

The Development of the *Shari'a*¹

The *Shari'a* differs from our modern concept of law which is to do with police and the state, and is more to do with individuals and their responsibilities before God. The Islamic world makes no separation between secular and sacred in the scope of the *Shari'a*, but "traditionally Muslims divide the *Shari'a* into two parts: the *Ibadat*, or duties that are owed to GOD by way of worship and so on: and the *Muamalat*, or duties of a practical kind toward men and society."² How did such an all-encompassing law come about? What led to the four classical roots, i.e. the *Qur'an*, *Hadith*, *ijma* and *qiyas*, of the *Shari'a*?

If we go back to pre-Islamic Arab culture we find that tribal history was remembered and chronicled in song and saga. "Pre-Islamic poetry celebrated the glory of each tribe and their warriors."³ When there were disputes recourse would be made to precedents, i.e. the *sunna* or customs of the tribe. The use of poetry and song along with the living traditions of *sunna* were to be influential in later Islam. N. Anderson says, "The fact is that it was customary law of both Arabia and the newly conquered territories on the one hand, and the administrative practice of the early caliph, on the other, that provided the new material from which Islamic law was quarried."⁴

During Muhammad's life the direction of the new community and the settling of disputes posed no authoritative problem. Muhammad was the prophet of Alláh who settled issues as they arose and gave his word on diverse matters. The *Qur'an* is inseparable from Muhammad. Here there is a dualism as "acknowledgement of the *Qur'an* as scripture by the Islamic community was inseparable from acknowledgement of Muhammad as its appointed recipient."⁵ Though claiming no power to do a miracle, Muhammad pointed to the revelations of the *Qur'an*, claiming that they "were themselves miraculous 'signs' of his apostleship" and that "the *Qur'an* was a transcript of a tablet preserved in heaven".⁶ The precise nature of the *Qur'an* led to the first intra-Muslim conflict over belief and practice. The *Mu'tazilite* claim of human free will led them to postulate that the *Qur'an* was created in time and therefore could employ metaphorical and changing interpretations. This was opposed by Ahmed ibn Hanbal who argued that this would invalidate absolute authority - for him the *Qur'an* was and is eternal. His opponents position undermined Muhammad's place as deliverer of revelation, which in turn made the *Hadith* less authoritative. Muhammad received revelation as the situation and the community required them and, in contrast to Christianity, they were prescriptions for situations and not God revealing Himself. Furthermore, contact is not personal and direct, but through an intermediary: Gabriel. Allah stays always remote. The utterances were written down on anything that came to hand, e.g. "Verses were written on palm leaves, stones, the shoulder blades of animals - in short, any material which was available".⁷ Also much was kept by "the professional remembrancers who could repeat the whole of a poet's compositions".⁸ The collection and sorting of this miscellaneous material into a *Textus Receptus* was accomplished during the reign of Uthman, although the collection was begun under the first Caliph, Abú Bakr and there were in fact four rival editions in use! The example of the Jews and Christians denouncing the integrity of one another's scripture provided an impetus to have one authoritative text. Although Uthman's edition is the authoritative one, the men of Kuta had a version which was extant as late as 1000 CE. The original script was Kufic, which had no indication of vowels and thus there is claimed a similar textual history to that of the Bible. It also led to many variations in the rendering of

the text. The verses themselves are arranged by size and not content or chronology, which makes modern 'criticism' impossible at the moment. The Islamic claim to an uncorrupted text has not explained the presence of foreign words, e.g. *Yumes* (Jonah) and *Ilyas* (Elijah) which are Greek. To summarise, Muhammad claimed divine revelation with profound theological and authoritative consequences. Against this are evidences of borrowing, and he was, in fact, accused of listening to foreign tales by night.

