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978-1-108-05535-2 - The Hedaya, or Guide: A Commentary on the Mussulman Laws: Volume 1

Burhan al-Din al-Marghinani Translated by Charles Hamilton

Frontmatter

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The Hedaya, or Guide

Composed in the twelfth century by the leading Muslim jurist Burhan al-Din al-Marghinani (1135–97), the original Arabic *al-Hidāyah* remains a central text of Islamic personal law. This English translation, from a Persian version of the work, was prepared by the orientalist Charles Hamilton (c.1752–92) for the East India Company in 1791. Although since superseded, it remains a fascinating document in the history of colonial jurisprudence. The legal system was central to the entrenchment of British rule in India, providing the framework for active control of civil administration and the courts. Translations of Islamic texts were intended to remove the language barrier for colonial officials, and blurred British and native law for the first time. Hamilton's text is one such, and its dedication to Warren Hastings and lengthy preliminary section outline its purpose and composition. Volume 1 contains sections on *zakat* (alms), marriage, fosterage, divorce, slavery, and vows.

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A Commentary on the Mussulman Laws

VOLUME 1

BURHAN AL-DIN AL-MARGHINANI
TRANSLATED BY CHARLES HAMILTON



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THE
HEDAYA, OR GUIDE;
 A
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 ON THE
 MUSSULMAN LAWS:

TRANSLATED BY ORDER OF THE
 GOVERNOR-GENERAL AND COUNCIL
 OF
BENGA L,

BY
 CHARLES HAMILTON.

VOL. I.

LONDON:
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WARREN HASTINGS, Esq;

L A T E

GOVERNOR-GENERAL OF *BENGAL*, &c.

S I R,

AFTER the labour of several years, I am at last enabled to present you with a translation of the *HEDAYA*.

To you, SIR, I feel it incumbent on me to inscribe a work originally projected by yourself, and for some time carried on under your immediate patronage.—However humble the translator's abilities, and however imperfect the execution of these volumes may be, yet the design itself does honour to the wisdom and benevolence by which it was suggested; and if I might be allowed to express a hope
upon

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upon the subject, it is, that its future beneficial effects, in facilitating the administration of Justice throughout our Asiatic territories, and uniting us still more closely with our *Mussulman* Subjects, may reflect some additional lustre on your Administration.—I have the honour to be, with the utmost respect, and the most lively gratitude and esteem,

S I R,

Your most obedient,

and most humble Servant,

CHARLES HAMILTON.

P R E-

PRELIMINARY DISCOURSE,

BY THE

T R A N S L A T O R.

THE diffusion of useful knowledge, and the eradication of prejudice, though not among the most brilliant consequences of extended empire and commerce, are certainly not the least important.—To open and to clear the road to science; to provide for its reception in whatever form it may appear, in whatever language it may be conveyed:—these are advantages which in part atone for the guilt of conquest, and in many cases compensate for the evils which the acquisition of dominion too often inflicts.

PERHAPS the history of the world does not furnish an example of any nation to whom the opportunity of acquiring this knowledge, or communicating those advantages, has been afforded in so eminent a degree as GREAT BRITAIN.—To the people of this Island the accession of a vast empire, in the bosom of ASIA, inhabited, not by hordes of barbarians, but by men far advanced in all the arts of civilized life, has opened a field of investigation equally curious and instructive.—Such researches must ever be pleasing to the speculative philosopher, who, unbiassed by the selfish motives of interest or ambition, delights in perusing the great and variegated volume of SOCIETY:—but to us they come recom-

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mended by no *ordinary* inducements ; knowing, and feeling, as we ought, how much the preservation of what we have obtained depends upon the proper use of our power ; and upon the right application of those means which PROVIDENCE has placed in our hands for continuing, and perhaps increasing, the happiness of a large portion of the human race.

THE permanency of any foreign dominion (and indeed, the justification of holding such a dominion) requires that a strict attention be paid to the ease and advantage, not only of the *governors*, but of the *governed* ; and to this great end nothing can so effectually contribute as preserving to the latter their ancient established practices, civil and religious, and protecting them in the exercise of their own institutes ; for however defective or absurd these may in many instances appear, still they must be infinitely more acceptable than any which *we* could offer ; since they are supported by the accumulated prejudice of ages, and, in the opinion of their followers, derive their origin from the Divinity himself.

This salutary maxim was wisely adopted by the servants of the EAST INDIA COMPANY on the first acquisition of our *BENGAL* territories ; and to a steady adherence to it much of the present flourishing state of those provinces must be attributed.

THE judicial regulations both of the *Hindoos* and the *Mohammedans* are, in fact, so intimately blended with their religion, that any attempts to change the former would be felt by them as a violation of the latter ; and should the wisdom of the British legislature ever suggest the expediency of introducing an uniform system of jurisprudence among them, it will, at the same time, dictate the necessity of preserving sacred and unaffected an infinite number of usages, essential to the ease and happiness of a people differing from us as widely in customs, manners, and habits of thinking, as in climate, complexion, or language.—Towards the accomplishment of such an important system, every effort which may tend to develop their LAWS is undoubtedly a step, and therefore carries with it its own recommendation.—It was this more remote consideration,

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sideration, as well as the *immediate* advantages to be derived from it, which dictated the compilation of the HINDOO CODE: and it was the same motive which gave rise to the present publication.

