

## Part 3: Social Studies

### Chapter 60: Historiography

The debt that history owes to the efforts of Muslim writers is generally recognized by Orientalists, but the consciousness of the value and significance of the Muslim contribution is rare among Western historians. Every known sizable collection of Islamic manuscripts includes a good proportion of historical works<sup>1</sup> which in itself is a fair indication of the importance attached by Muslim scholarship to history. A comparison between the outputs of historical literature by the Muslims before decay set in and the Islamic civilization began to decline and the histories written during or before that period by other peoples will show what great interest was taken by the followers of Islam in history. A similar comparison in the standards achieved will be equally illuminating. It would be no exaggeration to say that in the Middle Ages, history was very much a Muslim science. Their contribution is even more remarkable in view of the fact that the Muslims had inherited very meagre traditions on which they raised so glorious an edifice.

For several decades the Orientalists were not impressed with the Muslim traditions regarding the magnitude of ignorance in pre-Islamic Arabia. They saw in them an endeavor to exaggerate the achievement of Islam by belittling pre-Islamic Arab effort; even the silence of Muslim writers was suspect. Partly for this reason and partly with the desire to belittle the success of Islam in uplifting the Arabs, the Orientalists made strenuous efforts to find proofs of pre-Muslim attainments, but they did not discover much. In the words of a recent authority, “the cultural and economic level of the nomad population was, as it has always been, too low to support any literary effort.”<sup>2</sup> The Arabs did produce some poetry, a fact mentioned and recognized by Muslim authorities, but they had little conception of other branches of literature. They do not seem even to have a word for history. Some of the earlier writers have used the term *akhbdr* for history; the singular form, *khbar*, is used even today for a report or information.

This has been the meaning of the word in Muslim times; the earlier meaning of this word is obscure. As the name implies, akhbdr is generally understood to mean a string, a collection, or, at best, a connected sequence of reports, and only in the last form does it achieve the form of a historical narration of events. The origin of the word tdrikh, which is now generally used for history, is even more difficult to trace. Its root form perhaps came to be used in the Yaman in the pre-Islamic days, but, in all probability, it referred to time, not to history.<sup>33</sup> This significance of the word has not yet been lost; indeed, the word tdrikh is used more often in the meaning of a date than of history.

It is obvious that without even a proper word for it, the Arabs could have little conception of history before the advent of Islam. They had a few stories of what they had considered to have been important or interesting events and vague, probably untrue, legends of the peoples who had inhabited the old ruins that were scattered in some parts of the peninsula. They lacked even a proper epic; indeed, they were a people with no consciousness of history. The Muslims, therefore, could not have drawn any inspiration for the development of a tradition of historiography from the pre-Islamic Arabs.

The Greek sciences made a most significant contribution to Islamic culture, but in the field of history, the Greek influence is difficult to trace. No classical Greek history ever reached the Arabs; the Greek and the Latin annalistic literature has been lost and is not available even to the modern scholar.<sup>4</sup> History, however, was a much less important sector of Greek and Latin scholarship; it was not considered of sufficient merit to be included in the curriculum of regular studies. The Muslims adopted the branches of learning that were considered to possess sufficient importance in the eyes of the Greeks themselves; the Greek tradition was kept alive in these subjects. One of the reasons for the loss of classical Greek historical literature may be the fact that the Arabs showed no interest in its preservation.

The Byzantines had traditions of historiography and it is not beyond the range of possibility that some of their works came into the hands of the Arabs through Syrian Christians and converts to Islam. They might have contributed some techniques, but these techniques could not have been important.<sup>5</sup> In any case, the Arabs could not have derived their historical sense from the Byzantines.

The other two great civilizations with which the Arabs came into close contact were those of the Iranians and the Hindus. The Hindus never developed an interest in history. There is little indication of the Iranians possessing any notable historical literature at the time of the Muslim conquest.<sup>6</sup>

It is, therefore, more likely that the Arabs developed a sense of history as a result of the Prophet Muhammad's mission. Indeed, all indications point in this direction; hence they need exploration. It should be remembered that Islam itself claims to work in the context of history. It fulfils the previous missions of the prophets who had come before Muhammad.<sup>7</sup> It seeks to abrogate the excrescences that came to disfigure truth in the course of time, because the generations that had gone before had failed to preserve the earlier revelations.<sup>8</sup> Prophets had come in various societies at different times and had preached the same essential truth, but there had grown up errors and misunderstandings, some deliberate and perverse and others as the result of folly, and divine revelation had become clouded. Now

this basic belief shows a consciousness of history. It is concerned with the past, the present, and even the future.

The future comes in because Muhammad being the last of the prophets<sup>9</sup> and the bearer of a message of transcendent importance, his mission will remain effective throughout the future. This conception of religion is not concerned with the present only. It does not look upon the present as merely transient, nor upon the past as the sum total of merely so many transient and insignificant presents. This is borne out by the fact that the Qur'an draws attention repeatedly to the misdeeds of previous peoples and their destruction as the result of these misdoings.<sup>10</sup> The warning is implicit in the narrative itself, but it is also given explicitly on many occasions. If the past produced all those disastrous results, or if, conversely, virtuous deeds in the past were fruitful in producing good results, there is a relationship between the past, the present, and the future which is significant in fashioning human life. History, in this manner, achieves great importance in understanding life.

There is another aspect of Islam that has an important bearing upon history. Muhammad has a unique place in history. According to the Muslim belief, Muhammad stands, as if it were, on the watershed of time. The progress that had been vouchsafed to humanity before him was to find fulfilment in his mission. The previous messages were limited to particular peoples and their environments and conditions. They had the special circumstances of these people in view; hence they had contained, in addition to an emphasis upon the universal nature of the absolute values, certain teachings that were valid only in the circumstances in which they were revealed.

The succession of the previous prophets had worked for the completion of religious belief, for a perfection in the unveiling of the great truths, and for giving humanity the essence of religious truth, untrammelled by the need to circumscribe it by a consideration of the transient environment. Muhammad, thus, represents the culmination of one divine plan and the beginning of another. The first plan was designed to meet the differing needs of various segments of the human race, the second plan for the entire humanity. The very pattern of religious progress changes after Muhammad, because now there is a universal message to follow, the essence indeed of all that has gone before.

With this belief about the position of the Prophet in time, it was natural that the Muslims should cultivate the historic sense. Christianity also believes in a divine plan of history; indeed, the Church, encouraged by the power and expansion of the Christian nations, came to believe strongly that it was the will of God that Christianity should prosper in the world and in this manner the Kingdom of God should be ultimately established on earth. Only recently with the growth of communist States has this belief somewhat weakened. However, even when the Church held a strong conviction regarding the ultimate triumph of Christianity and looked upon history as the gradual revelation of the divine plan, its conception of the importance of the unfolding of the historical processes was not the same as that of the Muslims.

According to the Christian dogma, Christ is the man-god; he did come at a particular time in history, but that time has no special significance because, as God, Christ is eternal, timeless, and infinite. Only for

the time that he was in this world, did he put upon himself the limitations of a finite human existence. He came to redeem the world and he did it by paying for it with his own life. In a sense this redemption is the culmination of religious evolution. It was for this reason that the earlier Christians saw in every disaster the approach of the end of the world. Having been redeemed, the world had achieved the goal; there was nothing beyond it. The further unfolding of history was irrelevant.

The Muslim position was basically different. The Qur'an enjoined that there should be a body among the Muslims dedicated to the task of preaching the truth<sup>11</sup>; indeed, the Muslims themselves were to form a nation to invite others to accept the truth and to set an example for the world.<sup>12</sup> Muhammad was the last of the prophets, but his mission was to be carried on by the learned among his people. It was for this reason that he had said that these learned people were to be like the prophets of Israel; in other words, what had hitherto been achieved through a succession of prophets was to be accomplished through the agency of learned men.

This sharp contrast between the destiny of Islam and the earlier religions was bound to set people thinking about the elements responsible for this change in the divine plan. How had the world changed to need a new dispensation so radically different, in its purpose from what had gone before? This question was even more pertinent since it was not the nature of the truth that had changed; for did not Islam claim to be all revealed truth, whether it had come before Muhammad or through him? And what was the truth that had come before? How far did it conform to the message of the Qur'an?

How much of the truth claimed by the previous religions was interpolation, and how much of it incidental to the circumstances of those days and the peoples who; had been its recipients? These were the questions that arose naturally, and all of them are either directly historical or have historical overtones. They were rooted not only in natural curiosity, but, as we shall see later, also in theology itself.

In its exhortations for belief and righteousness, the Qur'an does not depend entirely upon appeal to emotions. It argues and appeals to reason at innumerable places. Phenomena of nature, legends contained in older Scriptures, the impact of ruined cities and buildings upon the imagination of a sensitive people, and historical events are all pressed into service. Indeed, there are considerable historical data in the Qur'an.<sup>13</sup> The inclusion of these allusions in large numbers led the critics of the Prophet to question the relevance of human experience in the past. They dismissed them as being merely the records of peoples who had gone before.<sup>14</sup> The unbelievers implied that what had happened in the past was of little importance to them. They certainly did not believe that history had any lessons for them.

The Qur'an, on the other hand, considers the experience of the past generations and of other peoples to be of vital importance. The underlying argument is that similar actions and circumstances produce similar results. The Qur'an thus lays down one of the first principles that guided the Muslims in their study of history. They wanted to learn from the experience of others. Besides, human activity is not an isolated phenomenon; it is linked with the past as much as with the future. Being implicit in the very

conception of Muhammad as one of the prophets and the last of them, it found confirmation in the insistence of the Qur'an on the importance of historical phenomena in the determination of right and wrong.

If any human action has brought disaster, that action could not be right except as the vindication of the principle of righteousness itself. And in judging the results of human activity, the Qur'an does not take into consideration the individual. It is the sum total of communal activity which cannot be right if it produces disasters. [15](#)

A good man working for the common good in a bad community may suffer, but he has his other rewards. A bad man in a good community may not suffer, but he has his other punishments. This is the reason why prophets and martyrs seemingly failed in bad communities which hurled themselves into disasters; from a purely worldly point of view they even suffered grievously, but actually they were saved and the evil-doers really suffered. And in the stories of the bad communities and the suffering prophets, there is another implication. The good that the prophets had sought to achieve might not have been established in their own times or communities but it ultimately did prevail, and this shows a continuity of the historical process in which righteousness ultimately wins.

Apart from their moral and philosophical implications, which helped in creating a historical sense in the Muslims, the historical allusions in the Qur'an presented a challenge to the Muslim mind. The Muslims wanted to learn more about them, and thus began a search for more detailed information. It is true that with their limited resources and the condition of human knowledge in their days, the information collected by the early Muslims was not always accurate. Considerable legendary material, folklore, and mythology entered into their understanding of the historical facts mentioned in the Qur'an. A fertile source of legendary material was the Jewish tradition. The net gain was that historical curiosity had been aroused. Some of the earlier mistakes were never corrected, but others were discarded when critical faculties got sharpened by greater experience and knowledge. [16](#)

There was yet another aspect of religion that directly led to the cultivation of history. Muhammad is a historical figure; he lived in the limelight of history. His biography has always been considered to be a cornerstone of Muslim theology [17](#) and, therefore, the events of his life were eagerly sought and collected. So long as his immediate disciples and Companions were alive, this was a simple matter, but as time elapsed, it was considered increasingly necessary to collect all information about him. Where the believers could not find clear guidance from the Qur'an, or where there was dispute in the interpretation of its text, the best authority could be the Prophet's actions and sayings.

Thus, there grew up the tradition of collecting the ahadith, and after some time when the original narrators had died and there had intervened several generations so that for every hadith there were several narrators in succession, it was necessary to submit the reports to searching criticism. The scholars developed canons of criticism that have not only endured but have earned the respect of the succeeding generations for their soundness [18](#)

Modern scholarship can find fault with some of the traditions that have been judged to be sound, but the canons of criticism and of testing the validity of reports are trustworthy even today. This was no mean achievement and shows not only a keen sense of responsibility but also a high perception of the criteria which should be applied to any narration. After all this is the kernel of all methods of historical research.

A by-product of this search was the compilation of working biographies of all the better known narrators. In this process those considered unreliable were branded as such. The biographers made the most careful and impartial scrutiny, and if they found any trace of deceit or even a charge of lying in any respect, they exposed the narrator so that the traditions, in the chain of the narrators in which he appeared, might at least be treated with extreme caution. As it was a theological and religious matter and concerned the beliefs of all Muslims, the critics developed the highest sense of intellectual honesty. Despite these efforts and precautions, some unreliable traditions have found their way into the “authentic collections,” but when it is remembered that the collectors discarded many more traditions than were considered sufficiently sound to be accepted, it would be clear how well the criteria were applied.

A remarkable testimony to the historical sense of the Muslims is their success in preserving the text of the Qur'an. It really arose from two of the teachings of the Book itself. The first of these is the doctrine of the corruption of the previous Scriptures through changes or interpolations. The other is the promise that the Qur'an shall be preserved.<sup>19</sup> According to the Muslim belief, the corruption of the previous Scriptures resulted in the misguidance of the people to the extent that the shape of the original faith was changed beyond recognition. The Muslims had been given the Qur'an, which they were to cherish and preserve in the original form. They believe in the verbal sanctity of the Qur'an. This led them to preserve the text. Taking into consideration the differences in languages in the Muslim world and the rise of various sects in Islam, this is quite an achievement. The preservation of the text of the Qur'an could not but have engendered a respect for the texts of documents of any importance.

It would be seen from this discussion that historiography in the Muslim world had religious beginnings. It was religion that gave the Muslims their historical sense, and the requirements of developing a theology made it imperative for the Muslim theologians to undertake historical research and to lay down canons of evaluating historical data for eliminating doubt and error so far as it was humanly possible. It led them to explore the traditions of religions allied to their own which had preceded the mission of the Prophet in point of time. Indeed, historical studies started in Islam as a necessary adjunct of theological development<sup>20</sup>. It was necessary, therefore, for the Muslims to cultivate a religious attitude towards history, which could not be discarded easily. Indeed, even when history ventured out into the courts of worldly monarchs, it was not able to overcome some of the conceptions developed in the cloisters of the mosques and the colleges of theology.

The theologians looked upon their work as an act of worship; hence it was to be approached with the utmost sincerity. In such work all merit was lost if any selfish motives were permitted to interfere with its objectivity. The scholar considered himself to be accountable to God for every fact that he reported or

any opinion that he expressed.<sup>21</sup> Indeed in the beginning he was doubtful whether he was justified in expressing an adverse opinion about anyone.<sup>22</sup> However, he was strengthened by the Prophet's example of not hesitating from censuring a person in the public interest, or from expressing an opinion that would save others from trouble and hardship.<sup>23</sup>

In the reporting of facts and the expression of opinions, therefore, the writer felt himself bound by the ethics of a witness or a judge. He would not report anything about which he was not certain; he would weigh all the evidence at his disposal and try to adjudicate fairly upon the merits of the report and the character of the narrator. He would not be a party to the perpetuation of a false report. In reporting a tradition of the Prophet he was conscious of the Muslim belief that the Prophet had strongly forbidden his followers to ascribe a saying or a tradition to him falsely. Therefore, he wanted to avoid at all costs any participation in such an act. The secular historians unhesitatingly imbibed these ideas and adopted the same attitude in their fields.<sup>24</sup>

This attitude created high standards of objectivity. Indeed, quite often objectivity was carried to ridiculous extremes. Not a few books written by Muslim authors are dry and jejune chronicles of events without any comments or value-judgments. The authors felt that it was their duty to narrate the events and that it was the business of the reader to arrive at his own conclusions. They did not believe that the historian's function was to narrate the facts as well as to interpret them. Such an attitude was crippling for a proper development of history as a social science. There was, however, a brighter side to this objectivity, a scrupulous regard for the truth. Even when history was written with a political objective in view, the facts were not mutilated.

