

The First Discussion: The Genesis of Two Main Currents during the Prophet's Lifetime

The two chief tendencies closely associated, from the start, with the emergence of the Islamic *Ummah* during the Prophet's lifetime are:

One, the current representing a belief in the devotional acts of religion, its arbitral power and the unconditional acceptance of religious stipulations for every aspect of life.^{[1](#)}

The second is a current which sees religious faith as eliciting devotional deed only within the special scope of overt and covert acts of worship. It believes in the possibility of independent legal Judgement (*ijtihad*) and free discretion for the amendment and improvement of religious stipulations according to benefits (*masalih*) which might accrue in other domains of life.^{[2](#)}

The Companions, being foremost in faith and enlightenment, were the best fit to create an apostolic community (*Ummah risaliyyah*); so much so that in all of human history no doctrinally-cohesive generation has been nobler, more magnificent or unsullied than the one brought up by the Prophet. Despite this, one must accept the existence of a wider tendency – beginning while the Prophet was still alive – proffering independent legal judgement as a way of determining “benefit” and inferring it from the circumstances. It emphasized, on the other hand, devotional acts in strict accordance with the letter, religiously stipulated.

The Prophet on many occasions suffered indignation on account of this tendency, even in his last hours, as he lay on his deathbed (as we shall see).^{[3](#)} But there is the other tendency, which consists in a belief in and acceptance of the arbitral power of religion, such that devotional acts accord with both the religious stipulations and every aspect of life.

One of the reasons behind the spread among Muslims of the tendency toward independent legal judgement is that it seemed to cohere with man's natural inclination to exercise his discretion, especially in view of a perceived or valued benefit rather than of some resolution whose significance he can hardly

fathom.

This current counted several bold representatives from among the more well-placed Companions. One case in point is `Umar b. al-Khattab, who used to argue with the Prophet and to exercise independent legal judgement on a number of issues in a way that was at variance with the provisions of the law. He believed this to be permissible so long as he thought his judgement did not impugn “benefit.” In this respect, one may note his position regarding the Treaty of Hudaibiyyah and his protestations against it.⁴

It is observable in regard to several other issues, including the call to ritual prayer (*al-adhan*), where he exercised his free discretion by omitting the phrase, “Come to the best of deeds” (*hayya `ala khayr amal*)⁵; his position concerning the Prophet's legalization of *mut'at al-hajj* (“marriage during the pilgrimage”)⁶; and other positions on independent legal judgement.⁷

These two currents were both reflected in the assembly called by the Prophet on the last day of his life. Al-Bukhari related in his *Sahih* the words of Ibn `Abbas:

When death was upon God's Messenger, and at [his] house were men who included `Umar b. al-Khattab, the Prophet said, “Come! let me write you an epistle by which you will never go astray...” `Umar then said, “The Prophet is overcome with pain, but we [still] have the *Qur'an*. We count on God's Book.” Those present at the house disagreed and quarreled with each other. And one of them said, “Approach that the Prophet may write you a letter by which you shall never go astray.” Another repeated what `Umar had said. When the inanities and the disputing persisted, the Prophet told them, “Leave!”⁸

This event alone suffices to show the chasm that separated the two currents, the true extent of their incompatibility and rivalry. In order to depict the deeprootedness of independent legal judgement as a current, one may compare this event to the disagreement that erupted among the Companions over Usamah b. Zayd's installation as army commander, despite the Prophet's explicit ordinance to that effect.

The Prophet finally stepped outside to address the crowd: “O People! what is this talk surrounding my appointment of Usamah as commander. You contest his appointment now just as you previously did his father's. But by God, the latter was as fit to command then as his son surely is now!”⁹

The two currents, whose rivalry began in earnest during the Prophet's own lifetime, were reflected in the Muslims' position regarding the thesis of the Imam's preeminence in the Mission after the Prophet. Those representing the devotional tendency (as opposed to the one for independent legal judgement) found in the Prophet's stipulation the reason for accepting this thesis without hesitation or readjustment.

The advocacy of independent legal judgement was viewed as offering the possibility of release from the pattern established by the Prophet, whenever a judgement imagined to be more harmonious with the circumstances was called for. By the same token, one observes that Shi`ites arose immediately after the Prophet's death, representing the Muslims who adhered in practice to the thesis of the Imam's preeminence and leadership, the first steps of whose implementation the Prophet had declared

obligatory right after his departure. The Shi'ite current embodied, from the first, a repudiation of the Saqifah Council's attempt to paralyze the thesis for Imam `Ali's preeminence and to transfer authority to someone else.

