



# Workshop Sharī'ah revisited

Switzerland is more Islamic than Saudi Arabia!



# Today's Goals - Content

After the workshop we know...

- ▶ the meaning of sharī'ah: Traditionally vs. quranic
- ▶ how to deal with thieves: What are the possible interpretations of verse 5:38
- ▶ the God-submitting state: rough sketch of a Koran-led government
- ▶ the comparison of the presented God-submitting state form with the current situation of Switzerland

Subsequently there is a Q&A round and the possibility for a discussion.



# Shari'ah

What has been repeated by the generations - often unreflected?

# Traditional Scharī'āh

- ▶ «Islamic» Law: Includes The Reading (engl. for «Koran») and normative collections («Hearsay») about the Prophet, his assumed actions and his alleged utterances
  - ▶ **No established law collection**
- ▶ Ritual actions (al-ʿibādāt) are also included
  - ▶ E.g. fasting, praying
- ▶ Interpersonal relationships are also regulated (al-muʿāmalāt)
  - ▶ e.g. Property, family, inheritance and criminal law
- ▶ «Must» be accepted without contradiction by the pious believer
- ▶ The jurisprudence here is the so-called “fiqh” and is shaped differently according to the law school (maḏhab) (with sometimes considerable differences!)
  - ▶ Sharīʿah is «God-given law» whereas «Fiqh» is man-made, and thus changeable
- ▶ Various evaluations such as legal (ṣaḥīḥ), reprehensible (makrūh), imperfect (fāsid) and void (bāṭil)



# The «way of law» in The Reading

What does sharī'ah (شريعة) mean in The Reading (engl. for «Koran»)?

# Linguistics

The root of the Arabic word **شريعة** is **schīn-rā-'ayn** (ش ر ع) and always has to do with a straight direction or a clear path (also symbolically):

## Verbs

- **شرع** (1) **schara' a** to go, to begin, to unknot sth., to solve sth., to fixate, to decree, to regulate, to set a law
- **شرّع** (2) **scharra' a** to give laws, to raise laws
- **اشرع** (4) **aschra' a** to point sth. to sb./sth. (eyes, gun), to whip out a pen
- **اشترع** (8) **ischtara' a** to introduce oneself, to command, to decree, to dictate, to accept, to go on the way

## Nouns

- **شرع** **schar' a** manifesto, clear and open way, direction
- **شرع** **schar' (a)** string, rope, bowstring, direction, way, law
- **شريعة** **schir' a** custom, path (of salvation)
- **شريعة** **schari' a** path, (open) drinking spot (**مشرفة** **maschra' ah**)

## Adjectives

- **شريع** **schari' a** brave (**شراعة**: brave character), good, excellent
- **شرّع** **schurra' a** visible, to appear on the water surface



# Verses from The Reading

What does The Reading say about the concept of «way of law»?

“

And We have sent down to you the Book with the truth, affirming what is between your hands of the Book and superseding it. So judge between them by what God has sent down, and do not follow their desires from what has come to you of the truth. **For each of you** We have made **a direction/custom** (shir'ah) ; and if God had willed, He would have made you all one nation, but He tests you with what He has given you; so race to do good. To God you will return all of you, and He will inform you regarding that in which you dispute.

”

5:48

This verse is sadly overlooked in the theological classification of the traditional concept of sharī'ah. Something like e.g. a "persistent tax for the other-believing people" cannot exist, and every community has its own custom, which is accepted by God! No form of any sharī'ah may be imposed on others (see also 5:43)!

“

And ask them about the town which was by the sea, after they had transgressed the Sabbath; their fish would come to them **visible** (shurra'an) on the day of their Sabbath...

”

7:163

“

He has decreed (shara‘a) for you the same system He ordained for Noah, and what We inspired to you, and what We ordained for Abraham, Moses, and Jesus: “You shall uphold this system, and do not divide in it.” Intolerable for the polytheists is what you invite them towards. God chooses for Himself whoever He wills; He guides to Himself those who repent.

