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THE SUDANESE MAHDĪ'S LEGAL METHODOLOGY AS AN INSTRUMENT OF ACCOMMODATION.[1]

1. Introduction[2]

Muḥammad Aḥmad b. ᶜAbdallāh headed a revival and reformist movement in Islam in the late 19th century, strongly inspired by Salafī and Ṣufī ideas, with a view to restoring the theocracy of the Prophet Muḥammad and the "Righteous Caliphs." He claimed legitimacy on the grounds of being a successor to the Prophet, his communication with him, infallibility and moral authority. He nominated successors to the orthodox caliphs, governors, military commanders and *qāḍī*s. Adherents to the Mahdiyya had to take a pledge of allegiance (*bayᶜa*) entailing a commitment to refrain from polytheism, offenses of the Qurᵓān and evading *jihād*, along with maintaining a devotion to asceticism.

[1] The paper is part of a comprehensive study in progress entitled "Revival of Islamic Law in Late 19th Century Sudan: The Mahdī's Legal Methodology and Its Application," based on the Mahḍī's proclamations, legal opinions, judgments and "traditions" attributed to him after his death. I am most grateful to the late Prof. P.M. Holt, who graciously placed his personal collection of the Mahdī's documents at my disposal during my sabbatical stay in Oxford in 1993 and offered generous comments and suggestions on my research proposal. Thanks are also due to Harris Manchester College and to Mrs. Sue Killoran, fellow librarian of the College, for the hospitality extended to me during my stay at the College in September 2005. My friend and colleague Prof. G.R. Warburg (University of Haifa) initiated me into the field of Sudanese studies for which he deserves my sincere thanks. The research is supported by a grant from the Israel Science Foundation.

[2] For a general review of the Mahdī's legal methodology and its Ṣūfī inspiration, see A. Layish 1977: 37-66; Layish 2007: 279-308.

The Mahdī promoted a unique legal methodology that provided him with unlimited authority to enact positive rules without any institutional restrictions on the part of the orthodox *ʿulamāʾ*. He ignored all schools of law (*madhāhib*) thus releasing himself from the burden of *taqlīd*, the positive law as consolidated by these schools. He acknowledged three sources of law: the Qurʾān, the Prophetic *sunna* and the inspiration (*ilhām*) communicated to him by the Prophet Muḥammad. In terms of priority, the Prophetic *sunna* precedes the Qurʾān, to the extent that the former can abrogate (*naskh*) the latter. In the Mahdī's legal methodology Prophetic inspiration replaces both *qiyās*, systematic analogy from the textual sources, and *ijmāʿ*, consensus of the *fuqahāʾ*. Indeed, the MahdĪ sought to deprive the *ʿulamāʾ* of their historic role as the sole authoritative interpreters of the will of God. In the event of a lacuna in the textual sources the Mahdī, after having exhausted the conventional avenues of interpretation of the sources and the technique of abrogation (*naskh*), would allegedly resort to a colloquy (*ḥaḍra*) with the Prophet to derive the necessary inspiration for solving legal problems. Actually, there was no question of exercising *ijtihād* in the conventional sense of the term; rather, the Mahdī would use his personal discretion (*raʾy*) independently occasionally in glaring contradiction to the textual sources. Indeed, the Mahdī strongly denied the *ʿulamāʾ*'s allegations that he was a *mujtahid* (*Al-Āthār al-kāmila,* II: 183).

The Mahdī's legal methodology provided him with almost unlimited authority to introduce far-reaching reforms in the *sharīʿa*, beyond the control of the *ʿulamāʾ*, with a view to achieving his political, social and economic goals. In what follows a small sample of the Mahdī's legal opinions, rulings and decisions based on his legal methodology demonstrates his innovative reforms in various domains of law.

2. Prohibition of excessive nuptial gift and its expropriation for *jihād*

According to the *sharīʿa*, the wife is a party to the marriage contract and the nuptial gift (*mahr*, *ṣadāq*) is her private property. Its rate is determined by mutual agreement of the parties as stipulated in the marriage contract (*mahr musammā*).

In the absence of such an agreement, the Ḥanafī and Mālikī schools prescribe, on the basis of a *ḥadīth*, a minimal amount of nuptial gift: ten dirhams and a quarter of a dinar, respectively. No maximal amount of *mahr* is recognized by any of the schools. In the absence of agreement between the parties, the bride is entitled to the proper nuptial gift (*mahr al-mithl*) that would have been paid for a woman with comparable qualities in terms of descent, virginity, wealth etc. (Shalabī 1973: 345-47, 350ff.; Peters 1996: § 0.1.3.2.2; Anderson 1970: 369).

