

Is the Qur'an a Legal Text: Law and Morality in Islam's Most Sacred Book

For over a millennium, the Qur'an has functioned as the ultimate source of authority for Muslims across the world. This authority is not particular to matters of worship; rather, it extends to how Muslims eat, drink, marry, conduct business, and govern their behavior in social settings. Despite this, the Qur'an does not fulfill the conditions of law as defined by contemporary philosophers of law. How are we to understand the authority of the Qur'an? Is it merely moral? Or is it in fact legal, even though it does not fit what is called "law" today?

What Does It Mean for a Text to be "Legal?"

Let us first briefly explain what is meant by "contemporary definitions of law." Essentially, for something to be legal, it has to be enforceable by a sovereign (worldly) authority, such as a king or the modern state. This understanding can be gathered from the works of influential scholars of Western moral and legal philosophy, such as John Austin, H. L. A. Hart, Thomas Hobbes, and Immanuel Kant. Furthermore, a clear distinction is made between law and morality, between facts and value; law is that which is implemented, whether it is what *ought* to be implemented or not. In this conception of law, there is no room for the word of God or any broader philosophy rooted in abstract concepts, as they do not represent the will of the "sovereign." Morality, meanwhile, is only to be determined by objective laws discovered by human reason, not by religious scripture. ((Wael Hallaq, "Groundwork of the Moral Law: A New Look at the Qur'ān and the Genesis of Sharī'a," *Islamic Law and Society*, vol. 16, No. 3/4 (2009), p. 250-1.))

The Qur'an Does not Fulfill the Conditions of Contemporary Legal Texts

The Qur'an's dictates, however, do not require the enforcement of a sovereign authority, let alone the enforcement of a state; ((The "modern state" is a modern concept, and clearly did not exist at the time of the Qur'anic revelation.)) do not distinguish between law and morality, or what *is* the law and what *should* be the law; and make very clear that God, and not the reasoning of man, determines what is right or wrong.

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As a result, Orientalists of the twentieth century largely dismissed the Qur'an's legal authority. Joseph Schacht, a British-German scholar of Islamic law and hadith, maintained that so-called "Muhammadan law" did not originate with the Qur'an, but rather, was derived from the popular and administrative

practices of the Umayyads, whose reign began decades after the Prophet (ﷺ) departed this world. Law in the Qur'an, according to Schacht, was confined to an "essentially ethical and only incidentally legal body of maxims..."((Joseph Schacht, *Origins of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1950), p. 224.))J. N. D. Anderson, a British Arabist, wrote that the Prophet (ﷺ) "made no attempt to work out any comprehensive legal system, a task for which he seems to have been singularly ill-fitted: instead he contented himself with what went little beyond 'ad hoc' amendments to the existing customary law."((J. N. D. Anderson, "Recent Developments in Shari'a Law," *The Muslim World* 40, Issue 4 (1950), p. 245.))In *A History of Islamic Law*, N. J. Coulson, a scholar of Islamic law, agreed with Anderson, writing that the legal verses of the Qur'an are not general rules, but rather "ad hoc solutions for particular problems."((N. J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), p. 13.))And Coulson believed only about eighty verses of the Qur'an "deal with legal topics in the strict sense of the term."((Coulson, *A History of Islamic Law*, p. 12.))By that he means the remaining verses pertain to "religious duties and ritual practices of prayer, fasting, and pilgrimage."((Coulson, *A History of Islamic Law*, p. 12.))Even then, he argued, most of the eighty verses are ethical matters not backed by earthly authority.((Coulson, *A History of Islamic Law*, p. 17-18.))"In short," he wrote, "the primary purpose of the Qur'an is to regulate not the relationship of man with his fellows, but his relationship with his Creator."((Coulson, *A History of Islamic Law*, p. 12.))