”

42:13

Here, the first verb stem is associated with the doctrine of faith and the way of life (ad-dīn) which God provides for believers. This is not meant in an exclusive but interreligious sense: our roots are the same.

“ Or do they have partners who have **decreed** (shara‘ū) for them a system which has not been authorized by God? And if it were not for the word already given, they would have been judged immediately. Indeed, the transgressors will have a painful retribution. ”

42:21

Once again, the first verb stem is used, this time to reject a “legal way” (ie. another shari‘ah), invented by men, in faith! **So there are people who want to spread their own path of faith as shari‘ah, which has nothing to do with the revelation of God and His “legal way”!**

“

Then We have established you a **rite** (sharī‘ah); so follow it and do not follow the desires of those who do not know.

”

45:18

Other translations use "clear direction", "direction", "straight path" or "clear path".

Spiritual fulfillment and social well-being, e.g. by commemorating God, is also meant by this verse. Important is the emphasis on "knowledge" in this context. Any kind of law must therefore be worked out by connoisseurs of the matter at hand in an interdisciplinary process (see also 4:59, 4:83) - whereby The Reading, the Word of God, is regarded as a guideline.



“ O you who believe, many of the Priests and Monks (i.e. religious scholars) consume the money of the people in falsehood, and they repel from the path of God. And those who hoard gold and silver, and do not spend it in the cause of God, give them news of a painful retribution. ”

9:34

This is the moral basis, we have to contribute to the improvement of social conditions. See also 9:35 for the formulation of “painful retribution”.

“

If only the Scholars and Priests had prohibited them for speaking in sin and consuming money illicitly. Miserable indeed is what they have done.

”

5:63

The real role of "scholars"



# Concrete example - verse 5:38

How to deal with thieves in the “legal way” of Submission (i.e. Islam)?



# Cutting off hands?!!!??? Really?

Typical translation from 5:38:

As for the man or woman who is guilty of theft, recompense them by **cutting off** their hands for their crimes. That is the punishment from God. God is *Mighty, Wise*.



# How should one analyze such verses?

Our focus is on the two words "hand" and "cut":

- ▶ hand: Arabic „yadd“ – يد or plural ’aydī – أيدي from the root yā-dāl-yā (ي د ي)
- ▶ cut: Arabic „qata‘a“ – قطع derived from the root qāf-ṭā-‘ayn (ق ط ع)

# «Hand» in The Reading

- ▶ The root of Yadd occurs in the Koran in 120 places in the following 110 verses: 2:66, 2:79, 2:95, 2:97, 2:195, 2:237, 2:249, 2:255, 3:3, 3:26, 3:50, 3:73, 3:182, 4:43, 4:62, 4:77, 4:91, 5:6, 5:11, 5:28, 5:33, 5:38, 5:46, 5:48, 5:64, 5:94, 6:7, 6:92, 6:93, 7:17, 7:57, 7:108, 7:124, 7:149, 7:195, 8:51, 8:70, 9:14, 9:29, 9:52, 9:67, 10:37, 11:70, 12:31, 12:50, 12:111, 13:11, 14:9, 17:29, 18:57, 19:64, 20:22, 20:71, 20:110, 21:28, 22:10, 22:76, 23:88, 24:24, 24:40, 25:27, 25:48, 26:33, 26:49, 27:12, 27:63, 28:32, 28:47, 30:36, 30:41, 34:9, 34:12, 34:31, 34:46, 35:31, 36:9, 36:35, 36:45, 36:65, 36:71, 36:83, 38:44, 38:45, 38:75, 41:14, 41:25, 41:42, 42:30, 42:48, 46:21, 46:30, 48:10, 48:20, 48:24, 49:1, 57:12, 57:29, 58:12, 58:13, 59:2, 60:2, 60:12, 61:6, 62:7, 66:8, 67:1, 72:27, 78:40, 80:15, 111:1
- ▶ In these, for example, in the Azhar translation in 27 places yadd is actually translated as a hand and in 33 places as hands.