Late in 1884, the Mahdi instructed the emir of Berber to persuade women who had received excessive *mahr* prior to the consolidation of the Mahdiyya, to voluntarily return to their husbands the difference between conventional and excessive *mahr*, for it to be allocated to *jihād* (*Al-Athār al-kāmila*, III: 227-28; cf. Holt, 1970: 98-99). Moreover, in a special proclamation the Mahdī prescribed maximal rates for *ṣadāq*: ten riyāls for a virgin and five riyāls for a non-virgin. Future brides and bridegrooms were warned to abide by this ruling, failing which the *mahr* in excess of the maximal rates would be expropriated for the poor and for the warriors of *jihād* in the cause of God (*Al-Āthār al-kāmila*, I: 432). In another proclamation, the Mahdī goes even further: If couples do not comply with his legislation and exceed the maximal rates prescribed by him, then

> [T]he husband and the wife will be punished for having contradicted [his instructions] by having two-thirds [of the *mahr*] expropriated to the Treasury of the Muslims as expiation (*kaffāra*) and charity (*ṣadaqa*) [in preparation] for the day when neither property nor sons can be of any use [i.e., the day of resurrection]. (A*l-Āthār al-kāmila*, I: 443; Chelhod 1997: 406-07; Schacht 1964: 185)

Finally, the Mahdī did not hesitate to impose criminal penalties and other sanctions on those who ignored his reformist legislation. Thus on one occasion he urged his adherents:

> Marry the virgin for ten riyals or less and the non-virgin for five riyals or less. Anyone contradicting this order will be liable to punishment by lashes, and

> imprisonment (*ḥabs*, *sijn*) until he repents (*yatūb*) or dies in prison; he will be dissociated (*maqṭūᶜ*) from our people; we will be mutually cleared (*bariyūn*) [*sic*] from each other. (*Al-Āthār al-kāmila*, I: 307-8; cf. Al-Muftī 1959: 137)

On one occasion the Mahdī declares that as long as the property belongs to God and is designed to be invested in launching *jihād* in the cause of God, as embedded in the pledge of allegiance (*bayᶜa*), an excessive nuptial gift and other marriage expenses are tantamount to theft (*sariqa*) (*Manshūrāt al-Mahdiyya*: 300) thus justifying the imposition of criminal sanction.

Needless to say, the Mahdī fixing maximal rates for the nuptial gift is an innovation in glaring contradiction to the *sharīᶜa*. The same applies to imposing criminal sanctions on excessive nuptial gifts. Expropriating the nuptial gift, even in favor of the poor and the warriors of *jihād*, infringes upon women's *sharᶜī* right. The Mahdī's presentation of the expropriation as expiation and charity in preparation for the day of resurrection is an attempt to justify the infringement on private rights on the grounds of religious and social arguments. It would seem that the Mahdī combines a desire to remove obstacles to marriage with the economic consideration of enriching the Treasury.

3. The Mahdī marries a fifth wife with the Prophet's permission

Under traditional Islamic law a free man may marry up to four wives. A contract of marriage with a fifth wife is deemed irregular (*fāsid*) and should be dissolved immediately; if the husband fails to divorce his wife, the *qāḍī* will do it on his behalf.

The Mahdi takes the liberty of maintaining concurrently in his matrimonial authority more than four wives. He issues a ruling based on Qurᵓānic verses and *ḥadīth*s, as interpreted by such commentators as ᶜIkrima (d. 105/723-4), al-Daḥḥāk (d. 723), Ubayy b. Kaᶜb (d. c.29-34/649-54) and Mujāhid (d. 100-04/718-22), in the light of inspiration (*ilhām*) from the Prophet Muḥammad. The Mahdī finds support for the solution of his personal problem in precedents established by the Prophet Muḥammad

Being fully aware of his deviation from the *sharʿī* norms pertaining to polygamy and the impact it has on the Anṣār, his adherents, the Mahdī justifies his behavior as follows:

> I do not absolve myself [from the guilt of marrying more than the permissible quota of four women]. Still my Lord vindicates me ... I know that the believers think well of me. ... I shall clarify some of the texts (*nuṣūṣ*) mentioned in some of the commentaries pertaining to a saying [of God], be He exalted: 'It is not allowed thee to take (other) women henceforth' [Q. 33:52], in order that relaxation be imposed on some of the Ikhwān [fellow members of the Mahdiyya] whose hearts are dominated by the hostility of Satan, due to the women whom my Lord, praise be to Him, wanted to be in my matrimonial authority. (*Al-Āthār al-kāmila,* IV: 192-96; the citation is from pp. 194-95)[3]

4. Divorce on ground of difference of religion

The Mahdī adopted a policy of *takfīr*, that is, declaring Muslims, both men and women, who had remained behind in Turco-Egyptian territory rather than joining the Mahdiyya, to be apostates (*murtadd*). In many cases where the spouses were divided between the two territories, this policy caused legal uncertainty as to the status of their marital bonds. The Mahdī based his policy on Qurʾān, 60:10, which ordains: 1. Emigrant women that have converted to Islam in good faith are no longer permissible to their infidel husbands. 2. Muslims may marry them after having paid their *ṣadāq* (nuptial gift). 3. Muslim husbands should sever the marriage ties with their infidel wives after mutual settlement of the expenses. The conventional interpretation is that the verse reflects historically the case of the Meccan women who converted to Islam and immigrated to join the Prophet in Medina.

