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A brief examination of the sources of Shariah Law.[Unpublished Work].

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Practicing Muslims believe in the fundamentals of Islam and live in accordance to its teachings(Al-Islam.org, no date). To fulfil these obligations, Muslims refer to Shariah law. Shariah(or Islamic law)is linguistically defined as a clear course or way(McMillen,2008). From a legal perspective, Shariah is defined as ‘God’s Law’, which encompasses and lays down the total code of conduct in Islam. The Shariah then, enlightens Muslims on the ideal path that they should follow(Quraishi-Landes,2015). The Quran legitimizes the use of Shariah by stating, “*To each among you, We have prescribed a law and a clear way.*”(The Qur’an, 5:48). Shariah law is derived from four sources in Islam. The primary sources are: the Quran and the Sunnah, and the secondary sources are: Consensus(*ijmaa*)and Analogical Deduction(*Qiyaas*). The sources of Shariah law are used in order, where if one source fails to provide a direct solution to a problem, the subsequent one is used(Alarefi, 2009). This essay will examine the different sources of Shariah law.

The Quran, meaning to recite(Aslan,2008), forms the ultimate basis of Shariah(Makdisi, 1986). It is deemed to be the collection of inimitable verses revealed by God to Prophet Muhammad during 7th century Arabia(Ali,2011). As the Quran notes “*And indeed, the Qur’an is the revelation of the Lord of the worlds.*”(The Qur’an, 26:192). The Quran is comprised of a total of 6,239 verses in which 500 of them contain legal content. The legal verses concern family and inheritance laws, criminal laws, obligation and contract laws and procedure(Alarefi, 2009). Legal principles derived from the Quran are given the highest ranking in the corpus juris of Shariah law(ibid). This is because every word in the Quran is considered to be divine in Islam. Therefore, legal verses cannot be challenged by Islamic scholars or revised by rulings understood from the succeeding sources of Shariah law(Rehman, 2007). For instance, the Shariah forbids Muslims from consuming pork unless one is forced by necessity(Stacey,2009). This law is in direct accordance to the explicit legal verse in the Quran that states: “*He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit] - then indeed, Allah is Forgiving and Merciful.*” (The Qur’an 16:115).

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The Quran's scripture contains verses that instruct and require Muslims to undertake specific deeds and behave in a certain manner. However, these verses are sometimes difficult to understand in isolation and the reader may require additional insight to fully comprehend the message. For instance, the Quran commands Muslims to perform the Hajj and 'Umrah in the following verse: *"And complete the Hajj and 'umrah for Allah..."* (The Qur'an 2:196) though as shown, the Quran does not explain how one must perform these rites. Therefore the second primary source, The Sunnah, is required to clarify the details of worship(Duderija, 2012).

Lastly, it is important to note that the authenticity of the Quran has faced wide criticisms from a number of academics. For instance, Dr Puin of the Saarland University states that the Quran contains shorter forms of biblical stories and as such, is merely a summary of the Bible. On the contrary, Orthodox Muslims argue that the integrity of the Quran is not threatened by similar traditions that exist within the Bible. Instead, they indicate that the Quran was revealed to confirm the past scriptures and to provide further guidance and rulings that make up Shariah law(Taher, 2000). As the following verse states: *"And We have revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it"*(The Qur'an 5:48). Therefore, evidence suggests that the Quran is a unique book that is not only revered by Muslims, but also serves as a foundation for which the Shariah law is built upon.

The Sunnah is the second primary source of Shariah Law and is defined as the recorded statements and actions of Prophet Muhammad. The Prophetic traditions are collected under the six hadith books in Sunni Islam(Yamani,1980). The authority of the Prophet's practices as a tool for Islamic law has been legitimized several times in the Quran. For example, Allah revealed: *"[We sent them] with clear proofs and written ordinances. And We revealed to you the message that you may make clear to the people what was sent down to them and that they might give thought."*(The Qur'an 16:44).

