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FEQH

FEQH (jurisprudence), term used to designate the processes of exposition, analysis, and argument which constitute human effort to express God's law (*šarīʿa*). Technical definitions in the pre-modern period suggest that it is an epistemological category, indicating knowledge of religions *šarʿī* rules as derived from the recognized sources. One who possesses such knowledge is a *faqīh* (jurist, pl. *foqahāʾ*). By extension, the term *feqh* is applied to the contents of an educational curriculum, a body of literature and, generally, to the academic activities of the juristic elite. These activities are perceived to be a direct response to a divine command, a communal duty fulfilled on behalf of the community, and something like an act of worship. "The best form of worship," said the Prophet, "is *feqh*," and "A session of *feqh* is better than 60 years of piety" (Bağdādī, pp. 14, 20-21). Whereas the word *šarīʿa* designates the law in its divine aspect (as God's intention for men, as that which the *foqahāʾ* struggle to articulate) and evokes the loyalty of Muslims, the word *feqh* designates a human activity, evoking, generally but not necessarily, respect. Real administrative systems and governmental decrees (called *qānūn*s from early Ottoman times) might be perceived, variously, as conforming to or falling short of *šarʿī* values. Since the 19th century the modern calque *qānūn-e eslāmī* (Islamic law) has encroached on the conceptual area of *feqh* and *šarīʿa*, bringing with it many of the connotations of a modern legal system, i.e., that of a nation state.

THE ORIGINS OF *FEQH*

There are a number of principles, of the intellect or of history, which come

logically, or theologically, prior to discussions of *feqh*. For example, that God exists, that He is creator and Lord of the world, and that He has a commission to humanity whereby He requires them to believe, confess, and act in particular ways. The details of the divine commission have been communicated through a succession of prophets, beginning with Adam and ending with the Prophet Moḥammad b. ʿAbd-Allāh, the seal of the prophets, whose message abrogates previous messages and is for all peoples. With the death of Moḥammad in 632, the divine message is embedded in two literary structures which together constitute revelation. The first of these is the Qurʾān, the word of God and a miracle. The second is the Hadith, a body of short narratives describing the activities and commands of the Prophet. These, appropriately interpreted, reveal his Sunna, or customary practice, which is exemplary and binding also on the community. The terms Hadith and Sunna are often used synonymously. Though the Qurʾān is different in kind from the Sunna—in theological belief, in literary form—the latter is equal in juristic authority. "I have been given the Book," said the Prophet, "and that which is its equal," meaning the Sunna (Bağdādī, p. 89). In view of his role as law incarnate, the Prophet was recognized as *maʿṣūm*, free from major sin or error.

According to Muslim belief, the process of thinking about the Qurʾān and prophetic practice led to discussion amongst his Companions (*ṣaḥāba*) and their Followers (*tābeʿūn*), then to dispute, debate, and finally to formal systematic thinking or *feqh*. This development culminated in the achievement of four great masters of the 8th and 9th centuries, Abū Ḥanīfa (d. 150/767, q.v.), Mālek b. Anas (d. 179/795), Moḥammad b. Edrīs Šāfeʿī (d. 204/820) and Aḥmad b. Ḥanbal (d. 241/855). The qualities of juristic skill, loyalty to Hadith, and piety which are attributed to these justify their position as the eponymous founders of the four major schools of law (*maḏāheb*, sg. *maḏhab*), which, by a gradual process throughout the 10th century, came to be the focus of loyalty for a majority of Sunni Muslims. The Hanafite, Malikite, Shafiʿite, and Hanbalite schools acknowledged each other and gave qualified recognition to a number of minor Sunni schools, and, sometimes, to the Imami (Twelver) Shiʿite tradition.

The Imami Shiʿites gradually evolved a juristic system which paralleled in most respects that of the Sunnis. They attributed much of their seminal juristic thinking to the sixth Imam, Jaʿfar al-Ṣādeq (d. 148/765). But the decisive moment in the history of this tradition comes with the disappearance of the

twelfth Imam. He was the last of the sinless (*maʿṣūm*, see ČAHĀRDAH MAʿṢŪM) leaders and, throughout the period of his absence (*ḡayba*, q.v.), the Shiʿites are, like the Sunnis, committed to a hermeneutical assessment of the law, based on Qurʾān and Hadith, and the prerogative of an academic elite.