MANY centuries have elapsed since the *Mussulman* conquerors of INDIA established in it, together with their religion, and general maxims of government, the practice of their courts of justice.—From that period the MUSSULMAN CODE has been the standard of judicial determination throughout those countries of INDIA which were subjugated by the *Mohammedan* princes, and have since remained under their dominion. In one particular, indeed, the conduct of the conquerors materially differed from what has been generally considered in Europe (how unjustly will appear from many passages in this work) as an invariable principle of all *Mussulman* governments; namely, a rigid and undeviating adherence to their own LAW, not only with respect to themselves, but also with respect to all who were subject to their dominion.—In all *spiritual* matters, those who submitted were allowed to follow the dictates of their own faith, and were even *protected* in points of which, with respect to a *Mussulman*, the LAW would take no cognizance.—In other particulars, indeed, of a *temporal* nature, they were considered as having bound themselves to pay obedience to the ordinances of the LAW, and were of course constrained to submit to its decrees.—Hence the HINDOOS enjoyed, under the *Mussulman* government, a complete indulgence with regard to the rites and ceremonies of their religion, as well as with respect to the various privileges and immunities, personal and collateral, involved in that singular compound of allegory and superstition.—In matters of *property*, on the contrary, and in all other temporal concerns, (but more especially in the *criminal* jurisdiction,) the *Mussulman* law gave the rule of decision, excepting where both parties were *Hindoos*, in which case the point was referred to the judgment of the *Pundits*, or *Hindoo* Lawyers.—It is true, this statement rather accords with the *spirit* of the *Mohammedan* laws, than with the *practice* of them; for it too frequently happened that little regard was paid either to judicial ordinance or natural equity.—Where avarice and bigotry are united with despotic power, such a

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combination

combination will occasion abuses, and corrupt the streams of justice.—Accordingly, the *Hindoos* were in many instances exposed to unfair and partial decisions, but more particularly where a *Mussulman* was concerned, in which case the law of MOHAMMED was doubtless often misinterpreted, and wrested to the purposes of injustice, or (which was an evil of equal magnitude) the decree was the result of a *bar-gain* between the magistrate and the highest bidder.—Still, however, these abuses did not alter the spirit of the law, which continued unvaried in its ostensible operation; the *Mussulman* courts determining in all matters of a *criminal* nature, without exception, and in every case of *Mussulman* property; and admitting of appeals to the *Hindoo* Lawyers (for there are no regular *Hindoo* courts of justice) only in cases where the *Mussulman* law had made no provision, or in which no *Mohammedan* had any interest.

SUCH was the state of jurisprudence in the *BENGAL* provinces, when a wonderful revolution threw the government of them into the hands of the *ENGLISH*.

LITTLE acquainted with the *forms*, and still less with the elementary *principles*, of the native administration of justice in their newly acquired territories, the British government determined to introduce as few innovations in those particulars as were consistent with prudence; and the only material alteration which, in course of time, took place, was the appointment of Company's servants to superintend and decide, as *Judges* in the civil *Mussulman* courts, and as *Magistrates* with respect to the criminal jurisdiction.—An important change was indeed effected in the administration of both justice and revenue, so far as affected the distinctions hitherto maintained between *Mussulmans* and *Hindoos*. Of these the latter had always been subject to *double* taxes, and imposts of every denomination, levied on principles which are fully explained in the course of the present work: and they also laboured under particular inconveniences and disadvantages in every judicial process, (especially where
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the litigating adversary was a *Mussulman*) some of which have been already noticed.—By the British government both have been placed, in these points, upon an exact equality; and the *Hindoo* and *Mussulman*, respectively, have their property secured to them under that system which each is taught to believe possessed of paramount authority: but where their interests clash in the same cause, the matter is necessarily determined by the principles of the *Mussulman* law, to which long usage, supported by the policy of the *Mogul* government, has given a sort of prescriptive superiority.—Still, however, though much was effected, much remained to be done.—The gentlemen who were appointed to superintend the proceedings of the courts, having had no opportunity of studying the languages in which the laws are written, were constrained, in their determinations, to be guided by the advice of the native officers—men sometimes themselves too ill informed to be capable of judging, and generally open to corruption.—Hence appeared the necessity of procuring some certain rule whereby those gentlemen might be guided, without being exposed to the misconstructions of ignorance or interest, and which might enable them to determine for themselves, by a direct appeal to the *Mussulman* or *Hindoo* authority on the ground of which they were to decide.—A compilation was accordingly formed, under the inspection of the most learned *Pundits*, (*Hindoo* Lawyers,) containing an abstract of the *Hindoo* laws, the translation of which into English was committed to Mr. HALHED; and, shortly after this was accomplished, a number of the principal *Mohammedan* professors in Bengal were employed in translating from the *Arabic* into the *Persian* tongue a commentary upon the *Mussulman* law, called the *HEDAYA*, or *Guide*, a work held in high estimation among the people of that persuasion. The *English* version of that commentary is now submitted to the public.

BEFORE the Translator proceeds to give an account of this work, it may be proper to say something concerning the LAWS of which it treats.