The Hadith (collections of the Sunnah) has gone through rigorous authenticity tests by Islamic scholars to eliminate fabrications. This was determined by evaluating the reliability of the narrators that transmitted the Sunnah(Watt, 1999). Therefore, Hadiths are either classified as *Sahih* (authentic), *hasan*(good), *gharib*(acceptable though poor) or *batil*(invalid) (Shafi, no date). The reliable sources of Hadith are used to create Islamic laws and aid in the exegesis of Quranic principles, which contributes to the Shariah legal framework(Duderija,2012). For instance, in terms of Islamic prayer, the Quran instructs(*law*) and the Prophet explains and demonstrates(*law and practice*). As the Quran and Hadith note

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respectfully, “*And establish prayer and give zakah and bow with those who bow (in worship and obedience).*” (The Qur’an, 2:43) and ‘*Pray as you have seen me praying.*’ (Desai, no date).

Therefore, evidence suggests that the Prophet’s Sunnah plays a fundamental role in clarifying and contributing to Islamic law, belief and practice (VanDoodewaard, 1996).

However, the Sunnah is not exempt from criticism. Goldziher (1971) for instance, questions the authenticity of all six hadith collections. He argues that the hadiths have largely been prone to misinterpretation or fabrication because the chain of narrators depended on oral traditions for transmission. Goldziher (1971) further asserts that the sayings and practices recorded in the hadith represent the beliefs of the Muslim community at the time of documentation rather than that of the Prophet. Conversely, Kazi (1992) states that careful care has been taken to distinguish between reliable and unreliable hadiths. Therefore, he argues that the authentic hadith is divinely inspired and must be followed by Muslims as the second primary source of Islamic law.

It is equally important to also stress that Shi’ite and Sunni Muslims do not always agree on the reported hadiths. Alsamail (2012) states that the differences between the sects occur whilst evaluating the legitimacy of the narrators. Therefore, both Shi’ite and Sunni Muslims largely refer back to narrators of their own sect. This has caused further scepticism to revolve around the reliability and authenticity of hadith. Nonetheless, Muslims within those denominations continue to use the Sunnah (mainly based on their own collections) as it has been validated through consensus within their scholarly domain (Alvi, no date).

Ijmaa is the third secondary source of Shariah law and is defined as a consensus between scholars regarding specific issues (Makdisi, 1986). Historically, these problems emerged after the death of the Prophet, in which their solutions were neither stated directly in the Quran or Sunnah (Gomaa, 2012). The principal of Ijmaa is that all Islamic scholars irrespective of their nationality, race or school of thought must agree on a solution to a problem (Alarefi, 2009). Otherwise, disputes would have to continue until a consensus is achieved (Makdisi, 1996). The rule of collective consensus is derived from the Prophetic hadith that states: “*My followers will never agree upon an error or what is wrong*” (Sachedina, 1990, p.107). The solution, more importantly, must not contradict the principles of the Quran and Sunnah. Finally, once the solution is agreed upon, it automatically becomes the law for all Muslims (Anon, no date). For instance, in the days of the Prophet there was only one call (adhaan) for the Friday congregational prayer. However, as the population of the Madeenah grew over time, noise levels did as well, making it difficult for the people in the market to hear the adhaan. Therefore, the third Caliph Uthman Ibn Affan

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negotiated with the other companions of the Prophet to include a second adhaan, and that it be called in the middle of the market. Through Ijmaa, the request became the law (Gomaa, 2012; Anon, no date). Therefore, Ijmaa seems to benefit Muslims by allowing the Islamic law to be set according to the time and circumstances one finds themselves in. This is to be used alongside the primary sources of Shariah: the Quran and Sunnah.

However, Ijmaa is still subject to much controversy. Farooq (2006) discovered that some Islamic jurists set out rules based on their own opinions, whilst falsely claiming that the Muslim Ulema have also collectively agreed on these particular rulings. For example, Farooq (2006) finds that only a few Muslim scholars agree upon the law that prohibits women from leadership in Islam. This clearly indicates that there has been no consensus between the entire Ulema of the Islamic Ummah. Nonetheless, the majority of Muslim women in Shariah-led Islamic countries are prohibited from leadership positions (Baden, 1992). Therefore, it seems that some Muslim scholars abuse Ijmaa to legitimize their own opinions.

Furthermore, Ali (no date) states that by definition, Ijmaa has never really occurred between **all** Muslim scholars. For instance, a consensus amongst the Sunni Ulema has never included or considered the views of the Shi'ite Ulema and vice versa (ibid). Hence, it seems that each school of thought has a set of its own approved Islamic laws, which can often be found contradictory to others. Therefore, evidence seems to suggest that the criticisms of Ijmaa have raised doubts as to whether discrepancies exist within the framework of Shariah law. Generally, if Ijmaa is unable to solve a problem then Muslim scholars move on to the final source of Islamic law.

