

# JURISTIC CLASSIFICATION OF ISLAMIC LAW\*

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Most jurists are in the habit of classifying the sources of Islamic law into two main categories:

1. Chief Sources:
  - (a) The *Quran*.
  - (b) The *Sunnah* — authentic tradition of the Prophet Muhammed (Peace be upon him).
  - (c) The *Ijma* — consensus of opinion.
  - (d) The *Qiyas* — judgment upon juristic analogy.
2. Supplementary Sources:
  - (a) *Al-Istihsan* — the deviation, on a certain issue, from the rule of a precedent to another rule for a more relevant legal reason that requires such deviation.
  - (b) *Al-Istislah* — the unprecedented judgment motivated by public interest to which neither the *Quran* nor the *Sunnah* explicitly refer.
  - (c) *Al-Urf* — the custom and the usage of a particular society, both in speech and in action.

But this classification of sources is by no means a decisive or authoritative one. During the lifetime of the Prophet Muhammed, only the first two chief sources were recognized as binding. Even the *Sunnah* derived its authority from clear injunctions of the *Quran*. Individual opinions did exist, but only in the absence of an applicable text in the *Quran* and *Sunnah*, and within the spirit of the two chief sources. The forming of individual opinions in such cases was urged by the Prophet

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Muhammed and was thus legalized.<sup>1</sup> This, however, was not what jurists later meant by *al-qiyas*, which implied technical rules for the legal exactitude of individual reasoning. With the exception of the *Quran* and *Sunnah*, every other source, chief or supplementary, has been a matter of controversy as to its validity or definition. There were some jurists who even considered the Holy Book, on which depends the very authority of the *Sunnah*, as the sole basic source of all Islamic jurisprudence.<sup>2</sup>

A careful examination of those sources, and of the extensive researches relating to them, would further distinguish the line that separates the first two sources from the rest of the sources. The latter were introduced at least a century after the Prophet, and were built upon the opinions of individual jurists. Such opinions should be subordinated, as in fact they were to the *Quran* and *Sunnah*, and not placed above them. The question of the sources which the jurists relied upon, or of the opinions they derived therefrom, is always open to reconsideration as to their compliance with the Quranic and Prophetic texts and the fulfillment of their objectives. The passing away of Prophet Muhammed came after the declaration of the *Quran*, "This day I have perfected your religion [Islam]."<sup>3</sup> This was explicitly emphasized by him in his last sermon, "O people, bear in mind what I am saying, for I might not see you again. I have left you two things. If you hold fast to them never will you go astray after me. They are: God's Book and His Prophet's *Sunnah*."<sup>4</sup> None of the caliphs (successors) of the Prophet claimed the right to be a new source of legislation. Abu Bakr, the first caliph, whenever passing a judgment,

looked into the *Quran*. If he found an applicable text therein, he would apply it. If not, he turned to the *Sunnah*. If he found an applicable text therein, he would apply it. If not, he would ask the people whether any of them knew of a judgment passed by the Prophet on the particular issue. It sometimes happened that some people would come forward and state that the Prophet had passed a judgment on it. If there was nothing at all, he would summon the chief representatives of the people and consult with them.<sup>5</sup>

Umar, the second caliph, did the same, except he used to ask

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1. Ibn Katbir, I, at 3.  
 2. Mustafa Ahame Zarva, *Al-Madakhhal al-Fiqbi*, at 56, Damascus, 1952.  
 3. *Quran* V:3.  
 4. Last Sermon of Prophet Muhammed.  
 5. Ibn al-Qayyim, *I'lam al-Muwaqqi'in*, I, at 62. This primitive way of tracing the *Sunnah*, in consultation, was enough at the time, and could correspond with the simple way of life and small population. This way, however, should always keep pace with the developing mode of living.

whether Abu Bakr had passed judgment on the issue before he passed a new one. It was he who wrote the historic letter to his judge Abu Musa al-Ash'ari, in which he stated:

Jurisdiction is to be administered on the basis of *Quran* and *Sunnah*. First understand what is presented to you before passing any judgment . . . . Full equality for all (litigants): in the way they take places in your presence, and in the way you look at them, and in your jurisdiction. That way, no highly-placed person would look forward to your being unjust, nor would a weak one despair of your fairness. . . . The burden of proof is the responsibility of the plaintiff, and the oath is upon the denying party. Compromise is always the right of the litigants except if it allows what (Islam) has forbidden or forbids what (Islam) has allowed. Clear understanding of every case that is brought to you for which there is no applicable text of *Quran* and *Sunnah*. Yours, then, is a role of comparison and analogy, so as to distinguish similarities and dissimilarities—thereupon seeking your way to the judgment that seems nearest to justice and apt to be the best in the eyes of God. Never succumb to anger or anxiety, and never get impatient or tired of your litigants.