THE

THE *Mussulman* LAW proceeds, in its determinations, upon two grounds the text of the KORAN, and the *Sonna*, or oral law, corresponding with the *Mishna* of the Jews.

THE KORAN (or, as it is more commonly termed, AL KORAN) is considered by the *Mussulmans* as the basis of their law; and is therefore, when applied to judicial matters, entitled, by way of distinction, *al Shàrra*, or THE LAW, in the same manner as the Pentateuch is distinguished by the JEWS.

WHO was the real *Author* of this extraordinary compound of declamation and precept, must for ever remain a matter of uncertainty, since on this point much difference of opinion obtained, even among the earliest opponents of MOHAMMED and his pretended mission.—That this extraordinary person, however, was himself the principal *projector*, is beyond dispute, although it be probable that he received much assistance from others in the composition of it.—By all orthodox *Mussulmans*, the original is believed to have existed from eternity, inscribed on the tablet of the divine decrees, which stands close by the throne of GOD, and contains the predestined fate of MEN and things.—From this tablet a copy of it is supposed to have been taken by the angel GABRIEL, and conveyed to the *Simma Asfi*, or lowest heaven, where it was by him revealed to the Prophet in various portions, and at different times.—In fact, it was delivered by *Mohammed* piece-meal to his followers, according as the occasion dictated, or as any particular emergency required: nor was it arranged together, in its present form, until the reign of his friend and successor, the *Khàlif* ABOO BEKR, who ordered the whole to be collected from the leaves or skins on which the passages had been written, and also from the mouths of such of the surviving companions of the Prophet as had committed them to memory, and inserted in one volume, but without any regard to the order of their original promulgation.—Much difference, however, was soon perceptible in the several copies of this

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this work; wherefore OTHMAN, the second succeeding *Khalif*, to remedy the growing evil, directed a number of copies to be transcribed from this of ABOO BEKR, and ordered all others to be destroyed.—The precepts of the KORAN are of two descriptions, prohibitory and injunctive. In the application of them to practice they are always considered as unquestionable and irrefragable, except where one passage has been contradicted, and consequently repealed, by a subsequent passage, some instances of which are cited in the course of this Commentary.

SONNA is a word which (among a variety of other senses) signifies *custom, regulation, or institute*. The *Sonna* (or, as it is expressed among the *Arabs*, by way of distinction, *Al-Sonna*) stands next to the KORAN in point of authority, being considered as a kind of *supplement* to that book. It forms the body of what is termed the *oral law*, because it never was committed to writing by the *Arabian* Legislator, being deduced solely from his traditionary precepts or adjudications, preserved from hand to hand, by authorised persons, and which apply to many points of both a spiritual and temporal nature, not mentioned or but slightly touched upon in the KORAN.—These traditions * are divided, by the *Mussulman* commentators, into two classes: I. the simple sayings of the Prophet from his own uninspired judgment; II. sayings from divine inspiration. The former are termed *Hadees Nabwee*, or traditions of the PROPHET; the latter *Hadees Koodfee*, or *divine* traditions; and both have the force of laws.—After MOHAMMED'S death, they were at first quoted by his companions merely in order to decide occasional disputes, or to restrain men from certain actions which the PROPHET had prohibited: and thus, in process of time, they became a standard of judicial determination. The

* The Translator, speaking of the *Sonna*, uses the word *traditions*, in compliance with custom, which, among Europeans, has applied this term to all the oral precepts, &c. of MOHAMMED.—*Hadees* (pronounced, among the *Arabs*, *Hadeeth*) properly signifies an *occurrence or event*. Some *Mussulman* commentators define it to mean “an *emanation*,” and understand it particularly in this sense when applied to the sayings or actions of their Prophet.

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first collection of them was made in the *Khàlifât* of ALËE; and, in after times, many pious men employed themselves in making those collections.—There are, besides these, a multitude of traditions cited by the *Mussulman* commentators, concerning the acts and sayings, not only of their PROPHEt, but also of his COMPANIONS and immediate successors; which, though not of equal authority, are nevertheless admitted to have some weight as *precedents* in judicial decisions, when not repugnant to reason, or contradicted either by the KORAN or the SONNA. Upon the *Sonna* a great number of volumes have been written, under the titles of *Sonnàn* *, *Rawdyat* †, and *Hawàdees* ‡, several of which are quoted in the course of this work, and will be more particularly mentioned when we come to treat of *authorities*.

PRACTICAL DIVINITY, also, is admitted to have its due weight in judicial determinations, even among the orthodox. As used by the *Mussulman* Lawyers, it chiefly consists of casuistry, and analogous applications to, or deductions from, cases already determined upon by the more certain standards of the KORAN or *Sonna*; the nature of which will be more fully explained by the perusal of a single page of the work than by any illustration that could be offered.

HAVING stated thus much with respect to the *foundations* of the *Mussulman* LAW, we shall next endeavour to account for those varieties which at present appear in the superstructure;—but before we proceed to this it will be proper to enter into a short detail of the events in which originated the first great schism among the followers of MOHAMMED.

HAD the impostor of *Mecca* left, at his decease, any male heirs, it is possible that the distinction to which he rose would have been transmitted without question to his posterity. In this however he was disappointed,

* Institutes.

† Reports. Traditions.

‡ Occurrences. Emanations.

