‘Violence in Sharī‘a and its Contemporary Implications’

The Al-Mahdi Institute’s 5th Annual Contemporary Fiqhi Issues Workshop

6th – 7th July 2017

60 Weoley Park Road, Birmingham, B29 6RB
www.almahdi.edu
'Violence in Sharī‘a and its Contemporary Implications'

Contributors Workshop
6th – 7th July 2017

Convenor: Dr Ali-Reza Bhojani

Al-Mahdi Institute
60 Weoley Park Road, Birmingham, B29 6RB
The 5th annual fiqhī workshop at Al-Mahdi Institute aims to facilitate scholarship directly addressing questions relating to the topic of “violence in Sharīʿa and its contemporary implications”. The Muslim juristic fiqhī discourse has been framed historically as concerned with preserving social order, through offering a framework seeking to regulate the lives of humankind by inferring orthopraxic precepts attempting to capture the judgment of God in any given circumstance. The remit of this framework includes regulations for the sanction of, and limits to, violence in all its forms. Recent years have seen increasing challenges to historically inferred positions, alongside continued attempts to understand precepts afresh, on issues as wide ranging as domestic violence, criminal law and the ethics of war. This workshop seeks to explore justifications, challenges and emerging responses to questions regarding attempts to apply any such regulation of violence, whether that violence be collective, interpersonal or self-directed.
Thursday 6th July 2017

10:45-11:15 – Registration

11:15 – Opening Remarks

11:30-13:15 – Panel ONE

**The Role of Law and Legal Systems in Creating, Perpetuating and Resolving Conflict**
Professor Christie Warren (William and Mary Law School, Williamsburg)

**How Muslim Jurists Theorised the Legitimacy of Violence in the Absence of a Legitimate Political Order**
Professor Mohammad Fadel (University of Toronto)

**How to Justify a Violence-Free Interpretation of Sharia**
Dr Ali Fanaei (Al-Mahdi Institute)

13:15-14:30 - Lunch and Salat

14:30-15:45 – Panel TWO

**A Comparative Examination of Shiite Political Power and Legal Discussions of Jihad**
Professor Devin J Stewart (Emory University)

**An Alternative Reading of the Islamic Theory of International Warfare**
Professor Liyakat Takim (McMaster University)

**Initiative Jihad: Moral and Human Rights Appraisal**
Professor Sayyed Fatemi (Al-Mahdi Institute & Shahid Beheshti University)

15:45 – 16:15 – Break

16:15 - 18:00 – Panel THREE

**Gendered Constructions of Prophethood and Revelation**
Dr Shuruq Naguib (Lancaster University)

**Gender Violence and Qur’an 4:34: An Interpretive Analysis between Tradition and Modernity**
Shaykh Mahmoud Ali Gomaa Afifi (Lancaster University)

**Transgender/Transsexual Muslims, Religious/Cultural Violence and Sex-Reassignment Surgery Fatwas**
Dr Mehrdad Alipour (Utrecht University)
Friday 7th July 2017

10:15 - 11:30 – Panel ONE

**Imam Husayn, the Twelver Creed and the “Resistance”**
Dr Samer El-Karanshawy (Centre for Lebanese Studies)

**Dissimulation, Violence and "the spilling of blood" (safk al-dimā’)**
Professor Robert Gleave (University of Exeter)

11:30 - 11:45 – Break

11:45 - 13:00 – Panel TWO

**Human Dignity and Stoning to Death (ḥadd al-rajm) within an Existential Paradigm**
Shaykh Arif Abdulhussain (Al-Mahdi Institute)

**Different Approaches to Stoning as a Legal Punishment**
Dr Emad Tabatabaei (Freiburg University)

13:00 - 15:00 – Lunch and Salat

15:00 - 16:45 – Panel THREE

**The Ethico-legal Principles of Arms Trade and Arms Embargo in Early Sunni Jurisprudence**
Dr Shahrul Hussain (The Markfield Institute of Higher Education)

**Position of Islamic Teachings against Violence and Extremism**
Professor Sayyed Mohaghegh Damad (Shahid Beheshti University)

**Principle of kindness (al-Riffq): authoritative rule and tool of understanding**
Dr Hassan Beloushi (Islamic Seminary of Kerbala)

16:45 – Closing remarks
**ABSTRACT: “The Role of Law and Legal Systems in Creating, Perpetuating and Resolving Conflict”**

Laws and legal system reform play central roles during post-conflict reconstruction, and legal advisors from a variety of countries are commonly called upon to assist in these efforts. However, despite their best intentions and efforts, international advisors are often stymied by their lack of understanding of the legal systems of the countries in which they work, and their advice and interventions tend to reflect their own parochial legal preferences. Instead of using the law and its component parts to solve the difficult concrete issues facing people recovering from war, genocide and poverty, post-conflict legal advisors too often find themselves advocating the benefits of their own legal systems without considering alternative options.