The best examples are furnished by two Muslim historians of the Indo-Pakistan sub-continent. Abu al-Fadl wrote the Akbarnamah with the blatantly clear object of extolling his patron, Akbar.<sup>25</sup> Mulla 'Abd al-Qadir Badayuni, on the other hand, wrote his Muntakhab al-Tawarikh, it seems, to prove to the world that Akbar had strayed away from the right path. Shorn of the propaganda against Akbar, Badayuni's book is merely an avowed redaction of Nizam al-Din Ahmad's Tabagati Akbari. Badayuni has added information about Akbar's lapses from his personal observation and also from hearsay.

The general effect is pretty damning from the orthodox Muslim point of view. On closer analysis, however, it appears that Badayuni has suggested more than his words really convey, and, being a master of studied ambiguity and innuendo, he is able to create impressions without taking responsibility for some of the events that he reports. Wherever he is reporting an incident or a fact that is obviously not correct, he prefaces it by a vague remark like "It is reported that...." Sometimes he writes sentences that can be translated in more than one way.<sup>26</sup> Such ambiguity, however, occurs only where the author deliberately seeks to suggest what he does not want to say. This was not done for any fear of the monarch, because Badayuni's book was kept secret during Akbar's reign.<sup>27</sup>

It was Badayuni's regard for the verbal and the literal truth that led him into these devious paths. He was perhaps not bothered about the general effect because he was probably convinced, as were several

other men of high repute, of Akbar's heterodoxy. Badayuni left the path of historical rectitude only in heightening an effect that he considered to be true. Abu al-Fadl, who approached his task with an entirely different purpose, is hard put to it where he finds it difficult to justify or explain away some measure or action of the monarch. He adopts the method not of ignoring it, but of making a veiled reference to it that a discerning reader can well understand. Abu al-Fadl, his general panegyrics apart, shows a high regard for truth in reporting events. He was probably also convinced of the truth of the general theme of his work, namely, that Akbar was a monarch of unusual ability and that he was inclined to show remarkable benevolence towards his subjects.

Whatever axes the two authors had to grind are, however, quite apparent to the reader, but he cannot help being impressed by the pathetic regard for truth that is so apparent in these works and that is so difficult to maintain because of the patently partial approaches of the authors. These are perhaps extreme examples, but they are by no means unique in the history of Muslim historiography. Nizam al-Din Ahmad, whose work has been mentioned above, provides a good example of the extreme objectivity observed by some Muslim historians, because, living in the midst of such acute controversy regarding the monarch's religious policies and attitudes and himself being orthodox in his own religious beliefs, he does not even as much as mention the topic. He could not have considered it unimportant, being an observer of good sensitivity, but he left it out because he did not want to pass value-judgments on matters which he disliked.

The Muslim monarchs were extremely sensitive regarding the verdict of the posterity on their deeds. They had the common human weakness of being desirous of leaving a good name behind them. Historians were, therefore, courted and patronized. A number of histories have been written by men who in varying degrees can be called "Court historians." In some European circles their works are treated with suspicion, which is not justified in all cases. We have seen how men of probity have not twisted facts even when they seemed to mar their own thesis; at worst, they may have been guilty in some instances of the suppression of some unpalatable truth or the suggestion of virtues that did not exist. They could not have invented events.

Their faults can mostly be remedied easily—any hyperbolic praise of a patron is understood to be merely a matter of form; the pure and unabashed panegyric can be easily dismissed as being out of context.[28](#)

When a weakling is called a world-conquering hero by a writer, it is understood that the epithet is only an expression of courtesy conveying nothing, but a Muslim historian does not invent imaginary victories to adorn sober history. If a historian misses some event, he knows that others are likely to mention it and that he will be held guilty by posterity; therefore, there are few instances of deliberate misrepresentation by Muslim historians, and these have often been corrected by subsequent writers or even their own contemporaries.

The historians who had access to monarchs and their ministers were well informed and to that extent are more reliable. In an age when the printing press had not made the daily newspaper possible and

governments were not publicity-conscious in the modern sense of the term, the isolated scholar was hard put to it to collect the necessary data for an informative book relating the events of a reign. One has only to compare the bazaar gossip related by European travelers to India with the sober histories of the period to see how distorted the reports of events did become once they had left the precincts of the Court and the circles of persons in contact with the high officials.

A Court historian was in no less desperate a position than a historian of today who is overwhelmed by the information material issuing from the publicity departments of modern governments, especially when his own emotions are also deeply involved, e.g., in a crisis in which his own nation is concerned. The Court historian had his own reputation at stake because he intended to write for posterity. The professional code established by historians could not be transgressed with impunity.

However, not all historians who were otherwise attached to a Court can be called Court historians. There have existed men of the highest probity who were attached to Courts and wrote historical works, but they cannot be termed Court historians. Amir Khusrau enjoyed the patronage of several monarchs but he was not employed as a historian. Badayuni, while attached to Akbar's Court, wrote against him. Nizam al-Din Ahmad held a high office in the government, but the recording of history was not one of his duties. It is doubtful whether even abu al-Fadl can be called a Court historian in spite of his great partiality for Akbar, because his official assignments were of an administrative or military nature.

The famous Ahmad bin Yabya al-Baladhuri was a nadim of the Caliph al-Mutawakkil; 'Ata bin Muhammad al-Juwaini was a wazir; other government officials who were also historians of some eminence include Muhammad Yabya al-Silli, Sinan bin habit, Abu 'Ali Ahmad bin Muhammad Miskawaih, and Salah al-Din Khalil bin Aibak al-Safadi, to name only a few. The great Ibn Khaldun was a Qadi, but this was not considered so much of a government office as a religious obligation to be discharged by those qualified for it if they were called upon by the monarch to assume the responsibility.

There were some princes and rulers who took an interest in history and wrote works of considerable merit. An outstanding example is Isma'il bin 'Ali Abu al-Fide' who, in the midst of the busy life of a statesman and soldier, found time to write authoritative history. The 'Abbasid prince Abu Hashim Yusuf bin Muhammad al-Zahir wrote a history of the reign of his brother, al-Mustansir bi-Allah. Some of the rulers of the Yaman, like Jayyas bin Najah (d. 501/1107), al-Afdal al-'Abbas bin 'Ali (d. 779/1377), and al-Ashraf Isma'il bin 'Abbas (d. 805/1402) were responsible for historical works.<sup>29</sup> None of these can be called Court historians, nor are their works prejudiced because of their high offices.

Diaries and memoirs are a fruitful source for historical studies. Indeed, some memoirs are our mainstay so far as the historical information regarding some areas at certain times is concerned. In this category come the memoirs of Zahir al-Din Muhammad Babur, whose stormy life presents not only one of the most exciting studies in history, but also gives us an insight into the political conditions of Central Asia after Timur's Empire had collapsed. He is rightly known as the prince of all diarists because of his frank narration of events, in which he also discloses his own humane personality, telling us in a most charming

manner his weaknesses and recording his triumphs without any bragging. He hides neither his elation at success, nor sorrow at his defeat.

This chiaroscuro of victory and defeat, of weakness and strength, of lapses and piety, and of ambition and frustration reveals a sensitive and lovable personality possessed of artistic sensibilities, all of which makes the Tuzuk extremely readable in addition to being informative. To take another example, his great grandson, Nur al-Din Muhammad Jahangir, also wrote his memoirs. Jahangir had known no adversity; his tale could not be so thrilling as that of Babur;<sup>1</sup> besides, he wrote not as an ambitious adventurer, albeit crowned and of imperial descent, as Babur did, but as an established ruler of a great empire. And yet, Jahangir's memoirs do not show any lack of sensitivity. He is as keen an observer of human character as his illustrious ancestor was, as artistic in his own manner, being one of the greatest patrons of art, and an excellent critic and connoisseur. In spite of the inherent pomposity in the writing of an emperor who knows that his book will be read by his subjects even in his own lifetime, the book does not lack obvious sincerity.

These examples can be multiplied from other periods and other lands in the context of Muslim historiography. The main point is that the suspicion in which certain Western writers uncritically hold any writer associated with a Court is not justified. Those who transgressed the requirements of historical objectivity were forgotten and subsequent scholars and historians did not fail to criticize or even condemn them for their lapses. In the words of Diya' al-Din Barani, "it is necessary that the historian be ... known and famous for his truth and just dealing" and when "he writes of the excellences, the good deeds, the justice and equity of the ruler or of a great man, he must also not conceal his vices and evil deeds. ...; the attention of the truthful, pious, and sincere historian should be directed towards writing the truth. He should be in fear of answering on the Day of Judgment.... In sum, history is a rare and useful form of knowledge and its writing is a great obligation.<sup>30</sup>

As the writing of history was looked upon as a religious duty, the highest objectivity and impartiality were its criteria in the mind of the Muslim historian. There were black sheep as well and sometimes the desire for gain or the fear of a tyrant overcame the sense of responsibility of the writer, but he generally was relegated to oblivion.

Muslim historiography took several forms. The pre-Islamic Arabs took great pride in their genealogies. Like other primitive peoples, they generally kept verbal records which on some occasions were even publicly recited. Of course this often resulted in bragging and was a fruitful source of tribal warfare and vendetta. The practice of maintaining genealogies was kept up under Islam as well, and many non-Arab families seem to have adopted the habit. It is unlikely that in the pre-Islamic period the Arabs bothered to remember the main events connected with the life of every ancestor. Some famous anecdotes or events might have been associated with some outstanding names, but an idea of a connected family history or biography, however sketchy, of even the better known men in the family tree was unknown. It is even more improbable that any of these genealogies were committed to writing in the pre-Islamic

period. The main features of these genealogies were fairly well known even outside the group of those to whom a genealogy belonged and any fraudulent claim was soon countered. In a way this was the early Arab way of remembering their tribal origin, but it had little to do with real history.

When the Muslims took up historiography, genealogies proved helpful in understanding the part played by the Arab tribes in Islamic history. With the growing participation of the non-Arab Muslims in the affairs of the Islamic world the genealogical pattern came to be discarded in the greater part of the Muslim world. The origin of the genealogical works like Zubair bin Bakkar's *Nasab-u Quraish* was the exaltation of the Quraish; this was feasible because the ruling dynasties of the Umayyads and the `Abbasids were alike Quraish. Baladhuri's *Kitab al-Ansab* is the classical example of history being dealt with from the angle of genealogy. However, with the inclusion of so many non-Arab peoples in the world of Islam and their rise to power, such treatment became obsolete. It, however, thrived in the Maghrib, especially in Spain, because tribal considerations continued to play an important part in the area and history could be grouped around the activities of some tribes and clans. Private families, particularly some of the 'Alids and Hashimites, were interested in keeping a record of their ancestry.

Family histories have continued to be written up to this day. Most families, however, contented themselves with keeping their genealogies in tabular forms. *Shajarahs* were quite common in the Muslim world, but they cannot be classified as history. The Arabs, however, were given to tribal fighting which continued for considerable time and had the tendency to be rekindled at the slightest pretext. The memory of a spectacular or significant victory was kept alive. The battle day tradition occupied an important place in the folklore of early Arabia. Those who had distinguished themselves in a battle or had inflicted a humiliating defeat on their adversary continued to brag about it long after. In fact, scholars are inclined to think that this form of narration was common to the earlier Semites as well. It is present in the older sections of the Bible.<sup>31</sup>

These traditions did not form a continuous narration like an epic; every anecdote stood by itself and spoke of a single event. In the Bible they have been grouped into a continuous narration, but each event can be read separately. It is improbable that any such anecdotes were committed to writing in pre-Islamic Arabia.<sup>32</sup> They were, however, known to the Arab historians of the Muslim period. They did not find their way into the Muslim historical literature before the seventh/thirteenth century, because the earlier historians were doubtful of their historical worth. They were valuable for philological studies, but not as sources of history, because they partook of fiction, being generally one-sided and meant to glorify one side.

Besides, they were not intended to be sober history; indeed, their original purpose was not the preservation of any historical fact, the conception of which was unknown to the pre-Islamic Arabs, but to be sources for entertainment for the listeners when recited. They were, however, significant in one sense: they created a tradition of recording a single event.

The narration of single events and their reporting is capable of independent and impartial treatment, and

thus provides us with the raw material of history. These events can be strung together either chronologically or on the basis of a period, a locality, or even a topic. The treatment, however, tends to differ from continuous narration, because every report is a unit in itself. The line is not easy to draw and yet it is not difficult to see where the emphasis upon individual events is, even though they may be connected. This form of historiography came into vogue among the Muslims fairly early and is referred to by the name of akhbar. In its singular form, khabar, the word means a report, an item of news. In the oldest form of Muslim historiography one comes across small pamphlets written to describe a single event, like the pre-Islamic narration of single battles.

The simple narration soon gave place to the description of the event followed by a discussion of the causes which were responsible for its happening. Even though such a description related to only a single event, it came closer to the present method of discussing the genesis of a happening. The single khabar gave place gradually to akhbar, a collection of several or many khabars. Theoretically, this could be quite disconnected, but the events or anecdotes came to have a focal point regarding a place or a subject and in their arrangement showed a consciousness of chronological sequence. Even in this form the method had serious handicaps.

A khabar was a well-rounded narrative, but the continuity of a historical process is difficult to convey in this manner. Any deep interpretation of facts also is ruled out, because the tendency is to look upon life as a series of separate incidents without much anxiety to discover their interaction. Every khabar was told like a vivid short story, hence it tended to sacrifice clarity and factualism for the creation of effect. This was sometimes achieved by the insertion of a few verses to drive a point home or to give it a dramatic quality. Indeed, it was not uncommon for the historian to retreat into the background and let the chief characters speak for themselves, very much like a dramatic dialogue.

In this form the facts were lost in the midst of the emotions of the speakers, who, to ring true, had to be shown saying what, in the opinion of the historian, they would have felt in the circumstances. Being the earliest form of historiography among the Arabs, the khabar was naturally integrated into other forms and was rarely found in its original and pure shape. It occurs in other works as well and can be spotted by its vivid style and the insertion of faked or actual conversations.[33](#)

Its most developed form was the monograph on some single historical event. A well-known historian in this style was 'Ali bin al-Mada'ini (752-830/1351-1417), known only through quotations from his works in other histories. A list of the books written by him is preserved in al-Fihrist. In the sub-continent of India and Pakistan, perhaps Amir Khusran's *Khaza'in al-Futuh* furnishes the best example. His *Tughluq--namah*, though written in verse, which is not usual with Khabar histories, has many of their characteristics.