Western scholarship has tended to see in the prophetic origins and in the biographies of the founders and early masters of the law schools a theological construct which gives expression to faith not history. Ignaz Goldziher proposed that many prophetic Hadiths, especially those giving expression to political and theological views, were in fact the product of the Muslim community during the first two centuries (i.e., 7th-8th centuries C.E.). Joseph Schacht (1950) extended that insight to the legal Hadith. He proposed that the real origins of Islamic law lay in the customary practice (Sunna) of local communities in Medina, Baṣra, Kūfa, and elsewhere. Custom there was initially, perhaps, simply assumed to be the Sunna of the Prophet. Only later, and as a result of polemical debate, did it become necessary to demonstrate prophetic origins by direct reference to Hadith. This neFENDERESKcessity gave rise to a search for and to the discovery and creation of Hadith. For Schacht, the real architect of Islamic law is Šāfeʿī, who formulated in absolute terms the theoretical need to justify law by reference to prophetic Hadith, producing a general theory of hermeneutics in his *Resāla* and demonstrating its application in the rules and arguments of his *Ketāb al-omm*. Norman Calder (1993) has proposed that the books of law attributed to the early masters (Mālek, Šāfeʿī, and the pupils of Abū Ḥanīfa) are not authored texts, but organic school texts developing and growing by successive redactions throughout the 3rd/9th century.

REVELATION AND TRADITION

The Qurʾān was generally deemed to contain only about five hundred verses with a strictly legal import. The Hadith, by contrast, were available in large numbers, and remained without firmly defined boundaries. The central core was clear and included the famous *ṣaḥīḥ*á ("valid") collections of Moḥammad Boḵārī (d. 256/870) and Moslem b. Ḥajjāj (d. 261/875). Beyond these, there were four, eight, ten, or more collections that might be referred to for purposes of hermeneutical discussion. ʿAbd-al-Raḥmān Soyūṭī (d. 911/1505) listed in his comprehensive *Jameʿ al-kabīr* more than thirty collections which contained valid material, of which some ten or twelve were valid in their entirety. The quantity alone of juristically relevant Hadiths, by contrast with Koranic material, ensured that Hadith was the dominant element in hermeneutical

analysis of the law. Expression of this fact led to debate about words—as to whether, for example, the Sunna could abrogate or judge or simply explain and interpret the Qurʾān—but few disagreed with the formulation of the Syrian jurist Awzāʿī (d. 157/774), who asserted that the Book was more in need of the Sunna, than the Sunna of the Book.

The Shiʿites had a similarly large body of Hadith material, enjoying the same kind of status as Sunni Hadith. They accepted Hadith from either the Prophet or the Imams. Four major collections emerged in the 4th/10th century, the most admired being that of Moḥammad b. Yaʿqūb Kolaynī (d. 329/941). These were reorganized and expanded in Persia in the Safavid period, producing a number of supplementary major collections, notably those of Moḥammad Ḥorr ʿĀmelī (d. 1104/1693; q.v.) and Moḥammad-Bāqer Majlesī (d. 1110/1699). As with the Sunnis, the central core of acknowledged collections was supplemented by others which commanded varying degrees of respect. With some qualifications the Shiʿites were also willing to accept the Hadith of the major Sunni collections.

The formal promotion of revelation as the source of law was only one aspect of the hermeneutical nexus within which the jurists worked. From the 10th century onward, the majority of Muslims, by virtue of birth and geography, only rarely by virtue of choice, were members of a particular school of law. Professional jurists acknowledged their participation in a school tradition and worked within its structures and in accord with its rules. By an ongoing act of loyalty and commitment, they submitted to the fundamental acts of interpretation and judgment which were attributed to the eponymous founders and early masters. They embraced the literary and interpretive efforts of succeeding jurists within the school tradition, making their opinions and literary products the basis for ongoing re-statement of the law. In other words, the dominant hermeneutical orientation of the jurists was towards the inherited tradition and not towards revelation. Consequently, the hermeneutical principles that were worked out in the discipline of *oṣūl al-feqh* (see below) were more characteristically deployed to justify the known (inherited) law, and not to make *ab initio* deductions of the law.