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his five sons having all died in their infancy.—He had indeed four daughters by his first wife KHADIJA, of whom one alone survived him, his favourite FATIMA, the wife of ALEE; but a female was universally deemed incompetent to be the leader of the FAITHFUL.

ALEE *, as the nearest relation of the prophet, the husband of his daughter, and the lineal chief of his family, aspired to the succession, with hopes founded not less on his personal merit than his conjugal and hereditary claims.—When MOHAMMED was seized with his last illness, his son-in-law probably expected a nomination in his favour.—His views however were frustrated, and his pretensions for the present defeated.—AYSHA †, the stepmother of FATIMA, had always entertained an antipathy against him; and, by exerting her influence with the dying Prophet, easily prevented him from making any declaration which might determine the *Mussulmans* in favour of the descendant of HASHIM.—From this circumstance, on the decease of MOHAMMED, his followers became divided into several factions.—The people of *Medina* were desirous of raising SAAD, one of their countrymen, to the dignity of *Imám*, or chief; whilst the *Meccanites*, considering his advancement as subjecting them to a foreign domination, declared their intention of electing a chief among themselves.—Had such a design been carried into effect, it must, in its consequences, have destroyed altogether the newly established religion; and by crushing the rising empire of *Islamism* in its infancy, would have restored the *Arabs* to their primitive barbarism and idolatry.—The prudence or policy of OMAR, and some other of the principal companions, interfered; and they proposed, in order to avoid the dangerous schism which this must occasion among the *Mussulmans*, that all parties should, without distinction, unite in the election of a successor to the

* ALEE BIN ABEE TALIB, cousin German of MOHAMMED, and, with him, descended from *Hâshim Abdalminâf*, from whom the *Hâshimee* tribe derives its title.

† The daughter of *Abou Bekr*, stiled, by the *Mohammedans*, OM al MAW'MENEEN, or *Mother of the FAITHFUL*.

Prophet, who as such should be universally obeyed.—The matter was not settled without much contention: but at length ABOO BEKR, the father-in-law of MOHAMMED, who had exerted himself as a mediator among the disputants, was unanimously elected by the *elders*, and acknowledged by the people.—It was in vain that the *Hâshimees*, and other partizans of ALEE, vehemently opposed this defeasance of his right, and obstinately maintained that he alone had an indisputable and exclusive claim to succeed, as well on account of his near relation to MOHAMMED, as because of a declaration of the latter to that effect*.—Their remonstrances were disregarded, their clamours drowned amidst the acclamations of the multitude, and they were compelled to remain satisfied with refusing to acknowledge the *Kbâlif*.

ALEE himself retired from the scene of his mortification, and sustained the disappointment of his ambition with silent disgust; nor did he pay his homage to the appointed “COMMANDER OF THE FAITHFUL” until some time after, when the death of his wife *Fâtima* had weakened his party, and he perceived that a perseverance in his dissent might indeed create strife, but could not be productive of advantage.

WITHIN little more than two years after his elevation, *Aboo Bekr*, finding himself attacked by a mortal distemper, nominated *Omar* to be his successor, who accordingly assumed the title without opposition, and after a most successful and victorious reign of above ten years, died of a wound he received from one *Firooz*, a *Persian* slave, whom he had offended by a sarcastic observation concerning a suit which the slave had referred to his tribunal.—When dying, OMAR refused to appoint any particular successor, declaring the *Kbâlifat* to rest among six persons, who should succeed to each other agreeably to the order of their election or ballot; namely, ALEE, OTHMAN, SAAD, ABDULRIHMAN, TALHA, and ZOBAIR. Of these ABDULRIHMAN agreed to forego his right altogether,

* The story cited by the partizans of ALEE, on this occasion, is related at length, in treating of the term *Mâwlâ*. (See MANUMISSION, vol. I. p. 425.)

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provided he might have the privilege of naming the successor to OTHMAN; a proposal to which all his colleagues assented, except only ALEE, who took this opportunity to urge his superior and exclusive pretensions to the *Khalifat*. ABDULRIHMAN, however, notwithstanding his opposition, being supported by his four other colleagues, offered the *Khalifat* to OTHMAN, and he was proclaimed and recognized as successor to the PROPHET, and sovereign of the *Mussulmans*. ALEE, on this second defeat, acted with a moderation which, however laudable in itself, was much blamed by some of his adherents. He paid his homage to OTHMAN without murmuring, and appeared content to submit to the success of his competitor.

IF OTHMAN was really desirous of the rank which he had thus attained, he exhibited a powerful instance of the delusions of ambition! Whilst his armies were extending the empire of *Iffum* in every direction, and penetrating into *Khorasan* and *Mauritania*, the venerable *Khalif* found his reign disturbed by intestine commotions, and his person exposed to the violence of faction. His declining age had unnerved his arm; he was unable to hold the reins of dominion with the steady hand of his predecessors; and he, perhaps too late, discovered that he had undertaken a task to which he was unequal.—The governors of his provinces, encouraged by the growing imbecility of their prince, plundered and oppressed those whom it was their duty to cherish and protect.—He had disobliged AYSHA, “*the Mother of the FAITHFUL*,” who excited a powerful cabal against him at *Mecca*, whilst ALEE and his discontented *Hashimites* connived at, perhaps inflamed, these disorders. The malcontents at length being joined by the deputies from the oppressed subjects of *Egypt* and *Syria* took to arms, and OTHMAN found himself besieged in his own palace.—Superstition and respect for a time withheld the assailants. Their scruples, however, were soon overcome: they forced the gates; and the unfortunate *Khalif* expiated his errors or his weakness by his blood.

