THEMES IN ISLAMIC LAW

The Origins and Evolution of Islamic Law

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Conclusion

With the massive migrations during the centuries preceding the rise of Islam, many large tribal federations from south Arabia had finally come to settle in southern Iraq and Syria, where they established themselves as powerful vassal kingdoms of the Sasanid and Byzantine empires. Despite their intermittent function as protectors of the imperial powers against tribal penetration from the south, these flourishing kingdoms constituted significant links between the Peninsular Arabs and the Fertile Crescent. Migration of the southern Arabs to the north – and much less frequently from the north back to the south, south-west and south-east – continued incessantly, and with it the shifting of demographic boundaries worked in favor of an increasing proportion of Arabs settling in the Fertile Crescent. This constant demographic movement and penetration was supported by trade and commerce that served the interests of both the tribal and sedentary Arabs of the south and of those societies in the Fertile Crescent, if not of the imperial powers that indirectly ruled the entire northern regions. Vibrant religious movements and missionaries further encouraged the otherwise intensive contacts between the Peninsula and the north. Yet, it was mainly trade – whether on a massive or more modest scale – that exposed the Hejaz, the birthplace of Islam, to the cultures of the north, thus making the Peninsula a more or less integral part of the all-pervasive Near Eastern culture. The ancient legal and cultural institutions of Mesopotamia and Syria (which at the time included the southern borders of today's Jordan), were mostly Semitic, though possessing a Greek and Roman veneer, and were known to the Arabs of the Peninsula, especially to those populations of the commercial and agricultural centers of the Hejaz.[1]

[1] On the continuity of penal law from antiquity to Islam, see Walter Young's remarkable thesis "*Zinā, Qadhf* and *Sariqa*: Exploring the Origins of Islamic Penal Law and its Evolution in Relation to Qur'ānic Rulings" (MA thesis, McGill University, in progress).

Tribal societies were not uniform throughout Arabia. While the eastern and central parts of the Peninsula were largely nomadic and did preserve the ancient tribal ties and customary laws, regions of western and south-western Arabia were often only nominally tribal. It was often the case that nomadic tribes would finally settle on the fringes of sedentary communities, and would maintain their tribal affiliation and even genealogies. But in all other respects, they would be full participants in the sedentary lives of these communities. To argue that Arabia was predominantly nomadic because our sources continued to transmit tribal genealogies is therefore to ignore the more recent evidence concerning a significant movement toward tribal settlement. Yet, this is not to say that, once settled, the tribes of Arabia (even those of the western and south-western regions) abandoned their laws and customs. The tribal structure no doubt continued to operate, as evidenced by the fact that it represented one of the major challenges that the new religion of Islam attempted to combat.

Muḥammad's initial mission was to propound a form of monotheism that seems to have been largely in line with a version of Ḥanīfism, a Meccan sect that had adopted Abraham as its strictly monotheistic Prophet. Muḥammad's call to the new religion was at the outset largely preoccupied with eschatological themes – law as a regulative system being largely absent at this early stage. In fact, it was not until a few years after his arrival in Medina, and only when he had secured for himself an unshakable position in that city, that he began to entertain the possibility of defining his religion in terms of law. It was his encounter with the relatively powerful Jewish tribes, and in particular their reluctance to acknowledge his mission as equally legitimate to their own religion, that prompted him to escalate the challenge: If Judaism and, for that matter, Christianity could and did possess laws, then so could Islam. The logic was simple: God created religious communities, each with its own law, and since Islam was undoubtedly one such community, then it had to have its own law. This transformation marks the beginning of an Islamic legal conception, but obviously not yet of law as a legal system. In fact, Muḥammad could not have thought of law in such developed terms, since in the world in which he lived there was no religious law that was at once the law of the body politic. This was to be one of Islam's greatest innovations.