It would, however, be a mistake to think of all books written on single reigns as falling into the category of the khabar literature. Its beginnings were, as has been mentioned, religious because it developed out of the desire to collect all the information about the life of the Prophet. The biographies of the narrators

of hadith were a by-product. The biographies of religious and political persons followed naturally. Some biographies were written for sectarian purposes, for instance, the earlier works on the descendants and sons of the Caliph 'Ali; several biographies of Husain, Zaid bin 'Ali, and others fall in this category. Sometimes biographies were written at the request of a noble or a monarch.

Thabit bin Qurrah wrote a biography of al-Mu'tadid, which was completed by his son Sinan; this was supervised by the patron himself. Shams-i Siraj 'Afif's Tarikh-i Firuzshahi is a typical biography of a monarch; the Sirat-i Firuzshahi partakes of memoirs because it was supervised by the monarch. Sometimes the biography of a patron was also a record of the author's own times and it is not always easy to draw the line between biography and memoirs. An excellent example is the Nawadir al-Sultaniyyah w-al-Mahasin al-Yusufiyyah, being the biography of Sultan Salak al-Din by ibn Shaddad. It achieves a high standard in depicting the character of the great monarch. Abu al-Fadl's Akbarnameh can be looked upon as a highly successful biography of a remarkable man in spite of the author's obvious endeavor to paint the monarch in as favorable a light as possible.

The success of the book lies in a faithful record of the events of the reign, which find confirmation in other authorities as well. The character of the monarch stands out clearly and in spite of the profusion of the adjectives in praise of Akbar, the panegyrics can be separated quite easily from what is the substance of the narration, because these are introduced as much to deliver formal homilies of praise as to show off the capacity of the author as a master of ornate style. They are not spun into the texture of the narrative in a manner to confuse the reader.

A biography sometimes includes accounts of some of the ancestors of the subject, but their lives occupy a minor place in the book and are introduced more often to trace the exalted line of descent of the main character. Sometimes, however, the biography is extended to include others. In this category would fall the histories of dynasties or families. There are good examples of dynastic histories; the Tarikh al-f-hazni by Fadl Allah Raid al-Din (d. 718/1318) being a history of Chingiz Khan and his family<sup>34</sup> may be cited as one.

Another form of the collected biographies was the tadhkirah. Some of the tadhkirahs dealt with poets, others with Sufis, yet others with scholars, but they all had the common characteristic of being collections of short biographies of a number of persons. As a matter of fact, like other forms of biography, they differed considerably not only in their subject-matter, but also in the standards achieved. The tadhkirahs of poets always incorporated some critical material; the best of these were highly instructive as essays in literary criticism. The tadhkirahs of the Sufis were extremely popular, partly because of the growing popularity of the Sufi silsilahs and the great esteem in which some of the saintly Sufis were held by the populace, and also because of the Muslim tradition of teaching religious truths through the biographies of learned and pious personages.<sup>35</sup>

This was based on the fundamental Muslim thinking that the best way of understanding Islam was through the study of the life of the Prophet. It was for this reason that biographies of jurists and scholars

also were not neglected. Apart from monographs on biographies, it became the fashion to include sections on the biographies of important people in general histories.<sup>36</sup> These would include the lives of theologians, Sufis, physicians, poets, and nobles. The disciples of famous Sufis sometimes collected their sayings into *maljuzat*; these consisted of the more significant utterances of the shaikh with a record of the circumstances in which they were made.<sup>37</sup>

In a way this may be considered to be a form of the *kabar* literature; it is, however, different in spirit, because the intention here is not to entertain but to instruct. Some *tadhkirahs* of the Sufis suffer from the admixture of supernatural fictions with truth. The defect is generally found in books written long after the subject of the *tadhkirah* had died and legends had grown about his supernatural powers. The writers of the *tadhkirahs* were seldom guilty of deliberately inventing tales; they only uncritically incorporated what they had heard. The *tadhkirahs* are very valuable because they generally give a picture of the social conditions of an age in which the general histories seldom devoted sufficient space to non-political topics.

The chronological order of the development of Muslim historiography has been transgressed in tracing the growth of the *khabar* form of historiography. Long before some of the developments narrated above, there had grown the annalistic form, in which the events were grouped around years. The historian took up the years in succession and then narrated the important happenings of each year. This was an excellent device for fixing the chronological sequence of events; and in all probability it gave to history the name of *tarikh*. It has been mentioned above that the word *tarikh* seems to have come into use in the pre-Islamic Yaman in the sense of fixing a deed in time; in other words, giving a date to a transaction. The earliest Islamic use is in connection with the establishment of the era of the Hijrah.<sup>38</sup>

Thus, apart from the narration pure and simple, which was *khabar*, *tarikh* was properly the assigning of a date to an event and, conversely, the fixing of an event in time by giving it a definite date. The annalistic form, therefore, seems to have played an important role in giving the name of *tarikh* to history. The greatest name in this form of history is the well-known Abu Ja'far al-Tabari, whose famous history was written in the early fourth/tenth century. This is the first history in the annalistic form written by a Muslim that has come down to us. Tabari's greatness is recognized now in all quarters because of his accuracy and great diligence in collecting data and giving them the form of authentic history by sifting evidence, which he must have done to achieve the result.

There are indications that others may have preceded him in using this form; indeed one 'Umarah bin Wathimah has been mentioned to have written a history in the annalistic form in the third/ninth century, but we know very little about the book.<sup>39</sup> It is, however, reasonable to believe that Tabari was not the first to use the form, but he is undoubtedly the greatest among those who have used this method both before and after him. The tradition, however, was continued and 'Ali bin Yusuf al-Qifti has mentioned a succession of trustworthy authors beginning with Tabari and ending with the year 61611219.<sup>40</sup> The best example in the Indo-Pakistan sub-continent is the *Tarikh-i Alfi* composed by a commission appointed

by Akbar.

The annalistic form had serious limitations; for this reason it was not imitated on a large scale. It made an absolutely reliable chronology indispensable but where dates could not be determined with absolute certainty it was useless. Besides, this treatment tends to become merely a catalogue of facts in the hands of an unimaginative historian. Even at its best, it leaves little scope for philosophical synthesis or analysis. Even the inclusion of cultural and administrative data becomes difficult; the tracing of the growth of cultural, social, and administrative institutions is ruled out. The understanding of social or even political processes is not aided by this form of history.

When this form was combined with the idea that the highest expression of objectivity lay in a bare statement of the naked fact unadorned by any illuminating comment or opinion, it became little better than a chronology in tabular form that many historians found useful to append to their works. The subsequent arrangement of information in decades, generations (*qarun*), or centuries, may have been derived from annalistic historiography. In any case, the grouping of biographical information in accordance with periods of time seems to have been affected as much by annalist traditions as by other considerations like the convenience of grouping people together by the years of their death.

An outgrowth of these forms was the genre of *tabaqat*. A *tabaqah* means a layer; it generally refers to a generation. The word *Barn* meaning a generation preceded the word (*tabaqah*, but later (*tabaqah* came to be used more often until works were called by the names of *tabaqah*. The term was originally applied to different generations of the narrators of Hadith; then it began to be applied more loosely, until it embraced the succeeding generations of all kinds of men. A history which was named by its author as *tabaqat* was meant to give information about various classes of people; however, the author seldom used the term in this wide sense and, therefore, only the classes that mattered in the opinion of the author were included.

Quite often a *tabaqat* work could limit itself to a single reign. Some of these are more like *tadhkirahs*, as, for example, *ibn abi Usaibi'ah's* history of physicians or *abu Ishaq al-Shirazi's* history of the jurists. *Tadhkirahs* and *tabaqat* of this nature alike gradually adopted an alphabetical arrangement to make reference easy, so that some of them came to be biographical dictionaries, often concise and limited to the barest facts. There were notable exceptions and, as has been mentioned earlier, many books dealing with poets incorporated critical reviews of their main works.

The Muslim historians developed many useful mechanical techniques. They were not averse to putting statistical and other factual information in the form of tables.<sup>41</sup> They appended in many places their authority for a statement.<sup>42</sup> Indeed, with the more careful historians, the sources of their information are almost invariably revealed. They attached bibliographies to their works, utilized official documents and correspondence, and when they thought that it was necessary to do so, they quoted the document verbatim. Consequently, some important documents have thus been preserved for us.<sup>43</sup> They utilized all official material that was available to them including the more important decisions of the courts. The

Muslim governments kept good records; the courts also had records of all the cases that came before them. The historians, therefore, had no dearth of official material and they used it whenever they found it relevant to their subject. They were aware of the importance of numismatic and epigraphical evidence and used both frequently.

It has been mentioned that the Muslims look upon themselves as a world community. Muhammad as a successor to all the prophets of the world came to fulfil the missions of all of them. The history of the world was, therefore, a matter of vital concern to the Muslims. A fairly large number of histories were, therefore, planned as world histories. The knowledge about the history of the non-Muslim world was fragmentary and depended upon the accuracy of the local tradition which was not reliable in most instances.

There were large regions which had no history; it is, therefore, obvious that the Muslim histories could not be perfect in the recording of the events of other regions or of the past of the regions where Islam had domination. The science of archaeology had not been developed; the methods of deciphering dead languages had not been invented. Because of these factors some non-Muslim pretenders to knowledge practiced curious frauds upon Muslim rulers and Muslim scholars.<sup>44</sup> History based on traditions and legends cannot be satisfactory; hence we find that the Muslim accounts of the ancient history of Mesopotamia or of Egypt are unreliable and fragmentary. The knowledge of the Arabs grew as their geographers succeeded in accumulating knowledge. Yaqut bin 'Abd Allah al-Hamawi's geographical dictionary, *Mu'jam al-Buldan*, seldom fails to incorporate biographical material of the people of note belonging to a locality. 'Ali ibn al-Husain al-Masudi is the best example of the interaction of geographical and historical knowledge; indeed, he combines the two disciplines in a remarkable manner. Today the works of the Arab geographers form a good source of history and are indispensable; even to their contemporary historians they were of extreme importance.

So far as the world of Islam was concerned, it was a real entity. In the earlier period before the rise of the 'Abbasids split the Muslim world into the East and the West, it formed a single polity. Juristically and theologically, the indivisibility of the Muslim world is an axiom, based as it is upon the Qur'anic doctrine of the brotherhood of all Muslims and upon the implied universalism in the conception of the unity of the Muslim community. It is, therefore, a matter of no surprise that it seemed only natural to the Muslim historians that they should look upon the whole of Muslim history as a single entity. Some of the works, thus, became huge compendiums because they had to treat the various regions and States which in spite of the theory came to have separate histories. With the weakening of the 'Abbasid Caliphate, it remained no easy matter to treat the entire Muslim world in one work. The most outstanding work that achieved great success in this respect is ibn Athir's *Kamil fi al-Tarikh*. It maintains its balance despite the length of the period which it covers and the large number of countries that it deals with. Despite its annalistic arrangement, it is not devoid of philosophical reflections on the happenings of some importance.

However, this trend of writing universal histories could not last long. For one thing, the distances were enormous and it was not easy to keep an eye on the happenings of so many corners of the Muslim world. Ibn Air himself complains; "A man sitting in Mosul cannot but miss some events happening in the remote corners of the East and the West."<sup>45</sup> It must be remembered that ibn Athir was more successful than anyone else. Broken into numerous independent States, even though most of these continued to owe allegiance to nominal Caliphs, the Muslim world could not, despite the doctrine of the unity of the Muslim world, ignore its division. It entered the domain of religious thinking as well and there grew up proponents of legally sovereign States, every monarch exercising the functions of the Caliphate within his own dominions and enjoying the prestige of being the Caliph in his territories. The Moghul Emperors of the Indo-Pakistan sub-continent were an outstanding but not the only example of the dynasties that accepted this theory of divided Caliphate. Even before, there had been written dynastic and local histories, but gradually the new trends brought to an end the tradition of universal histories of the Muslim world. The intermediate stage was that of the historian who would begin with the beginnings of the Islamic history and then trace the developments in the area about which he was writing, thinking that the Islamic traditions in his own land were a continuation of the history of Islam. Abu 'Umar Minhaj al-Din 'Uthman bin Siraj al-Din al-Juzjani's *Tabaqati-i Nasiri* is a good example. The dynastic and local histories have already been discussed.

The connection between political science and history was generally understood by the historians. As a matter of fact, the knowledge of history was considered essential to the work of statecraft. <sup>46</sup>The policies pursued by previous monarchs were put forward as object lessons to illustrate the consequences of foolish as well as wise methods. For this reason many authors included a good deal of information about administrative measures in their books and summed up their success or failure. In the sub-continent of India and Pakistan a considerable amount of space was devoted to the administrative reforms undertaken by the rulers. Diya' al-Din Barani's *Tarikh-i Firuzshahi*; Shams-i Siraj 'Afif's *Tarikh-i Firuzshahi*, the *Sirat-i Firuzshahi*, and the *Futuh-at-i Firuzshahi*. 'Abd al-Qadir Badayuni's *Muntakhabat al-Tawarikh*; 'Abd al-Hamid Lahori's *Padishahnameh*; 'Ali Muhammad Khan's *Mir'at-i Ahmadi*, to name but a few, are replete with this kind of information.

The most outstanding work, however, is abu al-Fadl's *Akbarnameh*, of which the *A'in-i Akbari* is intended to be an appendix. But what an appendix it is! It is a virtual gazette of the Moghul Empire and contains so much economic and administrative data that scholars have not yet been able to utilize them fully. The administrative institutions, the policies of the State, the divisions of the population, the agricultural produce of the various areas, the crafts and industries in the different parts of the Empire, and a host of other matters have been recorded. In addition, a considerable amount of cultural material is included. Compared to al-Biruni's *Kitab al-Hind*, there is no medieval book that gives such a sympathetic account of the Hindu faith and philosophy.

The incorporation of the accounts of alien faiths and cultures is an old Muslim tradition of Muslim historiography. The great geographers seldom mentioned an area without giving some account of the

religious beliefs and social customs of its inhabitants. For the non-Muslim times, whenever, for want of historical information of a political nature, the Muslim historian felt at a loss to collect much data, he fell back upon the knowledge of the culture of the people.<sup>47</sup> The histories quite often incorporate large sections of the biographies of men noted in some fields of culture.

Abu al-Fadl's data are mainly based upon al-Biruni so far as Hinduism is concerned, but his book also contains his own observations and research. In view of the immediate sources of knowledge available to him and because of his voracious thirst for knowledge, it is unlikely that he did not check all that al-Biruni had said, especially when the Emperor himself was taking so great an interest in Hinduism and Abu al-Fadl was his constant consultant. The fact that Abu al-Fadl had so little reason to differ shows how well al-Biruni had dealt with the subject.

The fact that history had a deep relationship with statecraft was recognized by the monarch's themselves.<sup>48</sup> The Caliph Mu'awiyah is reported to have spent some time regularly every night in the study of history; the narrator of this story gives details that show that the Caliph devoted this time to the study of mundane and secular history.<sup>49</sup> These examples can be multiplied ad infinitum. Harun al-Rashid, the Moghul Emperors of India, the Iranian rulers, indeed, monarchs of practically every part of the Muslim world and in every age attached the greatest importance to the study of history. Gradually, a literature grew up that emphasized only those aspects of history that had some direct relevance to statecraft. Sadid al-Din Muhammad al-'Afi's *Jawami' al-Hikayat wa Lawami' al-Riwayat* contains selections of historical stories and information that illustrate some principles of politics or administration.