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THE insurgents, upon the murder of OTHMAN, made ALEE an offer of the *Khalifat*; which, with the consent of his colleagues TALHA and ZOB AIR, (already mentioned,) he accepted.—He was publicly proclaimed *Khâlif* within a short time after, and at the distance of twenty-four years from the period of his first aspiring to that dignity.

IN obtaining, however, this long-fought object, ALEE soon found himself embarked upon a tempestuous ocean, and the storm ended only with his life.—Conscious that the concern he was generally, and perhaps justly, suspected to have in the death of OTHMAN would not fail to alienate from him all those who were connected with that *Khâlif*, or whom he had advanced, one of his first steps was, to effect a general removal of the governors who had been appointed by his predecessor. This bold and dangerous measure excited much disgust in all the provinces, but more particularly in *Syria*, where MOAVIAH, to whom the care of that region had been entrusted by OTHMAN, and who was nearly related to him, excited a strong party against ALEE, and openly declared his resolution of avenging upon him the death of his kinsman. At the same time TALHA and ZOB AIR were disgusted with ALEE, because of his having refused to them the governments of *Koofa* and *Bafra*; and understanding that AYSHA, the widow of *Mahammed*, had retired from *Medina* (then the seat of the *Khalifat*) to *Mecca*, followed her thither. At *Mecca* a powerful faction was excited against *Alee*, particularly among the tribe of OMMIAH; and these being joined by the dismissed governors of the provinces, and having *Aysha* at their head, collected a powerful army, determining to depose ALEE by force, and set up MOAVIAH as *Khâlif* in his room.—Thus was excited the first civil war among the *Mussulmans*; and hence originated the dissensions which have ever since obtained between the opponents of ALEE and his adherents.

ALEE, with undaunted resolution, faced, and for the present repelled, the threatening storm. He met the insurgents, and, after a bloody conflict, gave them a complete overthrow, in which TALHA and ZOB AIR
were

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were slain, and AYSHA taken prisoner, whom the *Khàlif* treated with the utmost respect, and sent her back, with honourable attendance, to *Mecca*.

AFTER this victory, ALEE remained complete master of *Arabia*. But he still found himself opposed by a powerful party in *Syria*; for MOAVIAH, having retired to *Damascus*, and being there joined by all the relations of OTHMAN, was publicly acknowledged by those as *Khàlif* and *Commander of the FAITHFUL*.

PERHAPS the mere effort of a faction at *Damascus* would not, of itself, have availed to shake the throne of ALEE, confirmed as it was by his recent signal success. But the pretensions of his competitor were supported, on this occasion, by the celebrated AMROO *ibn al As*, the most puissant and popular of all the *Mussulman* commanders. This chieftain had conquered Egypt during the *Khalifat* of OMAR; had afterwards been recalled by OTHMAN; and, at the period of his death, and the investiture of ALEE, commanded in *Palestine*.

To gratify some particular resentment against the son-in-law of the Prophet, or, more probably, induced by his attachment to the house of OMMIAH, he repaired from *Jerusalem* to *Damascus*, and took the oaths to MOAVIAH. He pledged himself to obey and maintain the usurper as the only true and legitimate leader of the FAITHFUL. Such was his influence that the multitude immediately joined their acclamations, and flocked to the standard of the *Syrian Khàlif*. The civil war was thus rekindled. The armies of the contending *Khàlifs* prepared for battle, and ALEE was once more on the point of defeating his enemies, when they were saved by the stratagem of fastening some KORANS to the ends of their spears; for the troops of ALEE, beholding the sacred volumes thus exposed, could not be prevailed upon to advance to the encounter. Soon after these proceedings a truce was agreed upon, and the competitors engaged to retire to their respective capitals, *Koofa* and *Damaf-*

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tus, leaving their claims to be decided by a reference, to the award of which each party bound himself to adhere.

AMROO was appointed referee on the part of MOAVIAH, and the less artful ABOO MOOSA on that of ALEE. In the course of their conferences AMROO had the address to persuade his co-arbiter that, in order to restore peace to the *Mussulmans*, it was absolutely necessary to depose both their principals, and to elect a *Khàlif* who should meet the approbation of all parties: and for this purpose a tribunal was erected between the two armies. ABOO MOOSA first mounted, and proclaimed the deposition of ALEE and MOAVIAH. AMROO succeeded him, and announced MOAVIAH “as the legal *Khàlif*, who had been nominated by OTHMAN, and “stood pledged to revenge his blood.” The friends of ALEE, supposing this to be done with his connivance, retired from the place astonished and discouraged. When recovered from their confusion and surprise, the compromise was declared void. Each party proceeded to vilify and excommunicate the other; and the anathemas uttered on this occasion have continued to be solemnly repeated ever since, in the mosques of the respective sects, as one of the offices of religion. The war was resumed with greater fury than ever. AMROO was dispatched into *Egypt* with a considerable force, and seized the government of that province in the name of MOAVIAH. The *Mussulmans*, instead of seeking foreign enemies, turned their swords against each others breasts; and the power of their empire was likely to perish by an internal disease, when an event took place which, for the present, put an end to the contest, and restored *peace*, if not *unity*, among them.