Preserved within the most sacred entity in Islam – namely, the Quran – this legal conception was not to be forgotten. On the contrary, it was intensely promoted by the succeeding caliphs, who declared themselves both Muḥammad's and God's deputies on earth, seeing their authority as an extension of both Prophetic and Quranic authority. Yet, despite the

importance of the Quran and the person of the Prophet, the Arab tribal values of consensus and collective model conduct could not be forgotten or even minimized. Good conduct worthy of being emulated was not only dictated by the Quran, but also, and to an even greater extent, by notions embedded in the *sunan*, the good example of the predecessors, both as collectivities and individuals. The time-honored communal and tribal practices of the Arabs constituted a source of these *sunan*, but so did the examples of Abraham, Ishmael and Muḥammad himself, among many others. As leaders of the Muslim community (Umma), Abū Bakr and ʿUmar I, the first two caliphs, possessed their own *sunan*, also to be emulated and followed as a matter of course. But with these two caliphs, as well as with their colleagues who came to be known as the Companions of the Prophet, the authority they acquired as *sunan*-bearers was not exclusively "secular," as had been the case before and during Muḥammad's early career. Now, the authority they enjoyed was both tribal and religious, in the sense that the model conduct they provided was due not only to the fact of their charismatic and influential leadership, but also because their conduct was viewed as having been in line with the principles of the new religion – principles that they absorbed by virtue of their intimate knowledge of what the Prophet and his religion were all about.

The propagation of Quran teaching throughout the Muslim garrison towns not only encouraged the spread of the ethical values of the new religion but also imbued the *sunan* with a religious element. To this process of Islamicization, the story-tellers, teachers and preachers contributed much through their heavily layered religious narratives, especially their stories that recounted the Prophet's biography (*sīra*). The story-tellers, from amongst whom part of the traditionist movement was later to emerge, promoted a Prophetic biography that, within a few decades after the Prophet's death, led to raising his *sunna*ic model to the forefront of the *sunan*, thereby elevating his status above and beyond that of any other. But such elevation in Prophetic status did not mean the obliteration of other *sunan*, for the simple reason that Prophetic Sunna was not seen at the time as necessarily distinct or independent from the other recognized *sunan* of the Companions. The *sunan* of the garrison towns – which provided the basis of conduct and, therefore, of law – were thus primarily modeled after, or derived from, the recognized conduct of the leading elite, the Companions of the Prophet who mostly (if not exclusively) were Hejazians and who were entrusted by the Medinan leadership with building the new Muslim societies in the recently conquered lands. The Companions' conduct was seen to reflect the best understanding of what the Prophet and his

religion were supposed to achieve, and thus their *sunan* were, at least conceptually, the embodiment of the Prophetic model. This explains not only why Companion authority persisted for so long as constitutive of the *sunan*, but also why, when the Prophet's authority was finally fully deified, Companion narrative was readily transformed into Prophetic Sunna (in what has been called by modern scholarship back-projection of Prophetic *ḥadīth*). Broadly speaking, this transformation was far less substantive than one having to do with the substitution in the locus of authority – namely, from Companions, caliphs and others to a Prophetic axis. This little-understood *organic* connection between Companion and Prophetic narratives is essential for understanding the dynamics of religio-legal transformation from the former to the latter, a transformation that began during the second half of the first/seventh century, and culminated in the middle of the third/ninth century.

Yet, long before Prophetic authority began to be distinguished from that of the *sunan*, the Quranic legal spirit, if not the letter, had asserted itself from the beginning. True, the proto-*qāḍī*s appointed by military commanders held a variety of non-legal, administrative functions, but within the narrow confines of their judicial duties as judges and arbiters they seem to have applied two sets of law – one tribal, the other Quranic. This is not to say, however, that the two were always distinct, for the Quran, innovative as it was, equally provided tacit sanction of many of the preexisting customs and unwritten laws of Arabia; and it did so as much as it was an innovation. The all-important penal laws of the tribal Arabs, for instance, remained largely intact, based as they were on the principles of retaliation and blood-money (to which the Quran would add the desirable conduct of forgiveness).

The strictly legal and judicial functions of the proto-*qāḍī*s for long continued to be narrow in scope, a fact explained by the nature of the population they were appointed to serve. It is remarkable that the Muslim conquests were by no means systematic, but rather geared toward centers. The early Muslims managed to conquer vast lands by subduing the main populations in large cities and towns, and by settling in military garrisons outside some of the conquered cities. These garrisons were later to develop into major urban centers, with complex social forms, but during the first decades of the conquests they maintained basic tribal structures, since the great majority of Muslim soldiers came – with their families and clans – from the various tribes of Arabia. Whatever problems and disputes arose amongst them were, expectedly, of a tribal nature. The work of the proto-judges was thus limited to disputes over booty distribution, to

inheritance of such booty rights by the families of deceased soldiers, to blood feuds, to personal injuries, and to such matters as might be expected to arise among a newly settled tribal population. It is also remarkable that the Muslims did not impose their customs and laws on the conquered populations, but only on themselves. Nor did they interfere in any manner with the laws that governed these populations. This policy of segregation allowed the new Muslims to develop their own regulations and rudimentary laws on the basis of their own needs and what they knew best. In other words, they were guided by what was of paramount importance to them, namely, their own venerable customary laws reflecting an amalgam of tribal values and commercial and other practices that represented a regional variation of the largely Semitic culture of the Near East. Permeating all this, no doubt, was the Quranic spirit that was increasingly, but only partially, altering these preexisting laws and customs.

