

What is the Sharia?

By Baudouin Dupret

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Relevant to contemporary times when Sharia, generally referred to as Islamic law, has been associated with numerous negative connotations –ranging from anti-women, homophobic and cruel– Baudouin Dupret’s *What is the Sharia?* is a timely treatise which offers clarification of sharia as a concept. Instead of providing a historical analysis of the development of various schools of Islamic jurisprudence and a detailed evaluation around contested themes like Islamic finance, the criminal justice system, or Islamic family law, Dupret adopts a methodology and style of argumentation similar to Shahab Ahmad’s *What is Islam? The Importance of Being Islamic*.¹ By focusing on the historical and contingent nature of sharia, the book presents the contribution of concrete contexts in the shaping of divine law (sharia). Dupret writes that the meaning and significance of Islam and Sharia “vary in space and time” (p. 4). Thus, they are “capable of evolution” (p. 1), contrary to the dominant perceptions about their stagnant nature.

The book addresses two major concerns with a total of ten chapters built around the theme of sharia. While the first six chapters provide a detailed analysis of the concept of sharia and sources of Islamic law, the last four chapters comment on its significance in contemporary times. One of the most intriguing characteristics of the book is Dupret’s invocation of Wittgenstein’s concept of “language-games” (p. 8) to explain sharia (although he doesn’t



acknowledge Wittgenstein). In line with later Wittgenstein, Dupret cautions against an essentialist understanding of the contested term sharia and proposes that its meaning lies in its “use” (p. 19), that is, its context. This implies that there is no necessary connection between sharia and legal rulings. Sharia assumes a legal

sense only under certain circumstances, where it is referred to as Islamic law. Therefore, Dupret prioritizes a “practice-based approach” (p. 22) over an essentialist approach in the first chapter to grasp the concept of sharia. He criticizes Wael B. Hallaq’s *Sharia: Theory, Practice, Transformations*² for its flawed approach of treating sharia as a fixed entity.

Chapters two, three and four discuss the four sources of Islamic law –the Quran, Hadith (*Sunna*), consensus (*ijma*), and analogical reasoning (*qiyas*)– and the comments of Islamic scholars on the subject. Dupret highlights the importance of scriptural exegesis and the role of tradition (or *Sunna*) in juridical debates. He further points out the role of *ijma* and *qiyas* in the development of doctrinal schools. The chapters shed light on the role of *ijtihad* i.e., “the effort of interpretation” (p. 79) in the development of the four schools of Islamic jurisprudence –Hanafi, Shafi’i, Maliki, and Hanbali. The implications of the Sunni-Shia schism on the interpretation of Islamic law is also touched upon. Chapter five briefly discusses the content of Islamic law with reference to family relations (marriage and doc-

trines), property, and criminal justice (fornication, adultery, and homosexuality). Chapter six discusses the practices and institutions of justice within historical Islamic societies ranging from the ninth to the twenty-first century. Chapter seven highlights how the category of Islamic law was invented by orientalist scholars and colonial administrators. Chapter eight sails the reader through the concrete expressions of sharia in civil and criminal matters in countries of the Arab world like Egypt and Iran, and countries outside the Arab world like Morocco, Indonesia, and Pakistan. Chapter nine discusses the spelling out of sharia in the various constitutions of Muslim majority countries like Algeria, Tunisia, and Egypt. Dupret dedicates the last chapter to a discussion of the fate of sharia in countries where Muslims exist as minorities. However, the last chapter is narrow in scope since it focuses only on the problems confronted by Muslims in the West in the aftermath of immigration. This account ignores the South Asian context which has also emerged as a space where contestations about sharia governing the minority Muslim populations have gained visibility in recent times, for example the debate over introducing a Uniform Civil Code in India which would do away with Muslim Personal Law (currently practiced by Indian Muslims in matters of family law) along with various other religiously personal laws practiced by different communities.

One of the significant contributions of the book is that it adds to the scholarship of

thinkers like Khaled Abou El Fadl and John L. Esposito, which is engaged in highlighting the colonial construction of Islamic law. Dupret mentions how, under the colonial influence of European powers, “Islamic normativity” (p. 10) was codified into doctrine modelled on a “Napoleonic-style law code” (p. 11). Similar to Joseph Massad’s argument in *Islam in Liberalism*,³ Dupret is critical of the West’s portrayal of conflict with the world of Islam to foster its modernity’s “narcissistic history” (p. 3). Dupret devotes a substantial portion of the book to clarify the distinction between sharia (principles) and *fiqh* (doctrine) which are often conflated, resulting in a “category mistake” (p. 20). This is a response to most of the attacks at the heart of the debates surrounding the concept of Islamic law.

Offering a succinct introduction to one of the most misunderstood concepts of Islam, *What is the Sharia?* should be read not only by graduate students and scholars in the field but by lay readers curious to grasp the complexities underlying sharia, a notion shrouded in mystery and viewed with suspicion.

Endnotes

1. Shahab Ahmed, *What Is Islam? The Importance of Being Islamic*, (Princeton, NJ: Princeton University Press, 2017).
2. Wael B. Hallaq, *Shari’a: Theory, Practice, Transformations*, (Cambridge: Cambridge University Press, 2012).
3. Joseph Andoni Massad, *Islam in Liberalism*, (Chicago: University of Chicago Press, 2016).