When we read such statements about law in the Qur'an, it becomes clear that Orientalists dismiss law in the Qur'an because it does not meet the requirements of contemporary definitions of law, not on the basis of the ontological framework of the Qur'an itself. Rather, such scholars evaluate the Qur'an in the context of a moral scheme borrowed from Aristotle that came to dominate Europe in the Middle Ages. Aristotle's original theory articulated that there is a fundamental contrast between what man *happens* to be and what he *could* be if he realized his essential nature. His scheme was then altered when placed in the context of religions. In the Christian context, the dichotomy of what man is and what he could be remained, but sin came to replace the Aristotelian concept of error and the Afterlife became the ultimate goal.

Meanwhile, in the secular discussions of eighteenth-century moral philosophers like David Hume and Kant, the scheme was adapted further. In the thought of Hume and Kant, man has no essential nature, and no moral goal that he is to achieve. However, they still distinguish between what man is and what he strives to be.((Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 2007), p. 52-5.))Placed in the context of law, this dichotomy gives us the distinction between legal facts and morality—what is and what should be—which became the only acceptable paradigm for thinking about law. When the context of contemporary discussions of law is made clear, one can see why it is inappropriate to impose this paradigm upon the Qur'an, a book that provides a very different understanding of legal authority, legal enforcement, and the dichotomy of law and morality.

The Nature of the Qur'an's Legal Authority

The Qur'an calls upon Muslims to do what is good, just,((See Qur'an, *an-Nahl* (16):90. "Surely God bids to justice and good-doing and giving to kinsmen; and He forbids indecency, dishonour, and insolence,

admonishing you, so that haply you will remember.” (Arberry))known to us by our very nature,((See Qur’an, *ar-Rūm* (30):30. “So set thy face to the religion, a man of pure faith — God’s original upon which He originated mankind. There is no changing God’s creation. That is the right religion; but most men know it not...”))and to follow the way of previous prophets and religious figures. Right and wrong are determined by God, not human reason. While modern legal thought maintains that law must be grounded in a sovereign authority such as the state, the Qur’an emphasizes that authority belongs solely to God. All other authority, including that of a worldly sovereign, is subservient to His authority. Any perceived power or authority of the state only exists by God’s permission, and is but one extension of His infinite power and authority. In other words, true sovereignty belongs to God alone,((Qur’an, *al-Mulk* (67):1. “Blessed be He in whose hand is the Kingdom — He is powerful over everything...”))and He gives sovereignty to whom He wills, empowering and diminishing those He wills.((Qur’an, *Āl ‘Imrān* (3):26. “Say: ‘O God, Master of the Kingdom, Thou givest the Kingdom to whom Thou wilt, and seizest the Kingdom from whom Thou wilt, Thou exaltest whom Thou wilt, and Thou abasest whom Thou wilt; in Thy hand is the good; Thou art powerful over everything.”))

Of course, the Qur’an does contain both promises (Paradise) and threats (Hellfire). But that is not the basis of its authority. Incidentally, the source of a secular government is also not imprisonment or other forms of punishment, but rather the willingness of its constituents to observe its laws. So the source of the Qur’an’s authority is different from the outcome of obeying or disobeying that authority. In other words, *why* we obey the Qur’an is different from what happens if we do or do not obey the Qur’an. And the reason we obey the Qur’an is because it instills in us a sense of awareness of our duty toward God, i.e., piety. This same logic can be applied to other means of worldly enforcement, such as *al-amr bi-l-ma’rūf wa-n-nahy ‘an-l-munkar*;((Commanding the good and prohibiting the evil.))this enforcement is not carried out by the legislator (God), but rather depends on the piety and self-accountability of believers. A modern state, meanwhile, must establish its authority by directly involving itself in the affairs of people, oftentimes by way of the threat of violence.