These are brief extracts from a long letter that has been held authentic by all Muslim jurists. It vividly demonstrates that the structure of Islamic law—the Shari'ah—was completed during the lifetime of Prophet Muhammed, in the *Quran* and *Sunnah*. This brings up an important fact which is generally overlooked, that the invariable and basic rules of Islamic Law are only those prescribed in the Shari'ah (*Quran* and *Sunnah*), which are few and limited. All other juridical works which have been written during more than thirteen centuries are very rich and indispensable, but they must always be subordinated to the Shari'ah and open to reconsideration by all Muslims.

#### THE SHARI'AH EXPLAINED

##### A. *Quran*

The *Quran*, in the belief of all Muslims, is the very word of God. It was revealed in fragments, through the angel Gabriel, during the prophetic career of Muhammed which lasted for about twenty-three years. The *Quran* states: "And it is a *Quran* that we have divided, that you may recite it unto the people at intervals, and we have revealed it in portions."<sup>6</sup> The present form of the *Quran* is one and the same in every part of the Muslim world, and it has been so all through the

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6. *Quran* XVII: 106.

centuries. This, Muslims believe, is due to the fact that the compilation and arrangement of chapters was completed—under divine instructions—by the Prophet himself. During his lifetime, every revealed portion was customarily recorded in writing by his many companions. Some of them even memorized the whole of the *Quran*.<sup>7</sup> Abu Bakr, the first caliph, ordered all original manuscripts made in the Prophet's lifetime to be collected and copied. Zaid Ibn Thabit, who was entrusted with the job, had been the personal assistant of the Prophet in Medineh in charge of writing down every revelation. He applied a two-fold method of verification, comparing the original manuscripts with the texts memorized by the Prophet's companions. This method provided a double verification for the accuracy of every injunction. During the reign of Uthman, the third caliph, Anas Ibn Malik, a companion of the Prophet, related that:

To Uthman came Hudhaifah, who had travelled to Syria and Iraq and had found that Syrians and Iraqis differ in the models of reading the *Quran*. So, he said to Uthman to guard against such differences, upon which Uthman sent word to Hafsah (the widow of the Prophet) asking her to send him the copy of the *Quran* in her possession, so that they might make other copies of it and then send the original copy back to her. Thereupon Hafsah sent her copy to Uthman and he ordered Abd-alrahman Ibn Hisham, Zaid Ibn Thabit, Abd Allah Jubair and Said al-As to work making copies from the original copy. Uthman also said to the three men who belonged to the Quraysh, (Zaid only being from Medineh), 'when you differ with Zaid in anything concerning the punctuation of the *Quran*, then write it in the language of the Quraysh, for it is in their language that it was revealed.' They followed these instructions, and when they had made the required number of copies from the original copy, Uthman returned the original to Hafsah and sent to every quarter one of the copies thus made, and ordered all other copies or leaves on which the *Quran* was written to be burned.<sup>8</sup>

Thus the door was elaborately locked against the possibility of corruption. This established authenticity. However, it has been received by Muslims more as an axiom of faith, and they often quote the Quranic injunction, "Falsehood shall not approach this Book from what has passed or from what lies ahead. It is a revelation from the wise, the

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7. Memorization of the whole Book has been common in all Muslim countries. Even today there are many schools specializing therein, and every graduate of a religious institute is supposed to have committed to memory every word of the *Quran*.

8. Al-Bukhari.

praiseworthy.”<sup>9</sup> To Muslims, the *Quran* being the very word of God, it is the absolute authority from which springs the very conception of legality and every legal obligation. It is also, to them, the first and everlasting miracle of Muhammed’s prophethood. Professor Gibb states:

But the Meccans still demanded of him a miracle, and with remarkable boldness and self-confidence Mohammed appealed as the supreme configuration of his mission to the *Koran* itself. Like all Arabs they were connoisseurs of language and rhetoric. Well then, if the *Koran* were his own composition other men could rival it. [Quoting from the *Quran* XI:13 he states:] Let them produce ten verses like it. If they could not and it is obvious that they could not, then let them accept the *Koran* as an outstanding evidential miracle.<sup>10</sup>

It has to be admitted, however, that the *Quran*, being basically a book of religious guidance, is not an easy reference for legal studies. It is more particularly an appeal to faith and the human soul rather than a classification of legal prescriptions. Such prescriptions are comparatively limited and few. Family law is laid down in seventy injunctions; civil law in another seventy; penal law in thirty; jurisdiction and procedure in thirteen; constitutional law in ten; international relations in twenty-five; and economic and financial order in ten. Such an enumeration, however, can only be approximate. The legal bearing of some injunctions is disputable, whereas in some others it simultaneously applies to more than one sphere of law. The major portion of the *Quran* is, as with every Holy Book, a code of divine exhortation and moral principals.