In the case under review, the husband was left behind in Turkish territory while his wife immigrated to Mahdist territory. Following the wife's plea for divorce (*ṭalāq*), the Mahdī issued the following *fatwā*:

[3] For a full translation of the document with annotation, see Layish 1997: 47-65.

> Whereas the man resides with the infidels (*kafara*) while the woman is affiliated with the religion of Abraham (*dīn khalīlhi*) ... Hence, [in order to bring about separation of the union], request to effect unilateral repudiation (*ṭalāq*) [by the husband] is not needed, nor [is needed the *qāḍī*'s] pronouncement of repudiation on behalf of the husband (*taṭlīq*); rather, her marriage is annulled (*mafsūkha*) on the strength of Q. 60:10... And since the wife stays in a Mahdist territory she is legally presumed (*fī ḥukm*) to be one of the female emigrants; her faith [in Islam] should be tested (*fa-*[*i*]*khtabarū īmānahā*) as God, exalted be He, requires [in the Qurʾānic verse]. If you find it [her conversion to Islam] authentic (*ṣaḥīḥ*) [i.e., in good faith], then she is [*ipso facto*] divorced. If he [the husband] has property (*māl*), then it is deemed booty (*ghanīma*) and should be transferred to the Muslim Treasury since it is legally presumed (*ka-ḥukm*) as the property of infidels within the category of *fayʾ*[4] [i.e., it belongs to the entire Muslim community]. (*Al-Āthār al-kāmila*, II: 94; cf. ibid., III: 70).

Needless to say, the application of the Mahdī's policy of *takfīr* with respect to the Muslim subjects of the Ottoman Empire had no justification in legal terms; it was inspired by purely political considerations.

5. Wills in favor of legal heirs

Q. 2:180 and 2:240 ordain making bequests in favor of parents and close relatives and in favor of widows, respectively. A Prophetic *ḥadīth* provides: "A Muslim who has some property that can be bequeathed may not sleep two nights unless his will is written at his side" (Zaydān, X: § 11192; cf. Wensinck 1936-92, VII: 229i). Q. 4:11-12 and 176 abrogate Q. 2:180 and Q. 2:240 and assign precise fractional shares to some of these relatives and to the spouse relict. A Prophetic *ḥadīth* imposes two restrictions, quantitative and personal, on bequests: one may not dispose by will of more than one-third of his property nor may one make a bequest in favor of an existing legal heir. The will with these two limitations has established itself in traditional Sunnī law (Shīᶜī law allows bequests in favor of legal heirs). Bequests made contrary to these limitations are deemed *ultra vires*

[4] Landed property acquired "by force" (*ᶜanwatan*) is to be reserved as a foundation in perpetuity for the benefit of successive generations of the Muslim community; see Løkkegaard 1991: 869ii.

and hence null and void unless the legal heirs ratify them after the testator's death (Peters 2000: 171-72; Coulson 1971: 213-14; Hallaq 2009: 289-92; cf. Powers 1986: 143-89).

Some jurists are of the opinion that making a will is obligatory (*wājiba*) while the majority hold that it is only recommended (*mandūba*) (Zaydān, X, § 11196ff.). Occasionally the Mahdī cites the aforementioned Prophetic tradition regarding the obligation to write a will without delay out of precaution, since life is short and one might be taken by surprise (*Al-Āthār al-kāmila*, III: 51; cf. ibid., V: 262).[5] The Mahdī does not refer at all to the abrogation of the testamentary verses in favor of close relatives. It may well be that he deems these verses valid and effective; in any case, there is no evidence to the contrary.

6. Infringement of women's chastity entails 27 lashes

On the basis of Q. 33:59 the Mahdī calls upon his adherents to protect women's chastity by properly dressing them and concealing their bodies and heads. Moreover, he urges his adherents who come across a woman "exposing her head [in public] or abandoning her veil (*tārikat li-sitrihā*) to beat her (*fa-*[*u*]*ḍrubūhā*)." (*Al-Āthār al-kāmila*, I: 276). He further instructs his adherents to see to it that women

> [D]o not walk out [of their homes] unless there is some legal (*sharʿī*) necessity nor raise their voice in public (*jahran*); men may not hear their voices unless behind a veil *(ḥijāb*)... Women should conceal themselves behind their clothes... A woman exposing her head [face] even for one moment as well as a woman speaking aloud should be inflicted 27 lashes (*Al-Āthār al-kāmila*, I: 302-3).