This kind of literature gave place to treatises on administrative matters pure and simple and on politics and statecraft. Even the latter were replete with historical anecdotes. Some were written by men of administrative experience like 'Unsur al-Ma'ali Kaika'us bin Sikandar bin Qabus' *Qabusnameh* or Nizam al-Mulk Tfi's *Siyasatnameh*; others were written by professional historians like Diya' al-Din Barani-*Fatawa-i Jahdandari*; yet others by saintly Sufis who were interested in securing the welfare of the people through the instruction of monarchs. In this last category falls the *Dhakhirat al-Muluk* by Sayyid 'Ali bin Shihab Hamadani. The great Ghazali also has a treatise of this nature in his *Nasa'ih al-Muluk*. Some were written by obscure writers and to give importance to their works, they ascribed them to well-known historical characters, as the *Tauqi'at-i Kisra* is ascribed to Nushirwan and the *Wasaya-i Nizam al-Mulk* to the statesman whose name it bears.

History today is related to sociology and endeavors to find the relationship between economic, social, and political factors and course of events. Indeed, history is no longer a mere recording of facts; it seeks to understand the significance of these facts as agents in fashioning the social and political fabric; it explores the impact of the past on the present in a more vital and deeper sense. It would be idle to expect the developments of the fourteenth/twentieth century in classical Muslim historiography because a good many of the sciences that are so important in understanding the full significance of historical processes had not developed until recently. For instance, the science of economics has made such

rapid strides that it can hardly be recognized to be in the least related to the medieval economic thinking.

Economic relations were neither so widespread nor were they so complex in a world where rapid means of transport were not known and the impact of world forces was not felt so quickly as in the world of today. Yet the Muslim historians were not unaware of these considerations. It is a truism to repeat that Ibn Khaldin's contribution in connecting history with sociology has been outstanding. He has been highly praised by modern authors and he has richly deserved this praise. "In the Prolegomena (Muqaddimah) to his Universal History (Kitab al-'Ibar) he has conceived and formulated a philosophy of history which is undoubtedly the greatest work of its kind that has ever been created by any mind in any time or place."<sup>50</sup> "Ibn Khaldin was a historian, politician, sociologist, economist, a deep student of human affairs, anxious to analyze the past of mankind in order to understand its present and future."<sup>51</sup>

Ibn Khaldin (732–808/1332–1406), considered simply as an historian, had superiors even among Arabic authors, but as a theorist on history he had no equal in any age or country until Vico appeared, more than three hundred years later."<sup>52</sup> So far as Ibn Khaldin's own position and contribution are concerned, it would suffice here to give these quotations, because a fuller discussion of his work is given in Chapters XLVI and XLIX of this work. It is true that Ibn Khaldin had no peers in the world of Islam, but it is not correct as has become fashionable to assert that he had neither predecessors nor successors in what he set himself to do.

Muslim historians do, in their search for causes, go into fields that are not merely political and search out causes that are not discernible on the surface. The Muslim writers had tried to understand the working of economic laws and were conversant with the Greek works on the subject.<sup>53</sup> The writers on revenue in particular brought in economics and sound finance within the scope of their work.<sup>54</sup> Of these perhaps Qudamah bin Ja'far deserves special mention, who in one of his chapters presents a systematic discussion of political and social sciences.<sup>55</sup> He enters into fundamental considerations regarding the social and economic needs of human beings and the steps taken to meet them. Observations on political, economic, and social factors are found scattered throughout the books of ethics, politics, and history.

In the Indo–Pakistan sub–continent, Abu al-Fall among others has brought in questions of economics and social organization while commenting upon administrative measures. The most outstanding example is Shah Waliullah, who based his philosophy on economic and social foundations.<sup>56</sup>

Being confronted with the problem of the decline of the Muslim political power in the sub–continent of India and Pakistan, he analysed the forces at work to diagnose the disease from which the polity as well as the society suffered at that time and came out with his suggestions for curing their ills, in doing which he explored a wide range of economics, sociology, history, and politics. He examined the relations subsisting between the producers and consumers and laid down the dictum that in a balanced society everyone must contribute to its welfare. Then he pointed out how some sections of the society had become parasites and, thus, had upset the balance. This kind of analysis runs right through his

discussions, whether he is discussing social conditions or examining political and economic ills. He has a historical mind because he brings in the examples of the great civilizations that had preceded Islam and draws relevant conclusions from their fate.

In conclusion one may say that history has been a favorite discipline with the Muslims. They brought the highest standards of objectivity into their writings; they showed great enthusiasm for the discovery of true facts; they produced a vast literature of considerable merit at a time when even among the civilized peoples there was not much flair for historiography; indeed, there were cultures of a highly developed nature that had no place

Jurisprudence in their learning for historiography. At such a time the Muslims established standards which have not always been improved upon in the modern world. For instance, contemporary nations have to learn a good deal in standards of objectivity and in distinguishing between national glorification and history. The Muslims were able to expand the scope of history from mere recording of facts into a repository of political, administrative, and cultural experiences and made fruitful essays into the analytical field as well. They failed like the political thinkers of Islam in suggesting the evolution of institutions that would have enabled greater and more responsible participation of the people in the affairs of the State, but they did help in making the Islamic governments beneficent and benevolent at a time when other governments tended to be arbitrary and even tyrannical.

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2. Franz Rosenthal, *A History of Muslim Historiography*, Leiden, 1952, p. 16.

3. e A. Jaussen and R. Savignac, *Mission Archeologique en Arabia*, Vol. II, Paris, 1909-14, Minaen Inscription No. 32.

4. Rosenthal, *op. cit.*, p. 66, n. 5.

5. The main argument in favor of Byzantine influence is that some historical works written before the known Muslim

histories show a similarity in arrangement. The annalistic arrangement, thus, could have been taken over from the Byzantines. On the other hand, the annalistic form could be a natural development. The argument against the acceptance of the view that the Byzantines had any influence is that the Muslim historians do not mention Byzantine authors, in spite of the fact that they were fond of mentioning their sources of information.

6. The work that has come down through an Arabic translation is Khuatnamak, which can hardly be called a history. Other sources of Iranian history were translated into Arabic towards the second quarter of the eighth century A.D. None of these was considered important enough to be preserved in spite of the Iranian tendency to glorify their past. Firdausi's *Shahnameh* written in the fourth/tenth century depended upon legend rather than history. If there had been any sober history available at that time, more of it would have entered the poem.

7. This is inherent in the Muslim belief, based upon the Qur'an, v, 48; vii, 30, etc.

8. *Ibid.* v; 68ff etc.

9. *Ibid.* xxxii, 40, where the Prophet has been called "the seal of the prophets." The seal comes at the end of an epistle. There is also a hadith which says, "There shall be no prophet after me."

10. Qur'an, e.g., vi, 6; x, 70ff.; xi, 25ff.; xix, 74; xxix, 20ff.; xxx, 9, 42-47; xxxv, 44, 45, etc., etc.

11. *Ibid.*, iii, 104

12. *Ibid.* iii, 110.

13. *Ibid.*, xi, 100

14. 14 *Ibid.* VI, 25; viii, 31; xvi, 24, etc., etc.

The Qur'an uses the word "asatir" which has generally been considered to mean stories, because of its resemblance to the Greek word *historia* (Goliuz, *Lexicon Arabico-Latinum*, Leiden, 1653, column 1171), but this seems to have little substance in fact, except for the coincidental resemblance. Several European authors have followed Goliuz, but opinion has now changed. Indeed, the Arabs should have been the first to notice the resemblance and to use the word in the sense of history if there were any substance in this identification. It is more likely that the word has been derived from *satar* (to write); hence *asatir* should mean a record. They certainly do not seem to imply that the Prophet was reciting to them merely fables.

15. This is obvious from the references to communities like 'Ad, Thamud, etc., vide note 10; also Qur'an, xiii, 30; xiv, 36.

16. Many religious thinkers in Islam refer to the Jewish legends adopted by some *mufassirin* as *Isra'iliyat* and disapprove of their use.

17. Muhammad bin 'Abd al-Rahman al-Sakhawi, *al-Fan bi al-Ta'rikh li man Mamma AN at-Tarikh*, translated into English by Rosenthal, op. cit., pp. 246, 247, 263.

18. 18 Muhammad bin Sulaiman al-Kafiyaji, *al-Mukhtasar T'ltm al-Tarikh*, selected passages translated into English by Rosenthal, op. cit., pp. 189, 190; al-Sakhawi, op. cit., pp. 205ff.

19. Qur'an, VI, 116; the corruption of previous Scriptures finds mention also at other places, e.g., v, 13.

20. Al-Sakhawi, op. cit., pp. 259, 261.

21. *Ibid.*, p. 299.

22. *Ibid.*, p. 264.

23. Al-Khatib al-Baghdadi, *Kifayah*, Hyderabad, 1357/1938, pp. 39ff.; also, al-Bukhari, *Sahih*, iv, 121, 126, 142 (Krehl).

24. E.g. *Diya' al-Din Barani, Tarikh-i Firuzshahi*, Calcutta, 1860-62, pp. 16, 17.

25. Jalal al-Din Muhammad Akbar (1556-1605), third in the line of succession among the Moghul Emperors of India.

26. His subtle insinuations have, through faulty translation, caused grave misunderstandings among European writers like Vincent Smith.

27. E.g. passages quoted in *Sources of Indian Tradition*, ed. William Theodore de Bary, Columbia University Press, New York, pp. 527, 528, show quite clearly that the authors do not intend the readers to take all their adjectives seriously. Akbar was certainly not "the ruler of the world and of all who inhabit it" nor the "origin of the canons of world-government" and "author of universal conquest."

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“author of universal conquest.”

[29.](#) O. Lofgren, *Arabische Texte zur Kenntnis der Stadt Aden im Mittelalter*, Ljpsala, 1936, II, pp. 20, 43–47.

[30.](#) Barani, *op. cit.*, pp. 16, 17.

[31.](#) “Exodus,” xiv, 30; “Samuel,” I, xvii.

[32.](#) Some scholars are of the opinion that no written prose literature existed in pre-Islamic Arabia, e.g., William Marcais, “Les Origins de la prose litteraire arabe,” *Revue Africaine*, LXVIII, 1929, pp. 15–18.

[33.](#) A good example is Sultan `Ala' al-Din Khalji's conversation with Qadi Mughith, reported by Barani, *op. cit.*, pp. 293–97.

[34.](#) Many of the histories written in the Indo-Pakistan sub-continent do not fall into the category of dynastic histories. They generally take up certain periods of Muslim rule or of a dynasty, but few works are devoted entirely to a dynasty.

[35.](#) E.g., Sheftah's *Gulshan-i Be-khar*, Azad's *Ab-i Hayat*, and Shibli's *in-i r at'Ajam*

[36.](#) E.g., Badayuni in his *Muntakhab al-Tawarikh*, Abu al-Fadl in his *A'in-i Akbari*, etc.

[37.](#) E.g., Hasan'Ali Sajzi's *Fawa'id at-Fuwad*.

[38.](#) Al-Sakhawi, *op. cit.*, p. 310; al-Kafiyaji, *op. cit.*, p. 183.

[39.](#) 'Abd al-Rahman bin 'Ali al-Jauzi, *Muntazam*, Hyderabad, 1357–58/1938–39, p. 37.

[40.](#) 'Ali bin Y6sufal-Qifci, *Tarik\_hat-Hukama'*, ed. A.Muller and J. Lippert, Leipzig, pp. 110ff.

[41.](#) *A'in-i Akbari* abounds in such tables; Barani gives tables of the names of officers in each reign, etc.

[42.](#) This was derived from the way ahadith were narrated: “A heard from B who heard from C who heard from D that the Prophet said.....”

[43.](#) Some examples are: Baihaqi in *Tarikh-i Baihaqi* has preserved the oath of allegiance taken by Mas'ud of Ghaznin to the Caliph; Badayani has preserved the text of the mahdar recognizing Akbar's authority to choose an interpretation where the doctors of law disagreed; abu al-Fadl has preserved the letter Akbar wrote to 'Abd Allah Khan Uzbek of Transoxiana, etc.

[44.](#) When Asoka's pillar was brought by Firuz Shah from Meerut and erected at Delhi, the Hindu pundits who do not seem to have known Pali said that the inscription on it prophesied the great success of Firuz hah as a ruler; also cf. Rosenthal, *op. cit.*, p. 111.

[45.](#) Ibn Aqir, *Kamil f al.Tarikh*, Cairo, 1301/1883, I, p. 3.

[46.](#) This was the reason why historical studies formed an essential part of a prince's education, e.g., Sinan bin Thabit bin Qurrah quoted by ibn al-'Adam, *Bughyat al-Talab*, Cairo, MS. *Tarikh*, 1566, I, p. 137; ibn Hamdun, *Tadhkirah*, Bodleian MS. (Ar.) Marsh 316 part 3, 80b, etc., etc.

[47.](#) The reason has been given by al-Tha'libi, *Qhurar*, Paris, MS. (Ar.) 1488, f. 247a, where he says, “The narration of these matters is like reporting about their kings, because people follow the religion of their kings, especially the Indians who immolate themselves for the glory of their kings and some of them even worship their kings.” The author has explained earlier that historical data regarding India are difficult to obtain.

[48.](#) Ibn Hamdun, *op. cit.*, says, “Genealogy, history, and elements of jurisprudence, are royal sciences.” Compare Yaqut, *Irshad*, Cairo, I, p. 27, who says, “the knowledge of genealogy and history belong to the sciences of kings ....” bah Jahan made a habit of listening to history every evening ('Abd al-Hamid Lahori, *Padishahnameh*, Bib. Indic&, Calcutta, I, p. 153).

[49.](#) Al-Mas'udi, *Murdj al-Dhahab*, Cairo, 1346/1927, II, p. 72.

[50.](#) Charles Issawi, *An Arab Philosophy of History*, London, 1950, p. x, quoting Arnold J. Toynbee.

[51.](#) *Idem*, pp. x, xi, quoting George Sarton.

[52.](#) *Ibid.* p. xi, quoting Robert Flint.

[53.](#) M. Plessner, *Der ouxovouir.6S des Neupythagoreers “Bryson” and sein Einfluss auf die islamische Wissenschaft*, Heidelberg, 1928, *Orient and Antike*, Vol. V.

[54.](#) The various books on *Kharaj* and the *A'in-i Akbari* of abu al-Fadl are good examples.

[55.](#) Rosenthal, *op. cit.*, pp. 462–63, gives a table of contents.

[56.](#) Such material is found in several of his books, especially *Hujjat Allah al. Balighah*; an Urdu translation is available, Lahore, 1953.

# Chapter 61: Jurisprudence

In this chapter it is proposed to bring into relief the philosophical significance of certain salient points and aspects of Muslim Law, otherwise known as Fiqh. But before doing so, let us have a tolerably precise idea of what one understands by law, and in particular what the Muslim jurists have understood by it.

## A - The Law

Law roughly means the rules of conduct. But not every rule of conduct forms a part of law. There are things people instinctively do under the dictates of their normal impulses. These do not concern law, nor are the concern of law the modes of behavior regarding things which persons do deliberately but which relate to their private lives, and have no repercussions on other members of the society or are of rare occurrence. Men differ enormously among themselves in their capacity for reasoning and the power of choosing an action out of the various possible alternatives. Even some matters of general occurrence and those affecting other persons besides the agent himself do not come under law. Law does not take cognizance of the behavior of individuals which is infinitely varied, for if it did, it would lead to chaos and conflicts rather than uniformity in behavior.

