

and between the internal and the external,” and “apathy and lack of intellectual analysis . . . of these issues,” and “loss of ummatic (nation-building) movements and aspirations,” and the “tendencies to fragmentation and the lack of public concern and spirit in the Muslim ummah and societies” (p. 2). The author’s pessimistic tendency should not have been allowed to cloud his scholarly judgment. The author’s tendency to resort to assertions and to express his views in law-like statements comes out loud and clear.

And a Final Word

One more thing comes out loud and clear from reading this paper: the author’s great sincerity and his overwhelming concern for the future of the Muslim nation and the sanity of its intellectuals and activists. His desire to encourage scholarly debate on this issue and his insistence on systemic and comprehensive analysis prompted me to demand the same from him. The author’s scholarship is demonstrated by his insistence on seeking evidence from the Qur’an and the Sunnah. His conclusions are not unreasonable and should provide an incentive to others to seek to confirm or challenge. By raising this issue at this juncture, the author has done us all a big favor indeed.

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Views and Comments

The Importance of *‘Ilm al Khilāf* to North America

‘Ilm al khilāf is a science which deals with the Islamically sound arguments used by Muslim jurists (*fuqahā’*) to reach their various legal opinions. As such, it can also be known as comparative Islamic law. Historically, the various *madhāhib* of Islam shared and benefitted from this science, and there is no reason why we also cannot benefit from it.

We know that there were differences of opinion and practice even during the time of the Prophet Muhammad, for his Companions did not view everything the same way. This state of affairs naturally continued after the Prophet's death. The *ṣuḥuf* ascribed to some of the Companions and the information given in the relevant biographical literature were studied for details. The fiqh-related issues debated by the Companions increased in number and complexity during the time of the Successors (*Tābi'ūn*), when the development of Islamic jurisprudence was just getting started.

The judicial and juristic opinions expressed in *Majmū' al Fiqh* by Zayd ibn 'Alī (d. 122/740), in *al Muwaṭṭa'* by Imām Mālik (d. 179/795), by Muḥammad ibn al Ḥasan al Shaybānī (d. 189/805) which he ascribed to his master Abū Ḥanīfah, and by Abū Yūsuf Yāqūb (d. 182/769), especially in his *Kitāb al Kharaj, al Radd 'alā Siyār al Awzā'i*, and *Ikhtilāf Abī Ḥanīfah wa Ibn Abī Laylā* may be cited here as the first scholarly sources of *'ilm al khilāf*. The related literature on differences between the *fuqahā'* is full of points which may be studied for further information.

With the spread of Islam and the incorporation of many non-Muslim subjects into its domains, new legal questions were raised. The resulting decisions led to the profound and scholarly development of *'ilm al khilāf* and the establishment of the methodological principles of Islamic law in several branches. However, it was not until the beginning of the fifth *hijrī* century that comparative Islamic law was scientifically established as an independent branch of Islamic law by Abū Zayd 'Abd Allāh ibn 'Umar ibn 'Isā.

This great scholar was born in 367/978 in Dabūsiyah, a village between Bukhārā and Samarqānd in the Central Asian region known to the Arabs as *Mā warā' al nahr* (present-day Uzbekistan). His school of thought follows Abū Ḥanīfah in its juristic practices and Abū Maṣṣūr al Māturīdī in its theological ideas. His teacher, Abū Ja'far ibn 'Abd Allāh al Astrushānī, studied under Abū Bakr Muḥammad ibn Faḍl and Abū Bakr al Jaṣṣāṣ. He is considered one of the seven judges (*al quḍāh al sabāh*) of his time.

Muslim scholars who were specialists in biographical literature have stated that he was the one who established comparative Islamic law, and his book *Ta'sīs al Naẓar fī 'Ilm al Khilāf* (printed in Cairo, undated) is viewed as the foundation for *'ilm al khilāf*. In this book, he first gives the rule and then discusses the arguments and logic of the different judges who have applied it in the past. He uses the word *aṣl* for "rule" and then describes its application after the phrase *minhā* or *wa 'alā hādihā mā sa'ālū*. One may say that it is the first attempted analytical juristic study of problems which faced the Muslims of his times, and that it is therefore similar to the literature used by contemporary law students.

Despite its small size (it has less than one hundred pages), the book allegedly influenced Ibn Nujaym's *al Ashbah wa al Naẓā'ir* and the much

later *Majallai Ahkami Adliyye*, the civil code promulgated by the Ottoman Empire in the last half of the nineteenth century.

Fortunately, several of his books have come down to us in manuscript form, such as *al 'Amāl al Aqṣā*, *al Asrār fī al Uṣūl wa al Furū'*, and *Taqwīm al Adillah*. He is also credited in the biographical and other related literature, as well as among the *fuqahā'*, with authoring several other books which are not available in manuscript form: *al Anwār fī Uṣūl al Fiqh*, *al Nuḥum fī al Fatāwā*, *Sharḥ al Jāmi' al Kabīr*, *Tajnīs al Dabūsī*, and *Khizānat al Hudā*.

According to different sources, Ibn 'Isā died in 430/1038 or 432/1040 in Bukhārā. Others mention 435/1043 and 403/1012. However, since it is known that he was born on 267/977 and died when he was 63, we can say that he died in 430/1038.

The importance of comparative Islamic law is obvious. It has played a great role in Muslim life for one thousand years and is still relevant for Muslims today. But, it will only benefit us if we are qualified to make use of it. Since Islam is spreading rapidly in non-Muslim and even anti-Muslim societies, we need to know what its legal scholars have said concerning those problems which we might face when confronted with local non-Islamic customs concerning wedlock, divorce, mortgage, credit, food and beverages, cosmetics, and various medical and dental practices. It is in areas such as these that *'ilm al khilāf* may make practical contributions to the Islamization of non-Muslim societies.

In order to gain the maximum benefit from this juristic literature, we need to produce experts in those areas upon which *'ilm al khilāf* depends, such as Qur'anic commentary (*tafsīr*), hadīth literature, the ranks of the jurists (*ṭabaqāt al fuqahā'*), philosophy (*kalām*), verb inflections (*ṣarf*), grammar (*naḥw*), logic (*manṭiq*), and rhetoric (*bayān* and *badī'*). In addition, we must not neglect such modern sciences as sociology, economics, and others which directly affect our society.

The most logical way to successfully pursue this task is to do it as a team, not as separate individuals. What we need to do is to set up an institute to deal with comparative Islamic law studies. Such an institute could be a part of a larger Institute of Islamic Law. Equipped with a first-class library of Islamic literature, modern technology, and a staff of eminent and qualified Muslim experts from all parts of the ummah, it would represent a major step forward.

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