The 20th Century Islamic Legal Reform of the Family Law with the Focus on Oman's Response to Modernity[*]

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Abstract *: This article explores the socio-economic changes that occurred in Muslim societies from the late 18th, 19th to the 20th centuries and how these changes contributed to the reformation of Shari'a Law. The focus of this article will be on Omani society in the 20th century but prior to 1970. The main question that I attempt to answer is how Oman has reacted to modern change in the 20th century. I argue that although reform is an important phenomena in Islamic law, and many Muslim societies have experienced legal changes towards equality within the Shari'a Family Law, Oman has remained distant from such changes.*
Key Words: *Islamic Law; Socio-legal Change; Oman; Ibadi Tradition; Tribal Culture and Modernization*

I. Islamic Law: Brief Historical Background

Many people refer to Islamic law as Shari'a law and many translate *fiqh* or Islamic jurisprudence as Islamic law (Saeed, 2006: 46).

Yet, a distinction should be made between the two Shari'a, as Saeed explains:

> *…represents the divine guidance contained in the revelation communicated to the Prophet through the Qur'an and further illuminated by the Prophet in his sayings and deeds (Sunna). In the context of Islamic law, Shari'a refers to the totality of this guidance contained in the Qur'an and Sunna and generally expressed in their commands and prohibitions (Saeed, 34).*

Some of these instructions are detailed as in the "dietary and some penal laws", whereas others are not. "They are principles and values which *the Qur'an* and *Sunna* want to instill in believers, such as their consistent reminder to be just and fair" (Saeed, 34). Shari'a refers to the totality of guidelines and avoidances found in the *Qur'an* and *Sunna* and, accordingly, the "source of Shari'a…is God and divine" (34). *Fiqh,* on the other hand, refers to a broader sense of understanding' or 'knowledge' of something. *Fiqh* means that precise decisions are attained through "the understanding and interpretation of the Shari'a… [which indicates that]…the source of *fiqh* is human" (34).

Islamic law has two aspects: the sacred and the temporal. It is sacred in "the sense that Muslims believe its source is divine revelation and its prime purpose is that of mapping the route to salvation" (Mir-Hosseini, 2000: 1). The very term by which the law is referred to, the Shari'a, which means 'the right way', embodies this notion. However, Islamic law as it is known today has a distinct temporal aspect. In this sense it is the product of centuries of juristic interpretation. Elements of clear incorporation of foreign legal provisions have also been discovered (Schacht, 2004: 59-68). As Mir-Hosseini argues, "the boundaries between the sacred and the temporal are particularly blurred in the case of family law, where divine revelations are most abundant".

As argued by Saeed, "renewal in religion (*tajdid*) has always been part of Islamic tradition" (Saeed, 129). Saeed distinguished four stages in the development of early Islamic law. The first is the Prophetic

period, when *the Qur'an* was revealed. He noted that during this period the law aimed to create a God-conscious and morally sensitive person with an acute sense of right and wrong. Thus, these laws were in the form of specific rulings as well as principles and values often without important details (Saeed, 129). Later, after the death of the Prophet, and as Islam reached areas outside of Arabia and interaction with different cultures was taking place, new incidents and situations emerged that required new legal opinions. Muslim jurists faced new situations and problems by using what became known as *ijtihad*. This term refers to the intellectual efforts of Muslim jurists to reach independent religion-legal decisions.

The second stage of the development of early Islamic law was the period of the successors, which refers to the "generation that immediately followed the companions…extending to the early part of the second Islamic century" (47). Given that Islamic society had expanded during the later part of the first Islamic century and the beginning of the second to include places such as Iraq, Egypt and Syria in addition to Arabia, individual legal opinions or *Ijtihad* also expanded during that time. In the words of Saeed:

> *Through their study, teaching, debates and discussions of issues related to all aspects of law, scholars continued to augment the existing body of legal knowledge based on the Qur'an, the Sunna and the Precedents and opinions of the Companions (47).*

According to a number of scholars, the third stage in the development of Islamic law was marked by the influence of elements of other laws from areas that had been conquered by Muslims, such as the Roman law (Hallaq, 2004: 21-54). The fourth and final period of the early development of Islamic law began roughly around the second half of the second to eighth century and continued well into the third to ninth century. During this period the main schools of Islamic law, as they are defined today, were established. These first and second stages in the development of Islamic jurisprudence will be referred to in this article as pre-modern Islamic law.