Qiyaas is the fourth secondary source of Shariah law and is linguistically defined as analogical deduction. Scholars use Qiyaas when a problem occurs that neither the Quran, Sunnah or Ijmaa can solve directly (Alarefi, 2009). In this case, scholars find a law previously executed in any of the three sources and contextualize that reasoning tailoring it to the problem at hand (Poole et al, 2014). For instance, cannabis and cocaine were not used in the Prophet's time and nor his companion's therefore, there was no law in place against drugs (Anon, no date). However, through Qiyaas scholars have made recreational drugs illegal in accordance to the hadith against intoxicants where the Prophet said: *"Whatever intoxicates in a greater quantity is also unlawful in its smaller quantity"* (Inter-Islam, no date).

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Qiyaas has also been widely criticized by academics. Hasan (1983) for instance, reports that Islamic scholars that used Qiyaas failed to successfully prove its sanctity as a source of law like that of the Quran or Sunnah. Hasan (1983) argues that this is because Qiyaas is merely a form of human opinion that lacks divinity. As a result, its validity is questioned within the Islamic scholarly domain (ibid). Furthermore, Kamali (1996) notes how jurists had the tendency to use Qiyaas as a tool to declare many things prohibited whilst failing to show solid reasoning behind those rulings. Therefore, evidence suggests that Qiyaas is subject to much debate in Islam.

In conclusion, the purpose of Shariah law is to guide Muslims on how to live an Islamic way of life. This is determined by extrapolating Islamic rulings from the four main sources of Shariah law. The Quran and Sunnah are classified as being the primary sources because they are believed to be divinely credible in Islamic tradition. On the other hand, Ijmaa and Qiyaas are classified as secondary sources of Shariah law because they rely on the opinion of experts amongst Muslim scholars. If an unfamiliar incident occurs, Muslim scholars use the four sources in chronological order to try to find a solution. Although the Shariah legal framework is not free of criticism, its four sources work interdependently to form contemporary Islamic law and is readily used in courts that follow Islamic ruling.

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References

- Al-Islam. org. no date. The Shari'ah. [Online]. [Accessed 9 April 2016]. Available from:<http://www.al-islam.org/introduction-islamic-shariah-sayyid-muhammad-rizvi/shariah>
- Alarefi, A. 2009. Overview of Islamic Law. *International Criminal Law Review*. **9**(4), pp. 707-732.
- Ali, A.H. no date. Scholarly consensus: Ijma':between use and misuse. [Online]. [Accessed 13 April 2016]. Available from:<http://www.lamppostproductions.com/files/articles/Scholarly%20Consensus.pdf>
- Ali, M.M. 2011 *The Holy Quran: English Translation and Commentary*. Lahore: Ahmadiyya Anjuman Isha'at Islam.
- Alsamail, A. 2012. What is the Shia view on Sunni Hadith Books such as 'Sahih Bukhari' and 'Sahih Muslim'. [Online]. [Accessed 12 April 2016]. Available from:<http://www.askthesheikh.com/what-is-the-shia-view-on-sunni-hadith-books-such-as-sahih-bukhari-and-sahih-muslim/>
- Alvi, K. no date. A Need for Hadith. [Online]. [Accessed 12 April 2016]. Available from:http://www.islamicislamic.com/hadiths_compilation.htm#6._ANY_NEED_FOR_HADITH___
- Anon, no date. Ijmaa' (Consensus of Scholars), Qiyaas (Analogical Deduction), Ijtihad (Individual Reasoning). pp. 1-3.
- Aslan, R. 2008. Interpreting the Quran. [Online]. [Accessed 10 April 2016]. Available from:<http://www.islamicity.org/3407/interpreting-the-quran/>
- Baden, S. 1992. The position of women in Islamic countries: possibilities, constraints and strategies for change. *Institute of Development Studies*. [Online]. **4**(1), pp. 1-36. [accessed 13 April 2016]. Available from:<http://www.bridge.ids.ac.uk/sites/bridge.ids.ac.uk/files/reports/re4c.pdf>
- Desai, S. E. no date. Differences in Sunnah between Men and Women. [Online]. [Accessed 11 April 2016]. Available from:<http://www.central-mosque.com/index.php/Acts-of-Worship/differences-in-salah-between-men-and-women.html>
- Duderija, A. 2012. Evolution in the Concept of Sunnah during the First Four Generations of Muslims in Relation to the Development of the Concept of an Authentic Hadith as Based on Recent Western Scholarship. *Arab Law Quarterly*. **26**(4), pp. 393-438.
- Farooq, M. O. 2006. The Doctrine of Ijma: Is there a consensus?. [Online]. [Accessed 13 April 2016]. Available From: <http://globalwebpost.com/farooqm/writings/islamic/ijma.doc>
- Goldizer, I. 1971. *Muslim Studies*. 2nd ed. London: George Allen & Unwin Ltd.
- Gomaa, S. A. 2012. Second Adhan and Bida. [Online]. [Accessed 13 April 2016]. Available from:<http://sunnah.org/wp/2010/11/22/second-adhan-and-bida/>
- Hasan, A. 1983). The Critique of Qiyas. *Islamic Studies*. [Online]. **22**(3), pp.45-69. [Accessed 13 April 2016]. Available from: <http://www.jstor.org/stable/20847237>