THREE of the *Khàregites* (*insurgents* against ALEE) happening to meet at the temple of MECCA, discoursed concerning the many friends and companions they had lost in this fruitless war, and deplored their deaths, as well as the danger which threatened the general cause from a continuance of those unhappy divisions.—One of them at length, in an extasy of fanaticism and despair, proposed to end these troubles at once by the death of ALEE, MOAVIAH, and his friend AMROO.—His two comrades

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rades immediately agreed to take their share in this desperate enterprize.—They prepared their daggers, and proceeded,—one for *Damascus*, another for *Egypt*, and the third for *Koofa*; each fully resolved to sacrifice his allotted victim.—The event proved that their determination was as firm as their undertaking was desperate: but one only succeeded.—The first, having arrived in *Egypt*, mistook the person of AMROO, and stabbed another who happened to preside that day in the character of *Imám* in his stead;—and on being conducted to punishment, satisfied himself with exclaiming, “I intended to strike AMROO, but GOD willed it should be “another.”—The second repaired to *Damascus*, there wounded MOAVIAH, but not mortally, and was suffered to live long enough to discover the conspiracy.—The third accomplished his sanguinary purpose.—Having arrived at *Koofa*, and engaged two assistants, he, on Friday the 17th of *Ramzan*, A. H. 40, waylaid the *Khàlif* as he was going to the *Mosque*, and gave him a wound, of which he soon after died.

THUS perished ALEE, after a short and turbulent reign of four years and nine months.—His partizans, however, were not dismayed by this event.—The murdered *Khàlif* left several children by nine different wives; the two eldest, HASSAN and HOOSEIN, by FATIMA the daughter of *Mohammed*, during whose lifetime he contracted no other marriage.

HASSAN was by his adherents proclaimed *Khàlif* on the death of his father; but MOAVIAH, who had assumed the dignity of *Khàlif* in *Egypt* and *Syria* some time before, was in possession of those countries, and refused to acknowledge him on account of the suspicion which attached to him as being concerned in the death of OTHMAN.—Hence a new competition arose, which could not have failed to rekindle the flame of war, had not HASSAN, who inherited more the *piety* than the *valour* of his predecessor, and was more ambitious to distinguish himself in the performance of religious ceremonies than in the support of his regal pretensions, agreed to relinquish his claim in favour of his rival; and thus was transferred the dignity of the *Khalifat* from the tribe of HASHIM to that of OMMIAH.

HASSAN,

HASSAN, upon resigning the *Khalifat*, retired to *Medina*, and there lived in privacy until A. H. 49, when he died, poisoned, as the *Shiyas* alledge, by his wife, at the instance of MOAVIAH, who dreaded the possibility of his renewing his pretensions.

HOOSAIN possessed a larger portion of the martial spirit of ALEE than his elder brother; but his fate was not more fortunate.—On the death of MOAVIAH, having refused to acknowledge his son YEZEED, (who succeeded to the *Khalifat*, A. H. 60,) he was constrained to retire for safety from *Medina* to *Mecca*, whither the people of *Koofa*, who were strongly attached to the family of ALEE, sent him an invitation to join their standard, after having proclaimed him the only lawful *Khalif*, and declared YEZEED to be an usurper.—YEZEED, understanding that HOOSAIN had accepted this invitation, and set out from *Mecca* for *Koofa*, dispatched OBEYDOOLA, one of his commanders, to intercept him; and OBEYDOOLA, meeting him passing over the plain of *Kerballa*, with only seventy-three of his family and attendants, cut to pieces the grandson of the Prophet and the whole of his feeble party.—In this indiscriminate massacre also perished four other sons of ALEE, namely, ABDOOLA, ABBAS, OTHMAN, and JAFIR, together with one or more of his daughters.—The wretched remains of his family were afterwards brought before YEZEED, who was advised to seize the present opportunity, and to cut off all future causes of disturbance, by extirpating this remnant of the Prophet's descendants.—This flagitious proposal filled the *Khalif* with horror. He repented of the blood which had been already shed, execrated the sanguinary obedience of OBEYDOOLA, and dismissed the captives with honour to the tomb of their father at KOOFA.

FROM this period the posterity of ALEE sunk into obscurity and insignificance, except in the eyes of their sectaries.—Their descendants, however, under the title of *Seyids*, have spread over *India*, *Persia*, *Turkey*, and the northern coast of AFRICA, are held in veneration by the multitude