In his *Ihtijaj*, Tabarsi related Aban b. Taghlab's words:

I told Ja`far b. Muhammad al-Sadiq, "May I be offered in sacrifice for you! Is there anyone among the Companions of God's Messenger who disclaims Abu Bakr's action?" He replied "Indeed. Twelve men repudiated it. Among the *Muhajirin* were Khalid b. Said, Ibn Abi al`Asi, Salman al-Farisi, Abu Dharr al-Ghifari al-Miqdad b. al-Aswad, `Ammar b. Yasir and Buraydah al-Aslami. Among the *Ansar* were Abu al-Haytham b. al-Tayhan, `Uthman b. Hanif, Khuzayma b. Thabit Dhu al-Shahadatayn, Ubayy b. Ka'b, Abu Ayyub al-Ansari. [10](#)

It may be argued that the Shi'ite current stood for religious devotion according to the text, while the tendency that opposed it represented independent legal judgement, with the implication that the Shi'ites had rejected independent legal judgement and did not allow themselves any right to exercise it. Yet observably, Shi'ites do make use of it constantly in legal practice.

The answer is that the kind of independent legal judgement practised by Shi'ites, and which they deem permissible – indeed, obligatory in a collective sense (*wajiban kifaiyyan*) – is the one used to derive a juridical ruling from the legal text. It is not judgement applied to the legal text by virtue of either an opinion held by the practitioner or some conjectured benefit." That is not permissible.

The Shi'ite current disallowed the exercise of independent legal judgement in any such sense. Whenever we speak of the rise of two currents at the beginning of Islam, one often intends the following. One, where the devotion act is based on the explicit text; two, a tendency toward independent legal judgement. But by independent legal judgement one could mean either the rejection or the acceptance of the explicit text. [11](#)

The rise of these two tendencies is natural to every mission of comprehensive change seeking alteration at the root, where corruption prevails. It can have various kinds of effects, depending on the surviving vestiges of the past; and it may vary according to the extent to which the individual becomes immersed in the moral values of the new Message and according to his attachment to it.

Hence, we know that the current which stood for the devotional act based on the explicit text represented the greatest degree of adherence to, and the most complete acceptance of, the Divine Message. But it did not reject independent legal judgment within the framework of the text nor the effort to derive a legal ruling (*hukm*) there from. [12](#)

What is important to note in this regard also is that the devotional act based on the explicit text does not imply a rigidity or inflexibility incompatible with the exigencies of evolution or any kind of initiative for renewal in the life of man. Devotion so based means, rather, as we now know, devotion through religion.

It means embracing it in its entirety without leaving anything out. Such a religion carries within it all the elements that make for resilience and the ability to adjust to the times. It embraces all kinds of change and evolution. Devotion through religion based on the stipulated text is devotion through all these elements, but with every fiber of one's ability to create, invent and renew. [13](#)

These are general features aimed at expounding Shi'ism in its definition as a "natural phenomenon" within the fold of the Islamic Call and of its appearance as a (self-conscious) response to this natural phenomenon.