II. Islamic Legal System and the Socio-Economic Factors

The Qur'an is proclaimed as a divine revelation communicated to humanity through the medium of the Prophet Muhammad. According to Islamic tradition, the Qur'an was revealed "seriatim over a period of approximately twenty-three years" (Mascud, Messick, &. Powers, 1996: 3-32). Yet "the content of these revelations changed dramatically over time, reflecting new phases in Muhammad's mission as a Prophet and a statesman"(4-5). Similarly, the pre-modern Islamic legal system has developed throughout different periods (Schacht, 59-68). While the Qur'an as a text remains unchanged and was utilized as the first source of regulation, the legal systems based upon it have developed in accordance with the needs of Muslim societies. This is self-evident, since the small Arabian Islamic society in Mecca and Medina had expanded immeasurably during the short years following the death of the Prophet (See Lapidus, Chapter 4, 1988). Similarly, new incidents and problems emerged that required legal opinions from Muslim jurists. These unfamiliar incidents, which reflected the new way of life and challenges in Muslim societies, required the construction of new legislation to meet the new demands. New legal opinions included fresh scholarly attempts to not only interpret *the Qur'an*, but also to include "much of the customary law of Arabs" (Pearl, 1987: 33). This development of Islamic law was instigated during the Umayyad Caliphate (661-750 A.D.), which was a period of "institution building directed towards worldly ends to manage an expanding empire" (Sfeir, 3). While the conquering Muslim-Arab rulers wielded the power, the administration of newly acquired territories was run by the same rulers as before (Lapidus, 2004: 1-28: see also Mir-Hosseini, 1-10; Saaed, 42-59; Schact, 2004: 59-68). As Sfeir explains,

> *Local functionaries who had served the previous rulers of these*
> *territories, the Arab rulers brought with them a new religion and*
> *a new law which necessitated a great deal of innovation and*

> *adaptation to local custom and practice far different from what*
> *they were familiar with in Arabia (Sfeir, 1998: 3).*

In order to respond to challenging new social, cultural and legal situations, the legal opinion of Muslim jurists relied more and more on the "free use of opinion (*ra'y*) as well as analytical analogy (*qiyas*) (Sfeir, 3). Muslim jurists therefore succeeded in their separate ways and disparate locations to evolve the law from the sparse precepts of the Qur'anic text, away from the direct influence of the sayings of the Prophet (*Sunna*), whose oral sources were yet to be authenticated and recorded. Development of Islamic law continued even after the Umayyad period. The 'golden age' that saw the construction of *Shari'a* as a definitive legal system came during the Abbasid Caliphate in Baghdad (750-950 A.D.) (Schacht, 1964: 20-23). This was also the period that recognized the development of the Islamic schools of law. Instead of the "Umayyad tradition of legal pragmatism and free use of opinion to reconcile local custom and usage with the revealed text" (Sfeir, 4), the Abbasid era "saw a more scholarly and speculative development of jurisprudence at the hands of religious scholars, the '*ulema*, who identified more closely with *the Qur'an* and the sayings of the Prophet" (Sfeir, 4). Yet, this closeness did not prevent the law from integrating foreign and customary elements that existed in society. This included elements from territories that were governed by Roman, Persian and Christian laws (Hallaq, 243-258; Schacht, 2004: 59-68). These territories also included people from vastly different religious, social and cultural backgrounds (Lapidus, 1-28). A number of studies have shown that, Islamic law benefited from widespread social interaction between Muslims and non-Muslims and Arab-Muslims and non-Arab Muslims that occurred during the Abbasid period. It can be argued, therefore, that although *the Qur'an* was always seen as the main source of Islamic law, the law itself remains indeed man-made, or in the words of Hallaq, "Islamic law is religious only at the most fundamental level, more as a holistic entity than its particular detail" (246). It is thus not a mere religious rigid regulation, and it was not immune from change. In sum, the basic elements of Islamic law

were constructed during the second and third Islamic century and much of this law was the product of juristic interpretation.