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as inheriting the blood of the Prophet, and have frequently excited the jealousy of the reigning princes of *Arabia* and *Turkey*.—In *Persia* and *India*, particularly, the memory of ALEE and his sons is cherished, among the people, with a veneration approaching to idolatry; and the latter country exhibits some striking instances of the force of this partiality, which possibly a long lapse of time, instead of weakening, has rather contributed to strengthen.—The *Mussulman* Princes of *HINDOSTAN* are, in general, *Soonis*, as well as most of their chief men, the heads of the law, or the ministers of state, whilst the great body of *Mohammedans*, being descended from a *Persian* stock, or from the proselytes of the first *Mohammedan* conquerors, adhere rigidly to the principles of the *Shiyas*.—The *Nizàm*, one of the most powerful and independent of those princes, cannot attend public worship in the *Yàmá* mosque of his capital (*Hydrabad*) because of the *Anathemas* weekly uttered there against the usurping *Khàlifas* of the house of *Ommiab*.—At *Lucknow*, on the tenth of *Moharrim*, the effigy of *Omar* (who, as being the first proposer of an elective *Khàlifat*, in prejudice to the right of ALEE, is regarded by his adherents with particular abhorrence,) is set up, filled with sweetmeats, as a mark to shoot arrows at; and, after being used with every species of indignity, is torn to pieces, and its contents devoured by the enthusiastic votaries of ALEE.—This day is throughout these regions observed as the anniversary of the death of *Hosseïn* and his brethren, and celebrated by songs and processions. The magnificent *Mausoleums* erected to the memory of these illustrious martyrs are still visited by their adherents, who regard this token of respect as scarcely less meritorious than a pilgrimage to the *Käba* itself; and the real or fictitious descendants from this sacred stock have, at different times, made their affinity to the Prophet a pretext for assuming the regal or pontifical authority in *Syria* and *Africa*.—They claim, moreover, a certain pre-eminence, and exclusive privileges, to some of which they are admitted, even in *Turkey*, where the memory of ALEE is least respected, and the pretensions of his line to the *Khàlifat* utterly denied.—A few slight traces of their assumed superiority may be discovered in this commentary.

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THUS

THUS early divided on a subject which involved at once the interests of individuals, and the prejudices of superstition, it was not to be expected that the followers of MOHAMMED should long continue to observe an uniformity of practice or of doctrine.—The first controversies began, of course, between the retainers of ALEE and their opponents. When the contending parties proceeded openly to anathematize each other, the mutual change of heterodoxy was not confined merely to the appointment of an *Imám*, but soon advanced to comprehend the expositions of the LAW in other matters both of spiritual and temporal concern. Each faction reproached the other with disbelieving, perverting or misunderstanding, the sacred text of the KORAN.—Notwithstanding the pious attempt of the *Khàlif* OTHMAN to restore a literal uniformity in the several copies of this work, (as already noticed,) still, from the nature of the composition, as well as from the character in which it was preserved, there was abundance of room in many places for a variety of constructions, independant of any particular interest which might mislead the understanding, or at least the inclinations, of mankind.—Its contents are distinguished under two heads, the *محکيات* or perspicuous, and the *متشبهات* or enigmatical, the latter of which each commentator might explain in the way most agreeable to himself, or best coinciding with the tenets of his particular sect.—The whole was, moreover, committed to writing in the *Koreish* character, the *Arabic*, into which it was afterwards transcribed, being of later invention; and as this last was destitute of vowels, the sense of course depended much on the pronunciation of the *Mokris*, or readers, whence, upon the introduction of the *vocal points*, a variation took place in the copies, according to the manner of the reader upon whose authority these were inserted.

THE traditions also opened a copious field for disputation. No authentic collections of them having been compiled until all or most of the Prophet's companions were dead, they existed, for above a century, merely in the memories of the *Arabians*. Thousands were of course promulgated by their leaders as the occasion or the passion of the moment happened

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happened to dictate : they swelled into a number exceeding all possibility of belief* : every collector assumed the right of erecting to himself a standard of selection : none would or could believe in all ; and some boldly disregarded or rejected them *in toto*, as affording no authentick rules for faith or conduct.

FROM these circumstances attending their authorities, the disputants found an ample field on which to exercise their polemical talents.—This literary warfare was indeed, for some time, confined to the original causes of their disagreement ; and, excepting those, they touched merely on points of a speculative description.—This, however, opened the way to the various heterodoxies of the scholastic divines. Abstracted subtleties and metaphysical distinctions were, by degrees, substituted for the precepts of the LAW ; and the controversial factions became divided and subdivided into parties innumerable.

IT is proper, however, to remark, that a difference of tenets did not enter into judicial decisions until upwards of a century after the death of ALEE, when it was occasioned by the defection of HANEEFA from the party of the *Sbiyas*, of which more shall be said when we come to speak of that doctor.

IN stating thus much, we have endeavoured to give a summary view of the first great schisms in *Islamism* ; but we have only ventured to sketch an *outline* of the picture, without any reference to collateral events, the recital of which is more properly the province of the historian.—Having dismissed this topic, we proceed to give some account of those eminent persons whose discussions occupy a considerable portion of this work, and whose doctrines and opinions are generally admitted as of binding authority at the present day.

* ABI DAOOD has left a selection of 40,000 out of 500,000 ; and IBN HANBAL gives us, in his *Moscuind*, 37,000 out of 750,000 of those real or pretended precepts of the Prophet.

IN every system of religion ORTHODOXY and HERESY are merely relative terms. Mankind, however, have in general agreed to confine these distinctions to points of spiritual doctrine.

