

Thinking Outside the Box: the Shari'a of Islam

Ahmad Thomson explores recent and possible developments in the interaction between English Law and Islamic Shari'a Law.



Introduction and Overview

After decades of academic dissection and media stereotyping, usually formulated under the influence of a cocktail of ignorance, misconception and distortion, any attempt to discuss rationally what the Shari'a of Islam has to offer the societies of Europe and America is often automatically rejected without consideration in a predictably programmed response. Social conditioning runs deep.

At worst the reader or viewer will think, “I *know* what Islam is,” and look no further, or at best will read or watch on, secure in the personal conviction that the only possible and inevitable conclusion is that any proposal based on the Shari'a of Islam is an ideal which is incapable of ever being realised – and this in spite of the fact that history reminds us that during the course of the last fourteen centuries, several great and lasting civilisations have flowered, fruited and faded as living organic realities, precisely because of their having been firmly based on and within the parameters of the Shari'a of Islam.

Nevertheless, this brief article seeks to consider seriously what the Shari'a of Islam has to offer the societies of Europe and America – not as a few minutes of absurd entertainment, nor as an ideal which can never be achieved, but as a very practical solution to many of our current difficulties.

The underlying premise of what follows is that the Shari'a of Islam, in its original and still accessible form (*not* as amended or re-formed), is a divinely revealed guidance whose source is the Source of all existence, not man. If this be true, then it is feasible that the Merciful and Compassionate has provided us with the best solution to all of the difficulties that are part and parcel of the human condition – which He has created and knows so intimately.

For those who feel unable to acknowledge or recognise this, but who nevertheless find themselves existentially boxed in and unable to resolve the contradictions in their lives (the control of which is often simply not in their hands), perhaps what follows will assist at least in illuminating the nature of their dilemma even if they disagree with the remedy. This proposal must be viewed in context – in other words, not only in a legal context, but also with awareness of our current economic, political and social climate. Otherwise we may not perceive either the relevant wood or its trees.

As lawyers, we all recognise keenly the necessity as well as the sanctity of the rule of law, but we are entitled to ask ourselves in whose hands the matter of framing the laws which comprise the rule of law really is. If we consider “the law of England and Wales”, we are all aware that this is the product of a historical process, a collection of laws which originally derive from ancient common practice as modified by the decisions of heedless tyrants, benevolent dictators, sage kings, the influence of various religions (particularly those based on the teachings of Moses and Jesus, blessings and peace be on them), the views of various social, economic and legal philosophers as championed by a variety of transient political parties and promulgated through parliament – and all of them as interpreted and applied by the judiciary.

We are not always fully aware, however, of how or why or even what new laws are created – there are so many of them and they are always subject to change. Certainly in my lifetime the rule of law has been transformed by a plethora of statutes and statutory instruments, often hastily fashioned from various disparate elements forged in the furnace of recent event and technological change and shaped by the hammer of political expediency with the temper of human rights.

In recent years a significant addition to the general mix has proved to be the Shari'a of Islam, based on the revelation of the Qur'an and the example and teachings of the Prophet Muhammad, blessings and peace be on him, and recognised implicitly by Article 9 of the European Convention on Human Rights as incorporated in the Human Rights Act 1998.

Economics

In the arena of the right to non-usurious finance, for example, the present Chancellor has publicly announced that he wishes London to become the centre of international Islamic Finance (which prohibits usury) – and laws have been and are being passed to facilitate this.

Unfortunately, up to now, not only he but also the Islamic scholars who are responsible for sanctioning the Shari'a compliancy of an ever burgeoning array of modern Islamic financial products have resolutely and repeatedly side-stepped the most essential and completely unavoidable element of Shari'a compliancy – which is that for any financial product to be Shari'a compliant, the means of exchange must be Shari'a compliant. Paper and digital electronic money are simply not acceptable as Shari'a compliant means of exchange unless and until they are backed one hundred per cent by a commodity which possesses intrinsic value, traditionally gold or silver.

In fact in an Islamic Shari'a based society, not even an IOU for gold dinars or silver dirhams can be used as a means of exchange, let alone an unredeemable IOU – which is what little paper money there is in existence (approximately 0.2% of our “cash in hand” at the bank) is. Any financial product or transaction which utilises paper or electronic money as its sole means of exchange is not Shari'a compliant and cannot therefore be described as Islamic.