The cases which fall under law are as follows:

- (i) Sometimes certain individuals do things of their own accord and thus their private initiative sets precedents, customs, and usages if experience shows their utility, or in case historical reasons create a halo of prestige and awe around the names of their initiators.
- (ii) Sometimes actions are done at the instance of others. For example, a child may do something or abstain from doing something because its mother, father, or some other superior directs it to do so. A young student may behave similarly at the instruction given by his teacher. A grown-up man may do something at the suggestion of his friends in whose sincerity and intelligence he has confidence, on the direction of his spiritual guide, or at the dictates of public opinion. Rules of conduct are also sometimes determined by the orders of a superior to whom we delegate powers out of our own free choice, such as an elected or accepted ruler with or without the power of revoking our decisions. On other occasions a rule of conduct may arise from a superior's order, obedience to which is a lesser evil than its disobedience. Such is the case with prisoners of war, slaves, and the like who must abide by the order of their master under pain of coercion and punishment.
- (iii) A rule of conduct may also be considered to be of divine origin. Our forefathers in different parts of the world at various epochs have continuously believed certain individuals possessed of lofty character to be messengers of God and later generations have inherited this belief. It goes without saying that of all the superiors' orders those that proceed from God must remain the most meritorious to obey. God's

orders, according to religious beliefs, are received through the agency of certain human beings chosen by Him and called by some prophets and incarnations of God by others. The commandments communicated by such persons are accepted by those who believe them to be the orders of God, the Creator and Master who will judge them all on the Day of Resurrection according to their deeds.

(iv) Lastly, there are deductions from and interpretations of basic laws, such as lead to new laws.

Muslim Law is a collection of all the four types of rules mentioned above, viz., rules of customs, orders of superiors, divinely revealed Laws, and the rules arising from the deliberations of jurists. There is the Qur'an, which is taken as the uncreated Word of God; there is the *Hadith* and *Sunnah* (sayings and doings of the Prophet of Islam) which include not only what the Prophet said or did himself, but also what he tolerated of the existing practices among his Companions, practices coming indeed from pre-Islamic habits and customs. Moreover, there are individual or unanimous opinions of experts and specialists (jurists), there are customs which do not go against express laws, and there are foreign laws acted upon on the basis of treaties, reciprocity, and so on and so forth.

Whether the legislators of Islam abolished some old customs and practices, retained and confirmed some others, intact or in a modified form, or took the initiative of ordaining new rules of conduct—the sole principle that guided their legislative activity in all these cases was to “do what is good, and abstain from doing what is evil.” According to al-Ghazali<sup>1</sup>, this principle of good and evil (*husn wa qubh*) was propounded by the Mu'tazilite jurists. Being more rationalist than their contemporary traditionists, it was the Mu'tazilites who were perhaps the first to be struck by the curious and repeated stress which the Qur'an has laid on the rational side of life. To persuade men to abide by the precepts of Islam, the Qur'an again and again appeals to reason (*tadabbarun, tatajakkarun, ta'qilun, etc.*), and repeatedly refers to *ma'ruf* and *munkar*<sup>2</sup> as the bases of Muslim Law.

Now, *ma'ruf* means a good which is recognized as such on all hands, and a *munkar* is an evil disapproved as such by everybody. It cannot, therefore, be true that the rules of conduct laid down by the Qur'an and the *Sunnah* are arbitrary and merely for the purpose of testing the will to submit on the part of the Faithful. Evidently, not every man in the street will be able to understand the underlying principles of each and every Qur'anic order or injunction. That is the domain of the specialists of the philosophy of Law. An anecdote will explain the point. Abu Hanifah, one of the early jurists, had a penetrating mind, and was also endowed with a sense of humor. Not always being able to understand the reasons that led this great jurist to hold certain opinions, stupid people began to accuse him of heresy; according to them, he legislated by his personal opinion in disregard of the sayings or practice of the Holy Prophet. Once somebody had the audacity to tell this to his face.

Abu Hanifah replied: “I never promulgate rules on my personal opinion; on the other hand, I always deduce laws from the sacred texts of the Qur'an and the *Hadith*. Had I relied on my personal reasoning, I would have ordered that in the act of ablutions, one should pass a wet hand not on the uppers of a shoe (*khuff*)—as is ordered by the Prophet—but on the sole, for that is the part which requires cleansing more

than any other part of the footwear.” In this humorous way, abu Hanifah succeeded in silencing and even calming the apprehensions of his well-meaning critic.

The answer was humorous, because abu Hanifah did not refer to the reasons for not washing the soles of one's shoes for if the sole of the footwear is moistened and then one stands up for the service of worship, it is the more apt to get dirty if one prays on the ground, and to soil the carpet if one prays on one. In other words, a single issue may have several aspects, but it is the duty of the philosopher to give preference to the more important of such aspects.

However, the principle of the Islamic Law is that its rules must be based on the good and prohibitions on the evil inherent in a given act. This was an original contribution of Muslims to the legal science; no other civilization had thought of it before, as has been admitted by Professor Ostrorog in his brilliant essay “Roots of Law,” contained in his book *Angora Reform*. In fact in expounding the Qur'anic statement, “Do what is ma'ruf (what is good in the eyes of God and man) and abstain from what is munkar (what is evil in the eyes of God and man),” the Muslim philosophers of Law developed an all-embracing system. A brief expose is all that we can take up here in dealing with a subject which fills scores of pages in works on *Usul al-Filth* (the Principles of Law).

In this world in which everything is infested with relativity, it is often impossible to obtain unmixed goods, and sometimes it is even possible to say that a given act contains neither good nor evil. Therefore, what seems to be unmixed good will be ordained as an obligatory rule (*wajib*); what is unmixed evil will be declared as an obligatory prohibition (*haram*); in complex cases, predominance will decide the preference: a matter of predominant good will be recommended (*mustahab*), and one of predominant evil discouraged (*makruh*), without going so far as to declare them obligatory to perform or to abstain from. And in matters where good and evil are equal, or where one is unable to see either good or evil, Law will leave it to the discretion and choice of the individual to act or not to act.

This five-fold division of actions giving rise to five rules of law—order, prohibition, recommendation, discouragement, and indifference—resembles the cardinal directions of the compass. Even as we can subdivide the directions and say North, NE, NNE, and so on, we can also find out intermediary grades between good and evil. The absolute good will be divine order, obligatory on each person in a group (*fard'ain*) or obligatory on at least a few in the group (*fard kifayah*); the good with less sure absoluteness will be legal order (*wajib*), and practice of it will be enjoined with insistence (*sunnat mu'akkadah*). The act with pronounced inclination towards the good will be recommended or preferred (*mandub* or *mustahab*) and the one on the deadline will be supererogatory (*nafl*). Similarly, the evil may be prohibited (*haram*), tending to be prohibited (*makruh tahrinai*), better to shun (*makruh tanzih*) and so on.

It is true that the application of these mathematically perfect rules of the legal geometry to concrete cases will be affected as everywhere else by play of the human element, more so in matters of intermediary grades with subtler points to judge. With regard to such matters the judges and jurists differ among themselves. Abu Hanifah would say that to eat prawns is forbidden, but al-Shafi'i would declare it

to be perfectly lawful. Certainly this respective relegation of the prawns as food to what is good or bad is only relatively so, and the forbidden character of their consumption has not the same degree of prohibition as, say, that of wine. Jurists call it deduced prohibition (Haram istinbati) as distinct from legal prohibition (haram shar'i).

Narrow minds may fail to see this point and enter into quarrels. Here a case may be cited which seems to be the model to follow in such cases: abu Hanifah and al-Shafi'i are doubtless two of the leaders (imams) of Muslim Law, completely independent of each other in legal judgment. According to al-Shafi'i, the qunut prayer at dawn (fajr) is obligatory, whereas abu Hanifah suppresses it completely. The story goes that once al-Shafi'i went to Baghdad (where abu Hanifah lies buried), and during his stay there he renounced his own view on the qunut prayer. When questioned, he said: "I continue as firmly to cling to my opinion as before, yet in the presence of the great abu Hanifah I feel ashamed to follow my own opinion." Needless to say that the implication is that such learned differences do not concern the general public who should not only follow their leader (imam) but should also be tolerant of those who are followers of other leaders.

## **B -Law And Ethics**

Islam attaches very great importance to ethical values, yet it makes a distinction between Law and morals. In the books on Filth, one comes across such expressions: "that is the rule of Law (fatwa), though the rule of piety (taqwa) requires just the contrary." The meaning is clear: the jurist wants to say that there is some difference between human justice and divine justice. Far from being impeccably perfect, what is human must fall short of the divine. The jurists consult and the judge decide cases on the basis of facts and evidence produced before them. If certain important facts, with bearings on the nature of the litigation, are concealed from the arbiter—no matter intentionally or otherwise—the decision may be correct de jure but not de facto, the latter being beyond human possibility, at least in some cases. For this very reason, the Holy Prophet once said: "Some of you are better pleaders, and I decide according to facts submitted to me. If I decide in favor of any of you what is not his due, let him know that I award him only a part of the hell-fire with which he will fill his belly,' <sup>3</sup> if he profits by such a decision based on mistake or the only available material facts.

The law which claims to be based on the good is often hard to distinguish from ethics. Nevertheless, it may be said that there exists a measure for differentiating between them. For, the rules of Law in Islam have a double sanction, namely, the coercive power of the court of justice (a court may enforce its verdict to get the rightful owner his due, or, in case it is impossible, the court may punish the doer of the injustice), and the divine punishment on the Day of Judgment; but the rules of piety, the ethical rules, as distinct from the legal injunctions have only the other-worldly sanction apart from the more or less effective public opinion.

As Islam inculcates belief in Resurrection and the Day of Judgment, a true believer prefers a loss here to

the divine wrath in the hereafter.

## C- Sanctions

As we have just observed, the Muslim Law is more fortunate than its counterparts in some other civilizations, for it is endowed not only with the material sanctions enjoined by modern secular States but also with a spiritual sanction, and this in addition to persuasions both material and spiritual. The belief in Resurrection and the Day of Judgment, combined with the mere coercive force of a country's court of justice, assures a greater observance of the law by its believing subjects.

It is common knowledge that the Qur'an repeats scores of times the formula, "Establish service of worship and pay the tax (zakat)," pronouncing prayer and tax in the same breath. Even a beginner in the study of Muslim Law knows that zakat has always been included in the section of liturgical rites ('ibadat) in the manuals of Fiqh. With a word of explanation of the meaning of the term zakat, even the most uninitiated may realize the significance of this seemingly curious combination of prayer and tax.

Zakat is not almsgiving or charity. Its proper place is in the books on Law. In the time of the Holy Prophet and his successors, the Muslim subjects of the Islamic State—we exclude the non-Muslim subjects for the present paid no tax to the government other than zakat which covered the entire fiscal system. Zakat al-ard was the land revenue; zakat al-tijarah was tax on commercial capital as well as on import customs; zakat al-mashiyyah was imposed on herds of domesticated animals (ovine and bovine animals and camels) living on public pastures; zakat al-ma'ddin on the sub-soil products; zakat al-'ain was imposed on savings of money, and so on and so forth. Every tax imposed by the government on Muslim subjects was included in the term zakat; this may be corroborated from the sayings of the Prophet on the subject of zakt (as also more or less the equivalent and synonymous term sadaqat).<sup>4</sup>

Now, reverting to the main point, mention of the service of worship and payment of tax in the same breath and, consequently, inclusion of the taxes in the category of liturgical acts ('ibadat) should not astonish us. It is in fact deliberate. In Islam one must do everything for the sake of God. As al-Ghazali has forcefully put it, if you pray or fast for ostentation, it will be a kind of polytheism, the adoration and worship of your own self; on the other hand, if you eat delicious food (with the sole intention of acquiring energy for the performance of acts pleasing to God), and if you cohabit with your wife thinking that it is the performance of a divinely ordained duty, then these mundane enjoyments constitute real acts of the worship of God ('ibadah). Authors of the works on Muslim jurisprudence (Fiqh) since very early times have affirmed that acts of worship of God can relate both to our body and soul and to our property: if true faith is our spiritual act of worship, and prayer, fasting, and pilgrimage are the physical expressions of the same faith, then zakat is no less than our monetary mode of worshipping God.

A true believer does his spiritual and bodily duties with respect to God, without being forced to them by an organization (such as the government); he also pays his taxes to whomsoever they are due, even when the rightful person ignores his right or finds himself incapable of having it enforced. Which finance

minister of the world would resent that the subjects of the State should believe that paying the government taxes is one of his religious duties, such as would bring eternal salvation in the life to come?

## **D - Law And Religious Affairs**

We have already made passing remarks, in the foregoing paragraphs that the subject-matter of Law consists of the practical affairs of men. It deals with affairs from birth to death, and, to a certain extent, even with those after death (such as the questions of funeral, payment to the creditors, execution of the will, distribution of heritage, remarriage of the widow, etc.).

It will be observed that the Fiqh excludes questions of non-practical nature, such as beliefs and dogmas and, as already pointed out, those of piety and charity, which are questions of conscience rather than those relating to practical affairs properly considered so.

All practical affairs of public nature fall within the purview of Islamic Law because it prescribes for each of them the degree of obligation (fard, wajib, mustahab, sunnah, mubah, etc.). Many a question of politics and administration too falls under the subject-matter of the legal science, although some latitude obtains in such matters.

It is perhaps useful to point out a certain resemblance that exists between the Roman fas and jus on the one hand, and that between the Islamic Fiqh and Siyasa Shari'ah on the other. In ancient Rome all laws were religious (and called fas) and as such depended on the decisions of the priests; later, the kings arrogated to themselves the right to decide in certain matters (rules of which were called jus) which the priests reluctantly conceded, but slowly more and more matters entered within the competence of jus or civil law of Rome, on which lay authorities could promulgate rules. The Fiqh is also a religious Law, inasmuch as its principal source is the divine revelation, yet the same Law left a number of points, including certain matters of penal law, to the discretion of the ruler and his delegates; this was termed Siyasa Shari'ah. But the nature of relation between Fiqh and Siyasa Shari'ah was such that the latter could not replace the former or encroach upon its privileges. For in Islam the "priestly class" does not exist, at least in the past it was not separate from the class of civil authorities, the Caliph himself being the head at all religious functions.

It is to be pointed out that in other civilizations, human affairs are divided into temporal and spiritual. In Islam the greater part of spiritual affairs is vested in the hands of the same authorities as have the charge of temporal affairs. It seems that the Muslims divide their religious affairs into external and internal. Declaration of faith, service of worship, fasting, and hajj, although closely related to spiritual matters, are yet matters concerning the State, and are, therefore, external affairs. Internal affairs, by which one understands one's relation with God, form the subject-matter of mysticism and are left in the hands of spiritual guides who are also considered successors of the Holy Prophet and, therefore, Caliphs in the spiritual sphere. In this realm, there are no rivalries. Several Caliphs could and did simultaneously exist in the Muslim community. On the death of the Prophet, Abu Bakr and 'Ali could not

co-exist as Caliphs for external affairs, yet both were at the same time regarded as Caliphs of the Prophet in internal or spiritual affairs. As a result of this natural division of functions, Islam has been able to avoid the possibility of a tug of war, and the consequent bloodshed, between a king and the chief spiritual authorities.