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Inter-Islam, no date. Islam on Drugs. [Online]. [Accessed 13 April 2016]. Available from: <http://www.inter-islam.org/Prohibitions/drugs.htm>

Kamali, M. H. 1996. Methodological Issues in Islamic Jurisprudence. Arab Law Quarterly. [Online]. **11**(1), pp. 3–33. [Accessed 13 April 2016]. Available from: <http://doi.org/10.2307/3381731>

Kazi, M.U. 1992. A Treasury of Ahadith. Jeddah: Abul-Qasim Publishing House.

Makdisi, J. 1986. Islamic Law Bibliography. Law Library Journal. **78**(1), pp. 103-190.
McMillen, M. 2008. Islamic Law Forum. International Law. **42**(2), pp. 1017-1032.

Poole, P., Schmitz, J.E., Boykin, W.J., Soyster, H.E., Cooper, H., Del Rosso, M., Gaffney, Jr. F.J., Guandolo, J., Lopez, C.M., Coughlin, S.C. and McCarthy A.C. 2014. What is Shariah and What Are Its Sources. The Counter Jihad Report. [Online]. 25 May. [Accessed 13 April 2016]. Available from: <https://counterjihadreport.com/2014/05/25/what-is-shariah-and-what-are-its-sources/>

Quiraishi-Landes, A. 2015. Sharia Problem with Sharia Legislation. Ohio Northern University Law Review. **41**(3), pp. 545-566.

Rehman, J. 2007. The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq. International Journal of Law, Policy and the Family. [Online]. 21(1), pp. 108-127. [Accessed 10 April 2016]. Available from: doi:10.1093/lawfam/ebi023

Sachedina, Z. 1990. Islam, Procreation and the Law. International Family Planning Perspectives. [Online]. **16**(3), pp. 107–111. [Accessed 13 April 2016]. Available from: <http://doi.org/10.2307/2133308>

Shafi, no date. The Hadith- How it was Collected and Compiled. [Online]. [Accessed 11 April 2016]. Available from: <http://www.daralislam.org/portals/0/Publications/TheHADITHHowitwasCollectedandCompiled.pdf>

Stacey, A. 2009. Why Pork is Forbidden in Islam (Part 1 of 2): Obeying the laws of God. [Online]. [Accessed 11 April 2016]. Available from: <http://www.islamreligion.com/articles/2513/why-pork-is-forbidden-in-islam-part-1/>

Taher, 2008. Querying the Koran. The Guardian. [Online]. 8 August. [Accessed 11 April 2016]. Available from: <http://www.theguardian.com/education/2000/aug/08/highereducation.theguardian>

The Qur'an: a modern English version

VanDoodewaard, W. 1996. Hadith Authenticity: A Survey of Perspectives. Unpublished.
Watt, M.W. 1999. Islam: A Short History. Oxford: OneWorld Publications.

Yamani, A. Z. 1980. Eternal Sharia. The New York University Journal of International Law and Politics. **12**(2), pp. 205-212.