It is for this reason that England's first “Islamic” bank, the Islamic Bank of Britain, has been requested to initiate a dialogue with the Bank of England and the Financial Services Authority with a view to facilitating the provision of gold dinar and silver dirham savings accounts.

Since the Royal Mint already regularly mints gold sovereigns and silver coins, it clearly has the necessary expertise and facilities to mint the first state authorised British gold dinars and silver dirhams in accordance with the specifications originally confirmed and established by Umar ibn al-Khattab in Madina. This simple measure would transform international Islamic finance immediately. The issue of these Shari'a compliant coins would attract investors from right across the Muslim world – and the Chancellor's dream would come true.

Personal Law

In the arena of the right to family life, members of the Muslim community wish to have their personal law matters dealt with in accordance with the Shari'a – and representations to this effect have been and are being made to the Government and the Law Commission.

Civil Liberties

In the arena of the rights to security and due legal process, we are constantly reminded via the media that innocent people are being indiscriminately blown to pieces in the UK and abroad, in their tens of thousands – and although they neither support nor condone such acts, practising Muslims in the UK have been affected disproportionately by the latest resulting anti-terror legislation. At times not only families but whole communities have been traumatised and victimised. This experience has resulted, for example, in publication of the *Anti-Terror Raid Guide* (http://www.aml.org.uk/Anti_Terror_Raid_Guide.pdf).

The significance of our current state of affairs which was almost inconceivable ten years ago can perhaps be grasped more fully by reflecting on the rapid development of the military-industrial complex of which President Dwight Eisenhower warned in 1961 (<http://coursesa.matrix.msu.edu/~hst306/documents/indust.html>) and which has so dramatically and dangerously changed the world in which we live by simultaneously making a multi-national business of warfare while gently but firmly insisting on the removal in the name of peace and security of many of our civil liberties – rights which, having taken a few centuries to establish, have in a few years been dismantled.

Having observed that America had “been compelled to create a permanent arms industry of vast proportions,” as well as having “three and a half million men and women directly engaged in the defense establishment,” and that “this conjunction of an immense military establishment and a large arms industry is new in the American experience,” Eisenhower warned, “we must not fail to comprehend its grave implications,” stating, “In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes.”

And yet “we” have. Today destruction and reconstruction on a global scale is a multi-million digital currency business, financed by an elite of the the ultra-rich who place little value on the unavoidable human collateral damage involved. While some of those who survive celebrate the “abolition of slavery”, an increasing number of people around the world are bonded and bound by the invisible ties and chains of debt-slavery.

It is within this stark modern context that the following proposals for new projects have recently been made to the Law Commission as being worthy of inclusion in their tenth programme of work which is due to start in 2008:

1. Amendment of the law governing Inheritance Tax

In my respectful submission this is an unjust law which is having an increasingly adverse impact on more and more people as the purchasing power of paper, plastic and electronic money continues to decline rapidly – as evidenced by the exponential and absurd increases in house prices up and down the country. I therefore recommend that inheritance tax is abolished altogether, but since the Lord Chancellor has an almost £600 billion national debt to service, I accept that this is unlikely unless Proposal 4 below is also accepted.

As a fall back position, I therefore propose that the class of beneficiaries to whom transfers are tax exempt should be widened to include not only spouses, but also parents and offspring (including adopted children). The new law on cohabitation may have to be amended to reflect these changes with respect to cohabittees.

2. Recognition of Religious Personal Law

Religious minorities should be allowed to be self-governing in respect of their religious personal law, that is with regard to marriages, divorces and inheritance. They should be permitted to have their own religious courts to adjudicate on these matters – but whose decisions would be enforceable not by the religious courts but in the main civil judicial system, either by way of the parties signing a binding arbitration agreement or preferably directly, by way of application to a civil court. If accepted, this proposal would mean that an effective and acceptable means of alternative dispute resolution would be introduced which would lighten the current burden on the civil justice system.

This proposal would entail, for example, legal recognition of the status of the Beth Din of the Jewish community, the Shari'a Council of the Muslim community and the Ecclesiastical Court of the Christian community.

3. Amendment to the Law of Bigamy

If Proposal 2 were to be accepted, this would necessitate a change in the law of bigamy, since under the Shari'a, although he is not permitted to have a mistress or a lover, a Muslim man may marry up to four wives provided he treats and maintains them and their children as equally as possible.