The importance of continuity and loyalty within school traditions was expressed also in the literary genre of biographies *ṭabaqāt* (“generations”). All the major schools of law produced a biographical literature which demonstrated the diachronic continuity of the schools and the constant recurrence of religious piety, juristic skill, and ascetic virtue in jurists of

succeeding generations. This loyalty can be interpreted as encoding a theological message about the authority of community (or tradition) in addition to revelation (or text). While demonstration of respect for the latter was an imperative never abandoned, the reality of development and the implicit message of juristic literature suggest the predominance of the former. Acknowledgment of school loyalty as a principle of authority eventually found formal articulation in the doctrine of *taqlīd*—which means acceptance of tradition—and in debate over whether the gate of *ejtehād* (q.v.)—independent deduction based directly on revelation—was or was not closed (Hallaq, 1984). This loyalty tended to ensure that the historical experience of earlier jurists, whether of interpretation, application, or intellectual and imaginative exploration, was preserved and made available to jurists of later generations. It probably fostered flexibility. Although loyal to a single tradition, the jurists perceived it as embedded in a pluralist system, both in so far as they recognized other schools and in so far as they acknowledged dispute and diversity within their own school.

The reality of school loyalties generated oppositional tendencies. These took a variety of forms which might be termed fundamentalist, in the sense that they advocated—in varying degrees—an abandonment of the diachronic tradition and a return, more or less exclusive, to the fundamentals, to the words of revelation or to the authority of the earliest generations. The nomenclature applied to such movements is sufficiently revealing. The Literalists (Ẓāherīs), followers of Dāwūd b. Ḵalaf Ẓāherī (d. 269/882), advocated a return to the precise words of the sources and had their greatest exponent in Ebn Ḥazm (d. 456/1064). *Salafī* tendencies (the word *salaf* denotes the earliest generations of Islam) were a recurrent feature of Islamic history, finding their most sophisticated articulation in the works of Ebn Taymīya (d. 728/1328). Amongst the Shiʿites, the Aḵbārī (q.v.) tendency advocated a direct reliance on the words of revelation (*aḵbār* = Hadith). All of these tendencies and movements re-enact a tension that was evident at the birth of the schools, mainly that between the proponents of Hadith and the proponents of *feqh*, the one group tending to advocate the simplicity and perspicuity of Hadith, the other stressing creative and flexible interpretation. Although all of the fundamentalist groups had some degree of local and short-lived success, the flexible, pluralist, and adaptive nature of the main traditions—not excluding their capacity for political accommodation—ensured their long-time dominance.

THE LITERATURE OF *FEQH*

Most of the literary products of the jurists can be assigned to one of two main categories: either *forūʿ al-feqh* (branches of jurisprudence) or *oṣūl al-feqh* (roots of jurisprudence). The first of these focuses on rules, the second on the hermeneutical principles that permit deduction of rules from the texts of revelation.

Forūʿ al-feqh. Works of this type present the law under a sequence of broad topics, each topic being divided into segments and the segments into sections and subsections permitting varying degrees of discrimination and refinement. Within the set of topics, there is one major and universally acknowledged division, namely that between ritual acts, which are exclusively or primarily for the sake of God (*ʿebādāt* "acts of worship"), and social acts or interpersonal relations (*moʿāmalāt*). The major ritual acts are prayer, alms, fasting, and pilgrimage, sometimes also *jehād*. Various attempts have been made to classify and organize the *moʿāmalāt*, but no single system predominates, the jurists adopting, for the most part, a sequential approach, based on the loose bundling of related topics. The major topics of *moʿāmalāt* are: rules of commercial exchange, including contracts of sale, loan, pledge, deposit, gift, and various types of partnership; rules relating to marriage and the family, including the contract of marriage, modes of separation and divorce, duties of upkeep, principles of bequest and inheritance, and rules relating to slaves; systems of compensation for damage to and loss of property, and for physical injury and killing, accidental or deliberate; defined penalties for fornication, theft, wine-drinking, false accusation and highway robbery; the organization and implementation of a judicial system; the creation of trusts, the appointment of agents, the fulfillment of vows and oaths, and a few more. The whole is the literary representation, in normative form, of the structures and institutions of a God-governed society.