We are accustomed to thinking of legal systems in monolithic terms, asking questions such as: Which system delivers better justice? Which is more likely to promote economic growth? Which resolves disputes most efficiently? My research, however, seeks to rebalance the analysis and questions posed by post-conflict legal advisors by introducing a bottom-up, problem-solving approach. In considering conflicts that have arisen in the past two and a half decades, I am asking:

1. What factors led to the conflict?
2. Were aspects of the legal system in place responsible in any way?
3. Were the laws or legal system manipulated or abused, thereby causing or perpetuating conflict?
4. Are there features of different legal systems that can be useful in resolving conflict?

Although these debates are most common among civil code and common law lawyers, they are not limited to these two systems. In Timor Leste, for example, the continued viability of customary law was a fraught issue during post-conflict reconstruction efforts undertaken by UNTAET. In Rwanda, Sierra Leone and other African countries, traditional legal mechanisms are used during transitional justice exercises to help people recover from conflict.

I am interested in exploring whether Islamic Law is susceptible to and/or useful in the same analysis. Are there aspects of Shari’ah that contribute to conflict, are manipulable so as to perpetuate abuse or conflict, or can be useful during recovery from conflict? It would be helpful to engage with Islamic legal scholars about their perceptions of the relationship, if any, between the Islamic legal system and conflict. I believe that Islamic Law may be able to provide useful contributions in the field of post-conflict reconstruction, which is in the process of evolving away from monolithic replication of discrete legal systems and toward a more comparative approach in
Mohammad H. Fadel is Associate Professor at the Faculty of Law, which he joined in January 2006. Professor Fadel wrote his Ph.D. dissertation on legal process in medieval Islamic law while at the University of Chicago and received his JD from the University of Virginia School of Law. Professor Fadel was admitted to the Bar of New York in 2000 and practiced law with the firm of Sullivan & Cromwell LLP in New York, New York, where he worked on a wide variety of corporate finance transactions and securities-related regulatory investigations. Professor Fadel also served as a law clerk to the Honorable Paul V. Niemeyer of the United States Court of Appeals for the 4th Circuit and the Honorable Anthony A. Alaimo of the United States District Court for the Southern District of Georgia. Professor Fadel has published numerous articles in Islamic legal history and Islam and liberalism.

**ABSTRACT: “How Muslim Jurists Theorised the Legitimacy of Violence in the Absence of a Legitimate Political Order”**

One of the central justifications for the state in political theory is the need to reduce, if not eliminate altogether, violence. Modern political theory accomplishes this end by vesting the state with a monopoly over the legitimate use of violence. The normative order of the state, therefore, does not eliminate all violence; rather, it limits its practice to individuals who are authorized by one means or another to be acting in the name of the state. Fear of unrestrained violence is also one of the principal justifications cited by Muslim thinkers for the necessity of a legitimate political order. But what happens when there is no legitimate public order? How do Muslim jurists conceive of violence in the absence of a legitimate state, or more generally, when the only state is a de facto state that enjoys no legitimacy from the perspective of the Sharia? My paper will explore how Muslim jurists theorized the legitimacy of violence in the absence of a legitimate political order.
Dr Ali Fanaei – Al-Mahdi Institute

Dr Ali Fanaei completed 17 years of seminary studies in the Hawza Ilmiyya of Qum. His teachers included; Ayatullah Sayyid Muhaqheqh Damad, Ayatullah Tabrizi, the Ayatullah Haeiri, Ayatullah Vahid, Ayatullah Montazeri, and the Ayatollah Ahmad Mianeji. He has an MA in Islamic Theology from the University of Qum taking special interest in modern theology and philosophy of religion. He then moved to the UK to conduct research at the University of Sheffield where he was awarded an Mphil for research on Moral Scepticism and Realism and a PhD for research regarding the epistemic justification of moral beliefs. Alongside training students at Al-Mahdi Institute, he has also published a number of influential works in Farsi, through which Dr Fanaei is becoming known as one of the most important of a select group of roshan fikri (‘enlightenment thinkers’) whose engagement with questions pertaining to the modern world is informed with the deepest Hawzawi credentials.