Medina, on the other hand, was obviously not a garrison town, but it still developed, legally and juristically speaking, along the same lines as Kūfa and other such centers. This phenomenon cannot, for one thing, be attributed to its role as capital of the new empire, since within four decades after the Hijra it had lost its geo-political importance – a fact bearing much significance. That Medina did become a prominent legal center and one that fundamentally affected the later development of Islamic law, bespeaks the similarities in social structures that existed between it and the garrison towns, structures that ultimately generated what came to be the legal norms of Islam. Of course it might be argued that the garrison towns, despite their segregation from the conquered populations, constructed their law through borrowings from the surrounding legal cultures (as some scholars would have it), and that Medinan law must have been subject to the same influences. This possibility, however, is highly improbable, not only because Medina was too remote from the conquered populations, but also because its own developed institutions and customs possessed a certain tenacity that precluded other laws and legal conceptions from being allowed to supplant its own traditions. Evidence of this can be seen in an array of commercial and other practices that were known to have existed there before Islam emerged and which persisted and survived into what later came to be Islamic law. Therefore, an eminently plausible explanation for the genetic similarities between Medinan and garrison laws is the fact that what the southern Arabs brought with them to the conquered territories was a version of the Near Eastern legal tradition that was, *ipso facto*, neither alien to nor even moderately different from the indigenous legal traditions of the conquered populations themselves.

The increasing legal specialization of the proto-*qāḍī*s' functions toward the end of the first/seventh century was not, therefore, a function of borrowing from other legal traditions but rather a reflection of the growing complexity of societal structures among the conquering Muslim populations in the garrison towns. The more entrenched these populations became in these towns, the more complicated these structures became, and with this grew the need to invoke the legal traditions that were known to them from the Hejaz. That the legal traditions of these garrison towns came to differ in detail (but not substantially) from those of Medina must be seen as a regional elaboration and modification of the same original laws that the Arabs upheld in their early days in the Peninsula in general and in the Hejaz in particular.[2] For despite the legal significance and ramifications of such difference in detail, the fact remains that their source and make-up were genetically identical.

The increasing legal specialization of the proto-*qāḍī*s also signified an enlargement of the body of law with which they had to work, for, after all, this enlargement appears to have precipitated the need for further specialization and the attendant abandonment of other administrative and financial functions. This new reality forced the proto-*qāḍī*s, who were now emerging as *qāḍī*s proper, to deal with questions of law as a technical discipline. Here, they exercised their considered opinion (*raʾy*), but not without due reliance on what they conceived to have been the model conduct, the *sunan*, of the forebears. *Raʾy*, therefore, was an extension of, and based upon, *ʿilm*, the knowledge of precedent. And as we have seen, the *sunan*, the corpus of model precedent, were not, even during the first decades after the Prophet's death, entirely "secular," but imbued with religious elements derived from the assumption that good conduct must now be in line with either the Quranic spirit, a Companion's behavior, or the conduct of any other personality associated with the emerging ethic of the new religion. Here, the Prophet and his immediate colleagues, especially the earliest caliphs, no doubt stood foremost.

Thus, if the *sunan* had begun to acquire religious significance as early as the reign of ʿUmar I (if not that of Abū Bakr or even during the later career of the Prophet himself), then the origins of Islamic law – as a *religious* system – cannot be rigidly defined as exclusively limited to its *direct* (and

[2] See now Z. Maghen, "Dead Tradition: Joseph Schacht and the Origins of 'Popular Practice'," *Islamic Law and Society*, 10, 3 (2003): 276–347; P. Hennigan, "The Birth of a Legal Institution: The Formation of the *Waqf* in Third Century AH Ḥanafī Legal Discourse" (Ph.D. dissertation, Cornell University, 1999). I thank David Powers for drawing my attention to Maghen's article before it was published; and to the information that Hennigan's thesis will be soon published in the form of a book.