- [1.](#) This is the tendency of the school of those who uphold the rights of the Prophetic Household and of Shi'ism.
- [2.](#) This is the tendency of the remaining, Sunni schools. For details see al-'Allamah al-Sayyid Murtada al-'Askari, Ma'allim al-madrasatayn; cf. Dr. Muhammad Salam Madkur, Manahij al-ijtihad (Kuwait: Matba'at jami'ah).
- [3.](#) Sahih al-Bukhari VIII: 161 ("Kitab al-i'tisam") Note the situations where their devotional acts do not accord with the text. For example, upon failing to send Usamah's detachment and their objection to it; or the time when a letter was intended to be written, as the Prophet was uttering, "Come! Let me write you a letter that you may never go astray after I am gone..." Observe also the situation surrounding the Hudaibiyyah Treaty. See the books in history and hadiths referred to so far. For a more detailed discussion, see al-Sayyid al-'Allamah 'Abd al-Husayn Sharaf al-Din, al-Muraja'at, edited and annotated by Husayn al-Radi and introduced by Dr. Hamid al-Hafni and Shaykh Muhammad Fikri Abu al-Nasr (Mu'assasat Dar al-Kitab al-Islami)
- [4.](#) Cf. Ibn Hashim, al-Sirah al-nabawiyah, Second Part, ed. Mustafa al-Saqqa et al. (Beirut: Dar al-Kunuz al-Adabiyah), pp. 316-17. See also Tarikh al-Tabari II: 122.
- [5.](#) See al-Qawshaji, Sharh al-tajrid, towards the end of the discussion on the "imamah," where he contends that "The tasks of those in charge were devoted to spreading the Call of Islam, and triumph over East and West. But triumphing over kingdoms cannot be done without motivating the soldiery to endure peril on the way, that they might drink deep of the struggle for Islam, until they believe that theirs is that best of deeds they shall look to on the Day of Judgement. The omission of this part of the adhan [i.e. "hayya`ala khayr al-`amal], in their view, had to do with giving priority to the benefit of those tasks over and above devotion in the manner foreseen by the Holiest Law. The second Caliph thus declared from his minbar that 'Three things existed at the time of the Prophet which I interdicted, forbade and punished: temporary marriage [mutat al-nisa], marriage during the pilgrimage [mutat al-hajj] and 'Come to the best of deeds!'"
- [6.](#) See al-Tajj al-jami lil-usul fi ahadith al-Rasul by Shaykh Mansur 'Ali Nasif (a noted 'alim from al-Azhar University) II: 124, "Kit-al hajj" on Abi jamrah al-Dab'i, who said: "I entered a temporary marriage but was forbidden by some people. And so I asked Ibn 'Abbas, who sanctioned it. I went to the Ka'bah to sleep, whereupon a protagonist came to me. He said, 'May the minor pilgrimage [umrah] be accepted and the greater one [hajj] valid' [Abu Jamrah al-Dab!]' went on: So I went to Ibn 'Abbas to inform him about what I had dreamed. 'God is Great! God is Great!' he said, 'It is the practice of Abu al-Qasim's [i.e. the Prophet]." It is equally narrated by Muslim and Bukhari. It is said of 'Umran b. Husayn that he stated, "A verse [ayah] on the temporary marriage was sent down in God's Book, and so we acted upon it with His Messenger. The Qur'an did not prohibit it, and the [Messenger] did not forbid it to the day he died. Likewise with the two Shaykhs: Shaykh Nasif says on the margins that "The mutah was interdicted by 'Umar, 'Uthman and Mu'awiyah."
- [7.](#) For more details, see al-'Allamah 'Abd al-Husayn Sharaf al-Din, al-Nass wal ijtihad, pp. 169, 243.
- [8.](#) Cf Sahih al-Bukhari ("Kirab al-ilm") I:37 (Beirut: Dar al-Fikr, 1981); cf. also Ibn Sa'd, al-Tabaqat al-kubra II:242.
- [9.](#) Cf. Ibn Sa'd, al-Tabaqat al-kubra II:248; see also Ibn Athir, al-Kamil fi al-tarikh II:318-19.
- [10.](#) Tabarsi, al-Ihtijaj I:75 (Beirut: Nashr Mu'assasah al-'alami, 1983) - Imam. Cf. Tarikh al-Yaqub'i II: 103.
- [11.](#) Cf Imam Sayyid Muhammad Baqir al-Sadr, al-Ma'alim al-jadidah lil-usul, p. 23ff. It contains ample details concerning the evolution of the master concept of independent legal judgement. The latter had been avoided because it used to mean: "The principle of jurisprudence which takes individual reasoning as one of the sources for arriving at judgements. But there was a concerted drive against this jurisprudential principle at the phase when traditions were being collected in the time of the Imams and those who transmitted their deeds (to posterity)..." The kind of independent legal judgement enunciated by

many Sunni schools of jurisprudence (like that of Abu Hanifah) regarded as one of the jurist's proofs and sources for inferences where there is not plenty of textual support, stands rejected. As Tusi said: "Neither the syllogism nor independent legal judgment for me is a proof. In fact, they are not to be used in legal matters." Nevertheless, as the concept of independent legal judgement developed and came to consist in the inference of a juridical decision (al-hukm) from the text – that is, synonymously with the inferential operation – it was accepted and put to use. For the divisions, types and scope of independent legal judgement, see `Allamah Muhammad Taqi al-Haki's al-Usul al-`ammah lil-fiqh al-muqaran, p. 56ff

[12.](#) Muhammad Taqi al-Hakim, al-Usul al-`ammah lil-fiqh al-muqaran, p. 563.

[13.](#) Cf. al-Ma'alim al jadidah lil-usul, p. 40.

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