

## A FIRST READER IN ISLAMIC STUDIES

- I Law and legality in pre-Islamic Arabia
  - II The emergence of Muhammad and the rise of Islam
  - III The spread of Muhammadan tradition and the development of Sharia Law
- 

### A BRIEF SKETCH OF THE ORIGINS OF THE SHARIA LAW

#### I

Any kind of detailed study of the origins of early Islamic jurisprudence will inevitably lead to an examination of pre-Islamic Arabia. The way in which continental Arabia conducted its affairs prior to the advent of Islam demonstrates that various cultural threads were/are interwoven in the thick fabric known as Muslim jurisprudence. By way of definition, jurisprudence deals with those aspects of legality, which cover our traditional areas of law; both criminal & civil with all of its related sub-disciplines and departments. We should note that prior to the emergence of Muhammad Eastern law codes had been in place for quite some time. Our earliest images on stele and extant archaeological remains give us a glimpse into the past and show peoples who believed that their laws were derived directly from *above* (meaning a divine source). These binding codes proffered between, often, vastly different communities arranged for the proper treatment of individuals and also for the subsequent penalties to be enacted when these arrangements were not adhered to. Crude and somewhat rustic in comparison with the plentiful common law systems in use in most of the West, these early codes censured unlawful activities and provided damages for any intended or unintended victims of crimes.

From roughly about 250AD unto 550AD there was a Roman school of law operating in Beirut (Berytus) which trained and provided jurists for the many provinces spread throughout the empire of Rome. Arabia, though it was not directly a part of Roman jurisdiction, was positively influenced by the Roman legal system. All trade in or surrounding the Mediterranean region was conducted under the aegis of Rome's power. In any direction which an Arabian caravan desired to travel in the northern parts

always lead to interaction with and subjection to a legal system that was worlds apart from their own.

Let us not forget that by the time of the rise of Islam the Jewish legal construct had been well established. From its BC days unto the final compilations of the Mishna, Tosefta and later the Jerusalem & Babylonian Talmuds, the Jews followed the *halakha* in various parts of the world, in particular, in the Near East region. The integration of Jewish thought with Muhammadan thinking appears in certain pieces of Quranic literature. Consider this verse by way of example: In surah 5:32 it says “and for this reason we ordained for the children of Israel that whoever has killed a single human without cause, it is as if he has killed the entirety of mankind.” This citation is not even located in the Torah. It is actually a reference to Babylonian Talmud tractate Sanhedrin verse 37a.

To this we might add that bedouin interaction functioned, in pre-Islamic days, more along the lines of an honor code; a code that bound not only the individual but also the tribe to personal commitments. Should one be found guilty of manslaughter, families on either side of the issue would be involved in the details of resolving it because of the implications for each member of the extended family unit. Later, these ‘interpersonal dealings’ would be codified in Islamic law as *Sharia*. The word Sharia, as a term, is used scantily in the Quran, but, it means essentially a higher way or path {sur. 45:18}. This would carry tremendous weight in the years to come as Sharia became synonymous with the Quran as an *inspired corpus of revealed writings*. Thus far you can see that the Sharia Law has a root system situated well beneath the soil of centuries of accumulated myth; its tendrils reaching out and back toward non-Islamic sources.

But at this point let’s explore the beginnings of Islamic law with the rise of the apostle Muhammad. {I prefer the term apostle to prophet because etymologically and definitively it is more accurate. Muhammad was viewed as one sent with a divine mission and not just as a prophet in the traditional English sense; a spokesman or seer. Muhammad is seen as an initiator of a brand new community of believers which are the fulfillment of the prophecies of the peoples of the book}

The Quran records 114 surahs (chapters) which give some indication of what Muhammad was thinking as he ministered in and throughout Arabia. From the first revelation (surah 96: 1-5) he issued forth proclamations that were both authoritative and startling to all those who heard him. Every surah in the Quran is either a product of his ministry in Mecca or in Medina. The differences in content

in these verses tell much of the context in which they were given. His temperament and activities are illuminated by the events that provoked reactions that in some ways were dreadful and dire for those on the receiving ends.

## II

The standard line is that Muhammad was born in or about 570AD. With the varying calendrical cycles one may be able to go forward or backwards a few months here or there but primarily this date is plausible enough. He was born into an Arabia that was home to pagans, Jews and a small sect that called themselves hanifs; those who accepted Abraham as the true monotheist of Middle Eastern peoples.