formal) association with the Prophet. For one thing, as we saw in chapter 5, Prophetic authority was substantively intermeshed with the authority of other *sunan*, including those of the Companions, which contributed much to the early formation of law. Second, Islam, however it was understood by the early followers, was not only that construction portrayed in the Quran and Prophetic *ḥadīth*, as many modern scholars and modern Muslims seem to assume. Obviously, even the Quranic provisions did not mean the same thing to all Muslims of the earliest generations. The meaning of Islam, particularly during the first century, was no doubt constantly evolving, undergoing significant and dramatic changes – a fact that, in this respect, distinguished the first/seventh century from later periods during which legal change took on a more steady pattern. That the conception of Muslims living, say, during the 50s/670s, was not based on a definitive Prophetic, Muḥammadan authority does not make their belief or conduct less Islamic than, for example, those who flourished three or five centuries thereafter. We must therefore be wary of the fallacy (dominating much of modern scholarship) that law began to be *Islamic* only when Prophetic authority, *as formally exemplified by ḥadīth*, came into being. The rise of this authority in no way signaled the rise of Islamic values, but rather constituted a continuing evolution of earlier conceptions of "Islam" as well as of forms of authority-statements. To search for the "origins" of Islamic law in the long process of *ḥadīth* evolution – as some prominent modern scholars have done – is therefore to miss the point altogether. In the present work, the pre-*ḥadīth* forms of Islam (including *sunan*, *'ilm* and *ra'y*) are as valid as those that emerged later. And it is precisely this conception that made it incumbent to exclude from our survey any extended discussion about dating the appearance of Prophetic *ḥadīth* as a yardstick by which to date the rise of Islamic legal norms. Rather, the rise of *ḥadīth* is seen here as an index of the evolution of a particular *form of authority* (namely, Prophetic), not as the emergence of an unprecedented Islamic content of the law. For, in addition to the clearly religious character of the first-/seventh-century *sunan*, Islamic law was, substantively and doctrinally speaking, already formed when Prophetic *ḥadīth* – as an independent source – appeared on the scene. That this *ḥadīth* replaced the *sunan* during the second/eighth and third/ninth centuries was largely a matter of rationalization and authorization, but hardly one of content or substance.

Furthermore, it is important to realize that the rise of *ḥadīth* was a process through which the Prophetic model was historically documented. In other words, *ḥadīth* represented the documentation of Prophetic praxis but did not exclusively embody Prophetic authority. This is a fact of

paramount importance, as evidenced in early Medinese jurisprudence. For the jurists of Medina, authority resided in their own legal practice, which they saw as possessing authority by virtue of the fact that it had been the continuous practice of the "people of Medina" since the time of the Prophet, sanctioned and reaffirmed by the practices of his Companions and their Successors. They rejected any *ḥadīth* that contradicted such "well-known" practices, however credible this *ḥadīth* may have been in the view of others. Until such time as *ḥadīth* achieved its dramatic victory against what we have called practice-based *sunna*, this latter continued to be the source of legal authority. When *ḥadīth* finally proved itself as the highest form by which exemplary Prophetic biography could be documented, and, more importantly, when it gained near-universal acceptance, the practice-based *sunna* as foundational authority was largely – but not entirely – abandoned.

The difference between practice-based *sunna* and *ḥadīth* is that the majority of the former was Prophetic authority mediated by the practices of the Companions (and to some extent of the Successors), whereas the latter conveyed Prophetic authority through a documented chain of transmitters who were just that: transmitters. With the passage of time, the status of these transmitters – including the Companions – was gradually to become equal. In practice-based *sunna*, on the other hand, the idea of viewing Companion practice and authority as possessing a less than paramount status (after the Prophet, of course) was unthinkable. More unthinkable was the idea that the Companions are no more than narrators or transmitters of *ḥadīth*. But this is not to say that their authority stood independent from any other; on the contrary, theirs was a derivative authority, and the Prophetic model was tacitly its source. They were bestowed with such elevated authority not only because of their *knowledge* of what the Prophet had said and done, but also because they acted on, and lived by, that knowledge. *Ḥadīth* or not, first-/seventh-and second-/eighth-century practice-based *sunna* was therefore imbued with Prophetic authority, but mediated through the discursive practice of the first generation of Muslims.