### B. *The Sunnah*

“Sunnah,” an Arabic word which literally means “method,” was applied by the Prophet as a legal term comprising what he said, did, and agreed to. Its authority derives from the prophethood of Muhammed, as expressed and defined in the *Quran*. His mission is thus stated in the *Quran*, “And we have revealed to thee the reminder that you mayest make clear to men that which has been revealed to them, and that haply they may reflect.” (*Quran* XVI:44). This statement implies the Prophet’s supreme authority in the interpretation of the Holy Book, be it by word or by action. That this authority is binding on all Muslims is explicitly declared by the *Quran*: “Oh you who believe, obey

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9. *Quran* XI: 13.

10. H.A.R. Gibb, *Mohammedanism*, 40-41.

God and this messenger," and "Whoever obeys the messenger, he indeed obeys God." (*Quran* VIII:20, *Quran* IV:80). The Prophet, however, in order to avoid a possible confusion of his sayings with Quranic texts, did not encourage his companions to write what he said. But this did not affect the status of the *Sunnah*. It only rendered more difficult its later recording. This difficulty was the price Muslims had to pay for keeping their Holy Book unquestionably authentic and unique.

Such a difficulty, indeed, is a result of the basic separation between the *Quran*, which is the letter and spirit of God's will, and the *Sunnah*, which is the human, though prophetic, clarification of the *Quran* by Muhammed. The latter, by virtue of its very nature, was meant to make the revelation through a man, clear to men. Therefore, it was no great risk to leave the recording of the *Sunnah* for a later authentication by the faithful. Muhammed's formidable influence and authority, not only on individual Muslims but also on the actual shaping of their entire society, were strong enough to enable later generations of Muslims to verify what Muhammed had said or done. One of the means of verification was the faculty of memory—a noteworthy characteristic of the Arabs—particularly strong when whetted by the urge of faith and spiritual love.

"The characteristic religious activity, then, of the first century," says Professor Gibb:

was the collection and transmission of details about the life and actions of Mohammed. . . . In view of the profound impress which the personality of the Prophet had left on his adherents, this activity was a spontaneous growth, owing nothing to outside influences. The natural center of these studies was Medina, where most of the companions continued to live and where first-hand information was most securely to be found.<sup>11</sup>

There were recorded compilations of the *Sunnah* by early Muslims, some of which were written down in the presence of the Prophet himself. Some examples are:

(i) The important sermon of Muhammed on the day of the conquest of Mecca, which he ordered to be recorded in response to the request of a Muslim in Yaman.<sup>12</sup>

(ii) The private record of Abdullah Ibn Amr Ibn Ac-As, a companion of the Prophet.

(iii) Anas Ibn Malik, who lived with the Prophet all through his

11. H.A.R. Gibb, *Mohammedanism*, 61-62.

12. *Al-Bukhari*.

stay in Madinah, and who died as late as the year 93 A.H. (711 A.D.) said:

Every now and then I took down in notes interesting points from what the Prophet said in his discourses and other occasions of conversation; and I used to read those notes over to the Prophet whenever I found him having leisure and after he had corrected them, I made a fair copy of them for my own record.<sup>13</sup>

(iv) In reliable reference books of *Sunnah*, written documents dictated by the Prophet are frequently mentioned and authenticated.

(v) In his book *Al-Wathaiq Al-Siyasiyah*,<sup>14</sup> Dr. M. Hamidullah records 250 documents emanating from the Prophet and written down in his presence.

These limited examples may serve to present the often ignored fact that the recent famous compilations of Hadith were by no means the first written documents relating to the *Sunnah*.