Hadith

The death of Muhammad brought problems of leadership and ongoing authority for the community, which would lead to sects and cleavages. To what or who could the community turn to with problems of life as they arose. With the Arab tradition for relying on custom the search was on for precedents by Muhammad whose name was an "index to the divine counsel"⁹. This unique status was one element in the establishment of *Hadith*, the other being "the rapid geographical expansion of the new faith in the first two centuries of its history into various areas of cultural conflict"¹⁰. New situations demanded some authoritative solution, and this demand brought temptations to manufacture *Hadith*. On the one hand rulers might compel learned men to invent a precedent to give credence to their politics, while on the other a pious man might think that he knew the Qur'an and Muhammad so well that he could speak for him. The proliferation of *sunna's* caused a reaction and certain men began to collect and compile those they considered genuine. The correlation and resolution of the problem can be attributed in the main to al Sharif, who conceived the science of Hadith in its orthodox and classical form. Making up a tradition would be an *Isnad* - a chain of transmitters - and the *Matn*, which is the content. These traditions would be classified as: i) sound; ii) good; or iii) weak, depending on the integrity of the transmitters. Western scholarship has regarded the *Hadith* with skepticism because of "contradictions, anachronisms and statements favoring one or another of the groups... conservative Muslims, however consider the Hadith collections historically accurate"¹¹. The canon of *Hadith* is made up of six sound books: i) *The Sahih of al Bulchari*; ii) *The Sahih of Hajjaj*; iii) *Abu Daud*; iv) *al-Tirimidhi*; v) *al-Mazai*; vi) *Ibn Maja*. Because of the absorption of Roman and Persian elements into the law under the *Umayyads* there was a strong reaction by those who wanted a true Islamic state. A review of the law occurred under the *Abbasids*, in the light of the Qur'an and differing law schools it debated the relevancy of precedence or reason outside of the Qur'an. The schools which formed around such people as al-Awzai in Syria, Abu Hanifah in Iraq and Malik ibn Anas all used some combination of Qur'an, Hadith, local custom and personal reasoning. Upon this ash-Shafii took the position that no *Hadith* that is authenticated back to the prophet could be set aside, at a stroke he placed a *Hadith* or par with the Qur'an. Such a system invalidated any tradition to the contrary traceable to any Companion, even one of the rightly-guided Caliphs. The fact that Islamic scholarship did not focus of the *Matn*, but on the *Isnad* of a tradition aided and abetted the wholesale fabrication of bogus tradition. This may be highlighted by the report that al-Bukhari in compiling the collection of less than 7 000 *Hadith* considered 600 000. Into the realms of excess came ash-Shafii who in viewing the community of Muhammad as a social ideal and his first four successors as rightly guided as the stratum of history that provides the basis of Islamic law, was able to make his significant contribution. For him the *Shari'a* is supremely important and governs every aspect of life; the Caliph was viewed as the protector of the *Shari'a* in a nomocratic rule. His system was influential in undermining the liberals in court circles and provided the discipline and control for personal reasoning along with

stimulating the collecting and testing of the *Hadith*. The *Hadith* as it became more and more formal left less and less room for personal application of the law.

Ijma and Qiyas

The *ijma* is significant as a guard against personal fallibility, here we have elements of custom and the 'ideal' community coming together. During the Umayyad dynasty there was a living tradition common to all schools that not only linked them in essence but was also broad enough to incorporate regional differences. This regional difference was due more to loyalty to an outstanding expert in the law as to geography. In this early period before the formalisation of the authority of Hadith it is interesting that early writers (e.g. Malik of Medina) regarded precedents of the prophet's Companions or Followers as only binding if they accorded with the practice of the community. But a lawyer following the hierarchy in solving a problem proposed by ash-Shafii would turn first to the Qur'an, then *Hadith*, then to *ijma* and then to *qiyas*. Perceiving divine revelation as infallible the Muslims are suspicious of any subjective factor in elucidating law. Because of this they wanted no link in the exposition of law that could be considered subjective or personal, (e.g. a *ra'y*). This produced the insistence on the process of analogical reasoning (*qiyas*) under the umbrella of a principle (*'illa*) which the text enunciated. To guard against subjectivism or fallible extension of sociological reasoning the opinion of a single individual was itself subjected to the test of previous catholic consensus which was usually by the preserve of reputable scholars.

The Right of the *ijtihad*

In its early stages the *Shari'a* was open to ideas and there was a liberty for jurist to use his own judgement. But by the 4th century *Hijra* the scholars of the Sunni schools felt that all questions had been dealt with. Future activity was to be restricted to exposition, this led to what has been called the "closing of the door of *ijtihad*". A 10th century scholar named al-Ash'ari taught "that man is incapable, of himself, of apprehending the moral quality of human actions without the enlightenment of divine revelation"¹². The norm now was that on joining of one of the law schools unquestioning acceptance of their doctrine was required.

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¹ For this essay I will only deal with the orthodox Muslim view.

² *Encyclopedia Americana*, Vol.15. (New York: Americana Corp.) 499.

³ *The New Encyclopedia Britannica*, Vol.22, 15th edn. Chicago: Encyclopedia Britannica Inc.,
10.

⁴ Anderson, Norman. *Islam in the Modern World*. Leicester: Apollos, 1990, 49.

⁵ *Encyclopedia Britannica*, 10.

⁶ Guillaume, A. *Islam*. London: Penguin, 1990, 55.

⁷ Guillaume, 57.

⁸ Guillaume, 56.

⁹ *Encyclopedia Britannica*, 10.

¹⁰ *Encyclopedia Britannica*, 10.

¹¹ *Encyclopedia Americana*, 496.

¹² Anderson, 53-54.