**ABSTRACT:** “How to Justify a Violence-Free Interpretation of Sharia”

The aim of this paper is to show that Sharia is subject to interpretation, and that we do not have a direct epistemic access to it. However, since more than one interpretation of Sharia is possible and indeed offered by different scholars throughout Islamic history, the question of how to evaluate and choose the epistemically valid interpretation becomes vital. To avoid legal scepticism and legal relativism as well as arbitrariness in our understanding of Sharia, we need a method to both justify our preferred interpretation, and to falsify the rival interpretations.

This paper tries to outlines a method of interpretation which is rationally acceptable and then show that this method speaks in favour of a violence-free interpretation. This method was first developed in the philosophy of science as the proper method for theorising and justifying scientific claims. It was then adopted by the moral philosopher John Rawls for the same purpose; formulating and justifying his theory of justice. By developing and modifying that theory of justification to make it applicable to the domain of Islamic law, one can use it to defend a violence-free interpretation of Sharia and reject other interpretations which support, in one way or another, different types of violence which are no longer acceptable from the moral point of view.
ABSTRACT: “A Comparative Examination of Shiite Political Power and Legal Discussions of Jihad”

In this paper, I examine Shiite writings on jihad and attempt to compare the effects of the rise of historical Shiite dynasties on discussions of jihad in Shiite legal literature, focusing on the Fatimids (909-1171), the Buwayhids (945-1055), and the Safavids (1501-1722). The source material includes al-Qadi al-Nu’man’s Da’aim al-Islam and Abu al-Fawaris’s Kitab al-Imamah for the Fatimids, al-Shaykh al-Mufid’s Muqni’ah and al-Shaykh al-Tusi’s Nihayah for the Buwayhids, and the legal works of ‘Ali b. ‘Abd al-‘Al al-Karaki (d. 940/1534), al-Shahid al-Thani (d. 965/1558), Mir Husayn b. Hasan al-Karaki (d. 1001/1592-93), and others for the Safavids. While jihad functioned as a legal rubric under which jurists strove to set parameters for the proper relationship between the Islamic polity and foreign non-Muslim—especially Christian—powers, it functioned to varying degrees as a rubric under which jurists strove to establish the legitimacy of Shiite states and to work out the relationship of the Shiite state to potentially hostile Sunni states. The latter function was especially pronounced under Safavid rule, in the on-going ideological conflict with their main political rivals, the Ottomans and the Uzbeks.
Professor Liyakat Takim – McMaster University

Professor Liyakat Takim is the Sharjah Chair in Global Islam at McMaster University in Hamilton, Canada. A native of Zanzibar, Tanzania, he has spoken at countless academic conferences and authored one hundred scholarly works on diverse topics like reformation in the Islamic world, the treatment of women in Islamic law, Islam in America, the indigenization of the Muslim community in America, dialogue in post-911 America, war and peace in the Islamic tradition, Islamic law, Islamic biographical literature, the charisma of the holy man and shrine culture, and Islamic mystical traditions. He teaches a wide range of courses on Islam and offers a course on comparative religions.

ABSTRACT: "An Alternative Reading of the Islamic Theory of International Warfare"

Classical Muslim jurists divided the world into the abode of Islam (dar al-Islam) and the abode of war (dar al-harb). The territory of Islam signifies a political entity that acknowledges and upholds Islamic values and laws. Dar al-harb, on the other hand, was the land of infidels, the epitome of heedlessness and ignorance that posed a threat to the Islamic order. The jurists’ concern was to universalize application of the shari’a, their ultimate goal being to propagate the Islamic faith.

This paper will trace the traditional rationale behind the wars that Muslims engaged in. It will also explore the ramifications of the jurists’ bifurcation of the world into dar al-Islam and dar al-harb. By accentuating the shari’a as the only source of legal prescription and validity, the jurists constructed a perpetual ideological contest between dar al-Islam and dar al-harb. Through this construction, the jurists were able to formulate rulings legitimizing Muslim expansion and ascendancy over the non-Muslim world.

The paper will also argue that unlike the jurists, the Qur’an does not suggest a perpetual state of war between dar al-Islam and dar al-harb. Rather than reflecting the Qur’anic pronouncement on interfaith relations, the legal construction of the world into dar al-Islam and dar al-harb are indicative of the historical realities that the ‘Abbasid jurists had to contend with. The paper will also argue that an important ramification of the concept of siyar (international relations) was that besides the revelatory sources, (the Qur’an and traditions from Muhammad), the jurists had to tap into other sources to formulate the rules incorporated in the siyar.