The Qur’an’s Means of Legal Enforcement

Unlike the modern state, the Qur’an does not require violence to establish its values (like the piety of mankind) and achieve its purpose (helping believers gain nearness to God and a fortunate position in the Afterlife), nor does it require outward manifestations of power to reduce its audience to submission. Rather, it calls upon the hearts of its readers, speaking to the depths of their souls and asking them to reflect upon their nature and upon God’s signs.((Qur’an, *az-Zukhruf* (41):53. “We shall show them Our signs in the horizons and in themselves, till it is clear to them that it is the truth. Suffices it not as to thy Lord, that He is witness over everything?”))In doing so, it is expected that the honest will emerge with an awareness of God. This awareness, in turn, instills in them a form of self-policing that is far more effective in governing the actions of mankind; no matter how advanced modern surveillance becomes, it will never rival the surveillance of the One who sees all that we do,((Qur’an, *al-Baqarah* (2):96, 110, 233, 237, 265; *Āl ‘Imrān* (3):15, 20, 156, 163; *al-Mā’idah* (5):71; *al-Anfāl* (8):39, 72; *Hūd* (11):112; *al-Aḥzāb* (33):9; *Saba’* (34):11; *Fuṣṣilat* (41):40; *al-Fath* (48):24; *al-Hujurat* (49):18; *al-Ḥadīd* (57):4; *al-Mumtaḥanah* (60):3; and *at-Taghābun* (64):2. Of course, many other verses discuss God’s ability to see His servants.))sees when we disobey Him,((Qur’an, *al-Isrā’* (17):17. “How many generations We have

destroyed after Noah! Thy Lord suffices as one who is aware of and sees the sins of His servants.”))and whose knowledge encompasses all that is on land and in water, including any leaf that falls or a grain in the darkness of the earth.((Qur’an, *al-An’ām* (6):59. “With Him are the keys of the Unseen; none knows them but He. He knows what is in land and sea; not a leaf falls, but He knows it. Not a grain in the earth’s shadows, not a thing, fresh or withered, but it is in a Book Manifest.”))Proper servants of God are wary of their duties toward Him in private,((See Qur’an, *al-Mā’idah* (5):94; *al-Anbiyā’*(21):49; *Fāṭir* (35):18; *Yāsīn* (36):11; *Qāf* (50):33; and *al-Mulk* (67):12.))that is, far from the eyes of their fellow human beings.

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Furthermore, the power by which God’s laws are enforced in the Qur’an—that is, piety—is more effective than the power by which the law of the sovereign state is enforced—that is, violence—even when it comes to laws of the state itself. An example can be found in the concept of *ḥifẓ al-niẓām*. As articulated by Shi’i *fuqahā’*, *ḥifẓ al-niẓām* demands that believers obey the laws of the land they reside in,

regardless of the religious or political dynamics of that land. Prominent *marāji'* like Sayyid Abū-l-Qāsim al-Khū'ī((Abū-l-Qāsim al-Khū'ī, *Ṣirāṭ al-Nijāt*, vol. 3 (Qum: Jāmi' Mawādd al-Kitāb, 1997), p. 297.))and Sayyid 'Alī al-Sīstānī have stated that any law—like traffic laws—required for order and safety in society must be followed, and that it is not permissible to break a law that was put in place with the best interests of people in mind.((('Alī al-Sīstānī, "al-Istiftā'āt: al-Taḳyīd bi-l-Aḥkām wa-l-Qawānīn," web, accessed: March 30, 2018 <<http://www.sistani.org/arabic/qa/02207/>>.)))These fatwas, when combined with the sense of duty God has outlined for believers in the Qur'an, are capable of producing an ideal citizen in any society.