It must further be pointed out that the division of spiritual and temporal powers is perfectly lawful in Islam, and does not upset its religio-legal system. The Qur'an<sup>5</sup> lays down that the practice of former prophets remains valid in Islam, unless expressly abrogated; and it relates, as a precedent, how in the presence of the Prophet Samuel and with his approval the Israelites could accept the famous Talut as king.<sup>6</sup> The presence of a king and a prophet in the same community necessarily implies the division of powers, temporal affairs falling within the competence of the king. It goes without saying that in Islam the Qur'an is the basis of all rules of conduct, both for the lay authorities and for the religio-spiritual functionaries.

As to the object of Muslim Law, its comprehensive nature admits of no doubt regarding the fact that it aspires the well-being both here and in the hereafter. The Qur'an has condemned those who neglect any of these two, and approves of those who aspire simultaneously after welfare in both.<sup>7</sup>

## E – The Chief Sources

The life and longevity of a legal system depends much on its sources; unless these sources are adaptable to changing circumstances, it may not survive for long. Let us see if the recognized sources of Muslim Law satisfy this requirement of longevity. The chief sources of Muslim Law may be classified as under.

**Divine Revelation.** This is of three kinds: (a) Recited (matluww); (b) non-recited (ghair matluww), i.e., not employed in the service of worship; and (c) a previous revelation. A few details may not be out of place.

(a) The recited revelation as preserved consists solely of the Qur'an, which the Muslims believe to be the Word of God, a collection of divine messages revealed from time to time to the Prophet Muhammad, and preserved from his very time by the double method of writing and learning by heart. If the written document has some error due to inadvertence of the scribe, or even due to an exterior evil such as effacement, damage to the copy, etc., memory comes to rescue. Similarly, if one who has learnt a passage by heart, but while reciting it cannot recall a word, reference can be made to the written document. From the time of the Prophet down to these days, this double method has everywhere in the Muslim world been employed to preserve the integrity and purity of the sacred text, which in this respect is unique in the world.

(b) The non-recited revelation consists of three distinct things: what the Prophet said (Hadith), what he did himself (Sunnah), and what he approved of and tolerated among his Companions such as an ancient

pre-Islamic custom consistent with Islamic norms. For lack of a comprehensive term, Hadith and Sunnah have been used as co-extensive, interchangeable, and synonymous terms to cover all the three aspects of the non-recited revelation. It was quite natural for the community receiving a messenger of God to treat every message given and every act done by him as being in conformity with the will and wish of the sender of that messenger, more so because the Qur'an itself has enjoined that the practice of the Prophet should be treated as the best model to imitate and follow.<sup>8</sup>

The non-recited revelation was both explanatory of and complementary to the recited revelation. As such it helped to clarify the Law and also to interpret it.

A number of the Companions of the Holy Prophet put their memoirs on the subjects of Hadith and Sunnah to writing in the very lifetime of the Prophet. One such compilation, the Sahifah Sadiqah of 'Abd Allah ibn 'Amr ibn al-'As, is reputed to contain one thousand reports.<sup>9</sup> The case of Anas is much more interesting. In later times, when requested by his pupils, he would bring out a box and show them notebooks (majallat) saying, "That is what I wrote from the sayings and doings of the Prophet, and also read to him from time to time, so that if there was any mistake be removed it himself." Many more Companions prepared their memoirs after the death of the Prophet, yet they were all supposed to have been based on first-hand knowledge. Later generations compiled the memoirs of these different authors, always scrupulously mentioning in each case its source. How careful and honest they were may be realized from the following fact.

Al-Bukhari's collection of the Hadith is considered to be one of the most authentic collections. He has cited for each tradition the chain of narrators, i.e., the sources and the sources of the sources up to the Prophet. Supposing he uses the clause: "From ibn Hanbal, who from 'Abd al-Razzaq, who from Ma'mar, who from Hammam, who from Abu Hurairah, who from the Prophet heard. . .," it would be perfectly legitimate for an objective and impartial student to be skeptical and to start fresh investigation by assuming that al-Bukhari has forged the chain of the sources and invented the narration. But we possess also his source, the Musnad of ibn Hanbal, and find that this latter author also cites the same narration, on the basis of the same sources, and gives exactly the same wording of the contents of the narration.

Al-Bukhari is acquitted honorably, but perhaps ibn Hanbal had forged. But no, we possess fortunately also the Musannaf of 'Abd al-Razzaq (now in press in Hyderabad-Deccan, having been edited by Dr. Yusuf al-Din), and there the remaining chain of sources is given and the hadith is recorded in the same words without the least difference. Now say, perhaps 'Abd al-Razzaq was the falsificator. But we possess his source also, for in the Jami' of Ma'mar now being edited by Dr. Fu'ad Sezgin of the University of Istanbul, the same hadith is found, with a shorter chain, but with no difference in the wording of its contents. Perhaps Ma'mar was the forger. But no, his source, the Sahifah of Hammam ibn Munabbih dictated by abu Hurairah to his pupil, is there to attest his perfect honesty. We also know that abu Hurairah possessed many books on Hadith. Even in the absence of these books other chains of

transmission narrate the same with and attest to its truth and there remains no possibility of its having been falsely attributed to the Holy Prophet.

There is no denying the fact that forgeries in the Hadith have crept in, due to unscrupulous or dishonest authors, yet the double method of riwayat (uninterrupted chain of transmission by reporters known for the integrity of their character) and of dirayah (scrutiny of the contents and internal evidence) has practically eliminated the chances of forgery in the more important collections, such as the “Six Canonical Collections” (Sihah Sittah). If, however, a certain report seems to us to be incompatible with the dignity of the Prophet as envisaged by our modern conception that alone would not justify our declaring it to be a forgery or a falsification. Many a time the context explains what an isolated phrase does not. A subjective approach must be replaced by an objective one, and everyone should try to understand things with reference to their context—not in isolation—and in the light of the whole system of Islamic Law.

The hadith comprises also the taqir or confirmation of some of the customs and practices of the pre-Islamic days. It shows on the one hand that Islam is a reform of the past and not a complete break with it, nor an entirely new implantation. It also gives an authoritative interpretation of the verses of the Qur'an according to which all that is not expressly forbidden is lawful.<sup>10</sup> The same notion is stressed in two interesting sayings of the Prophet, namely:

- (i) “The virtues of the days of ignorance (jahiliyyah) will be acted upon in Islam” (Ibn Hanbal, III, 425).
- (ii) “A wise counsel is the lost property of the Faithful (mu'min); wherever he discovers it, he takes hold of it” (al-Tirmidhi, chapter “Ilm,” 19; ibn Majah, chapter “Zuhd,” 15).

What is virtuous or vicious in pagan customs is easy to decide by reference to the injunctions and prohibitions expressly given in the Qur'an and the Hadith.

(c) Previous Revelations.—With regard to the earlier prophets the Qur'an has said: “They are those who received God's guidance; follow the guidance they received.”<sup>11</sup> But, unfortunately, most of the ancient Scriptures have been lost to us, e.g., that of the Prophet Abraham, of which there is repeated mention in the Qur'an. Some prophets seem never to have transcribed the divine messages they received. The accusation made by the Qur'an of the corruption of the previous Scriptures<sup>12</sup> considerably reduces the importance of this source.

## **F—Other Sources**

(a) Private Expert Opinion.—Law in Islam has a divine origin, yet the exercise of judgment on its interpretation, application, and implications is human. The Qur'an and the Hadith have approved this source, and even encouraged it. Individual opinions are termed qiyas, and the collective ones ijma' (consensus). But the opinions of savants and researchers are not infallible; hence these same savants

have approved that a qiyas by one could be rejected by another and a better one suggested. Similarly, an earlier collective opinion can be superseded by a later one. [13](#)

It goes without saying that a right given by the Qur'an and the Hadith cannot be taken away by any worldly authority.

These private opinions are, however, valid only in so far as they are not against the revealed Law, the principal source. In this connection the Holy Prophet has left a principle for the savants to observe. This principle enjoins that they should aim at facility for the public and not at difficulty. Once he said: "The Islamic religion is easy. Whoever will render it hard, he will be defeated thereby." [14](#) The same principle was repeated in the instructions given to governors: "Provide facility, don't create hardship, and do not frighten people away from Islam." Hence public weal (istislah) is an additional and valid source of Law.

(b) To the same category should be assigned the rules promulgated by the government—be they based on the ijihad of the ruler, or on expert opinion of the jurists consulted by him—and enforced mostly for administrative purposes. In theory, this may remain in force during the reign of a ruler, until it is abrogated by him or his successor. This kind of legislation is sometimes called al-ahkam al-sultaniyyah. The fundamental principle holds good, viz., that such official directions should not go against the revealed Law.

(c) An allied source is a Muslim ruler's confirmation and retention of pre-Islamic customs of a territory, mostly at the time of the accession of that territory to his State. A typical instance is reported by al-Mas'udi, who says that after the conquest of Iraq and Iran, the Caliph 'Umar retained the Sassanian law of land-revenue. He found it equitable and conforming to social justice. Not so was the case with the Byzantine laws in force in Syria and Egypt which countries were conquered at the same time. 'Umar thoroughly modified the Byzantine laws. [15](#) The basic source of this attitude was the Qur'an and the Hadith. Such "good customs" of foreign origin may even touch private affairs, such as contractual relations in commerce, industry, etc.

(d) With a small difference, the same source is to be based on the principle of reciprocity. A classical example is the following. Once the governor of the frontier town Manbij (Hierapolis) asked the Caliph 'Umar what tariff should be imposed on traders coming from beyond the frontiers, and the Caliph replied, "Levy as much as their governments levy on Muslim subjects going there for similar purposes." [16](#)

(e) Certain laws, particularly those concerning international relations, both in peace and war, are often regulated by bilateral or multilateral treaties which were regarded by the Holy Prophet as a valid source of Muslim Law. An example of such laws is the law of extradition based on the Treaty of al-Hudaibiyyah. [17](#)

(f) Even new customs may gradually take root and add to the body of Muslim Law. To express slight nuances they are called 'urf, addah, ta'amul. They are practices and customs limited to localities or classes of people. Needless to say that society is a living organism, and the interaction of

circumstances, inventions, and progress made in the material domain profoundly affect our conceptions and, indeed, our practices. The general principle remains valid: such practices should not go against the revealed Law.

(g) One sole exception to this general principle is admitted by the jurists, and they call it “prevalent custom” (‘umum al-balwa), which may abrogate even an existing law. Apparently, the theory of the ijma’ (consensus) plays its role therein. In practice this touches only minor points of legal rules, mostly the rules deduced by former jurists. It is unthinkable that such “prevalent customs” could abrogate a law enjoined by the Qur’an.

## **G – Particular Sections Of The Law**

Theologians normally discuss four topics: (i) beliefs (‘aqa’id), (ii) acts of worship (‘ibadat), (iii) morals (akhlaq), and (iv) social affairs (mu’amalat). The jurists do not concern themselves with beliefs and morals and confine their views only to rules regarding acts of worship and laws regarding social affairs.

Before dealing with Muslim jurisprudence under these two heads, we would like to make it clear that in Islam acts of worship (‘ibadat) do not mean acts indicating only the relation between the worshipper and God. In fact, beliefs, acts of worship, morals, and social affairs are all closely related to one another and, therefore, none of them can be considered in isolation. Acts of worship, apart from relating the worshipper to God, directly influence other human beings as well. For example, although zakat is an act of worship in relation to God, yet it is intimately connected with society. It is a State tax collected from and used for the welfare of its members. Similarly, social affairs are not merely matters of relations between man and man but have direct bearing on man’s relation with God. In Islam there is no matter which can be considered to be isolated from spiritual values and divinely ordained laws. Every public affair is a means to the achievement of some spiritual value. Therefore, it can be safely said that there is no matter in Islam which is purely an act of worship or a public affair. Every act of worship is a public affair and every public affair is an act of worship.

Jurists generally divide jurisprudence into the laws dealing with (i) acts of worship (‘ibadat), (ii) social affairs (mu’amalat), and (iii) crimes (‘uqubat). Under the head “acts of worship” fall prayer, fasting, pilgrimage, and zakat (the State tax). Under “social affairs” come socio-political, economic, and financial matters, e.g., sale and purchase, contract, gift, trust, surety, partnership, and matrimonial affairs. Penal laws deal with such crimes as murder, theft, adultery, drinking, etc. It is not possible to deal with every rule within the space at our disposal, not even with every set of rules. Therefore, we content ourselves with discussing some select topics and these too very briefly.

### **1. ‘Ibadat**

Under this head we deal only with prayer. A prayer or service of worship in Islam is described by the Prophet as the “pillar of the faith” and “ascension” (mi`raj), i.e., a journeying unto the Almighty. In the

words of Shah Wali Allah: “Worship consists essentially of three elements: (i) humility of heart (spirit) consequent on a feeling of the majesty and grandeur of God, (ii) confession of the superiority of God and lowliness of man by means of appropriate words, and (iii) adoption of bodily postures expressing reverence. As a man can reach the top of his spiritual evolution only gradually, it is evident that such an ascension must pass through all the three stages, and a perfect service of worship would have three postures, to wit, standing up, bowing down, and prostrating by laying the head on the ground in the presence of the Almighty—and all this for obtaining the necessary evolution of the spirit so as truly to feel the sublimity of God and the humility of man. [18](#) At the end, kneeling before the Lord, in the “invocation of the Divine Presence” (tashahhud), the faithful use the very words of the dialogue between the Holy Prophet and God during the mi`raj:

Prophet: “The blessed and purest of greetings to God!”

God: “Peace be with thee, O Prophet, and the mercy and blessings of God!”

Prophet: “Peace be with us and with all the pious servants of God!”

After this a Muslim affirms his submissiveness and attests the formula of the faith, then expresses his thankfulness to God for having sent such messengers as Abraham and Muhammad (both of blessed memory) to guide him. Thereafter, he asks for pardon and well-being in the two worlds. On his “return” from the visit of the threshold of God, he wishes peace to all believers, and with that he terminates his service.

## **2. Mu`amalat**

### **(a) Polity**

Islam has not only united prayer and politics in a greater whole by assigning them both to the same Imam, but it has also dispensed with all prejudices of color, language, race, birth-place, etc., declaring all men equal, basing superiority solely on piety, and taking practical steps to reunify the descendants of Adam and Eve. Allah is not the God of this or that race, He is the Lord of the worlds, both known and unknown (Rabb al-`Alamin). Nationality as based on race, color, or language is fatal in the long run. It is to be based on the identity of outlook on life (religion) accessible to any and every individual, irrespective of race, caste, or color. The common code of Law (the Qur'an and the Hadith), the common focal point for prayer and hajj (Ka'bah), and the unity of the Faithful under a common Caliph are some of the means employed for the removal of all class and color distinctions.

In politics, sovereignty belongs to God, and man is the lieutenant and vicegerent of God. This notion works powerfully on man. Islam imposes no particular form of government; the Qur'an never speaks of kingship in connection with Muslim polity. There is not a single reference to republic or oligarchy. Yet the first Muslim Government after the Prophet was a “life-long republic.” The Head of the State did not come to power by inheritance, but was chosen for life. So the State was neither our modern republic, nor

the hereditary despotic kingship. The oath of allegiance (bai'ah) was essential even for the recognition of the Prophet himself; and this automatically excluded hereditary monarchy, though the Shiites do not hold this view.

