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PART I

The Qur'ān and the
Islamic legal sciences

1 Introduction

Classical Islam, as it is referred to by European scholars, may be dated from the stage when Islam first saw itself as a religio-legal system wholly rooted in a divine revelation. As in Judaism the heart of the system was the Law and it has long been a truism for Western scholars that the Law which Islam proclaimed was held by the Muslims to have derived from two co-equal sources, the Islamic Scripture and the Islamic Tradition.

The derivation of the Law had resulted from the labours of a series of individual scholars active in the course of the first two centuries after Muḥammad. To this Law was given the name Ṣarī'a, while the science concerned with its elaboration was called the Fiqh.

At an identifiable moment in recent history God had spoken to and through a prophet, Muḥammad (A.D. 570-632). To Muḥammad God had addressed His Holy Book, the Qur'ān, the written law of Islam, kitāb allāh. Simultaneously through the Prophet's words and actions, lovingly recorded by Muḥammad's contemporaries, God had further communicated to mankind the unwritten law of Islam, the perfect pattern of divinely approved human conduct, the Sunna. The scholars of the classical age of Islam saw themselves as having inherited a revealed Law securely preserved in two literary

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sources, the Sunna which had circulated in primarily oral transmissions and the Qur'ān which had been cherished in both oral and written form.

The texts of the Qur'ān had been preserved in two ways. The better to express the Qur'ān's quality as a direct divine revelation independent of earlier revealed religions, Islam portrayed its prophet as doubly illiterate. Despite his personal inability to read and write, during the twenty-odd years of his public activity Muḥammad had employed the services of a series of amanuenses to record at his dictation each of the individual fragments of the revelation immediately he received it.

Others of his followers had devotedly committed the revealed texts to memory. On the death of the Prophet and before the written texts had been assembled, edited and promulgated his Companions had disseminated their knowledge of the Qur'ān texts among the Muslims of the Islamic lands. They simultaneously instructed them in the minutiae of the Sunna. This double body of knowledge became the common heritage of the Muslim faithful.

In time there had arisen throughout the Islamic empire a number of specialists, the scholars of the Fiqh to whom especially belongs the merit of having produced a manageable statement of the Law, devising for the purpose a set of techniques known as uṣūl al fiqh.

These were the rules governing the extraction of the Law from the twin sources of Qur'ān and Tradition.

Scholars may advance the general stock of knowledge in a

variety of ways: by the discovery and publication of hitherto unknown source materials; by placing their entire subject in a wholly novel perspective on the basis of an extensive re-examination and analysis of available sources; or finally, by applying the new perspective to the elucidation of a single long-recognised problem. The present work is of this last kind. It seeks to re-open the question of the collection of the Qur'ān as seen by the Muslims. Their accounts will be re-examined in the light of studies by Goldziher and Schacht, pre-eminent instances of works of the second type.

Each of these scholars had the fortune and the genius to perceive amid the multiplicity of baffling detail presented in the literatures of Islam the few points of significant meaning which held the clue to an overall pattern and which, properly assessed, offered the key to its interpretation.

Goldziher's contribution to modern Islamic studies lay in his observation that the literature of the Muhammadan Tradition, the Ḥadīth, represented less a corpus of information from and about the Prophet as transmitted with verbal fidelity by successive generations after him than a reflection of the social, political and religious ideals of the transmitters themselves and of the societies or groups they served as spokesmen. By Sunna was to be understood, not the inherited instruction of the Prophet, but the ius consuetudinis of a group or party, large or small. By ḥadīth is meant the vehicle of that sunna, a report, verbal or written, conveying a description of the relevant practice, opinion or custom approved by the disseminators of the report.¹

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Building upon this ingenious suggestion, Schacht has shown in his studies of the Muhammadan legal traditions that, rather than spreading out from an original centre at Medina, Islamic Law originated in the provinces. Reference of the Sunna to the Prophet was the end rather than the beginning of a process. Its purpose was to verify some local legal viewpoint. In other words, the Sunna differed and was differently defined from region to region. Thus, the individual ḥadīth conveys a truth that is theoretical rather than historical. It served as verification by documenting legal conclusions reached by the scholars of a particular locality on the individual topics of the Fiqh.²

We in our turn are now directed by the findings of these two scholars towards a more detailed consideration of the role played within the broad field of the Islamic Tradition by uṣūl al fiqh, the Islamic source theory.

Our aim shall be to enquire whether and how these uṣūl al fiqh may even have fashioned part of that Tradition, in particular, the part that recounts the history of the collection of the Qur'ān texts. It will be suggested that the available evidence indicates that the Muslim accounts of the history of the collection of their Scripture must now be re-interpreted in the light of a prolonged and highly technical discussion on the role (as opposed to the history) of the revealed book.

The discussion concerned the relative status of Qur'ān and Sunna as legal sources. Although the details of the course of the discussion during the second and third centuries after Muḥammad have long been available to us, they

could not hitherto be properly evaluated.

Only one version of the traditions on the collection of the Qur'ān has until now been accepted. This is the version maintained and handed on by Muslim and Western scholars alike. European investigations into Muhammadan accounts of the collection of the Qur'ān texts have hitherto been restricted to the analysis of the accounts as preserved. There is no sign of any realisation that it might be profitable to seek to relate the accounts to the wider background within the totality of the Islamic sciences out of which they had emerged; and nor has there been any effort to enquire whether there might not lurk behind the wording of the accounts some underlying motivation.