III. Islamic Law and the Challenge of Modernity

Generally speaking, Islamic law, as constructed by Muslim jurists during the pre-modern age, remained endorsed by many Muslim societies until the 19th century. The need for change, however, became apparent during this time. It was Muslims themselves who discovered the backwardness of their society *vis-à-vis* Western hegemony (Rahman, F. 1970: 21-54; see also Brown, 1996; Schacht, 1964: 59-68). The response to Western domination was wide in its scope, and hence, the need for modernization was crucial. Questions regarding education, women's emancipation and women's status, minority rights, equality, the rule of law and the modernization of the Shari'a, among others, were raised and debated in a number of societies such as Turkey and Egypt (Bonderman, 1968: 1169-1193). Bonderman argues that the widespread adoption of nontraditional Western ideas in many Muslim societies has increased the pressure for political, socio-economic and legal reform during the 20th century (1169-1193). As will be shortly explained, in terms of legal reform and women's rights, a number of Muslim countries have adopted documented Personal Status Laws. Codification itself is seen as an element of the modernization process of the Shari'a law (Rahman, 1970: 451-465; J N D Anderson). A number of these Laws were subsequently amended as means to reduce inequality, to enhance the rights of women and attenuate social inequality. For instance, in 1926, Egypt announced the first documented Personal Status Law, followed in 1951 by Jordan and in 1953 by Syria. Tunisia, Morocco, and Iraq issued a Code of Personal Status Law in 1956, 1958 and 1959 respectively.

Contemporary Muslim scholars have proposed that the revitalization of pre-Islamic legal principles maybe one way to address the challenges posed by legal reform, equality and women's emancipation (Ahmad, 1992: 128). What was then the Ottoman

Empire was among the first Islamic societies to debate the idea of the emancipation of women. In the late 19th century, for instance, the Turkish journalist Ahmad Faris al-Shadyaq (1804-1888) provoked the debate on women's emancipation in his newspaper *al-Jawa'ib* ('Imarah,1989: 12-13). Soon afterwards, the debate reached Egypt, which at that time was still under Ottoman rule. In 1899, Amin (1863-1908) published, *The Liberation of Women: A Document in the History of Egyptian Feminism* (Amin, 1992) or, in Arabic, *Tahrir al-Mar'a*. Although issues such as the education of women (a topic that Amin extensively advocated in his book) had already been raised politically in Egypt('Imarah, 13), his book aroused a heated debate on women's issues, including the education of women, women's legal rights and particularly the role of tradition and patriarchal power in society. This was the first book to discuss the importance of women's education and the reformation of women's role in society. Amin asserted that "every change that occurs in a society influences various segments of that society" (Amin, 1). He approached the subject of women from an Islamic perspective, repeatedly arguing that "the Islamic legal system, the Shari'a, stipulated the equality of men and women before any other legal system" (3). Amin's criticism was directed towards the authority of men and the traditions of patriarchy. In this respect he argued that by "despising women, a man fills his home with slaves, black or white, with numerous wives, satisfying himself with any of them …he ignores the prescribed religious obligations, which require good intentions for his actions and justice in his dealings" (8). To Amin, tradition is a universal phenomenon, made by man and therefore it should be subjected to change according to the time and the situation (3-10). That is, their Islamic principles and traditions should be interpreted in accordance with the times and within their socio-historical context. In this sense, Amin was not different from the influential religious figure Muhammad Abduh (d.1949) (Abu-Zeid, 1999: 58-65). Abduh also questioned the traditional status of women and attempted to review women's rights in accordance

with Islamic principles of justice and equality in order to overcome modern challenges. In 1926, ten years after Amin published his first book, the Tunisian theologian scholar Tahir al-Haddad, published his book *Our Woman in the Shari'a and Society*, which also received unsympathetic criticism from a number of Muslim scholars inside and outside Tunisia (Abu Zeid 200: 281-309). From his position as an Islamic scholar, graduated from the Islamic University al-Zaytuna, al-Hadad approached the issue of reformation of the Shari'a law in relation to women. Al-Hadad particularly criticized the attitudes of Muslim scholars regarding the low status of women in society, calling for an improved understanding of Shari'a principles (Abu-Zeid, 2000: 279). Both Amin and al-Hadad questioned the relationship between the unfair treatment of women on the one hand, and cultural constraints and pre-modern interpretations of Shari'a on the other hand.