It is obvious that the Companions' generation operated within the contours of its own culture, but this cannot mean that all their solutions to the newly arising problems were based on an exclusively Prophetic precedent. Yet there is little doubt that their practices were in line with the *sunan māḍiya*, the established ways of the forebears, be they Islamic or pre-Islamic. The emerging Prophetic authority was to claim both forms of the *sunan*: whatever pre-Islamic values the Quran and the Prophet did not shun became part of these recognized *sunan*, for, after all, they reflected the

venerated traditions that defined the world of early Muslims. And since the practices of the first (and, for that matter, the second) generation were deemed to fall within the recognized *sunan*, they were in turn attributed to the Prophet and thus represented a part of the model Prophetic conduct, to be emulated and followed. This, in short, is the process through which Muḥammad acquired Prophetic authority, a process that began in the Quran itself (which enjoined believers to take their Prophet as a model) and continued to gain support by the operation of the time-honored *sunan māḍiya* that Prophetic authority gradually came to shape and define.

The activities of the Quran teachers, preachers and story-tellers contributed, from the very beginning, to the evolution of this Prophetic authority. The more knowledge one possessed of the Quran and the Prophetic *sīra*, the more authority one gained to speak of what "true" religion was. From the circles of these teachers, preachers and story-tellers there emerged, within a few decades after the Prophet's death, a new generation of young, pious men who focused their attention on the study of the Quranic text and/or *sunan māḍiya*, including the all-important Prophetic, Companion and caliphal *sunan*. At a mature age (during and after the 80s/700s), this generation had already produced an epistemic oral tradition that encompassed many facets of Quranic exegesis and religious narratives of *sunan māḍiya*. Those amongst them who focused their attention on legal subject matter – e.g., Quranic inheritance, family law, ritual and pecuniary and commercial transactions – were the legal specialists who began to teach these relatively specialized subjects to the ever-increasing circles of students. Their specialized knowledge of these subjects bestowed on them what we have called epistemic authority, namely, the recognized ability to declare what was permissible or impermissible, or, in other words, what the law was. The Quran and the *sunan* – including those of the Prophet, caliphs and Companions – became the subject matter for what came technically to be known as ijtihādic activity, a hermeneutical apparatus that defined what law might be derived from that subject matter. The increasing specialization of the law meant a commensurate specialization in, and refinement of, technical legal thought, which in turn meant that law can no longer be defined by, or limited to the reproduction of, the subject matter of the Quran or the *sunan*. These latter, in other words, became the substrate of an intellectual and technical super-structure that was the law. Individual ijtihādic activity was the emblem of legal development as embodied in the emergence of the circles of legal specialists, an activity that was to endure and flourish for over a millennium as perhaps the most fundamental feature of that culture.

The individual ijtihādic activity of the next generation of legal specialists – those who flourished after the second or third decade of the second/eighth century – involved the development of more conscious legal methodology and principles of positive law, albeit still somewhat rudimentary. Each recognized *mujtahid* not only established such methodology and principles, but also gathered around him students who would recognize his doctrine as a particular brand of jurisprudence. This development marked the beginning of the personal schools that were to persist well into the beginning of the next century. The hallmark of these schools was then the individual doctrine of the leading jurist and teacher, the *mujtahid*. The distinctiveness of each personal doctrine was, as we have said, to be found in the particular set of positive legal principles that he elaborated. But his doctrine was not to remain intact. His students and their own students elaborated and expanded his doctrine, and in doing so drew on the doctrines of other leading jurists who did not always share the same juristic premises as their principal teacher. Thus, a student – or the student of a student – of Shāfiʿī may have drawn primarily on the latter's doctrine, but he may well have incorporated into his (what were later deemed) Shāfiʿite solutions a heavy element from (what, again, was later considered to be) Ḥanafite law. The personal schools were thus also characterized by the absence of exclusive loyalty to one doctrine, and this lay at the heart of a fundamental development in the nature of schools. The cumulative build-up of legal doctrine gave rise to the doctrinal school, which emerged as significantly different from its personal predecessor. But once the cumulative legal doctrine of the school took shape, loyalty to it became one of its defining features. And though this loyalty was to a collective doctrine, it was different from the eclectic loyalty of the personal schools. For, unlike the latter, the doctrinal schools commanded loyalty, not to the person or even positive law of a teacher or master-jurist (the so-called eponym), but to what came to be recognized as his *consciously constructed methodology and principles of positive law* – methodology and principles that in reality were the product of an effort extending over generations of juristic and jurisprudential output. Constructing the eponyms as the final authorities who, as absolute *mujtahid*s, single-handedly elaborated the law of the doctrinal schools was precisely the accomplishment that defined these schools, which in turn shaped – in the most fundamental ways – the entire remaining history of Islamic law.