Works of *forūʿ* are of two main types, *moḵtaṣar*s, meaning epitomes or summaries of the law, and *mabsūṭ*s, meaning large explorations which multiply details, incorporating, for example, conceptual exploration, variant opinions, justificatory argument, and linguistic analysis. A typical *moḵtaṣar* will attempt to express, as concisely as possible, the basic concept of the law, according to the dominant school tradition. The best of these works are masterpieces of syntactic concision and elegant expression. They might serve the needs of an elementary education but were frequently so brilliantly contrived that they remained a delight even to the learned. Moḥammad Ḡazālī

(q.v.; d. 505/1111), a Shafiʿite, produced three works of *forūʿ* which neatly illustrate the play of expansion and epitome within the literary tradition. They were entitled the *Concise* (*wajīz*), the *Expansive* (*basīṭ*), and the *Intermediate* (*wasīt*áá).

Hermeneutical continuity was marked by the prevalence of commentaries and supercommentaries, which in the end displaced all other forms of *mabsūṭ*. The Shafiʿite jurist Yaḥyā b. Šaraf Nawawī (d. 676/1277) wrote a commentary on the *Mohaḏḏab* of Abū Esḥāq Šīrāzī (q.v.;d. 476/1083). Nawawī explained his intentions as follows: He wished to elucidate all the Hadiths used by Šīrāzī, to relate them to the standard collections, or to other sources if necessary, to identify the characters involved, and the transmitters, and to provide further Hadiths, where necessary, to supplement those of Šīrāzī. Beyond this, he would analyze and present the views of all earlier Shafiʿite masters of any significance, including Šāfeʿī himself. He would summarize and analyze their arguments and attempt to discover, within the large diversity of views which characterized the Shafiʿite tradition, the dominant view. He would also provide linguistic explanations of terminology. Nawawī confidently—and rightly—expected that his efforts would delight his readers and inspire them to further study (Nawawī, pp. 7-10).

Although always potentially in the service of real life, and never entirely divorced from the world of action, mastery of the basic concepts, topics, and rules of *feqh* led also, and perhaps in the sphere of literature, primarily, to a world of intellectual play which was for its own sake, or for the sake of a large and all-embracing theology. The delight that Nawawī anticipated in his readers reflects the delight he found in writing his work, which was in part that of a worshipper, and in part that of a literary craftsman. The structure that he worked with was huge, perhaps endless in its ramifications, but firmly contained within a framework of topics and a network of concepts which did not develop much—save toward greater refinement—for the thousand years during which this discipline dominated the intellectual and cultural milieu of Islamic societies. Exploration of the inherited framework permitted and demanded a constant cross-reference between the framework, the texts of revelation, the juristic tradition, social reality, imagined reality, and the world of language and poetry, which had an expanding presence within the literature of *feqh*. By the end of the 18th century, *feqh* was a multi-faceted, multi-functional discipline, generating many types and sub-types of literary discourse, often within one multi-volume work. This was true equally of the

Sunni and of the Shiʿite traditions.

Oṣáūl al-feqh .Works of *oṣūl*, like works of *forūʿ*, show remarkable structural and conceptual uniformity from their first appearance until their gradual displacement and/or transformation in the 19th and 20th centuries. They always contain at least three broad areas of discussion: the sources of the law, the hermeneutical rules that permit extrapolation of norms from sources; and an elaboration of the theory of *ejtehād.* The earliest complete work of *oṣūl* is the *Resāla* of Šāfeʿī, a work which already exhibits all of these features, albeit not in a fully elaborated form (Calder, 1983). There is a hiatus between the date of this work and the emergence, some two centuries later, of other works of the same kind. Modern scholars have put this down to pseudoepigraphy (Calder, 1993) or to the elementary nature of argumentation in the *Resāla*, the implications of which required time to be worked out (Hallaq, 1993).