By comparison, Omani society experienced the challenge of modernity more narrowly. It appears that at least two attempts to challenge the hegemony of Ibadi tradition came during the first half of the 20th century. Yet, they had little lasting significance. Long established Ibadi traditions were able to reduce the effect of modern challenges. The following section provides an overview of Ibadi tradition and examines attempts within Oman to challenge its hegemony.

IV. Ibadi Profile, Struggle for Survival and Equality

Originally, al-Ibadhiyya or Ibadis, or, as it is sometimes referred to in English, *Ibadism*, is an Islamic school of law, that originated from the old Islamic faction al-Khawarij or the Kharijite (See Bakai, 2001),Ibadis take their name from the 7th CE 'Abdullah B. Ibad (Eickelman,1989: 32). Ibadi resources claim that the Ibadi School emerged in the first Islamic community. Ibadis, therefore, believe that their school of law was the first Islamic school of law to be developed in Iraq, possibly in the late decades of the first Islamic century .

The development of the Ibadi School involved struggles against both the Umayyad (660-750) and the Abbasid (750-1258) Caliphates. The Ibadi struggle aimed to restore a united Muslim community (*Umma*), through the establishment of the true Imama (Wilknson,1987: 1-17). In the eyes of Ibadis, both the Umayyad and Abbasid Caliphs were unjust rulers. Instead of adhering to the principles of these two Caliphs, Ibadis secretly established their own principles concerning the Imama and Islamic society. Ibadis argue that Muslim society should be governed in accordance with the established political and social system during the period of the Prophet and his two companions, Abu Bakr (d. 13/ 634) and 'Umar (d.24/ 644) (Wilknson, 1-17). Thus -and this is one of the main distinctions between the Ibadi and the Sunni schools- the third Caliph 'Uthman (d. 35/656) and the fourth Caliph 'Ali (d. 40/ 661) did not adhere to the 'true' Islamic principles and were, judged illegitimate.

One important theoretical proclamation by the Ibadis therefore concerns equality between Muslims ('Awad Muhammad Khulifat, 78). According to Ibadi teachings, the establishment of the Imama in accordance with the period of the Prophet and his first two successors is obligatory. The Imam (the political ruler) is the head of the Muslim community. In their early doctrine, Ibadi scholars agreed that the Muslims community should elect the Imam.

There is evidence to suggest that the first Ibadi generation in Basra Iraq, were a mixture of Arab tribal and non-Arab ethnic followers. For instance, Ibadi documents reveal that the Ibadi community in Basra was led by Abu 'Ubaida, a *mawla* (ex-slave) of the well-known Arab tribe of Bani Tamim ('Awad Muhammad Khulifat, 106). His leadership probably commenced at the beginning of the second Islamic century. During this time, Ibadis existed in a period of secrecy (*kitman*), indicating that it was "a time when Ibadis… [believed it was]…unsafe to declare their religious beliefs publicly" (Harith M. al-Ghassany, 9-10).

It was during this time of secrecy that Abu 'Ubaida and his pupils managed to develop a social and political system practical enough to

enable them to survive, carry out their missionary activities and to develop their school. Ibadi sources claim that some of the Ibadi group in Iraq originated from Oman. Accordingly, around 747 CE, Abu 'Ubaida, sent a number of his students, mostly of Omani origin, to the edge of the Abbasid territories of Oman, whilst other students were sent to remote places such as the Abbasid territories in North Africa, Algeria, Tunisia and Libya. His pupils succeeded in establishing the first Imama in Oman in 747.

The situation in Oman was not especially conducive to the establishment of the Imama, since society was encircled by tribes and tribal disputes were common. Wilkinson noted that such disputes have continued even after the tribal adoption of Islam (J. C. Wilknson, 9-17). As explained in the previous chapter, disputes between tribes over wealth and territories were common in Oman before Islam. Hence, while it is true that tribes in Oman had accepted Islam during the late period of the Prophet, as Wilkinson has argued "in reality the Imamate has always been a more or less dynastic institution, the religious legitimation of a clan or family seeking to hold a tribal State together" (J. C. Wilknson, 9). It can be argued that one of the aims of the Ibadis who traveled to Oman from Iraq was to create unity among the tribes through the establishment of the religious-based authority of the Imama. To some extent, this was achieved by the election of the first tribal leader al-Julanda b. Mas'ud in 747 as the first Ibadi Imam (J. C. Wilknson, 9). This step was a historical moment, which was to shape Omani history, yet it was not enough to end the long period of tribal struggle. Perhaps, due to its alliance with tribes, the Ibadi Imama fluctuated between levels of stability and instability. This fluctuation was due to a number of reasons which are beyond the scope of this study.

One feature that distinguished many of the Ibadi Imama in Oman was their alliance with tribal leaders. Shiba, the Ibadi activist for the last Imama in Oman in the early 1950s, wrote of around 61 Imams, who governed the community in Oman from 747 CE to 1954 and more than 24 originated from a single tribe: the Bani Kharus (Abu

Bashir Muhamad Shiba, 64-67). Five of these leaders inherited the position of Imam from father to son or from brother to brother. The Ibadi scholar al-Syabi (d. 1993) stated, "Omani politics were controlled by five 'States': Bani al-Gulanda, Bani al-Yahmad (al-Kharusi tribe), Bani Nabhan, Bani Ya'rub and al-Bu Sa'id" (Salim b. Hamud al-Syabi, 371). These 'States,' as the author refers to them, were tribal in nature and not all of them had adopted the religious political system of the Imama.

The early generation of Ibadis organized themselves in what seems to be an egalitarian political system. This early development of the Ibadi School was more accepting of the integration of Muslims as equals, regardless of their social, tribal and geographical backgrounds. This early 'Ibadi egalitarianism' has since then changed. Perhaps the long - established Omani tribal structure was stronger than the religious initiative of equality, which appears to have been a novel, even premature, concept. It also appears that the survival of the Ibadi School was not to be achieved without alliance with the tribal leadership. In relation to the history of Oman and its relationship with the Imama, a point to be made here is that although history recognizes the Ibadi Imama, it has also recognized another political system based on the inheritance of authority through the line of the male: the Sultanate or monarchic political system (J. E. Peterson, 1-15). It is in fact the struggle between the Sultanate and the Imama that has largely shaped the history of Oman(Riphenhurg, 11). Another point to note is that the history of Oman does not reveal any significant role played by women in society, regardless of whether authority was controlled by Imama or Sultanate. Historical documents do not mention notable cultural, social, economic or political role played by women. This is not to say that women never played significant roles, rather it seems that there simply has been no documentation of such roles in Omani literature to date. Also, while Abu 'Ubaida was *mawla* in origin, non-tribal Ibadi people do not appear to have played any significant political role in the development of the Imama in Oman. Thus, the authority in Oman

remained hierarchal in its nature. This is highly likely, because the social structure in Oman was dominated by tribes.

V. Omani Society and the Challenge of Modernity

The first challenge to traditional Ibadi views occurred in Oman during the first half of the 20th century. This challenge came from Ibadis residing in Zanzibar. The Ibadi community in Zanzibar put forward a number of questions to the Ibadi scholar Abdullah al-Salmi (d.1914). Al-Salimi provided his answers (*fatwas*) accordingly, which today can be found in a booklet published in 1995. The questions concern the possibility of studying at Christian schools, the imitation of Christian dress, the learning of English, and the shaving of beards, and so on. The questions were worded in a challenging way that al-Salimi referred to as "ludicrous and far-fetched" . Zanzibar Ibadis appear to have adjusted to the new values of non-Muslims (i.e. Christians and Jews) that had entered their societies. Al-Salimi on the other hand, who resided in Oman, dismissed their arguments, which favoured social and cultural integration. For instance, according to al-Salimi, it is "without any doubt extremely dangerous for Muslim youth to study in their schools…they (Christians and Jews) convert the youth to their religions". The questioners on the other hand, argued that "the prophetic Shari'a should be flexible enough to allow us (Ibadi-Zanzibaris) to live on this island, if not; we must leave our land (Zanzibar). An Omani academic, al-Harasi, has argued that the questions and answers demonstrated a conflict of two different discourses. While both of them are Ibadi, social and cultural differences reflect the way that each one considers new values. For the Ibadi Zanzibaris, integration in their homeland Zanzibar was essential, if only to avoid isolation from the rest of the community. Such integration implies an acceptance of the new cultural values that probably the majority of them had not experienced previously. For al-Salimi, who lived in Oman under the rigid rule of the Ibadi Imama, such integration was inconsistent with Islamic tradition. This

argument between the two types of views indicates the serious challenge of modernity to the Zanzibari Ibadis in Zanzibar, but, on the other hand, it points to the low value given to modernity in Oman during the first twenty years of the 20th century. It could be argued that Ibadi, tribal traditions in Oman were strong enough to resist the modern ideas of the Ibadis of Zanzibar. Oman therefore remained largely beyond the influence of modernity.