# "Hand" does not always mean "hand"?

- ▶ 38:45 **And remember Our servants, Abraham, Isaac and Jacob - those of strength (al-aydī) and vision.**
  - ▶ A selection of translations for this word (al-aydī): power, strength or inner strength, possibility, ability.
- ▶ 48:10 **Those who pledge allegiance to you, are in fact pledging allegiance to God; the hand of God is above their hands. Those of them who violate such a pledge, are violating it only for themselves. And whoever fulfills what he has pledged to God, then He will grant him a great reward..**
  - ▶ It should be noted, however, that the Azhar translation here describes the words yadd and aydīhim as "power" and "force".
- ▶ 51:47 **And the heaven We constructed with strength, and indeed, We are (its) expander.**

# «To cut» in The Reading

There are small differences in the words derived from the same root qāf-ṭā-'ain (ق ط ع). The following forms of this root occur in the reading:

- ▶ 12 times as a first verb stem qaṭa'a: قطع – to cut
- ▶ 12 times as a second verb stem qaṭṭa'a: قطع - to cut open, cut up
- ▶ Five times as a fifth verb stem taqaṭṭa'a: - تقطع - to cut oneself
- ▶ Four times as a noun qiṭ' (part - قطع) or as a noun qiṭa' (section - قِطَع)
- ▶ Three times as an active (cutter: qāṭi'ah - قاطعة) or passive participle (maqṭū' - مقطوع; maqṭū'ah - مقطوعة) of the first verb stem.

Meanings are:

- ▶ To cut/separate/dissolve/seclude, to make a punishment impossible, unable to drive on, retract, demolish, perish/stop/terminate/backfire, cut briefly/ stop, retain/interrupt/transit, to make an end, a cut part/ part / a part from a whole, herd, distinguishable part.

## «To cut» in The Reading(2)

In 36 verses in total we find that, leaving out 5:38, in only 15 verses something physical or material is torn, cut through, trimmed, eradicated or divided:

- ▶ earth, rope to the sky, intestines because of the drinks in hell, robes of fire etc.
- ▶ 5:33, 6:45, 7:72, 8:7, 7:124, 12:31, 12:50, 13:31, 15:66, 20:71, 22:19, 26:49, 47:15, 59:5 and 69:46. (also used as „eradicate“ bzw. „elimination of people“, which can be understood as a symbolic „cutting off of life“.)

The word is used in the other verses as follows:

- ▶ for the bonds or commandments and, which are separated,
- ▶ for the 12 tribes of Israel, which will be divided,
- ▶ for a certain part of the night,
- ▶ for the hearts, which will be broken,
- ▶ for paths, which will be cut,
- ▶ or for the separation on the Judgment Day between the polytheists and their idols.



# «To cut» in The Reading(3)

The remaining verses can be grouped as follows:

- ▶ to physically cut off and split (5:33, 7:124, 13:31, 20:71, 22:19, 26:49, 47:15)
- ▶ to interrupt or end the relationship (2:166, 6:94, 7:160, 7:168, 9:110, 47:22, 21:93, 23:53)

or

- ▶ to hurt or scratch (12:31, 12:50).



# Cut and hand in the same verse

- ▶ In 5:33, whereby the context is a state of war and several forms of revenge are cited. Even those who have started the war do not necessarily have to be killed or their body parts do not have to be separated.
- ▶ In 5:38, which we are evaluating.
- ▶ In 7:124, where the threat of the pharaoh is mentioned to cut off the hands and feet of the believing magicians. Similar to this: 20:71 and 26:49
- ▶ In 12:31, according to which the women cut their hands because of their astonishment of Joseph's beauty. **They really didn't cut their hands off.**
- ▶ In 12:50, according to which Joseph enquires about the women who have cut their hands. It is the same circumstance as in verse 12:31.
- ▶ In the fourth example, in verse 12:31 it is evident that the use of prepositions becomes important. Knowing that cut does not mean „cut off“, it is similar in The Reading. To cut the hands does not mean to cut off the hands.