Furthermore, there was no prophetic precedent that articulated clear guidelines for such an engagement. Thus, in many cases, the jurists had to develop their own rules governing the interaction with non-Muslim states. They often deduced laws based on the principle of maslaha (rulings enacted in the public interest). By invoking the principle of “public interest,” the jurists saw the potential to legitimize state policies and secure political and military advantages that were in the interest of the Muslim community even if these contravened the spirit of the Qur’an. In essence, Islamic law was reflecting the empirical and political necessity of the state. As it did, it became more alienated from the Qur’anic notion of a just and peaceful social order.

The paper will also explore alternative readings of the juristic vision of a world order. It will argue that the Qur’anic view of international relations is interwoven to its conception of a universal moral discourse that unites all human beings. Fundamental to the Qur’anic view is the view that human beings are united under one God (2:213) and that they are to build bridges of understanding and cooperation with fellow human beings so as to create a just social order. It will also propose alternative readings of the juristic fiqhi bifurcation of the world.
Prof. Seyed Mohammad Ghari S Fatemi - Al-Mahdi Institute

Seyed Fatemi spent thirteen years studying to the highest level in the traditional educational seminaries of Qum under the direct instruction of some of the leading scholars of the present day. Alongside his traditional education Seyed Fatemi was also trained in Public Law at Tehran University, receiving the award of both an LLB and an LLM. In 1999 Seyed Fatemi was awarded with a PhD from the Faculty of Law at the University of Manchester for research engaging with Comparative Human Rights. Seyed Fatemi’s teaching and research interests include; the Philosophical foundations of human rights, International and comparative Human rights, Islam and Human Rights, Usul al-Fiqh and Hermeneutics, the History and Development of Fiqh, and Muslim Theology.

ABSTRACT: “Initiative Jihad: Moral and Human Rights Appraisal”

Initiative Jihad (al-jihad al-ibtidaee) is a term of art employed by Muslim jurists to differentiate it from the defensive one. Jurisprudentially speaking, the main purpose of initiative jihad is to subordinate non-Muslims to the Islamic rulings and Muslim rulers, either via their conversion to Islam or through their compliance with the dhima agreement.

Freedom of religion is a negative liberty encapsulated in two main aspects of "freedom from" and "equal to". One enjoys freedom of religion when s/he can freely believe, demonstrate their beliefs and practice their religious convictions. While their freedom of belief is an absolute negative liberty the "principle of harm" is a justified limitation on their religious practices.

Autonomy is a pivotal moral concept not only for Kantians, but also, at least in an interpersonal level, for some Islamic schools of thought, notably ʿAdliyya. Unlike the dominant Muslim Sunni theological school of the Ashʿari, the ʿAdliyya may theologically have laid the theoretical ground for the moral notion of autonomy at the level of norm making as well as personal responsibility through rejecting Divine Command Theory and its theological moral implications.

To examine morality of the jurisprudential norm of initiative jihad, I shall first introduce two conflicting Shiite theories. As to the advocates of the obligatory nature of initiative jihad - even in the time ghaybat (occultation) - I will study two contemporary Shiite jurists, ayatollah Abulqasim al-Khu’i and ayatollah Husianali Muntazeri, who represent two major jurisprudential Shiite schools of thought in two main seminaries centers, i.e., Qom in Iran and Najaf in Iraq.
Dr. Shuruq Naguib – Lancaster University

Dr. Shuruq Naguib is a lecturer in Islamic Studies at the Department of Politics, Philosophy and Religion at Lancaster University. She received her PhD in Islamic Studies from the University of Manchester, Department of Middle Eastern Studies. Dr. Naguib’s research covers two key strands: the classical and pre-modern intellectual and textual traditions, particularly Qur’an hermeneutics and ritual law; and Muslim responses to modernity, with a focus on how twentieth century and contemporary Muslim women scholars read the tradition to intellectually and socially develop their religious authority as knowers of the tradition. She has written on ritual purity, metaphor in post-classical Qur’an interpretation and Arabic rhetoric, feminist hermeneutics of the Qur’an, and contemporary female exegetes and jurists in Islam.