Ibadi traditions were again challenged during the second half of the 20th century, at a critical time for Oman generally and for the Ibadi community in particular. This time, the challenge originated from a well-known Ibadi scholar and nationalist Arab politician, Sulayman al-Baruni (1870-1940), who was born in Libya and played a major role in the fight against the Italian invaders of Libya in 1911. Al-Baruni was a loyal and close ally of the Ottoman Empire and, along with other Muslim scholars, engaged in attempts to unite the 'Muslim Nation (*Umma*) regardless of its religious and ethnical differences.

Al-Baruni visited Oman during the reign of Sultan Taymur B. Faysal (1913-1932) and Sultan Sa'id b. Taymur (1932-1970). At that time, authority in Oman was divided between Sultan Taymur, who ruled in Muscat and other parts of the country, and Imam Muhammad b. Abdullah al-Khalili (d. 1954) who ruled the interior. As an activist, who had traveled and experienced the world, fought against the Italian invasion of Libya, and traveled through the Ottoman Empire and other European capitals such as Paris and Rome, al-Baruni was aware of the modern challenges facing Muslim societies. He looked forward to introducing new ideas to both Omani rulers.

In addition to his attempts to unite the divided country, he advised both the Imam and the Sultan to establish modern institutions for education and religious missionary and to establish a "treasury for the country" (*bayt mal al-muslimin*). Initially, the Imam appointed al-Baruni as head of a religious organization, the members of which were mainly Ibadi scholars and tribal political figures. However, al-Baruni faced tremendous difficulties and his ideas were rejected by both Ibadi scholars and tribal leaders.

Omani sources do not provide much information about the sort of ideas that he presented, nor do they provide information regarding the obstacles that he faced, but one source indicates that this rejection was based on the allegation that "al-Buruni's ideas were alien to both Ibadi and local tradition." Al-Baruni therefore left Oman and his ideas were forgotten. Abu Bashir, who in the 1950s and 1960s advocated a reformation of Imama institutions which had collapsed in 1955, argued that "previous Ibadi scholars who rejected al-Baruni's ideas were hypocritical". Al-Baruni's efforts were not probably the first attempts at modernization experienced by the Ibadi community during the 20th century, up to the collapse of the Ibadi Imama in 1955. After the collapse of the last Ibadi Imama in 1955 recommendations were made by a number of Baruni's associates for integration of the Ibadi community in Oman into the world political system. Yet, these requests came too late, as not only did they originate from members in exile who had little or no influence in the affairs of Oman, but by the time the submissions were made the Imama had already collapsed.

VI. Conclusion

This article explores the development of both classical Islamic jurisprudence and contemporary scholarly approaches to the reformation of Shari'a Law in accordance with the socio-economic change in Muslim societies. It looks first at the development of Islamic law during the 1st and 2nd Islamic centuries and explores the proposition that renewal in Islam has long been part of the Islamic tradition, a proposition that is taken up by exploring how one Muslim society has responded to the challenge of modernity during the first half of the 20th century.

As can be seen, strong - established Ibadi traditions in Oman were able to continually thwart attempts at modernization. Omani society therefore, remained governed by Shari'a law as interpreted by Ibadi scholars and according to tribal customs until 1997, when the post-1970 Omani State declared the first codified Personal Status Law.

While codification of the Personal Status Law in Oman represents a step forward, in so much as judges are now obliged to use a written document rather than relying on their personal understanding of Shari'a, the provision of the law has not progressed far from previous pre-1970 cultural traditions. In other words, the Law has been codified, but some of its provisions, remain discriminatory, deferring to tribal and religious hierarchal tradition.

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