The *Mostaṣfā* of Ḡazālī shows all the typical features of a work of *oṣūl*, though the organization, presentation, and numerous individual selections are his own. He begins with a brief introduction to formal logic based on the notions of “definition” and “proof.” He organizes his remaining material under four headings based on a structural analogy with (1) fruit, (2) tree, (3) method of harvest, and (4) harvester. The fruit is the legal categorization of human actions, comprising the familiar five *aḥkām* (mandatory, preferred, permitted, disliked, and forbidden) and a number of other classificatory terms. The tree, meaning that which bears the fruit, is formed by the sources, given by Ḡazālī as four, namely Book, Sunna, consensus (*ejmāʿ*; q.v.), and intellect. The workings of abrogation, and the difference between common report, giving rise to knowledge, and isolated report, giving rise to opinion, are discussed under Book and Sunna, respectively. Under the heading intellect, he asserts that this faculty is restricted only to operation of the principle of *esteṣáḥāb al-ḥāl* (a presumption of continuity). Ḡazālī dismisses as invalid four sources which in other writers might be accepted and elaborated. These are the law of earlier prophets, the opinions of the Companions, juristic preference (*esteḥsān*, notably elaborated in the Hanafite tradition), and public welfare (*maṣáááááááááálaḥa*, much developed by Ebrāhīm b. Mūsā Šāṭebī (d. 790/1388). In his section on the method of harvesting, Ḡazālī deals with hermeneutical principles in three groups: (1) general principles of language, arranged in a characteristic set of antithetical pairs: the ambiguous and the clarifying, the evident and the inferred, commands and prohibitions, general and particular; (2) a theory of the explicit and the implicit; (3) juristic analogy

(*qīās*). Ḡazālī's last section, on the harvester, deals with *ejtehād*. The overall concern with sources and with principles of interpretation and judgment is common to all works of *oṣūl*. These works represent a continuous academic tradition in which writers, with varied approaches and preferences, analyze, present, and explore an established but flexible set of topics which, taken as a whole, link law to revelation (Hallaq, 1992).

The body of hermeneutical principles leads to conflicting possibilities (*taʿāroż*) and to the exercise of preference (*tarjīḥáá*), the methodology of which is explained under the heading *ejtehād*. *Ejtehād* literally means effort. Technically, it means the exertion of the utmost possible effort by a trained jurist, taking into account all the relevant texts and principles of interpretation, to discover, for a particular human situation, a rule of law. Underlying this definition there is an important epistemological message. It concedes that most of the details of the law are not known—not certain—but are a matter of skilled, and preferably pious, deduction on the basis of principles themselves subject to debate and incapable of providing certainty. Within this area, the jurists were committed to acknowledging the views of other jurists, if adequately defended, and to the elaboration of systematic arguments to defend their own views. Committed in this respect to debate and uncertainty, the jurists—in this context *mojtaheds*, i.e., those who undertake *ejtehād*—also acknowledged a need for final decisions in particular cases. This was provided by asserting that the result of an act of *ejtehād* was binding both on the *mojtahed* and, where relevant, on those who were not trained in the law. These, *moqalled*s, by an exercise of choice, were required to commit themselves to a particular *mojtahed* and to accept his rulings. Ḡazālī gathered all these matters into the last section of his book, under the heading of the harvester, the *mojtahed*, exercising his skills to gather from the tree (the sources) the fruit, namely a ruling on a point of law.

The theory of *ejtehād* provides both an epistemology (permitting and encouraging debate and intellectual play) and a structure of authority. In its former aspect, it accounts, in part, for the vitality of the tradition of *forūʿ*; in its latter aspect, it justifies the participation of the jurists in positions of authority, notably as judges (*qāżī*s) and jurisconsults (*moftī*s).

The Sunni tradition summarized its hermeneutical loyalties by reference to the four principles (*oṣūl*) of Book, Sunna, consensus, and analogy. The Shiʿite tradition rejected most forms of analogy, substituting for the last of the Sunni principles that of intellect, which they acknowledged to have an independent

capacity for moral judgment. The Shiʿites were initially suspicious of the theory of *ejtehād*, perhaps because it too easily acknowledged plurality and uncertainty in the law, but it was integrated into their works of *oṣūl* from the time of ʿAllāma Ḥasan b. Yūsof Ḥellī (q.v.; d. 726/1325). Thereafter, Shiʿite works of *oṣáāūl* show a roughly similar set of structural components to those of the Sunnis, and a roughly similar diversity of classificatory techniques and selections (Calder, 1989).