**ABSTRACT:** “Gendered Constructions of Prophethood and Revelation”

The first aim of the paper is to map out the contours of the medieval Muslim debate on the prophethood of women. Much of the discussion in different genres of Islamic writing revolves around the interpretation of certain aspects of the Qur’anic narrative of Maryam. In key theological works such as Kitāb al-irshād by Imām al-Ḥaramayn al-Juwaynī (d. 419/1028), the question is addressed in the course of proving Prophetic mission and distinguishing between Prophets’ miracles and saintly marvels. In tafsīr works such as al-Qurtubi’s (d. 621/1273) Al-Jāmi’ li-aḥkām al-Qur’an, the discussion is more broadly related to the conceptual grammar of Maryam’s depiction in the Qur’an, mainly: her election (iṣṭifā), her moral and/or physical purification (taṭhīr), hence, potentially, her infallibility, her capacity to hear and speak to the Angels and, finally, her miraculous virginal conception. Although the majority hold the view that maleness is a prerequisite for prophethood, those who argued in support of female prophethood were not marginal figures in the Islamic tradition. Two of the most prominent scholars who espoused this view are Abū al-Ḥasan al-Ash’arī (d. 324/936 CE) and Ibn Ḥazm al-Ẓāhirī (d. 456/1064). The second aim of the paper is, therefore, to interrogate these as well as other sources to reveal the different concerns underlying gendered conceptions of prophethood and to account for the predominance of the view that women were excluded from it.
ABSTRACT: “Gender Violence and Qurʾān 4:34: An Interpretive Analysis between Tradition and Modernity”

A look into the attitudes taken by today’s Muslim scholars to the interpretation of Qurʾān 4:34 reveals two approaches, one of acceptance and one of rejection. The acceptance approach is represented by neo-traditional scholars who synthesize both the traditional and reformist approaches. The rejection approach is represented by neo-modern scholars and/or feminists, even though not all of them will categorically declare such rejection. The debate over the implications of Qurʾān 4:34 came as early as its revelation. According to the literature of “asbāb al-nuzūl” or “occasions of revelation,” the Prophet Muḥammad, to begin with, was against any kind of corporal punishment against wives, until the verse revealed otherwise. Even after revelation, the Prophet kept reluctant to allow wife-discipline. The debate over the verse never ceases among the interpreters of the Qurʾān throughout history. However, as far as the physical discipline of the wife is concerned, the different interpretations of the verse indicated that interpreters were reluctant to accept the literal meaning of the verse. On one hand, some interpreters put limitations on the literal meaning or seem to put obstacles on the way of applying physical discipline to the wife. On the other hand, other interpreters totally reject the literal implications of the verse and bind such implications to the context of revelation. The following lines argue that the failure to attain a consensus on the interpretation of Qurʾān 4:34 is inherent in the methods developed by its different interpreters. These methods are mostly influenced by the different contexts used by the interpreters themselves. Consequently, these interpretations may fall short of fulfilling what they are made for within different realities. While the traditional methods deal with the Qurʾānic text as piecemeal and, consequently, fail to harmonize legal enactments with the holistic ethical view of the Qurʾān, the neo-modern methods are yet to develop coherent treatment of the Qurʾānic text in its totality, insofar as such methods are based on the duality of universality and particularity duality, the duality according to which the interpretation of a Qurʾānic text serves as a historical contextual expression based on the general ethos and universal intents of the Revelation. On that note, this essay will explore the different interpretations of Qurʾān 4:34 and their respective methods, highlighting representatives of each method. The essay concludes with the interpretation of the verse by al-Ṭāher Ibn `Ashūr, whose attempt seeks to bridge the gap between the ethical purport of the verse and its legal indications on one hand, and between tradition and modernity on the other.
ABSTRACT: "Transgender/Transsexual Muslims, Religious/Cultural Violence and Sex-Reassignment Surgery Fatwās"

The approach of Islāmic scholarship to the issue of transgender/transsexual identity is still a challenging subject for Muslim *trans* people. The modern term *trans* describes both women and men who feel that they are trapped in the wrong bodies and may decide to change their bodies through sex-reassignment surgeries (SRS). Although *trans* identity does not sit easily with the categories established by Islamic societies in premodern Islam, there are overlaps and, of course, many *trans* persons exist and have existed in Muslim societies. However, *trans* individuals have had a hard time living in their respective Islamic patriarchal cultures without discrimination and oppression. Indeed, traditional Muslim scholars, who usually raised in patriarchal cultures and believed in Islāmic theological patriarchy, often just ignored them. Consequently, sex-reassignment surgery was mostly regarded as sinful, thus prohibited (harām) in Islam by both Sūnī and Shi'a traditional jurists. However, in recent decades, *trans* people have become more visible as they openly struggle to achieve their rights. They have begun to protest against the marginalization, violence, and discrimination entrenched in patriarchal culture. In this paper, I will give two examples of such struggles: one (Sally ʿAbd Allāh) from Egypt and the other (Maryam Khātūn Mulkārā) from Iran. We shall see how their plight caused two important neo-traditional jurists, i. e. Āyatullāh Khomeini in Iran and Shaykh Muhammad al-Ṭanṭāwī in Egypt, to issue Fatwās legalizing SRS within Sharīʿa law and, thus, state law (in the Iranian case) in the late 1980s. These fatwās can be seen as the first step toward giving *trans* Muslims the right to live out their Islamic ideals. This paper explains how the transgender Muslims’ situation prompted the fatwās on sex-reassignment surgery and, therefore, how the fatwās, ultimately, expanded the scope of Islamic tolerance. The paper also analyzes the main juridical reasons behind Khomeini and al-Ṭanṭāwī issuing such fatwās through their classical methodology of understanding the Islāmic concept of ījtihād.