The issues which arise in Proposals 1-3 are considered in more detail at the following links:

Incorporating Muslim Personal Law into UK Domestic Law (February 2004)

[<http://www.wynnechambers.co.uk/pdf/AMSS-ATNotes220204.pdf>]

Muslims in Europe and Human Rights (March 2004)

[<http://www.wynnechambers.co.uk/pdf/UMO060304.pdf>]

Applying Islamic Fiqh in UK Arbitration Law (September 2005)

[http://www.wynnechambers.co.uk/pdf/RPM_Arbitration.pdf]

Accommodating the Islamic Dissolution of Marriage Law within English Law (September 2006) [http://www.wynnechambers.co.uk/pdf/RPM_Dissolution_10_09_06.pdf]

Islamic Law for Family Lawyers January 2007

http://www.wynnechambers.co.uk/pdf/FLJ_Islamic_Family_Law.pdf

Understanding Islamic Wills (May 2004)

[<http://www.wynnechambers.co.uk/pdf/IslamicWills.pdf>]

Probate and Shari'a Law (April 2005)

[http://www.wynnechambers.co.uk/pdf/PRJ_Islamic_Wills.pdf]

Drafting Islamic Wills (March 2006)

[http://www.wynnechambers.co.uk/pdf/Drafting_Islamic_Wills.pdf]

4. Reduction of the National Debt & Return to the Gold & Silver Standard

We have reached a stage where general elections are fought and won primarily on the basis of the promises which are made by the respective political parties to the electorate to tax them the least, even though everyone knows that taxes will inevitably go up in order to

service the national debt and bolster (albeit temporarily, until the next tax increase) the ever diminishing purchasing power of money. I therefore propose firstly, that legislation is introduced whereby whatever proportion of the national debt has been created out of nothing by means of charging interest or applying the compound interest formula to the debt is simply written off – and secondly, that we return to a bi-metal (gold and silver) backed currency, so that the paper, plastic and electronic money which we use is backed by commodities with intrinsic value.

I am sure that the original capital sum which was first borrowed by King William of Orange has in fact already been repaid many times over – and therefore in effect the entire national debt would probably be written off, resulting in the abolition or reduction of other taxes.

5. Abolition of Usury

It follows on from Proposal 2 that the practice of usury (originally legalised in this country by King Henry VIII) should be made illegal once more – or at least unenforceable in a court of law. As with the national debt, the legislation would have to provide that any debts which had been created out of nothing by means of charging interest or applying the compound interest formula to the debt would be simply written off and only any original capital sum borrowed would remain repayable.

The issues which arise in Proposals 1-3 are considered in more detail at the following links:

Finding the Cure for the Cancer of Usury April 2003

[<http://www.wynnechambers.co.uk/pdf/Usury.pdf>]

Understanding Islamic Finance June 2005

[http://www.wynnechambers.co.uk/pdf/PRJ_Islamic_Finance.pdf]

The Colour of Shari'a Compliant Money – Gold and Silver July 2006

[http://www.wynnechambers.co.uk/pdf/The_Colour_of_Money.pdf]

Essential Elements in Islamic Finance April 2006

[http://www.wynnechambers.co.uk/pdf/Elements_Islamic_Finance.pdf]

I appreciate that if acted on the results of these proposals would be far-reaching – but I suggest that they would be instrumental in introducing a renaissance into a society which is seriously in decline. I have noticed when studying the history of past societies that once interest rates in excess of 30% are applied, a society collapses under the weight of its debts.

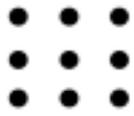
Conclusion

It may well be that a time will come when the realisation dawns that far from posing a problem, the Islamic Shari'a provides practical solutions. In the words of Lord Alfred Tennyson:

The old order changeth, yielding place to new,
And God fulfils himself in many ways
Lest one good custom should corrupt the world.

Ahmad Thomson

Ahmad Thomson is a barrister specialising in Charities, Employment, Discrimination and Islamic Law. He is head of Wynne Chambers (www.wynnechambers.co.uk) and deputy chairman of the Association of Muslim Lawyers (UK) (www.aml.org.uk).



The phrase **Thinking Outside the Box** derives from the nine dots puzzle: The challenge is to connect the dots by drawing four straight, continuous lines without lifting the pencil from the paper. The puzzle is easily solved, but only if you draw the lines outside the confines of the square area defined by the nine dots themselves. – This is one of the solutions:

