p. 101-102).

Ibn Rushd essentially contended that it would be absurd for God to describe a group as *deeply rooted in knowledge* if their knowledge is not different from that attained by the general public, and if it does not help them to decipher the meaning of the Qur'an. This led him

to identify people and their ability to understand Shari'a according to three categories: People of Rhetoric (not adept at interpretation), dialecticians (adept at dialectical interpretation) and philosophers (adept at conclusive interpretation) (Ibn Rushd, p. 118).

Ibn Rushd believed conclusive interpretation disproves the validity of the literal, thus undermining the premises that sustain the faith of literalists and dialecticians. It should not be made accessible to the first two categories because they cannot grasp it and exposing them to it leads them to disbelief; anyone who conveys to them conclusive interpretations is therefore an unbeliever (Ibn Rushd, p. 119). Thus, for him, the books that contain the demonstrations should be concealed from the public and only made accessible to those skilled at conclusive interpretation. The general public must take God's commandments according to their apparent meaning (Ibn Rushd, p. 113).

We clearly see here Ibn Rushd's disagreement with other jurists as to whether or not their knowledge is to be shared with the public. But the question that begs itself is the following: is all legal knowledge subject to conclusive interpretation? Ibn Rushd says that all legal knowledge is subject to conclusive interpretation except the type of legal knowledge about which there is consensus among scholars, and the consensus is reached on the basis of conclusive certainty. Everything else, where there is lack of consensus or consensus derives from opinion, those skilled at conclusive interpretation must use it to reach answers, all of which are valid (Ibn Rushd, p. 99).

One infers from Ibn Rushd and the other jurists that the inquiry into the law is not an exercise to determine a unique and harmonious legal system and statutes. It is rather a process to determine all plausible laws. Furthermore, there is a law that is based on literalism which is for the general public and another law reached by conclusive interpretation and there is disagreement as to whether the latter is to be shared with the public.

One might argue that all language is like this: clear and not clear. This is correct, except that the jurists used this evident fact to bring Shari'a out of God's authority and under theirs. In other words, only they can tell us what God really says.

### Sources of Law

Despite the general accord among jurists that they were designated by God to be interpreters of his law, they sharply disagreed regarding the sources that help them achieve such a mandate and define its perimeters. Here we cross into the debate over textual vs. human authority and reason vs. revelation, which impacted many fields, especially law. Muslim scholars disagreed on the role and limits of reason and revelation and over the permissibility of human authority given revealed texts. It was not binarism, but rather a myriad of views between these poles. For instance, many orthopraxic Sunnis (i.e., those who defined Islam as primarily concerned with right acts) argued for the exclusivity of revelation as the only sources of communication between God and humans. Anything outside revelation is unacceptable, and the jurists must therefore limit themselves to working within the Qur'an and the Sunna, both of which originated from God (they were creative though in carving a role for the jurist to be God's interpreter).

Shi'is, however, focused on orthodoxy (defining Islam as first and foremost about right beliefs) and allowed human authority (i.e., the Imams) to complement or supplant revealed texts. They also divided over the function of reason, between those who rejected it, those who accepted it with some limits, and those who accepted it without limits. Orthodoxic Sunnis as well divided over the role of reason, with some like al-Ash'ari (d. 935) and most of his followers who generally insisted that orthodoxy is to be exclusively based on Qur'an and Sunna, whereas some later Ash'aris – such as al-Ghazali (d. 1111) and al-Razi (d. 1209) – argued that Qur'an, Sunna and reason must be all deployed in order to determine orthodoxy. We also have the pure rationalists – like Ibn Sina/Avicenna (d. 1037) and Ibn Rushd – who argued that revelation is for those unable to attain the divine source they called “active intellect” which is the same fountain that informs prophets. For them, textual sources, such as the Qur'an and Sunna, are redundant.

Moreover, for most jurists, jurisprudence was contextualized either in theology or in philosophy. Therefore, despite the common agreement that God needs them as interpreters, they did not agree on the principles and hermeneutical tools that they should apply to interpret God's law.



An example of differences is the notion of analogy, which applies the legal rule of a case to something similar (although jurists disagreed on the definition of similarity). Some schools rejected analogy.