Keywords. Transgender, Transsexual, Sex-Reassignment Surgery, Fatwā, Khomeini, Sharīʿa law, al-Ṭanṭāwī
**ABSTRACT: “Imam Husayn, the Twelver Creed and the “Resistance”**

Imam Husayn’s martyrdom at Karbalā’ is at the heart of every strand of Shi’ī political Islam, and often also, its propaganda. The martyred imam’s figure looms large in the Twelver creed. His legacy appears to lend itself to calls of armed “resistance.” After all, he died fighting tyranny. Yet, as I shall discuss, little can be as contested as the meanings of the Imām’s martyrdom. Based on examining its textual foundations and fieldwork in Lebanon, I argue that the subject’s textuality necessitates diversity of understandings, and with this, any political, let alone military, use of his legacy is bound to be contested. At the heart of the Twelver creed is the imāmate, defining the nature of Husayn’s role. If he was an imām capable of any miracle, in possession of “God’s great name” (as traditions in Twelver collections of Hadīth tell us), why did he choose martyrdom over victory? Or was he, as the late Sayyid Fahl-Allah argued, in front of thousands in his mosque, seeking worldly political reform and lost the battle (whereby an imām is no possession of divine powers? And based on this, which Husayn to follow? The one capable of ordering the universe around, who foretold his pending fate yet wilfully sought it, and thus is not a political model to follow? Yet perhaps a military one? Or the one who, in worldly terms, fought and lost, and whose nobility remains the political example? And through all of this, how does the interplay of narrative and performance affect the meaning? No student of the relevant Twelver body of Hadīth on the subject will miss the orders the imāms left for weeping over +usayn and making others weep for him. For more than a century now, a number of Twelver ‘ulamā argued that much of the “history” we have of Karbalā’ is but dramatization. If true, which parts of the Imām’s legend can we solidly build on? It is telling that Hezbollah’s current leader, addressing a conference held on the subject in 1999, cautioned the participants against being too critical of available accounts. According to him, all that the available material needs is “refinement”. A force keen on propaganda, with a clear bellicose spirit, may take issue with doubt and debate. Yet can Hezbollah, or anyone for that matter, control the near infinite questions that the existing body of texts engenders? One where the borders between creed, Hadīth, narrative and dramatization appear porous? I shall argue that such control is not only impossible, but counter-intuitive.
Professor Robert Gleave is Professor of Arabic Studies at the Institute of Arab and Islamic Studies, University of Exeter. His primary research interests include hermeneutics and scriptural exegesis in Islam; Islamic law, works of Islamic legal theory (usul al-fiqh); violence and its justification in Islamic thought; and Shi‘ism, in particular Shi‘i legal and political theory. He has organised a number of funded research projects including Islamic Reformulations: Belief, Governance and Violence (www.islamicreformulations.net) and Legitimate and Illegitimate Violence in Islamic Thought (www.livitproject.net). He is author of Islam and Literalism: Literal Meaning and Interpretation in Islamic legal theory (EUP, 2011) and Scripturalist Islam: The History and Doctrines of the Akhbari Shi‘i School of Thought (Brill, 2007).

**ABSTRACT: “Dissimulation, Violence and "the spilling of blood" (ṣafk al-dīmā’)”**

The dispensation to dissimulate in order to prevent persecution and harm is established in various Islamic schools. Whilst the Imāmī Shi‘ī notion of taqiyya is the most elaborated rubric for dissimulation, it can be found in pre-modern Muslim legal writings in the discussions of actions permitted by necessity” (ḍarūra). Dissimulation permits justified transgression of the law; though there are limits. Under taqiyya, Imam jurists have prohibition ṣafk al-dīmā’, a phrase which is understood figuratively by most scholars to refer to any form of physical harm (not merely killing, and not only actions which literally cause blood to be spilled). In this paper, I will discuss what this generally held prohibition means for the idea of violence amongst Shi‘ī jurists, both pre-modern and contemporary. Does it reveal a particular concern with preventing violence, and a strong revulsion towards it? Are there other factors at play in the discourse around ṣafk al-dīmā’? The discussion influences conceptions of "legitimate" and "illegitimate" violence in Islamic law more generally.
Shaykh Arif Abdulhussain – Al-Mahdi Institute