We now possess enough information to discover the ideological basis of the accounts and to expose the evolution of the motives which shaped the accounts. The solution lies in an unsuspected yet not improbable quarter.

2 The Islamic legal sciences

Queen of the Islamic sciences and the first to achieve major development was the Fiqh. As we now know it the Fiqh was constructed mainly in the course of the second century A.H. Since then it has been represented in a number of separately developed and frequently conflicting schools or systems independently established in the main cities of the chief centres of the empire, Iraq and the Hijāz. Syria also produced a system of law but this was early replaced by the more vigorous systems of the two neighbouring territories.

Mecca, Medina, Baṣra and Kūfa were the homes of schools of law which had been the gradual creation of locally-settled scholarly groups who had inherited from their predecessors, in addition to their Qur'ān and Sunna knowledge, the broad lines of a developing local Qur'ān science.

These schools of Fiqh had emerged nearly simultaneously and those who received their training in each local legal tradition grew up in the belief that the achievement of those who had founded the local school or madhab (pl. madāhib) had consisted in derivation, in the review in their entirety of the twin constituent source 'documents' of the local expression of Islam, the Qur'ān, and the Sunna. Included under the heading Qur'ān were close textual study, qirā'a, and the accumulated masses of interpretation of the

individual verses as transmitted in the ta'wīl or tafsīr of the foregoing generations.

The Fiqh, as elaborated locally by the anonymous founders of the several madāhib, represented to their successors the totality of the ṣarī'a, the normative Muslim 'way of life' which the commands, prohibitions, exhortations and recommendations of the common sources could be shown to embody.

This outlook of the later adherents of the madhab was cultivated in a secondary science, uṣūl al fiqh, which sought to determine precisely which source materials the founders of the local Fiqh had consulted in deriving each clause, ḥukm (pl. aḥkām) of the Law. The work was to involve the identification of the materials, their authentication as either Qur'ān or Sunna and finally the definition of the relative primacy that the founders of the madhab had accorded in their derivation of the Law to each of the two primary sources. This, as we see, was a relatively late development posterior to the articulation of the Fiqh and presupposes dispute.

Dispute had been occasioned by the fact that the Muslims were indefatigable travellers, frequently covering enormous distances for the purpose of commerce, warfare against the Infidel, study or pilgrimage to Mecca. These movements would have provided individuals with opportunities to realise that there were numerous disagreements between the madāhib. The word means 'attitudes' or 'interpretations'.

As the Fiqh had been originally a local creation, so also each local madhab evolved its own local science of uṣūl

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al fiqh. Uṣūl must therefore be seen not as a unitary science cultivated in different centres, but as a series of local sciences regionally organised like the Fiqh itself, and continuously developing to serve the function of documenting, verifying and defending the Fiqh taught in the parent madhāb. Naturally uṣūl scholars engaged in polemics and apologetics.

As the schools of uṣūl became more sophisticated through the discipline of disputation, it became clear that the madāhib differed not merely in the individual aḥkām propounded by their respective founders, but also in the use that these had apparently made of the basic sources - for that is how the observable conflict between the madāhib on the various legal topics came to be explained. The conflicting local schools of uṣūl science are best seen therefore as having been called into being to provide the necessary retrospective rationalisation of instances of such conflict.

Uṣūl studies were not, however, restricted solely to points of law where the paths of the madāhib had diverged. The entire corpus of legal conclusions now represented in the local body of legal knowledge was the proper sphere of the uṣūlī, and as the content of the science expanded the awakening of interest in the technical aspects of the study led the way to the formulation of axioms and definitions, theorems and rules. Refined by use and practice, and improved by the lessons of debate, the framework of rules enabled uṣūl al fiqh to achieve eventual academic independence to be pursued for its own sake within the confines of each of the several madāhib long after the days of inter-school rivalry, when contention had given way to mutual recognition

and a resigned acceptance of differentness. The Muslims never achieved either a unified Fiqh or a unified uṣūl.

Each maḏhab produced its uṣūl literature, the study of which presents the reader with a series of rationalised justifications of the local school Fiqh. In the analysis of the history and development of the school's agreed set of views, the rationalisations are characterised from maḏhab to maḏhab by the varying emphasis placed upon appeal now to the Qur'ān, now to the Sunna.

This differential emphasis affects, however, not only the aḥkām traditionally at issue between the maḏāhib. It affects also the rationalisation of the aḥkām held in common by all groups of Muslims.

This is especially evident in the treatment of particular aḥkām maintained by a majority of Muslims, which we propose to examine in detail.

Whereas one group of uṣūl writers refers the shared viewpoint to one source, another group refers the same ḥukm to the other source. This had interesting results for the further development of the uṣūl science.

One seldom reads (except in the edited version of a debate penned by his adversary) of a scholar abandoning his original Fiqh or uṣūl viewpoint owing to his finding the representative of the rival maḏhab adducing more convincing evidence or more cogent logic. Rather one notes a sharpening of the debating techniques and the search for (and discovery of) more impressive Qur'ān or Sunna or interpretative arguments to be used in future.

This prompts the further question: whether it is