It is obligatory on a Muslim ruler to have consultations; right of veto seems to be a matter left to time and clime. His fundamental duties are four-fold: cultural (propagation of Islam), administrative-executive, judicial, and legislative. But legislation by government is the least important of its duties. In Islam, legislation has always remained a privilege of private savants, beyond the control of the rulers with their ever-changing whims and fancies and exigencies of the day-to-day politics. And as we have described above, legislation in Islam is only for secondary matters; the primary principles have already been laid down by the Qur'an and the Hadith.

### **(b) Fiscality**

As already pointed out zakat is not at all almsgiving or charity, but the State tax, covering practically the entire fiscal system imposed on Muslim subjects. It is significant that the Qur'an prescribes no details as to the income, but gives very precise directions regarding the expenditure of the State. The implication seems to be that the government may have a free hand in increasing the revenues, but in matters of expenditure it should not deviate from the principles of a welfare State. The rates and items of the zakat are mentioned only in the Hadith. That they are not of a static character, is proved by the fact that in the time of the Prophet the import of victuals, effected by caravans of the Nabataeans, coming from beyond the frontiers of the Muslim State, were subjected to ten per cent of duties, but the Caliph 'Umar reduced them only to five per cent. To ibn Hazm the rates current in the Holy Prophet's time are, for all later generations, the necessary minimum and can be increased only in the interest of the community. Other jurists have resorted to more reverential attitudes. They uphold the rates of the time of the Prophet as the norm, but allow under the name of nawa'ib (passing exigencies) enhanced or new taxes.

The expenditure of zakat is much more important. The Prophet of Islam ordained that the income of zakat is religiously forbidden (haram) to him, to his family, to his tribe, and to the allies of his tribe. If the Head of the State is so scrupulous and does not abuse public confidence in money matters entrusted to his care, subordinates would be the less tempted to corruption. Further, the Qur'an has ordered that taxes (sadaqat) should be spent under eight main heads of expenditure. They are to be levied only for the poor, the needy, the wayfarer, those who work for the State revenues, and those whose hearts are to be won; also for freeing the necks, and the heavily indebted, and for use in the path of God.<sup>19</sup> According to such a high authority as the Caliph 'Umar, fuqara' (the poor) are those who belong to the Muslim community, and masakin (the needy) are from the non-Muslims. It is to be noted that the sadaqat do not come from the non-Muslims, yet the needy among them are the beneficiaries of these taxes paid only by the Muslims.

Those who work are the collectors, accountants, and controllers of expenditure, auditors, and others, embracing practically the entire administrative machinery of the State.

Those whose hearts are to be won may be of many kinds. The great jurist abu Ya'la al-Farra' observes: "Those whose hearts are to be won are of four kinds: (i) those whose hearts are to be reconciled for coming to the aid of the Muslims; (ii) those whose hearts are to be won in order that they abstain from doing harm to the Muslims; (iii) those who are attracted towards Islam; and (iv) those by whose means conversion to Islam of the members of their tribes becomes possible. It is lawful to benefit each and everyone of those whose hearts are to be won, be they Muslims or polytheists."<sup>20</sup>

By the term "freeing the neck," jurists have always understood the emancipation of slaves (which is a duty of the State!) and ransoming the prisoners of war, be they Muslim or non-Muslim subjects of the Muslim State.

Aid to those who have heavy debts or great burdens may be given in different ways. The Caliph 'Umar organized even a service of interest-free loans.

Expenditure "in the path of God" includes every charitable act, and the jurists from very early times have not hesitated to mention military equipment for the defense of Islam as the first item, since Islam struggles solely for the establishment of the kingdom of God on earth.

As for the wayfarers, one can help them not only by giving hospitality to them, but also by ensuring them physical well-being and comfort, providing means of communication, security of routes, and taking all other measures for their well-being, be they countrymen or strangers, Muslims or non-Muslims.

These items are wide enough to embrace practically all the requirements of a welfare State.

### (c) Contracts

Contracts are of many kinds: matrimonial, commercial, agricultural, industrial, and so on. When differences arise as to the meaning of the terms during the execution of a contract, third parties are referred to, such as arbitrators, judges, and other State authorities. This entails questions of evidence and proof and capacity of the contracting parties including the minors, the insane, the absentees, etc. Again, contracts may be made of free accord or under coercion.

In Islam, contracts require the consent of the parties, or "mutual free-will" as the Qur'an puts it.<sup>21</sup> This great principle, common to all systems of law, is a means to mitigating the rigor of another principle that men being equal to one another, nobody owes anything to anybody else. Contracts include among other things the give-and-take of labor. The give-and-take of labor entails division of labor which has several advantages: saving wastage of concurrent labour, specialization for the sake of better production, diminution of preoccupations with the consequent leisure which is essential for all progress, intellectual as well as material. If everyone of us were to rely on his individual resources to procure even the barest necessities of life—food, dress, lodging, etc.—we should be worse off than most of the beasts.

Custom or usage has taught men the advantages of the exchange of commodities. Prices are a

technique used to equalize two different kinds of items. They are subject to variation according to the demand and supply of goods, and also to the whims of the sellers. Ordinarily, this latter aspect is a man's private affair; the organization of which he is a member need not meddle with it. But there is a limit even to this liberty. Once a merchant was selling his goods in the market of Medina at a price lower than the one prevalent. (We are not told whether it was a case of dumping or any other mischief.) The Caliph 'Umar ordered him to leave the public market, or else fix the price as charged by other merchants. Neither the inherent liberty of each nor the mutual consent of the parties could deter 'Umar from ordering what he judged to be right in the interest of social well-being.

Contracts may comprise conditions. There is a huge monographic literature on the subject, and it is related that abu Hanifah was the first to compile a special treatise on the conditions of contracts. Here too mutual consent is not the sole deciding factor; law steps in, and enjoins that no condition is to be tolerated which violates legal injunctions of all kinds.<sup>22</sup> Lesser of the two evils justifies to interfere in and curtail the inherent liberty of the individual, since in the long run he too will suffer from the same liberty if left uncontrolled.

The same principle of public well-being (maslahat 'ammah) has led legislators to declare inadmissible the contracts made by minors or the insane. Guardians are appointed temporarily or permanently to look after the affairs of those suffering from legal incapacities.

#### **(d) Family Law**

Of all the contracts, those of matrimonial relations seem to be the oldest in human society. Here there is no question of exchange of commodities, but rather of usufruct. Muslim Law has relegated matrimony to the level of any other bilateral contract. In pre-Islamic days, people "sold" their daughters to their would-be husbands. In Islam, woman has an individuality of her own as independent and complete as that of man, and is not a chattel even of her progenitive father. For profound social reasons, and in view of the nature of the fair sex, the mutual benefit accruing from married life has been thought to be less favorable to the wife, who is, therefore, considered entitled to a compensation in the form of a monetary gift settled upon her before marriage (mahr), dowry, and maintenance by the husband. The mahr, which is a sine qua non of Muslim marriage, is the exclusive property of the wife, giving no right of share to anybody else, not even to her father; and she has full legal powers to dispose of her property—mahr or anything else—the way she likes it (a thing unknown even today in other systems of law).

The question of polygamy may be briefly treated here. According to the generally accepted interpretation of the injunctions of the Qur'an, it may be said that Islam permits polygamy, but which religion does not? Hindu, Jewish, and Parsi religions allow unlimited number of wives to a polygamous husband, and even Christianity is no exception! There is not a word against it in the Gospels and teachings of Jesus Christ; on the contrary, learned theologians (like Luther, Bucer, Melancthon, and others) have deduced that Christ accepted polygamy as a matter of course as is evident from the way in which he speaks of the marriage of a man with ten virgins, mentioned in the Gospel according to St. Matthew 25:1-12.

Further, it was practiced in early Christianity, and as late as the time of Charlemagne (third/ninth century); even priests could be polygamous.<sup>23</sup> The reference here is not to the mundane rules among Christians and even Muslims to “abolish” polygamy, but to their religious doctrines only. Islam is the first and only religion which has put a limit to the maximum number of wives, and has also provided legal means of prohibiting the practice of polygamy between couples desiring monogamy. Marriage being one of the ordinary contracts, conditions can be stipulated therein.

The lawful conditions are: (i) the husband would remain monogamous for the duration of the marriage with the stipulating wife, and (ii) the wife would have the right to divorce her husband at will. Christianity formally prohibited divorce, and so did the Dharma Sastra. Islam, on the other hand, permits the right to divorce to the husband under certain conditions, and to the wife under contract, and even without a contract, by an appeal to a law-court-khul'. It also allows judicial separation under orders of the court. And if a woman herself does not demand these rights, it is not for the law to oblige her to do so, since there may be occasions when polygamy may even become necessary. Who does not know that after the Thirty Years' War, the Kriegstag of Nuremberg (Germany), in view of the greatly reduced number of the male population due to war ravages, ordered that thenceforth every man should contract marriage with two women?<sup>24</sup>

#### **(e) Commercial Contracts**

The most important point in this connection is perhaps the prohibition of interest. Other religions also had done that before, but with little results. They did not attack the root question, which is: How to supply interest-free loans to the needy? Islam characterizes the taking of interest as “a declaration of war against God and His messenger;”<sup>25</sup> in our own time Professor Keynes did not hesitate in his numerous writings to assert that interest more than anything else lies at the root of all social ills. Islam makes a clear distinction between commercial gain and interest on loans.<sup>26</sup>

The difference between them is that one shares in the former (in various kinds of joint-stock companies) both profits and risks, whereas in the latter the debtor has to pay a fixed profit even if circumstances have not allowed him sufficiently to fructify the enterprise. The thesis of Islam is that one should undertake to participate in the eventual risks in order to participate in the profits (al-ghunum ma' al-ghunum). One should certainly take necessary precautions, even create reserve funds for lean years, but the parties to the contract should be ready to divide losses as well as gains.

As to non-commercial and unproductive loans, it goes without saying that private capitalists cannot offer interest-free loans unless they are most generous and pious. Therefore, it is only a welfare government that can and must do so. As a practical religion, Islam noticed this human weakness and, therefore, made it the duty of the government to provide for interest-free loans to the public in the annual budgets of the State, as we have mentioned above while speaking of zakat. The same could also be done on the basis of mutuality.

In fact, interest-free co-operative lending societies have been a great success, for instance, in Pakistan and Hyderabad-Deccan (India) where they have existed for over a century. The members participate in the working expenditure, and the circulation of the money gradually paid by the share-holders satisfies the needs of the members of the society.

The question of co-operative activity for loans naturally leads to the problem of insurance which has existed in Islam from the time of the Prophet himself. It was further developed in later times. Under the term *ma`aqil*, the constitution of the City-State of Medina, dating from the year 1/622, the Holy Prophet laid down that the individual shall not be required to shoulder two kinds of responsibilities alone: (1) payment of blood-money in case of homicide, and (2) payment of ransom for prisoners of war. It was the treasury of the tribe that was to bear these two obligations.

Should the funds of the tribe, periodically contributed by its members, be not sufficient at a given moment, the parent tribe and in the last resort the Central Exchequer must come to aid. In the time of the Prophet insurance against fire had little importance. Incidents of fire occurred only in living quarters which were built by the inhabitants themselves at meagre expense. In later times, marine insurance was introduced among the Muslim merchant class. The Caliph 'Umar is reputed to have reorganized the insurance units, and according to al-Mabsut of al-Sarakhsi, employees of the same governmental department, members of the same cantonment, etc., began to function as units. In still later times, we see insurance practiced by guilds of the same profession in a given locality.

It may be pointed out that unused contributions to such units need not lie idle; they could be utilized for fruitful commerce to build up reserves, and eventually profits could be divided amongst the members of the units. There has been an attempt in recent times of this kind of insurance among the owners of automobiles of a big city, insuring against damages both to their cars and to their persons. Islam has not left this kind of self-help only to a group of capitalists but has proposed it for everyone as a measure against damages in addition to all that the government may do.

#### **(f) Administration of Justice**

As explained above, the administration of justice is a necessary concomitant of contractual relations in a society. Inexpensive, prompt, and fool-proof—such is the ideal of justice in Islam. In pre-Islamic days, there was declaration of rights by arbiters, but no provision for enforcement. The Holy Prophet gave Medina a constitution which made the execution of judicial awards a central subject leaving it no longer to tribes, much less to the individuals winning their cases. Further, in pre-Islamic Arabia there was no law but only the common sense of the arbiters. There was also inequity in the administration of justice. Powerful tribes, for instance, paid half of the blood-money, and value of women was taken as half the value of men. The said constitution rectified these defects.

Islam established equality not only among Muslims and Muslims, but also among Muslims and non-Muslims, and cases are recorded of the classical period, in which Muslims were executed for having

murdered non-Muslims. Evidence was also demanded from the parties concerned. In the very first year of the Hijrah, the Qur'an<sup>27</sup> made it obligatory to have written documents of contracts. During his audiences, the Prophet would inquire about the character of the witnesses before admitting their evidence. In later times, every locality established archives of the entire population, constantly revising remarks on personal character. Whenever a man presented himself as a witness, the archives were consulted to admit or reject his evidence. Further, near relatives were declared unfit to give evidence in favor of their kinsmen. In almost all cases, no less than two witnesses were required.

One more peculiarity of administration of justice was the autonomy conceded to non-Muslim inhabitants, the principle being, for instance, Jewish parties, Jewish Law, Jewish courts, and Jewish judges. In case parties belonged to different communities, a Jew versus a Christian or a Muslim, the conflict of laws necessitated special arrangements; in most cases parties agreed to go to the Muslim courts.

### 3. Penal Laws

The administration of justice described above applies mutatis mutandis to penal cases. It appears that ordinarily capital punishment was not enforced unless reference was made to the Caliph (Central Government).

In his celebrated farewell address during the last pilgrimage, the Prophet chartered human rights under a triple division: person-property-honor, and affirmed their sacrosanct character once for all.

Let us refer to two verses of the Qur'an regarding punishment:

(a) ***“Whoever transgresses against you, so transgress against him with the like of his transgression against you? ...” (2: 194).***

(b) ***“The compensation of an evil is an evil like thereof. ...” (40: 40).***

The wording of these verses implies that punishment is also regarded as transgression and evil. Although many verses exhort the victim to pardon the transgressor, yet retaliation, a time-honored institution in human society, is allowed as a necessary evil, though never beyond the measure of the original crime and this too perhaps only so long as a suitable cure for the ailment of criminality has not been found.

The penal law of Islam has certain peculiarities. First, it makes a distinction between crimes of fixed penalties (hudud), and those which allow a certain latitude to the judges. The crimes of hudud refer to person, property, and honor. According to the classical jurists, they are eight in number: (a) apostasy, (b) homicide, (c) illicit sexual intercourse, (d) false accusation against the chastity of a woman, (e) alcoholic drinks, (f) highway robbery and theft, (g) war, and (h) infliction of injuries.

### **(a) Apostasy**

In all old and most new legal systems treason is awarded capital punishment. We have seen that Islam has rejected color, language, land, and similar other accidents and hazards of nature as the bases of “nationality,” and adopted instead the “identity of outlook on life” as the foundation to build a world-wide community. Even with its zeal for religious propagation, Islam admits no compulsion in religion,<sup>28</sup> but intends to create a rigorous discipline among those who voluntarily enter its fold. Such seems to be the explanation of considering apostasy as a crime. At times one feels that Islam has needlessly provided for that, since apostasy among Muslims is practically non-existent.