## Raise your hand in the witness box

Source: The Proceedings of Old Bailey, Punishments at the Old Bailey, Website: <http://www.oldbaileyonline.org/static/Punishment.jsp#branding>



# Examples from The Reading

The mercenaries of Joseph accuse his brothers of stealing the goblet of the king:

- ▶ 12:74–75 **They said, "What is the punishment for the thief, if you are liars?" They said: "The punishment is that he in whose saddlebag it is found will himself serve as the punishment. It is so that we punish the wicked."**

Conclusion:

- ▶ Community work
- ▶ The victim can however forgive the criminal wholly or partially to gain God's benevolence (2:178).
- ▶ None other than the culprit has to take the punishment (12:78–79)



# Temporary result

In consideration of all these points we have three meanings of this one verse in the fifth chapter.

1. The physical cutting off the hands (cut off);
2. The mark, scratching or hurting the hands (visible characteristics for the fellow men and for future trials by raising the hand);
3. To take the remedies (resources/incomes) away and/or restrict their social connections (like to do community work or prison).



# Principle of proportionality

Because of the fact that a punishment is allowed to be repaid equally at most (16:126), cutting off hands is no longer in the realm of possibilities:

And if you punish, you shall inflict an equivalent punishment. But if you resort to patience (instead of revenge), it would be better for the patient ones.

In the event of theft goods or products were stolen, which would mean it is allowed to take away the resources and incomes (his social and individual power), for example as a community work combined with a financial penalty.



## Principle of sincere repentance

**5:39 If one repents after committing this crime, and reforms, God redeems him. God is Forgiver, Most Merciful.**





# Conclusion to 5:38 – Social devolving of power

So it is possible to implement a «withdrawal of social power» in a number of ways – which has to be specified by the society respecting the cultural and political context.

Withdrawal of social power could mean e.g.:

- ▶ prison
- ▶ financial penalty
- ▶ community work
- ▶ ...

Here then the lawyers have to formulate the corresponding laws.



Rough sketch of a God-submitting  
state form

Does God ask us to build a theocratic state?



# A 2010 study „How Islamic Are Islamic Countries“

- 1. New Zealand
- 2. Luxemburg
- 3. Ireland
- ...
- 11. Austria
- 12. Norway
- **13. Switzerland**
- ...
- 17. Germany
- 18. France/Bahamas
- ...
- **131. Saudi Arabia**
- 38. Malaysia
- 48. Kuwait
- 64. Bahrain
- 103. Turkey
- 110. Albania
- 147. Pakistan
- 153. Egypt
- 163. Iran
- 169. Afghanistan
- 202. Sudan
- (201. Iraq)
- 206. Somalia



“ You were the best community ever raised among the people: you advocate righteousness and forbid evil, and you believe in God. If the followers of the scripture believed, it would be better for them. Some of them do believe, but the majority of them are wicked. ”

3:110

Every citizen of a state should be able to participate directly or indirectly in social matters.



# Principle of a God-submitting state

## - Constitution and declaration of consent

- ▶ Monarchy is rejected: 27:34
  - ▶ traditional “caliphate” and thus religious dictatorship is impossible: 88:20-22
- ▶ **Basis is the (laicistic) constitution which is valid for everyone (‘ahd – e.g. 2:177, 9:4)**
- ▶ Can be (must not) presidential, but, above all, a declaration of consent must exist: 48:18, 60:12 (bay'ah – women had already the right to vote, i.e. to decide, if they wanted to declare their consent)
- ▶ Allows international constitutions/alliances (mītāq, e.g. 4:90), which have to be mandatory even in cases of war (2:177),
  - ▶ Releases us from the compliance in cases of war against the aggressors (9:1)