His call to Islam was for all intense purposes radical and unusual for his day. Mecca was a place of pilgrimage for many but, later on, in his view, for the wrong reasons. The desire to visit and pay homage to the black stone called the kaaba was somewhat of a sacrilegious act to him. Abraham & Ismael's roles as cornerstones of the original monotheistic faith had been superceded by superstition, idolatry and other other unconscionable ideas & beliefs. With the embracing of his call revelations began to come and these oral dictions were memorized by his followers. Those given in Mecca tended to be more evangelistic (Arabic word/*dawa*: calling people to Islam) while the revelations later in Medina came to bring more legal terminology into the corpus of Islamic thinking. In Medina (622AD), the place of his caliphate, he established a theocracy in the traditional sense.

This of course would require laws to justify his actions as well as govern the actions of the various persons in the city as they interacted with one another. The Quran does contain some 500 extremely long verses which regulate many diverse things. Surah 5 is believed to be the beginning of these types of regulatory statutes; dealing with lawful and unlawful foods and with its handling. By the time of his death a decade later a substantial amount of legal material had been amassed for usage by the community of believers. During the caliphate of Omar, which lasted 20 years or so, Islam overspread the region near and far. These towns and villages now coming under the influence of Islam were essentially conscripted into the faith.

Scholars argue bitterly over whether or not the sword was used but there can be no doubt about verses in the Quran revealing intense friction and animosity between the various newly subjugated peoples and their new overlords. The sudden rise of Islam demanded that communities new to the faith be instructed in the religion of Islam. Early on preachers were sent to propagate Islam's doctrine among the converts and eventually as the community of believers grew there was a need for adjudicating various contrivances amongst the believers.

### III

With no Islam legal system as of yet, Eastern tribal codes and Roman laws were collected, utilized and refracted through Islamic lenses so that over a period of time these laws took on a kind of Islamic dress. Those who had known the prophet for a long period of time came to be 'experts' in certain aspects of Muhammadan jurisprudence. This caused Medina to become the capital and training ground for hundreds of people who were sent to various areas within Islamdom. Since there (in Medina), the Apostle had set up the city according to the pattern of God and had created a constitution for the governance of the inhabitants, Medina became a city of emulation. The judges trained there became, in short, standard bearers of Islamic truth. Their labors in judging between friend and foe as well as, settling disputes among relatives lifted them to a place of high prestige. By the end of the first Islamic century Islamic courts had been set up in many major cities of the Middle East and were recording their proceedings using learned scribes of the day.

Simultaneously, with the campaigns of the preachers in the formative days of Islam, some of the companions of the Apostle (of about 418 in number), began to immigrate to various locations in the Islamic worlds. Travels of this type brought stories and sayings into the main streets of distant villages and cities. Iraq, Egypt and Syria, among other places, in time became citadels of prophetic traditions. Often each community would have traditions that differed from other communes because of the variety of 'sayings' transmitted to each community of believers. Of course, over decades these 'traditions' would come to be standardized so that they later were inscribed and codified as 'Hadith' literature. The Arabic word *hadith*, in a simple sense, means 'sayings.' These sayings are important

because what may not be recorded in the Quran could quite possibly be found in the extant hadith canon of the day.

To understand the system commonly called Sharia Law one needs to have some knowledge of the foundations of Islam's history. The laws of Islam are derived primarily from two specific sources: The Quran & Hadith materials. Some would argue that there are other sources but in reality, these two form the main components of what governs the Islamic (ummah) nations today. What did the Apostle do? And from all of the written materials, if we had to deduce, what do we believe he would do in this situation? These are the questions asked daily around the world as fatwas and edicts are issued. Regardless of media presentations, Islamic law is not monolithic in any sense.

Through the spread of tribal peoples from Mecca and Medina into various locales, multifarious traditions arose around these settlements as their stories were told and retold again. These assorted stories later came to be taught by notable teachers who then developed private interpretations of the materials relevant to their cases, which in time morphed into schools (madhabs) of jurisprudence. In the beginning there were numerous instructors of law with disciples, but over time only a few gained favor and grew in power. Today, basically, there are four, but of these four there are still smaller variant schools {read sects} that still operate under various covers.

Whether one is Sunni, Shiite, Sufi, Alawi, or of other tiny tributaries in the Islamic stream, the Sharia Law holds a place that is not given to secular systems. The two may co-exist in a region but it is not a happy arrangement. Hasan Al Basri in his treatise called Ar Risala states "*Any opinion not based on the Quran is erroneous.*" The Sharia Law is more than a legal system. For the Muslim it is viewed as a 'righteous way' to be kept, preserved and one from which a pious Muslim should not seek to stray. To this we conclude that unless the Quran and/or the Hadith are displaced from their positions of prominence, the Sharia Law will continue as an ever abiding force in the hearts of Muslim believers today.

*Moshe Hanna*