### **(b) Homicide and Corporal Damages**

In such cases *lez talionis* is not the only alternative: injured persons and the representatives of the murdered person have been given the right to blood-money and appropriate monetary compensation. The blood-money imposed by the Holy Prophet approximately amounts to the maintenance of a man for thirty years (expected life of the victim if he were not murdered!). One hundred camels is the traditional blood-money. During the battle of Badr, when the Prophet heard that the enemy slaughtered one day nine and the next day ten camels for consumption, he concluded that they numbered between nine hundred and one thousand combatants. If one camel suffices for one hundred days, one hundred camels can do so for about thirty years.

### **(c) & (d) Sexual Transgression and False Accusations Affecting the Honor of Women**

Consent of the parties of adults in sexual relations, even though unmarried, gives them no immunity from the operation of the Islamic penal code. This strictness in Islamic Law at least deters men from behaving like dogs and asses. Despite this rigor the Prophet of Islam has been more indulgent than Jesus Christ (as described by the Gospel according to St. John, 8:3ff.). The Qur'an requires four eye-witnesses for a sexual crime (as against the normal two), or confession on the part of the culprit. Islam also intends to purify society of scandalous talk; if anybody talks of the sexual immorality of a woman, he has to produce at least four eye-witnesses, otherwise he is himself to be given eighty stripes and he permanently forfeits his right to give evidence before a tribunal.<sup>29</sup>

### **(e) Alcoholic Drinks**

Though the Qur'an has strictly prohibited the use of intoxicants, it has prescribed no definite punishment. The Holy Prophet, however, used to administer forty strokes with his sandals to the intoxicated persons. The Caliph `Umar seeing the expansion of the evil in Muslim society said, “Since intoxication leads to obscene talk and false accusations against the honor of women, I shall henceforth give eighty strokes.” (This is the Qur'anic punishment for speaking against the honor of women.) Non-Muslims including the non-Muslim wives of Muslims are, however, exempt from this penalty. But if the representatives of the

non-Muslims in a parliament agree on total prohibition, it is to be enforced on them as well.

### **(f) Robbery and Theft**

Crimes against property have been provided with severe penalties. As to the results, it may suffice to refer to a case from contemporary history. Who does not know the pillaging of the pilgrims, during the time of Sharif Husain? When ibn Sa`ud got power in the Hijaz, he reinstated the Islamic sanctions against theft, with the result that people began to feel that they were given the security of the times of abu Bakr and 'Umar. In 1359/1939, part of the baggage of a lady pilgrim was found missing at an intermediary station between Mecca and Medina.

The police were alerted. Even after two weeks of investigation, the police were unable to trace the thief, but the Sa`udian Government ordered payment of the value of the stolen goods to the victim and the amount was immediately paid. The much maligned punishment of cutting the hands of a thief is waived in the case of theft committed by the needy and according to many jurists also in the case of children and the mentally diseased.

### **(g) War**

As everybody knows, international law means the rules that govern relations of States in times of war, peace, and neutrality. If suppression of theft and robbery requires partial mobilization of the forces of order and security, foreign invasion requires the same measures on a larger scale. Hence the inclusion of international law by Muslim jurists in the section on penal laws, and its treatment immediately after the section on highway robbery. Apart from its logic, the important point to note is that international law forms an integral part of the Islamic Law and is not left to discretion. In the international law the accused has the same rights of defending his conduct before a tribunal as, say, a robber who is captured and tried. An old author aptly says: "Among the happenings of a certain time a war is like sickness in contrast to peace and security which resemble health. It is necessary to take steps against warlike activities to preserve peace as it is necessary to fight against disease."<sup>30</sup>

### **(h) Infliction of Injuries (Mazalim)**

Under this category fall the crimes other than those determined by the hudud. Judges are given wide latitude for inflicting appropriate punishment according to the circumstances of each case. Nevertheless, the ruler has to prescribe certain rules defining the discretionary powers of the judges.

## **H – Muslim Contribution To Law**

1. However unbelievable it may look at first sight, it is a fact that the science of law, in its theoretical sense, did not exist in the world before Islam.

Law did indeed exist in Rome, Greece, China, India, Mesopotamia, Egypt, pre-Columbian America, and

elsewhere, yet it was Imam Shafi'i (b. 150/767) who first thought of the science of law or jurisprudence as case-law. His book *al-Risalah fi Usul al-Filth* speaks of the origins and sources of Law, also of the methods of legislation, interpretation and application of law and many allied topics. Al-Shafi'i gave this science the expressive name *usul al-Filth* (the roots of Law) in contradistinction to the general laws of a land, which were named as "branches" (*uru'*) shooting out from these roots. Some generations afterwards, the Muslim jurists created a new science, called *khilafiyat*, i.e., "comparative Law," restricted to the study of the different schools of Muslim Law and dealing with the grounds and consequences of differences amongst the various jurists.<sup>31</sup>

2. The principle of intention, in spite of much research, has not been found in earlier laws. This was first introduced by the celebrated saying of the Holy Prophet: "Actions are (to be judged) by intentions (*innama al-'amal bi al-niyyat*)," quoted by al-Bukhari, Muslim, and all the other authorities, the echo of which we hear in the celebrated address of the Prophet given during his last pilgrimage.

3. The idea of ethical value as the basis of legal injunctions is also unique in the legal history of the world. The credit of initiating it goes to the Qur'an.

4. International law has existed in the world since times immemorial, yet in antiquity it was neither international nor law. For, ordinarily, it was reserved only for resolving disputes of a country with certain other countries and nations only; Islam extended its scope to the entire world, without making any geographical and political limitations. Again, in antiquity it was not considered to be law, but formed part of a country's political discretion; Islam made it a part of Law. This is testified by the fact that all books of Fiqh from the very beginning have dealt with international law under the section named *Siyar*. Further, before Islam, the subject was treated in books of politics and manuals of statecraft like the *Artha Sastra* of Kautilya, or the *Politics* of Aristotle. The Muslims made it an independent branch of Law, and devoted special monographs to it, the earliest of which is attributed to Abu Hanifah. The works of the pupils of this master, Abu Yusuf and Muhammad al-Shaibani, have come down to us and have partly been printed.<sup>32</sup>

5. The first written constitution of a State in the world, as promulgated by a sovereign, came from the Holy Prophet of Islam. The text constituting the City-State of Medina in the first year of the Hijrah (622) has been preserved in toto, and comprises fifty-two articles, dealing with such questions as independence vis-a-vis the rest of the world, war and peace, administration of justice, legislation, religious tolerance with regard to non-Muslim subjects, social insurance, asylum, naturalization, etc.<sup>33</sup>

6. Lastly, it is interesting to note that the Muslims as a people always kept legislation (and so also judiciary) separate from the executive. The development of Muslim Law as deduced from the Qur'an and the Hadith has always been the work of private savants and jurists. Tradition has insisted that the State should not interfere with this work, much less monopolize it. It is the freedom of juristic judgment which creates conflicting opinions and alternative solutions, and these provide the coming generations with raw material for sound judgment. These conflicting opinions have given rise to different schools of jurisprudence; yet in one's comparative study of international law in Sunnite, Shi'ite, and Kharijite schools

and their sub-schools one is agreeably surprised that, despite their water-tight divisions, there are practically no differences of vital significance.

## I – Interactions

Ernest Nys (in his *Les Origins du droit international*, which has also an Urdu translation published by the Osmania University) shows the great influence of Muslim international law, particularly on Spanish Christian writers, who first inaugurated the study of international law in modern Europe. Later on, the Dutch Hugo Grotius, who is considered to be the father of international law, also refers to Muslim practices. Many savants allude to the Muslim influence on the famous Code Napoleon, the basis of modern Western legislation. Many provisions of the Islamic law of inheritance, divorce, etc., are now being adopted by and necessary modifications made in Hindu Law by the modern Indian legislature.

Foreign elements in Muslim Law have already been shown in the section on “Sources.” Far from being the chief determinant of the growth of Muslim Law, as it is sometimes claimed, Roman law in its influence on Muslim Law has been of the least significance.<sup>34</sup> No early Muslim jurists, except al-Auza'i hailed from an ex-Byzantine territory. All of them were either the Hijazian Arabs or belonged to Persian families which had lived as Muslims for at least two generations. Even al-Auza'i was not of Syrian origin for his father was among the captives brought from Sind.<sup>35</sup> And, therefore, he could not be suspected of having inherited any part of the Byzantine traditions.

## J – Further Possibilities

A modest yet practical procedure to adapt Muslim Law to present conditions has been suggested in the colloquium recently published by the “Law Number” of the Karachi monthly *Chiragh-i Rah*. Muslims should not remain content with their past, however glorious that past. The *raison d'être* of their existence is their constant struggle to become the very best community, a model for the whole of humanity—the community enjoining the good (*ma'ruf*, interdicting the evil (*munkar*), and believing in God.<sup>36</sup>

“Influence of Roman Law on Muslim Law,” *Hyderabad Academy Journal*, Vol. VI, 1943, and *Imam Abu Hanifah ki Tadwin-i Qanun-i Islami* (Urdu), Karachi.

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Al-Shafi'i, *al-Risalah* fc *Usal al-Filth* (several editions); ibn al-Qayyim, *al-Turuq al-Hikmiyyah*; *I'lam al-Muwaggi'in*; Shah Wali Allah al-Dihlawi, *Hujjat Allah al-Balighah*; *al-Budur al-Bazighah*; *Izalat al-khifa'* (in Persian); al-khadri, *Tarikh al-Tashri al-Islam* (also Urdu tr.); Ahmad Taimdr Pasha, *al-Madhahib al-Arba'ah*; 'Abd al-Rahim, *Muhammadan Jurisprudence* (also Urdu tr.); D. B. Macdonald, *Development of Muslim Theology, Jurisprudence and Constitutional Theory* (also Urdu translation); Ostorog, *Angora Reform* (particularly the Chap. “Roots of Law”).

- [1.](#) Al-Mustaf/a, I, 55–56 (ed. Bulaq, 1322 A.H.).
- [2.](#) Al-Qur'an, iii, 104, 110, 114; vii, 157; ix, 67, 71, 112, etc.
- [3.](#) Abu Dawud, Aqdiyyah, 6
- [4.](#) Perhaps it will be useful to remind that Islam in the pre-Hijrah period had no temporal authority and the Prophet proceeded gradually from suggestion to recommendation before finally ordering and prescribing sanctions. In the Meccan period there was neither a fixed amount, nor a fixed time of the year, nor even an organization to collect and disburse the taxes; all these measures were taken during the Medinese period. The sense of the terms with regard to taxes underwent a profound change when "charity" became a State duty; the Qur'an and the Hadith retained the old terms, with the advantage that the people were persuaded to believe that to pay tax to the government was no less meritorious in the sight of God than charity and almsgiving, and that zakat was the best kind of charity. The Caliphs retained the same terms.
- [5.](#) Al-Qur'an, vi, 90
- [6.](#) 'Ibid. ii, 246ff.
- [7.](#) "And there are some men who say: Our Lord, give us a good in this world and also a good in the next world, and deliver us from the torment of the fire. Such shall have a portion of that which they have gained" (al-Qur'an, ii, 201–02). "Seek the abode of the hereafter in that which God hath given thee and neglect not thy portion of this world ..." (ibid. xxviii, 77).
- [8.](#) Al-Qur'an, xxxiii, 21; lix, 7, etc.
- [9.](#) As to the references and details of this and the following statements of the paragraph, see Hamidullah, Sahilah Hammam Ibn Munabbih (both Arabic and Urdu editions), Introduction.
- [10.](#) Al-Qur'an, iv, 24.
- [11.](#) Ibid. vi, 90.
- [12.](#) Ibid. ii, 75, 79; iv, 46; v, 13, 41.
- [13.](#) Al-Bukhari, Kashf al-Asrar'ala Usid al-Bazdawi, III, 262.
- [14.](#) Idem, Sahih, Chap. "iman," section 44.
- [15.](#) Consult the very interesting book Poll Tax in Islam by Dorman.
- [16.](#) Abu Yusuf, Kharaj (Bulaq edition), p. 78.
- [17.](#) See for references and discussion on this point, Hamidullah, Muslim Conduct of State, Lahore, 1953, pp. 17–38.
- [18.](#) Hujjat Allah al-Balighah, Vol. I, Chap. "Asrar al-Saleh," cited in Introduction to Islam, Centre Culturel Islamique, Paris
- [19.](#) Al-Qur'an, ix, 60.
- [20.](#) Al-Ahkam at-Sultaniyyah, Chap. "Zakat." (The author was a contemporary of al-Mawardi, and both composed their books with the same title.)
- [21.](#) Al-Qur'an, IV, 29.
- [22.](#) Based on a saying of the Prophet: "Muslims abide by the conditions they have contracted, except the condition which permits a Haram (forbidden thing)"; cf. al-Tirmidhi, Chap. "Ahkam," 17, etc.
- [23.](#) Edward Westermarck, History of Human Marriage, French tr. Genep, Paris, 1943, Vol. V, pp. 54–56; Encyclopaedia Britannica, "Polygamy."
- [24.](#) Ibid.
- [25.](#) Al-Qur'an, ii, 279
- [26.](#) Ibid., ii, 275.
- [27.](#) Ibid. ii, 282.
- [28.](#) Ibid., ii, 256
- [29.](#) Ibid. xxiv, 4.
- [30.](#) Hasan ibn 'Abd Allah, Athar al-Uwal fi Tartib al-Duwal, compiled in 708 H., p. 167.
- [31.](#) See Hamidullah, "Used al-figh'm tarihi," in the Islam Tetkikteri Enstiusu Dergisi, of Istanbul University, II, 1956–57, pp. 1–18. Also the French tr., Annates of the Faculty of Law of the same University, 1959.
- [32.](#) Extensive literature has been published in European languages during the last few decades, references to which can be found in the bibliography given in Muslim Conduct of State by Hamidullah, Lahore, 1953.
- [33.](#) It goes to the credit of Wellhausen to have made this constitution known to the Western world for the first time, under the title Gemeindeordnung von Medina (published in Vol. IV of his book Skizzen and Vorarbeiten). For English tr., see

Hamidullah, "The First Written Constitution of the World," Islamic Review, Woking, 1941. For Urdu tr., see his 'Ahd Nabawi ka Nizam-i Hukmrdni. A more recent and detailed discussion and analysis is given in Le Prophete de l'Islam, 8a vie et son oeuvre, Paris, 1959. For the Arabic text, see al-Watha'iq al Siyasiyyah.

[34.](#) There is now considerable literature in favor of this thesis. For instance, Nallino's Italian article (English tr. "Impossibility of the Influence of Roam Law on Muslim Law" in the Voice of Islam, Karachi, Vol. I); Bousquet, "Le Mystere do la formation et des origins du Filth," published in Reveu Algerienne, Alger, July-September 1947, Urdu translation in Ma'ari f, Azamgarh; see also Hamidullah,

[35.](#) Al-Dhahabi, Tabagat al-Huffaz, s.v. "Auzh'i."

[36.](#) Al-Qur'hn, iii, 110.

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