# Principles of a God-submitting state – fundamentals of the constitution

- ▶ Freedom of expression and religion 2:256, 10:99
- ▶ Protection (walāyah) of life (8:72, 18:44, see also 5:32)
- ▶ Compliance of dignity(karāmah) and mindfulness (taqwà) (49:13)
- ▶ Right to rule: Chilāfah (chalīfah - 2:30ff., 57:7, 6:165, 7:74, 10:14, 38:26)
- ▶ Equitable (‘adālah, qisṭ), institutional as well as private distribution of resources: donations, improvement of social conditions, charity (ṣadaqah, zakāh, infāq), inheritance, ownership
- ▶ Fair economic conditions (free and contract-based): 4:29, 2:188
- ▶ Faith and honest work are closely linked (no corruption, no bribery etc.): 4:32



# Principles of a God-submitting state

## - consultation

- ▶ consultation (schurà): 42:38, 3:159

The muslim scholar Fazlur Rahman who died in 1988 wrote:

- ▶ „Consultation, which The Reading assigns, does not mean, that somebody asks occasionally other's advice. It means rather mutual consultation of equals. Those who reject this consultations or postpone them, because they do not fit, is a dictator, who contradicts the submission [islam].“



# Principles of a state of submitters

## - political form

- ▶ **federalistic (5:43-48)**
- ▶ chains of command/officials are working on behalf of the society or of the state according to their expertise (4:83), who are to be obeyed (4:59), where The Reading is the measure in case of disputes (see also 16:107) – to prevent social decline and corruption, which are signs of collapse (17:16)
- ▶ Militia system/military, but only self-defence (4:91, 2:190-193, 22:39-40) is allowed, no pre-emptive strike, because peace has the highest priority (8:61)
- ▶ allows in general the death penalty, but it sets many, mostly difficult conditions, to use the death penalty (2:178-179, sh. auch 5:45)
  - ▶ Possibility of death penalty includes war situations, too (17:33, 5:33)
  - ▶ Death penalty is rejected in many cases: 26:116, 19:46, 18:20, 36:18, 11:91, half of the “death penalty” (4:25)?, apostasy (7:123-124, 4:88-92)



# Principles of a state of submitters

## - civil rights

- ▶ justice (5:8) and orientation on truth as absolute conditions for justice (especially in the witness box, 4:135)
- ▶ petition and referendum, fighting injustice: 4:148
- ▶ privacy (24:58), immigration law (earth is God's: 7:128)



# Leonard Binder (USA) in his book «Islamic Liberalism»

„Does God or the people grant the permission of ruling? This is how the discussion was solved: The original permission comes from God, but it is assigned to certain persons by the people. The permission of ruling over the people, whose origin is God, is assigned to a leader who has been chosen by the people, this is called democracy.“

- At the core it means: God, the almighty ruler, legitimizes the people's right to rule. Man uses this legitimation by assigning certain people a mandate by using the principles of consultation and the article of association which is built on a declaration of consent.



# Universal principles have higher priorities

Yaşar Nuri Öztürk gives higher priorities to universal principles in the frameworks for a state proposed by The Reading:

*«The Reading has taken away the omnipotence of the people and has bound it to certain principles and guidelines. Values are prescribed by God and are made available by Him. According to The Reading reason is the first value of all values. In chapter 10, verse 100 it is written: „And God is angry at those who do not use their minds.“ Translated into the legal terminology of modern time, it means: The governance is based on the principles of universal rights. The Reading always refers to these universal principles.*

*The Reading calls to use the mind, and criticizes if people act like a herd of cattles. The people aren't allowed to make anyone to their shepherd and should take their destiny into their own hands.»*

“

... Thus, God does not change the condition of any people unless they change what is in themselves. If God wills any hardship for any people, no force can stop it. For they have none beside Him as Lord and Master.

”

13:11

Self-responsibility! cf. 8:53

Any questions?