### C. *Probity of Jurists and Muslim Jurisprudence - Al-fiqh*

Umar, the second caliph, who was described by the Prophet as a man of great intuitive power, is reported to have said: "Tradition is only what the Prophet has laid down and prescribed. Do not permit an error of opinion to become a tradition for the community."<sup>15</sup> Within two centuries after Umar's death, and throughout Muslim history ever since, his statement proved to be not only a sound intuition but also a shrewd anticipation of the basic defect of the Muslims' actual relationship with Islamic Law. This basic defect consists in confusing what God and His Prophet have described with the opinions of the jurists.<sup>16</sup>

The very appellation *al-fiqh*, a term attributed to the works of Muslim jurists, reveals the original impulse that brought these works into existence.<sup>17</sup> The verb "*faqaha*" means "to comprehend," thus "*fiqh*," its noun form, means "comprehension." Professor Fyzee says "*Fiqh* literally means 'intelligence.' It is the name given to the whole science of jurisprudence, because it implies the independent exercise of intelligence in deciding a point of law, in the absence or ignorance of tradition on the point."<sup>18</sup>

In his *Al-Risalah*, which is generally considered to be the earliest

13. M. Hamidullah, *Early History of Compilation of Hadith* (Hadith is an Arabic word literally meaning "saying" it is used as a synonym for the legal expression "Sunnah.")

14. Cairo, 1956.

15. *Al-Shawkani*, *Al-Qawl al-Mufid fil Ijtihad*, at 32.

16. Dr. Said Ramadan, *Islamic Law*.

17. "Al" in Arabic is the definite article equivalent to "the" in English.

18. FYZEE, *OUTLINE OF MOHAMMEDAN LAW*, 17.

sound work on the science of Muslim jurisprudence, Al-Shafi'i answers the question, "What is *al-qiyas*? Is it *al-ijtihad* or is it different?", by saying, "They are two expressions of one meaning." Asked, "What is it?," he answers:

For every issue concerning a Muslim, either there is a binding text (of the *Shariah*) that rules it, or there is a guidance that may indicate the way to truth. If there is a text, then the Muslim has to follow it. In case there is no text directly applicable, then he has to seek a guidance to truth by *al-ijtihad*. *Al-ijtihad* is *al-qiyas*. And when people exercise *al-qiyas*, can they be sure that the opinion they have formed is the truth in the eyes of God? And can they differ in their *qiyas*? And do they have one way of reasoning or different ways? And is there a differentiation between the authoritativeness of one's *qiyas* upon himself and upon others?

In a sound answer to all that, he states:

Knowledge applies to two categories of truth; one which is a factual truth in appearance and in fact, and one which has a seeming probability of truthfulness. The first category applies only to the texts of *Quran* and *Sunnah* successively authenticated generation after generation. These texts alone may allow or forbid, and this, in our opinion, is the basic fact that no Muslim may either ignore or doubt. . . . Knowledge attached through the medium of *al-ijtihad* by *al-qiyas*, belongs to the second category; thus what it attains is binding only on the one who exercised *al-qiyas* and not on other men of knowledge.

Thereupon Al-Shafi'i proceeds to illustrate the difference between the two categories by means of an example. He asks, "When we find ourselves in the sacred mosque and see the Ka'aba before us, are we obliged to face it with exactitude?" When his interlocutor answers, "yes," Al-Shafi'i proceeds: "Are we obliged, wherever we may be, to turn in our prayers towards the Ka'aba?" The answer is naturally, "yes." Thereupon Al-Shafi'i asks, "Are we in such a case absolutely certain that we are facing the Ka'aba with exactitude?" The answer is, "If you mean that you are facing it with the same exactitude as when you had it before your eyes, then the answer is no. But even so, you have done your duty." Then Al-Shafi'i states:

It follows, therefore, that our obligation with regard to something that is not visible to your eyes is different from our obligation with regard to something that is directly seen. Similar is the case with regard to that on which there is no binding injunction in the text of *Quran* or *Sunnah*; for in this case we

are striving only by means of *al-ijtihad* and we are obliged only to the extent of what we consider to be truth.<sup>19</sup>

Al-Shafi'i in his famous book *Al-Umm*, states that in cases of differences between those who exercise individual reasoning in the absence of binding texts, each of them is bound only by what he himself decides, and none of them may abandon what he personally considers to be right in order to follow blindly the opinion of another person.

