1 The Origins of Islamic Law

THE SHARI'A

Although the Islamic system of jurisprudence is one of the best developed and most adequate systems in the world, very little is known about it by Western law students. The average law course does not contain even a slight exposure to the richness of Islamic legal thought and the average law graduate passes out with no knowledge of it whatsoever. This brief outline is intended to convey a glimpse of the magnitude of this body of juristic learning and of the impact it has had on civilisation in general. It can only aim at picking out a thread or two in this vast and colourful tapestry, in the hope that it will help towards an appreciation of its scope and richness and of its importance in the universe of legal knowledge. It will also aim at showing some of the many interrelationships between Islamic and Western jurisprudence and philosophy.

Islamic law is based, as we shall see, on unqualified submission to the will of God. This is a fundamental tenet of the Islamic religion, and since Islamic law is based upon Islamic religion, it proceeds on the same fundamental assumption. The will of God embraces all aspects of life and the law hence covers all of them. It is a path or way guiding the Muslim and the revealed law governing all these matters is known as the Shari'a (the Arabic for track or road). The Shari'a governs in every detail the lives of several hundreds of millions, provides the basic moral and legal framework for dozens of nations and has now held sway for upwards of thirteen and a half centuries.

From these observations it will be seen that the Shari'a is not, strictly speaking, a legal system, for it reaches much deeper into thought, life and conduct than a purely legal system can aspire to do. (For a series of differences between the Shari'a and a legal system strictly so-called, see Rauf, 1985.) It places the individual in his relationship to society, the universe and his Creator. ‘The sacred law of Islam is an all-embracing body of religious duties rather than a legal system proper; it comprises on an equal footing ordinances regarding cult and ritual, as well as political and (in a narrow sense) legal rules.’ (Schacht, 1950, Introduction p.v).
At the conclusion of a recent international seminar on the *Shari'a* (International Seminar on Shariah and Social Order (ISSSO)) held at Chulalongkorn University, Bangkok on 12–15 December 1984, the Deputy Rector of Chulalongkorn, himself a non-Muslim, made the following observations on the significance of the *Shari'a* for Muslims and for the non-Muslim world in general: ‘It has been a tremendously rewarding and revealing experience for me to attend this International Seminar on Shariah and Social Order. The subject of this seminar is especially significant as it has from the first day been conducive to a better understanding of how one billion people order their lives according to the dictates of their religion – Islam – and how the law of that religion can contribute to improved social conditions for all of mankind . . . This has been especially true for me as I am not a Muslim and therefore had never realised how truly liberal, progressive and broad-minded *Shari'a* is. I had never expected Muslim leaders, scholars and jurists to be so frank and open, so relaxed, easy-going and warm-hearted, even when exploring the most controversial issues.’ (*Shariah Law Journal,* November 1985, p.3). The Deputy Rector of this leading university of a Buddhist country went on to observe that, as a result of this conference, his university now had ‘a far better understanding of the role this religion, with its hundreds of millions of followers to whom it is an entire culture and way of life, can and must play in shaping a better future for mankind – a future enriched with a deepened sense of human values and higher regard for one’s fellow man.’

The cause of international harmony needs more such dialogue leading to a better understanding of this globally vital theme.

**ARABIA BEFORE AND AFTER ISLAM**

Let us take our minds back to the beginning of the seventh century. Amidst the caravans winding their way through the Arabian desert, amidst the teeming market towns at which these caravans arrived, amidst the palm trees of the oasis and the sands of the desert, a fierce tribalism flourished. It knew no single religion and acknowledged no superior law. Might was right, learning was despised, the poor were trodden underfoot. Many savage customs prevailed. Female infanticide was practised. Women’s rights in a male-dominated culture varied according to local customs, taboos and other practices. Indeed the attitudinal frame of reference of the time, considering the female