But the doctrinal schools could not have been fully formed without a methodology of law (*uṣūl al-fiqh*; to be distinguished from the above-mentioned "principles of positive law"), for it was this very methodology

that presumably lay at the core of the constructed image of the founding master-jurist, the absolute *mujtahid*. Nor could this methodology itself have arisen without the creation of a synthesis between the opposing forces of rationalism and traditionalism, a synthesis that gave Sunnite Islam its defining features. The doctrinal schools were therefore the last major stage of development that in turn gave Islamic law its final form (without this implying that Islamic law did not later experience internal and piecemeal change within its established boundaries).

The uniqueness of the doctrinal schools in world legal cultures – and they are unique – must prompt at least two important observations: First, if other cultures did possess law and legal systems without having to construct for themselves doctrinal schools, then these schools in Islam must have had a purpose other than providing a positive law, a legal philosophy or a legal system. And second, if they were not necessary for fulfilling such purposes, then they must have evolved for another reason. But what was this reason?

Unlike other world legal cultures, however "complex," Islamic law was never a state mechanism (to use "state" anachronistically). To put it differently, Islamic law did not emerge out of the machinery of the body-politic, but rather arose as a private enterprise initiated and developed by pious men who embarked on the study and elaboration of law as a religious activity. Never could the Islamic ruling elite, the body politic, determine what the law was. This significant fact clearly means that, whereas in other legal cultures the body politic was the source of legal authority and power, in Islam this body was largely, if not totally, absent from the legal scene. The rise of doctrinal schools was the compensation, the alternative solution. The lack of governmental legal authority and power were made up for by the evolution and full emergence of the *madhhab*, an entity which came to possess even greater legal authority than that produced in other cultures by the body politic. If the body politic commanded obedience because it possessed political and coercive powers, the *madhhab* commanded a more evincive form of obedience because it spoke on behalf of God through his absolute *mujtahid*s, those who *knew best* what God might have in mind as to what Muslims should or should not do. This epistemic ijtihādic feature, we have already said, not only shaped and defined Islamic law throughout twelve centuries of its history, but also replaced the legal authority of the body politic, which was (and remains more so today) suspected of harboring every kind of vice.

But to say that legal authority remained in the hands of jurists because the body politic was morally suspect is to commit an error in causality.

This tenet of political moral corruption was the by-product, rather than the cause, of lodging legal authority in the jurists' domain. It was, in other words, part of the jurists' discursive strategy in their bid to augment their own legal powers. They were the ones who spoke on behalf of the law, not the body politic; and it is they to whom we listen when we study Islamic law. As part of their exclusive construction of the image of legal Islam, they possessed the power to control knowledge, and it is this knowledge that will continue to influence our understanding as well as our own constructions of them and of the silent – nay, absent – legal authority of the body politic.

This is not to say that the ruling elite did not have an important role to play (nevertheless, we must continue to insist that its role in *determining the law* was virtually nonexistent). We have seen, for instance, that the success or failure of personal and doctrinal schools had much to do with the material and political support that this elite elected to give or withhold. The legists constituted the linkage between this elite and the masses, providing an efficient instrument to the ruling elite for gaining political control and legitimacy. Thus, inasmuch as the legists depended on the financial favors of those holding political power, the latter depended on the legists for accomplishing their own interests. This symbiosis defined the dynamics of the relationship between the two groups: the more the political elite complied with the imperatives of the law, the more legitimizing support it received from the legists; and the more these latter cooperated with the former, the more material and political support they received. Law as a substantive doctrine aside, the interplay between the legal and the political remained within the province of the judiciary and of financial/political interests. The dire need for political legitimacy imposed on the ruling powers the imperative of compliance with the law, and if they manipulated their way out of such compliance – which they at times did – it was an act that could not have been so significant as to deprive them of the mantle of legally approved political legitimacy. It was this reality – which made the approval of the men of law indispensable to the acts of politics – that gave formative Islam what we call today the rule of law. The dismantling of Islamic law and the religious legal institutions during the nineteenth and early twentieth centuries automatically meant the decimation of whatever rule of law there was in that traditional society. The dynamics that governed the relationship between the madhhabic jurists and political power disappeared with the wiping out of the class of legal professionals who mediated another relationship between the masses and what has now

become the all-powerful nation-state of modernity. The rise of modern dictatorships in the wake of the colonial experiences of the Muslim world is merely one tragic result of the process in which modernity wreaked violence on venerated traditional cultures.