This attitude of probity is not, however, unique to Al-Shafi'i, but his work is generally admitted to be the first thesis on Muslim jurisprudence. Here are some statements explicitly made by the great jurists in whose names the four Sunni schools of law were gradually built up. Said Abu Hanifa (d.150 A.H.): "It is not right on the part of anyone to adopt our opinion unless he knows from where we derived it." He also said: "Slanderous is their saying that we give our *qiyas* any priority over the *Shariah*. Do we need opinion when there is a sacred text?"<sup>20</sup> Said Malik (d.179 A.H.): "I am but a human being. I may be wrong and I may be right. So first examine what I say. If it complies with the Book and *Sunnah*, then you may accept it. But if it does not comply with them, then you should reject it." Said Al-Shafi'i (d.204 A.H.): "If ever my opinion is in deviation from a tradition, then you should follow the tradition and never imitate me; and if a report is later authenticated as being a tradition, then my opinion contrary to it is no longer valid, and you should only follow the tradition." Said Ibn Hamble (d.214 A.H.): "Do not imitate me, or Malik, or Al-Shafi'i, or Al-Thawri, and derive directly from where they themselves had derived."<sup>21</sup>

Ibn al-Qayyim records specific statements testifying to the fact that all of these jurists gave priority even to traditions which were not fully authenticated over their own individual conclusions. An incident illustrative of the probity of the early Muslim jurists is the famous attitude of Malik to the caliph's proposal to enforce *Al-Muwatta* (Malik's book) as a uniform legal code throughout the Islamic state. Harun al-Rashid, the caliph, insisted on this proposal and even went so far as to suggest that the book be hung in the Ka'aba to symbolize the general reverence for the book and to bring about legal uniformity in the Muslim nation. But Malik, with clarity of mind and heart, rejected the enticing proposal of the caliph and said, "Oh, leader of the believers! . . . Difference among Muslim scholars is but a divine mercy for this nation. Each of them is following what he considers to be right, and each of them has

19. *Al-Shafi'i*, *Al-Risalah*, (Arabic), 476-86.

20. *Al-Sharani*, *Al-Mizan*, (Arabic), at 51.

21. *Al-Shawkani*, *Al-Qawl al-Mufid fil Ijtihad*, 15-27.

his own argument, and all of them are sincerely striving in the way of God.”<sup>22</sup>

#### D. Schools of Law

“Schools of Law” is the usual translation of *al-madhahib*, which literally means “the ways of going.” In most works on Islam the term *al-madhahib* has become identical with Islamic Law. This identification, in itself a basic misconception, seems in addition to overlook two main facts about these schools:

1. The four famous schools—the Hanafite, the Malikite, the Shafite and the Hanbalite—are by no means the only schools in the history of Muslim jurisprudence, nor are they even fully representative of Sunnite jurisprudence.

From about the middle of the first century up to the beginning of the fourth, not less than nineteen schools of Law and legal opinion appeared in Islam. This fact alone is sufficient to show how incessantly our early doctors of law worked in order to meet the necessities of a growing civilization.<sup>23</sup>

Most of these schools, it is true, were overwhelmed by the stronger influence of the famous four, but their disappearance as influential schools does not imply their ineffectiveness, whether in the real establishment of Muslim jurisprudence or in setting its trends.

There is also the Shiite School of Law. *Shiah* is an Arabic expression which means “partnership.” It was first used by a section of Muslims who attached themselves to Ali, the son-in-law of the Prophet Muhammed. This attachment not only asserted itself after the death of the Prophet, but it also took no concrete shape or legal bearing until after the death of Ali, the fourth caliph. Says Professor Asaf Fyzee, himself a Shiite:

When the caliphate came into the hands of the Umayyads after the death of the first four caliphs and religion itself was made the plaything of political ambition, the murder of Husain, the Prophet’s grandson, set the seal on official Shiism. This faith preserved the passionate remembrance of this tragedy at Karbala, created an ‘imam’ who would be the focal point for the love normally showered on the founder of Islam, and systematically formulated a theology (Kalam) and a law (*Fiqh*) in opposition to the Sunni creed.<sup>24</sup>

With the exception of the Shiite concept of the infallibility of the imam

22. *Abu-Zahrah*, Malik, (Arabic), 213-14.

23. IQBAL, *THE RECONSTRUCTION OF RELIGIOUS THOUGHT IN ISLAM*, 165.

24. FYZEE, *SHII LEGAL THEORIES*, 113.

or the caliph, which the Sunnites basically reject, and the difference in authentication due to some subjective political elements, there is no great difference between the two schools of law. Says Professor Fyzee:

Apart from the doctrine of Imamat, the difference between the Sunnite and Shiite schools is not very great. . . . As has been pointed out by Goldziher, there are really no 'sects' in Islam but only 'schools' or *madhahib* (singular, *madhab*), of Muslim law. Strictly speaking, belief in the one and only God and the apostleship of the Prophet Mohammed are the only two beliefs necessary in Islam. In the theory of the law all Muslims are brothers and equals, and differences in opinion on questions of law do not constitute them, speaking legally of course, into separate sects of the kind, for example, which we find in Hindu law.<sup>25</sup>

There are still several schools of thought within the Shiites, the most important of which are the Ithna-Asharis and the Ismailis. "The Zaydis, who are concentrated in the Yaman, combine Shii and Sunni doctrines," says Professor Fyzee. The number of Shiites, as approximately calculated by him is twenty million.