Shiʿite theories of juristic authority. The Imami Shiʿite juristic tradition shared with the Sunni traditions a common set of topics, concepts, arguments, and literary forms. Even the Shiʿite assertion that the intellect had an independent capacity to make moral judgments, though it was an important polemical point, did not have a significant effect on the expression of the law. Differences in legal detail between the Sunnis and the Shiʿites have been described as not greater than those subsisting between the four Sunni schools. The major exception to this generalization lies in the sphere of political authority.

Wherever the rules of the *šarīʿa* required an executive agent—e.g., for the waging of *jehād*, the collecting of taxes, or the appointment of judges—the Sunni traditions recognized the actual ruler as having, at least potentially, this right. Shiʿite jurists, assigning these functions exclusively to the sinless Imams, initially perceived most of them as having lapsed during the period of the *ḡayba* (occultation). Judicial authority, however, had been transferred, during the *ḡayba*, to qualified *foqahāʾ*, in virtue of delegation from the sixth Imam Jaʿfar al-Ṣādeq and irrespective of appointment by the actual ruler. Over time, this acknowledged judicial authority was extended to cover all the executive functions that were otherwise reserved to the Imam. This had two significant results. First, the Shiʿite jurists developed no system for conferring *šarʿī* legitimacy upon the actual ruler, even when he was a supporter of the Shiʿite faith. The only executive agent, for *šarʿī* functions, recognized by them, for the period of the *ḡayba*, if they recognized such an agent, was the qualified *faqīh*, acting in his capacity as deputy of the absent Imam. Second, the jurists, since they deemed themselves to be the rightful recipients and managers of *šarʿī* taxes— principally *zakāt* and *ḵoms*—provided themselves with real financial independence, at least in so far as they could, without political power, persuade believers to pay them these taxes. When the theoretical illegitimacy of the actual governor and the reality of financial independence were combined with the principles of authority expressed in the theory of *ejtehād*,

the Shiʿite jurists became, potentially, repositories of power in a way quite different from the Sunni jurists (Calder, 1987). The practical results and the theoretical developments that emerged from this situation can be measured in the terminological innovations of the 19th and 20th centuries (*marjaʿ-e taqlīd*, *welāyat-e faqīh*, *āyat-Allāh*) and in the activities of individual jurists (Kāšef-al-Geṭāʾ, Moḥammad-Ḥasan b. Maḥmūd Šīrāzī, Ḵomeynī).

PRACTICAL APPLICATIONS

The dominant practical application of *feqh* lay in the sphere of education. From the 5th/11th c entury—and probably earlier—the only generally available system of education was that associated with the mosques and, especially, the *madrasa*s. These offered a curriculum that began with revelation (Qurʾān and Sunna) and finished with *feqh*. It might be extended to other disciplines but not at the expense of these. Even for the uneducated or illiterate the structures and concepts of *feqh* permeated their lives through mediums like sermons and public and private discussions. The patterns of Middle Eastern life, at least in a rough and sometimes in a precise manner, reflected the patterns and structures of *feqh*. The actual realization of these patterns, as ascertained from social histories (e.g., Goitein, 1967), was governed by local customs, informality, expediency, and common sense, and was learnt more through experience than through academic study. *Feqh*, however, would be perceived as a practical discipline, at least at a basic level, as a useful discipline—when the informal patterns of life broke down and led to litigation—as a guide to religious conduct, as a symbol of religious authority, and as a cultural tool. A training in *feqh* provided, in a highly practical sense, for the needs of the bureaucratic and the merchant classes.