There was also disagreement as to how the Qur'an and Sunna function together and if other concepts and tools must be introduced alongside them in order to harmonize them and further determine God's commands. The Shafi'is, for instance, alleged that God "only abrogates things in the Book by means of the Book, and that Prophetic Practice does not abrogate the Book" and that the "Book of God is not abrogated except by His Book" (al-Shafi'i, p. 80-83). They also allowed consensus, analogy, and systematic reasoning as further sources and tools to define and determine the law. That they upheld the view that Sunna cannot contradict the Qur'an as seen in the quotes above or that nothing is allowed to contradict clear text in the Qur'an and Sunna (al-Shafi'i, p. 324-325) should not be given much credibility because they actually did allow silencing the voice of the Qur'an either by ignoring it or by introducing hermeneutical tools that, for example, label the verses of the Qur'an as general and the hadiths of Muhammad as specific. For instance, the Qur'an stipulates that the Muslim should pray three times (verse 11.114) whereas all schools of Islamic law, including the Shafi'is, say that Muslims should pray five times, which is based on Sunna. So how come this is not a problem for the Shafi'is who alleged that the Sunna is not allowed to contradict the Qur'an? Their answer is that the Qur'an is not actually specifying the number of prayers. It is addressing the prayers in a very general way, whereas the Sunna is specifying them, as in these words: "God imposed the obligation to pray [...] and then God's Emissary explained how to perform the prayer, how many times to do it, its appointed times, and the rites associated with it" (al-Shafi'i, p. 164-165).

This tendency is actually generalized to all types of legislative statements:

"Another type of legislative statement includes those matters the obligations of which he has affirmed in his Book and then explained how they are to be performed through the words of his Prophet, like the number of prayers, alms and the times when they fall due, and other obligations that he has revealed in his Book" (al-Shafi'i, p. 14-15).

Similarly, the Qur'an allows pleasure marriage (verse 4.24) whereas it is prohibited by Sunnis because the Prophet banned it (al-Shafi'i, p. 252-253), although it was likely the second caliph 'Umar who banned it (Ibn Hazm, Vol. 5, p. 73-74). Here we have a caliph's word prevailing over the Qur'an. A third example is about the punishment for adultery, which in the Qur'an is 100 lashes (verse 24.2) whereas Islamic law generally mandates stoning, a rule based on Sunna (al-Shafi'i, p. 86-87 and 102-103). Therefore, one might take a cue from al-Shafi'i and say that his contention that nothing abrogates the Qur'an except the Qur'an belongs to the second kind of knowledge that requires a jurist to decipher its true meaning which is different from its literal sense.

The Malikis, like al-Shatibi and Ibn Rushd, take the practices of the early Muslim communities in Medina as a third foundational source, on equal par with the Qur'an and Hadith. Therefore, they look at Islam "in practice" over a period of two generations, which they consider as reflective of the ideal Muslim society.

### Modernity

The creativity on the part of Muslim jurists to carve for themselves an indispensable role in defining and manipulating God's words and by extension his Shari'a, as we have seen above, is still practiced in the modern period. The pressures of Modernity made the renewing of Shari'a an absolute necessity. One only needs to observe the proliferation of the phenomenon of *fatwa* (legal opinion), which if it demonstrates anything is that Muslims generally do not know or understand their Shari'a and seek clarity from specialists (sometimes self-proclaimed ones) to rule on matters already decided in Shari'a. The irony is that a *fatwa* is supposed to address controversial issues or *lacunae* in the law, not a restatement of a rule. Nevertheless, what we find with many modern jurists is exactly the same old efforts to fine-tune Shari'a to the changing cultures. The words of the renowned Shi'i scholar Muhammad Husayn Fadlallah (d. 2010) sum up this point:

"It is not a condition to require that the Guide must be the most knowledgeable, for it is legal to follow another Guide who is less knowledgeable even if the most knowledgeable is available, although it is better to follow such a person if he exists. The most knowledgeable

is the most competent to decipher than others, and that is because he is more capable and skilled in the understanding of the Qur'an and Sunna and deducing judgments from them according to the rules of the Arabic language. He is also more precise in pursuing the science of the principles of law and its application, and more grasping of the spirit of Islam in his judgments and deciphered matters" (Fadlallah, p. 9).

Fadlallah admitted that even though the most knowledgeable jurist can understand Islam and explain it to people better than any other jurist, he nevertheless accepted that a jurist who has attained the level of Guide (*marja' taqlid* – lit., a guide to be emulated) has the right to explain Shari'a to people so that they could practice Islam according to his teachings.

Similarly, Subhi al-Salih (d. 1986), who was one of the most influential Sunni jurists in the Arab world and president of the Islamic High Council in Lebanon, proclaimed that what motivated him to write his book – *The Features of Islamic Shari'a* – was to "free" Shari'a "from complex issues" and bring it "in line with the spirit of the age" (al-Salih, p. 5). He opened the introduction with the following words:

"This Shari'a is immaculate from the eternal beginning and perpetually renewed. The Salafi renewer Ibn Qayyim al-Jawziyya recognized its spirit when he wrote saying: 'Shari'a is built and founded on wisdom and the benefits of creation in life and afterlife, for it is all justice, mercy, benefits and providence'" (al-Salih, p. 7).

Two things stand out in the words of al-Salih. His admission that Shari'a is immaculate from the beginning and always in need of renewing. If this means anything, it is that for Shari'a to remain always right it needs to be always renewed. To be renewed, it needs renewers, hence the indispensable jurists.

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