2. The second fact which is often overlooked about *al-madhahib*, or the schools of law, is that none of them was actually established during the lifetime of the jurist with whose name it later became identified. This reveals yet another fact, namely, that early Muslim jurists did not mean to establish schools, they only meant to exert all their means of knowledge, whether in historical authentication, linguistic implications, or in the comprehension of new occurrences. Their common purpose was to contribute to a healthy relation between the Muslims and their *Shariah*. None of them ever thought of erecting himself as a barrier between the Muslims and the *Shariah*. Significantly, in all books about Abu Hanifah, in whose name the first school was gradually established, one can easily discover that the methods and opinions which later became characteristic of this school were neither introduced nor recorded by him in writing. Even in regard to the basic conceptions of *al-ijma'* and *al-qiyas* (the latter being usually, but inaccurately, ascribed to Abu Hanifah, as being peculiar to his *fiqh*), it is recorded that the Hanifite scholars after his death deduced those juristic rules from what they had collected of his opinions on different issues. Malik, in whose name the second school came into being, rejected the caliph's proposal to enforce his Al-Muwatta as a general legal code. No different from the attitudes of Abu Hanifah and Malik, was that of Al-Shafi'i, who changed his opinion on many issues after moving from

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25. FYZEE, OUTLINE OF MOHAMMEDAN LAW, 36.

Iraq to Egypt. However, the third school came into existence under his name. Ibn Hanbal did not write any books on jurisprudence. He left only a compilation of authenticated traditions. He explicitly stated, "I am not a man of dogmatic theology, rather, I am against it. Only what is in the Book and *Sunnah*, or what has been authentically conveyed, may be considered."<sup>26</sup>

The fact that none of these jurists, including those whose names are associated with the four Sunnite schools, ever intended to establish a definite school gives rise to the natural question: why and how, then, were these schools of law gradually established? The answer to this question is well indicated in the very conception of *ijma* (consensus of opinion) which these schools presented as a third source of Islamic Law. The usual arguments for the validity of *al-ijma* can be summarized as follows:

1. The Quranic injunction: "And whoever acts hostilely to the Messenger after guidance has become manifest, and follows other than the way of the believers, we turn him to that to which he (himself) turns. . . ."<sup>27</sup>

2. The Prophetic Tradition: "My nation shall never be unanimously in error."

There are, however, many other texts to the same effect. The crucial question is: Can such texts provide a real sanction for a new source of legislation? A study of juristic works on *al-ijma* reveals a basic disagreement not only as to its validity, but even as to its very existence. Abu Hanifah, for instance, was never reported to have introduced by himself a definite conception of *ijma*' with a definite legal bearing. Malik considered the unanimity of the Madinites as a probable reflection of some early Prophetic practice. Al-Shafi'i, in his *Al-Risalah*, almost denies the existence of *al-ijma*, except on fundamentals of religion which have been handed down from generation to generation and the validity of which rests on some authentic text. Ibn Hanbal is known to have said that any claim of unanimity is a mere lie, and that the most one could claim is that he does not know of any disagreement on the particular issue. The Shiites totally deny the conception of *ijma*. Ibn Hazm considers only the consensus of opinion among the companions of the Prophet Muhammed as being a sign of an early Prophetic sanction or approval.

While the development of the concept of *al-ijma* was a concrete expression of a commonly felt need for a collective authority, as against

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26. Ibn Al-Qayyim, *Al-Manaqib*, 156.

27. *Quran* IV:115.

individual interpretations and opinions, the juristic rules relating to *al-qiyas* came to be considered next to *al-ijma* as a means of bringing about a unification of thought. The result was the division of Muslims into various legal schools. That the desire for social unity was an overriding factor in the establishment of these schools is clear from the fact that their works are mostly similar. Says Professor Gibb: "It is true that the differences among them came down mostly to relatively minor points of law and ritual."<sup>28</sup> Whether this centuries-long tradition of unification will be encouraging to contemporary legislation will be a most interesting matter.

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28. GIBB, MODERN TRENDS IN ISLAM, 14.