The structures of *feqh* did not develop uniformly in response to practice. Most of its topics, concepts, and rules were fossilized, its practitioners engaged in a religious duty of preservation. Such changes as may be detected reflect some, but not all, real developments or local variations. There were certain areas where juristic structures did not expand. This is particularly true of governmental structures, where the few efforts to create juristic images of the major offices of state (e.g., by Māwardī; see Lambton; Calder, 1986) only mark the lack of development in this area as a whole. Criminal law in the *šarīʿa* is limited to only a few specified crimes. Exploration of these within *feqh* was extensive, but almost never refers directly to the reality of practical administration. On the other hand, the concepts of the law were flexible: they could be manipulated and extended to cover markedly different political and

social situations (for a notable history of practical development in the spheres of taxation and land-law, see Johansen, 1988). Generally, however, the point of contact, or the judgment of relevance, between theory and practice is not predictable and scholarship has made little progress toward understanding the collocations of theological loyalty, intellectual play, and practical discussion that mark the tradition of *feqh*.

The only areas of the law which were, in pre-modern times, systematically transformed into administrative structures were those related to the office of judge (*qāżī*). His competence traditionally covered many aspects of family law (marriage, divorce, inheritance, and testamentary bequest), the administration of charitable endowments (*waqf*), and the property of orphans, declaratory judgments on the significance and validity of contracts, and civil disputes. In the Sunni system, the governor—just or unjust—was accorded the absolute right to appoint judges and to define their spheres of competence. He also had the right in areas of dispute to declare the rules that would be put into effect. Various types of judicial hierarchy emerged to ensure predictability and order in judicial decisions, subordinate officials and deputy judges deriving their authority from appointment by the *qāżī*. Many aspects of civil and criminal law, however, could not be dealt with under the norms of the *šarīʿa*, and some of the norms of the *šarīʿa* could not be rendered practically effective. Already, by early ʿAbbasid times, a system of courts was required in addition to the *qāżī*s' courts, which would take a more expedient and flexible approach to *šarʿī* rules. These were initially called *maẓālem* courts, though the nomenclature varied. They were administered directly by the governing bureaucracy, usually with the help and advice of trained jurists. They dealt with complaints against government officials, and administered an extended criminal law, loosely related to *šarīʿa*. Separate *maẓālem*-type structures disappeared during the Ottoman period, when the office of *qāżī* was fully integrated into the bureaucratic structures of the governing institution (Tyan; Heyd). In spite of the *de jure* illegitimacy of Shiʿite rulers, the practical situation was not very different under Shiʿite governments, the Shiʿite jurists generally giving expression to the law in a way that permitted working for governments.

A second major institutional office which emerged to serve the structures of *feqh* was that of *moftī* (see FATWĀ). Originally, a *moftī* was any qualified *mojtahed* who was capable of providing reasoned responses (*fatwā*s; q.v.) to the questions of the people, those not educated in the law. Informal *moftī*s never disappeared, but, in the Sunni community, governmental structures

often signaled official preference for some *moftī*s over others. FENDERESKĪ During the Ottoman period—and partly as a result oFENNELf developments in Mamlūk Egypt—officially appointed *moftī*s became fully integrated into the structures of government. The rulings of a *moftī* could be issued, on request, to individuals, to *qāżī*s, and to agents of government, and could have broadly legitimizing effect (e.g., in respect of government policies) or, if translated into governmental edicts, strict practical effect (e.g., in relation to judicial practice). The financial independence of high-ranking Shiʿite jurists ensured that they did not depend on government appointments. Any attempt by governments in the Shiʿite world to favor particular individuals as *moftī* or *marjaʿ-e taqlīd*—a term emerging in the mid-19th century—tended to reduce, not promote, the influence of that person.

THE SPREAD OF JURISTIC SCHOOLS IN PERSIA

Prior to the 16th century, Muslims of the Iranian plateau and areas to the East were predominantly Sunni. From the early 9th century, Hanafism emerged as the major juristic school, with centers of scholarship in Transoxania, in the cities of Marv, Balḵ, Bokhara, and Samarqand (qq.v.). Shafeʿism began to spread in the late 9th and early 10th centuries, usually through the activities of individual scholars, notable amongst them Abu'l-ʿAbbās b. Sorayj (d. 306/918). In Saljuq times, most of the population were either Hanafites or Shafiʿites, the two communities often represented in one city and living in a degree of tension, marked at times by factional fighting. The Saljuq sultans tended to favor the Hanafite communities, but there is little sign of significant Hanafite scholarship in central Persia during the Saljuq period. The vizier Neẓām-al-Molk (d. 485/1092) favored the Shafiʿites. It was partly as a result of his patronage that Shafiʿite scholarship in this period produced a number of major works, including those of Šīrāzī and Ḡazālī. Hanafite scholarship continued to be produced in the East, usually under local Turkish dynasties, and became the dominant juristic school in the Indian subcontinent. A number of minority theological and juristic affiliations were represented in scattered areas, Hanbalites in Gīlān, Muʿtazilites in Chorasmia, Imami Shiʿites in Qom, etc. (Madelung).