Shaykh Arif founded the Al-Mahdi Institute in 1993, and currently serves as its Director and Senior Lecturer in usūl al-fiqh and Muslim Philosophy. He has been at the forefront of developing and delivering Advanced Islamic studies for over twenty years and is committed to sharing the Human face of Islam at all levels of society through a combination of public lectures and intra and inter faith dialogue. Shaykh Arif was educated at the Madrassah Syed Al-Khoei, London and graduated with Honours in 1988 where he also taught Grammar, Logic, Islamic Law and Usul-Fiqh. He then travelled to Iran to further his studies and received his training at Hawza Ilmiyyah of Qum. He also attended private training and research studies with leading scholars of Qum. Alongside these studies he was also teaching in Qum across a wide spectrum of the traditional Muslim scholarly disciplines.

ABSTRACT: “Human Dignity and Stoning to Death (ḥadd al-rajm) within an Existential Paradigm”

One of the primary aims of religion is to provide a spiritual orientation to the life of a faithful believer/adherent/person by informing them of a meaningful and purposeful life on earth through a befitting soteriology. In this respect the religion of Islam address two fundamental aspects of human life: the devotional (‘ibadat) and the societal (mu’amalat). Of these the ‘ibadat are original religious teaching whereas the mu’amalat are a product human conventions regulated by religious teachings with the aim of ensuring fairness at a societal level and productivity in terms of soteriology. On rare occasions Islam has originally stipulated mu’amalat in given contexts where there is a lack within the mu’amalat system of a given community as is evident from the conduct of the Prophet Muhammad.

Since the mu’amalat are non-religious, in principle they have to be fluid in line with the growing human community as observed historically through the changing socio-cultural systems and the ever evolving human rights discourse. This fluidity accomodates changes across the entire spectrum of mu’amalat with the role of Islam being secondary: one of bringing about greater fairness and purposefulness in human (co-)existence.

The soteriology espoused by the Abrahamic faiths is one in which human beings are existentially constituted to become fine moral agents and spiritual beings. This notion of salvation which is presented in the Quran and authentic teachings of the Prophet is conveyed through notions such as human nobility (ikram i.e. ennobil the children of Adam) and the breathing of spirit into Adam (nafkh al-ruh). The result of such an understanding is one which leads to the growth of human communities by a continuous means of evolutionary process, a process whereby human societies naturally become morally upright so as to become free of the need of incentives toward good or deterrents averting from evil. Similarly, any form of punishment that demean a human or is deemed inconsistent with human dignity and nobility would naturally be replaced with other forms of punishments that achieve the same end yet are more in line with human dignity.

In this paper I discuss the capital punishment of stoning (rajm) which was possibly introduced or borrowed from other religious cultures due to the need felt at the time when Islam was still a relatively new faith seeking to impose itself on the nascent Muslim community, despite the fact that it is not mentioned in the Quran. However, when the origins and development of religious trditions and communities are viewed from an existential paradigm, then the legal systems which are introduced by religion must also be regarded as subordinate to the overall aims and purposes of religion insofar as the fate and salvation of human beings is concerned. Hence we might argue that as human communities mature, which they inevitably must, the religious law which serves the purpose of human growth must also mature, thereby becoming less draconian and mirroring to an even greater extent the evolving human state of nobility. What this demonstrates is that the moral and spiritual growth of the human community is an essential facet towards which religion is primary concerned, whereas the mu’amalat are contextual forms that assist in this process. In other words, law is purpose-driven by the aims and purposes which religion itself has for the human being. This is further attested to by many modern Islamic states shying away from the application of rajm.
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**ABSTRACT:** “Different Approaches to Stoning as a Legal Punishment”

This article has two aims. First, it will survey the contemporary approaches to the nature and justifiability of stoning as a legal punishment in the Shia legal school. Secondly, it will try to examine these approaches and their different assumptions and arguments to show how a legal reformist can justify revisions to this and other similar punishments. My hypothesis is that there is a hierarchical pyramid of relationships between the following fields of study: legal policy, political system, legal system, philosophy of law, moral philosophy and epistemology, and that any attempt at legal reform in the penal system is naturally accommodated in one of these fields.
Dr. Shahrul Hussain studied classical Islamic studies and Arabic at a specialist Islamic seminary, Darul Uloom Al-Islamiyah Al-Arabiyyah College, Birmingham. After graduating from Darul Uloom he won a scholarship to study at the pre-eminent University of Al-Azhar, Cairo, Egypt, and graduated from the Faculty of Islamic Jurisprudence and Law in 2001. In 2010 he completed his PhD at the University of Aberdeen, Scotland. His key areas of research and teaching are jurisprudence, theology, Qur’an and Hadith studies. I have a keen interest in the study of Islam as a sociological phenomenon in modern, pre-modern and postmodern developments.