Consider the following anecdote, which illustrates how a believer's piety provides a very different enforcement mechanism than the forceful measures of the state. Years ago, a friend was visiting from the region of al-Qaṭīf in Saudi Arabia. He is a highly successful businessman who has not been deceived by his riches; rather he has remained a pious Muslim and intimate friend of '*ulamā'*. One night, along with a group of friends, we had just dined together and were returning to the Qaṭīfī friend's car. It was rather late, and no cars or even other pedestrians were in sight. The light for the crosswalk was red, but without a second thought, we started crossing. It was very unlikely a police officer was anywhere near us, and even if one had been, it was almost unfathomable that he or she would fine us at that time of the night for doing something that posed no danger or disturbance. We were almost on the other side of the street when we saw the Qaṭīfī brother had not taken a step forward. When we asked what the matter was, he simply stated that according to Sayyid al-Sīstānī, it is *ḥarām* to break the laws of the land—any land, at any time. I find his action to be a reflection of the superior sense of civic duty—and adherence to the law—one acquires by way of piety, when compared with that of the sovereign state.

A Lack of Distinction between Morality and Law in the Qur'an

In the Qur'an, that which is enforced—law—and that which should be enforced—morality—are not separate. God provides a reminder for those who fear the consequences of their actions,((Qur'an, *Ṭāhā* (20):3. "But only as a reminder to him who fears..."))and commands His Prophet (ṣ) to merely admonish.((Qur'an, *al-Ghāshiyah* (88):21-22. "Then remind them! Thou art only a reminder; thou art not charged to oversee them."))But the Qur'an acknowledges that some will turn away from its message.((Qur'an, *al-Jāthiyah* (45):31. "But as for those who have disbelieved: 'Were not My signs recited to you, and you waxed proud, and were a sinful people?"))Furthermore, there is no form of worldly authority that can completely enforce the dictates of the Qur'an, as it is impossible to impose proper belief, which is at the heart of every virtue in the Qur'an.

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In fact, even dividing the Qur'an's dictates into *fiqh* and *akhlāq* is only appropriate in that it facilitates

more convenient scholarly discussion. How scholars approach a *fiqhī* issue—i.e., a legal issue that is outwardly observable with clear parameters, like prayer—is different from how they approach an *akhlāq* matter—i.e., behaviors or traits deeply rooted in habit that depend on the individual policing himself, like greed. But from the perspective of the Qur'an, matters of *akhlāq* are not to be taken any less seriously than matters of *fiqh*. Consider, for example, the compromised status in the Afterlife of the greedy, ((See Qur'an, *an-Nisā'* (4):37. "[S]uch as are niggardly, and bid other men to be niggardly, and themselves conceal the bounty that God has given them. We have prepared for the unbelievers a humbling chastisement..." And Qur'an, *at-Tawbah* (9):69. "[T]hose before you, who were stronger than you in might, and more abundant in wealth and children; they took enjoyment in their share; so do you take enjoyment in your share, as those before you took enjoyment in their share. You have plunged as they plunged. Those—their works have failed in this world and in the world to come; those—they are the losers.)) the lengthy admonition God provides for the man who frowned at a blind person, ((Qur'an, 'Abasa.)) the fact that evil thoughts are considered a sin, ((Qur'an, *al-Hujurāt* (49):12. "O believers, eschew much suspicion; some suspicion is a sin. And do not spy, neither backbite one another; would any of you like to eat the flesh of his brother dead? You would abominate it. And fear you God; assuredly God turns, and He is All-compassionate.)) or how walking humbly is mentioned in the context of other obligatory or forbidden acts. ((Qur'an, *al-Furqān* (25):62 ("And it is He who made the night and day a succession for whom He desires to remember or He desires to be thankful."); and *Luqmān* (31):19 ("Be modest in thy walk, and lower thy voice; the most hideous of voices is the donkey's.").))

Conclusion

Contrary to the evaluation of Orientalists, the Qur'an is a source of legal authority. However, to understand its authority, one must remove oneself from the confines of contemporary discussions of law and morality. The authority of the Qur'an depends on the individual's belief and willingness to impose God's commands and prohibitions upon herself. These commands extend to that which is observable and elaborated by scholars of *fiqh*, and that which is not as easily determined in the outside world, *akhlāq*.

Hasan Kashani studied in the seminaries of Iran, completing his suṭūḥ studies before attending the dars-i khārij lectures of Sayyid Shubayrī Zanjānī and other scholars.