The juristic loyalties of the population did not change much until the 16th

century, although there may have been a strengthening of the Shiʿite communities in the cities of central Persia during the Il-Khanid period. Shortly after the foundation of the Safavid dynasty in 1501, Imami Shiʿism emerged as the favored state religion. The continued public support of the Safavid rulers for Shiʿism ensured a gradual long-term process of conversion which led to a majority of the population becoming Shiʿite, probably before the end of the Safavid period. The quality of conversion was notably improved by Majlesī, minister to the last of the Safavid rulers, partly through his administrative activities, mostly through his production of a body of Persian language theological materials, both translations and original works. The dominant juristic tradition in Persia since the 17th century has been Shiʿite, although minority traditions continue to exist, notably among the Kurds, who for the most part remain Sunni and Shafiʿite.

MODERN DEVELOPMENTS

Amongst the factors which, in the course of the 19th century, initiated the decline and end of *feqh* as a continuous cultural tradition, were changes in education. The institution of secular education systems, first to serve the needs of the army, then of the administrative and merchant classes, deprived the jurists of important social alliances, devalued the content of the traditional curriculum, reduced the numbers of students, and deprived them of a career structure. The knowledge and the skills that had made *feqh* a universal cultural tool gradually disappeared and lost apparent value. In Sunni countries, the failure of a class and of an educational system was, by the mid-20th century, widespread and decisive. In Shiʿite communities, by contrast, the financial independence of high-ranking jurists enabled them to maintain the status of discipline and permitted the preservation and continued flourishing at least of the major centers of juristic education in Iraq and in Persia. During the same period, under the influence of Western legal systems, juristic thought was diverted to practical ends. First in the Ottoman empire, then in the succeeding nation states, as they emerged from colonial

and mandate authority, there was a search for constitutions and codified national legal systems. The Ottoman *Majalla* (1876) attempted a partial codification of the Hanafite system for practical ends. Thinkers like Moḥammad ʿAbdoh in Egypt introduced practical reformative ideas intended to break the hegemony of traditional school loyalties. A majority of Shiʿite jurists supported the Constitutional Movement (q.v.) in Persia. These beginnings ensured that practical lawyers and drafters of statutes were the most important Muslim jurists of the 20th century, enFEQHgaged in a remarkable interpretive task for which the traditions of *feqh* and *šarīʿa* were only one influence among many. That practical focus of interest, together with the general devaluation of *feqh*—the rich, flexible, and human aspect of *šarīʿa*—left many of the concepts of the law, especially that of precisely *šarīʿa*, open to exploitation by groups who espoused an ideology of political activism. These tended to find their heroes and their slogans not in the dominant traditions of *feqh* but in the fundamentalist tendencies associated with the word *salafī* and the figure of Ebn Taymīya. The latter provided modernist thinkers—including Moḥammad ʿAbdoh, and, later, various spokesmen for politically activist groups—with arguments which denied the value of the juristic tradition and promoted *šarīʿa*, not *feqh*, as symbol of loyalty, unity, and activism. These tendencies are evident even in the propaganda activities that led to the emergence of Ayatollah Rūḥ-Allāh Ḵomeynī as leader of the Persian revolution of 1978-79, although his ideology was also based on the established oppositional potential of Shiʿite juristic tradition.

In general, and even in the Shiʿite world, the major 20th-century responses to the juristic tradition have been practical and in the service of either state law or political opposition. There has been a corresponding lack of interest in the theological, philosophical, and cultural messages that were embedded in the traditional modes of discourse. These remain, however appropriately valued, in the university systems of modern Muslim states, and it is there that the task seems likely to be attempted of re-interpreting their message for the needs of the 21st century.

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