THE *Mussulmans* who assume to themselves the distinction of *orthodox**, are such as maintain the most obvious interpretation of the KORAN, and the obligatory force of the traditions, in opposition to the innovations of the sectaries: whence they are termed *Soonis*, or traditionists.—Although differing considerably in their legal conclusions, and in the application of the KORAN and the SONNA to *temporal* matters, yet they unite in rejecting the speculations of the scholastic divines;—and some of them condemn the use of scholastic divinity altogether, as tending to destroy the foundations of religious belief.—Concerning these we shall be somewhat more particular, as their discussions occupy a considerable part of this work, and it is their opinion alone which is admitted to have any weight in the determinations of jurisprudence.

THE orthodox sects are four in number—the *Haneefites*, the *Mâlekites*, the *Shaféites*, and the *Hanbalites*—who are all *Soonis*, or traditionists. But although they equally assume the name of *traditionists*, they do not all equally adhere to the *Sonna*; for there is this characteristic distinction among them, that the first, in determining upon cases where the KORAN affords them no positive precept, are guided principally by their own judgment, examining and deciding, in most of these instances, according to the rules of practical divinity; whereas the three others adhere more tenaciously to the precedents left them by the Prophet. On this account the *Haneefites* are by some writers, for distinction sake, termed *Ahl Keeas*, or *the followers of reason*, and the others *Ahl Sonna*, or *the followers of tradition*.

* The word *orthodox*, as here used, is confined purely to a justness of thinking in *spiritual* matters, concerning which the opinions of those four sects perfectly coincide, the differences among them relating solely to their expositions of the *temporal* LAW.

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THE founder of the first sect was *Imám* ABOO HANEEFA NAOMAN BIN SABIT, who was born at KOOFA, the ancient capital of IRAK, A. H. 80, A. C. 702, at which time four of the Prophet's companions were still alive *, from whom, however, it is related, that he never received any instructions or traditional knowledge.

HANEEFA is considered, by the MOHAMMEDANS, as the great oracle of jurisprudence, he being the first among them who attempted to argue abstractedly upon points of LAW, and to apply the reason of men to the investigation of temporal concerns.—They are accordingly lavish in his praise. They even trace the origin of his eminence to a period antecedent to his birth, and suppose him to have been assisted by the peculiar favour and influence of Heaven; for it is related by the learned INAYET-IBN HAMED, that his father, when yet a child, being presented to ALEE, received his blessing, the Commander of the Faithful at the same time declaring, that “from his body should spring a light, which should diffuse its rays throughout all the regions of ISLAMISM.”—However well or ill founded this anecdote may be, his early youth is said to have been marked by a strong predilection for study, an uncommon acuteness of understanding, and an unremitting but cheerful piety, equally removed from the gloomy austerity of the bigot, and the frigid indifference of the sensualist.—HANEEFA was educated in the tenets of the *Shiyas*. He received his first instructions in jurisprudence at *Bagdad*, from *Imám* ABOO JAFIR, an eminent doctor of that sect, and heard traditions chiefly from ABDOOLA IBN AL MOBARICK, both of whose authorities he frequently quotes.—After having finished his studies, and gained considerable reputation at *Bagdad*, he returned to *Koofa*, and there distinguished himself by seceding from his master ABOO JAFIR, and teaching civil law on principles repugnant to those inculcated by that doctor. His defection indeed is, by the *Shiyas*, attributed to motives which, if true, divest

* *Viz.* ANS IBN MALIK, of *Basra*; ABDOOLA IBN AOFA, who lived in *Koofa*; SIHL IBN SAAD, residing in *Madina*; and Aboo YOOFIL IBN-WASILA, who resided in *Mecca*.

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him of the merit of proceeding in this upon internal conviction. They relate that ABOO JAFIR's eminent piety, learning, and austerity of manners, having attached to him a considerable number of followers, the increase of his reputation alarmed the reigning *Khàlif*, who, in order to destroy his credit, gained over HANEEFA, by promising to support, with all the influence of government, his opinions and decisions against those of JAFIR; and that HANEEFA, allured by the offer, quitted his preceptor, and instituted a school in opposition to him. Whether they be correct in this statement or not, it is certain that the dissension which took place between these eminent lawyers is considered as the origin of the different tenets of the *Shiyas* and *Soonis* in jurisprudence; and as the habits of mind most early acquired are seldom to be entirely subdued, the little attention which (comparatively with the other *Soonis*) HANEEFA pays to the precepts of the *oral law* may perhaps be attributed to the instructions which in his youth he imbibed from ABOO JAFIR.—He is described of a middling stature, a comely countenance, and pleasant conversation; harmonious in his voice, of an open and ingenuous disposition, and kind to excess to his relations and friends, admitting none to his society but of the best character. Such a disposition and conduct necessarily secured to him the universal esteem, whilst his polemical abilities gained him the reverence and admiration of his disciples; as may be collected from an anecdote which is recorded by SHAFEI, in the introduction to his *Osool*, where he relates that, inquiring of MALIK, “Whether he had ever seen HANEEFA?” he was answered by that doctor, “Yes; and he is such a person that if he were to assert a wooden pillar was made of gold, he would prove it to you by argument.”—*Shafei* himself, although differing materially from him in his legal decisions, says, in another part of the same work, that “No study whatever could enable any man to rival HANEEFA in the knowledge of the law.”—It appears, indeed, from the best authorities, that he was a man eminently endowed with science, both speculative and practical; of a mild disposition and tolerating principles; pious, abstinent, charitable,