Estimated at a staggering 401 billion dollars plus global industry, arms trade is not only a lucrative business but a highly sensitive issue that requires strict government licenses to regulate it. Current national and international regulations and licenses for arms trade is different to what it was over a millennium ago. This article looks at an age where government licences and regulation did not exist in the same form we have today, and investigates the principles early Muslim jurists established to govern arms trade and arms embargo. The article examines the evidences behind these principles. I argue that due a dearth of clear-cut (muḥkam or qat’i) Qur’anic and sunnic precepts Muslim jurists where forced to abandon the traditional method of relying on the apparatuses (uṣūl) of deducing Islamic law and moved to looking at this issue from more of an ethical perspective than an uṣūlī perspective. In conclusion I argue that the jurists’ view were not only suitable to meet the needs of their time but still holds valid today. Their principles were not idiosyncratic to their faith nor based on religious text as much as common sense, to wit, universal principles any state would adopt to protect their self-interests.
Ayatullah Seyyed Mostafa Mohaghegh Damad is an Iranian Shia cleric, and reformist who has been called "a leading instructor" in Iran's major seminary city of Qom. He has served as Chairman of the Commission of Compiling Judicial Acts and a Judge in the Ministry of Justice. His English publications include 'Protection of Individuals in Times of Armed Conflict Under International and Islamic Laws and Religion, Philosophy and Law: A Collection of Articles and Papers.' He received his PhD in Law from the Catholic University of Louvain, Belgium and his BA and MA from the University of Tehran.

**ABSTRACT: "The Position of Islamic Teachings against Violence and Extremism"**

The phenomenon of violence is as old as human history. Sacred texts of Abrahamic religions trace back the history of first instance of violence to the time of creation of Adam, his life on the earth and the conflict between two of his sons. Regardless of realness or symbolism of this event, its report in the sacred texts indicates that violence and aggressiveness are born with human being. Another outstanding feature of this story is that human beings have two inborn or inherent tendencies, i.e. ability to practice or to avoid violence. Cane, who greedily and jealously threatens his own brother to death and removes the sapling of his life from the face of existence, is a symbol of man’s ability to practice violence. On the other hand, Abel, who tolerantly takes distance from the application of force and announces his peaceful stance to his brother, is a manifestation (symbol) of man’s capacity to avoid violence.

Through a cursory look at that the modern and old histories, one can find several practical examples of both the tendencies among human beings. On the one hand, we come across human beings who enjoy decent characteristics such as tolerance, self-restraint and kindness, while on the other hand, there are people who, do not spare any violence and just like savage beasts inflict injuries on others.
ABSTRACT: "The Position of Islamic Teachings against Violence and Extremism"

This paper will examine an authentic jurisprudential principle (qā'idah or 'asl) that is derived from a set of regulations in Shariah, namely: the principle of kindness (al-riffq). It means that: seeking for kindness and implementing it in every case and giving it a priority in which there is contention between kindness and severity or violence.

The principle includes the statute of implementation and in reality when there is an actual contention between cases. Furthermore, it includes all the juristic sections such as the field of sanctions (al-hudud wa al-'uqubat), the administration of the state, the application of Shar‘, disagreements and wars.

Awareness of this principle and its authoritativeness would help, then, to argue that (1) it is a tool of understanding the Shar‘ in terms of using violence, which is an inevitable instrument of any ethical social order, in some of its aspects. This understanding inclines to using violence not as being retaliatory or as essence of religious practices, rather as last treatment, exceptional and can be waived with the least justification. Further and in the same line, the principle can be seen as a clear (muhkam) authoritative rule by which some texts, especially some transmitted reports, can be evaluated in terms of its meaning and authenticity. (2) Believing in the principle of kindness as an authoritative rule would provide a different understanding of some contemporary claims about the relationship between religion and violence, especially Islam. It would argue that there is not any such substantial relationship between the religion or the sacred and violence. Rather it is a relation between a specific reading of any ideology or thought and violence including even the secular or scientific thought.