Needless to say, 27 lashes do not constitute a Qurʾānic *ḥadd*. It seems that the Mahdī does not deem the offense serious enough to merit one hundred lashes as in the case of unlawful sexual intercourse. On the face of it, the sanction can be

5 This tradition with minor stylistic variation is very common among the Druze, who acknowledge complete freedom of testation; see Layish 1982: 305ff.

defined as a discretionary punishment (*taᶜzīr*). However, this specific punishment has become an established norm anchored in acts of legislation and has consequently ceased to be a discretionary punishment. This norm was innovated by the Mahdī with a view to deterring moralistic offenses such as talking to a strange woman (*ajnabiyya*) not related by marriage or one prohibited for some legal reason, and transactions in tobacco (*Al-Āthār al-kāmila*, I: 303-4).

7. Literal interpretation of Q. 5:38 regarding amputation of a thief's hand

Q. 5:38 provides that a thief, whether a male or a female, is liable to amputation of the hand. The Qurʾānic verse does not provide any definition of the theft. The jurists (with some differences of opinion) define theft entailing *ḥadd* punishment in a very restricted manner. There are preconditions for the amputation to be inflicted, such as the object having been taken away secretly (*khafāʾ* or *sitr*), a minimal value of the stolen object (*niṣāb*), its licit character, the perpetrator not owing any part of the property, the property not being entrusted to him, the property being kept under guard by its owner (*ḥirz*), lack of doubt (*shubha*) averting amputation. If any of these conditions is not met, the perpetrator is liable to discretionary punishment (*taᶜzīr*). (Peters 2005: 21ff., 55-57; Zaydān, V, § 4371ff., 4429ff.; Ibn ᶜĀṣim 1958: § 1538ff.; Heffening 1995: 62-63; Hallaq 2009: 316ff.; Anderson 1970: 374)

On one occasion, following an abortive conspiracy, the Mahdi instructs his emir to restore property that had been confiscated by the Turks and to carry out his policy regarding punishment on crimes of theft: "It is hereby confirmed [from now on] that a thief's hand be amputated" (*wa-qaṭᶜ yad al-sārik muwaffaq*) (*Al-Āthār al-kāmila*, III: 129; Holt 1970: 79-80). The Mahdī makes no reference to the definition of theft, and it seems that the matter is left to the discretion of the emir. On another occasion the Mahdī reiterates his policy regarding amputation of the thief's hand while referring to Q. 5:38 (*Al-Āthār al-kāmila*,.III: 137-39). No indication is given as to whether the Qurʾānic punishment of theft (*sariqa ḥaddiyya*) should be inflicted under any circumstances, regardless of the *sharᶜī* preconditions for amputation of the hand. The Mahdi seems to adhere to the literal

meaning of Q.5:38, which does not specify any preconditions for the application of the Qurʾānic punishment. Ibn ʿĀṣim, likewise, does not mention any preconditions for amputation, though he does mention that *shubha* averts punishment (Ibn ʿĀṣim 1958: § 1544).

There is one clear item of evidence of the Mahdī insisting on amputation of the thief's hand regardless of the value of the object stolen:

> Anyone who steals from you an object regardless of whether it is of insignificant or significant value (*qalla aw kathura*), you must amputate his hand so that on the day of resurrection he will rise handless wandering about randomly the same way as a human being wanders about in this world after having suffered calamity by Satan (*Al-Āthār al-kāmila*, V: 418-19).

On the other hand, in a *fatwā* issued by Qāḍī al-Islām, he clearly deviates from the Mahdī's view regarding the *niṣāb*, though not with respect to *ḥirz*, as a precondition for amputation:

> Regarding the thief, it is by all means necessary to respect the [doctrine] of the minimal value (*murāʿat al-niṣāb*) of the stolen object required for amputation though no legal account (*lā ʿibra*) should be taken as to whether the theft took place within or outside the safe keeping area of the [stolen object] (*ḥirz*) (*Manshūrāt al-Mahdiyya*: 207).

8. Conclusion

The Mahdī's proclamations, legal opinions and decisions are based exclusively on the Qurʾān, the Prophetic *sunna* and Prophetic inspiration through personal communication, the latter source being demonstrated in the permission granted to the Mahdī to marry a fifth woman. No resort has been made to such traditional legal sources as systematic analogy from the textual sources (*qiyās*) or the consensus (*ijmāʿ*) of the *ʿulamāʾ*, nor to the legal literature as elaborated by any of the schools of law. It seems that the Mahdī tends to a literal reading of the textual sources and their assessment at face value while ignoring their interpretation as elaborated in the legal literature. This is demonstrated in his

literal reading of Q. 5:38 regarding amputation of a thief's hand; such a reading actually implies extending the scope of definition of the crime of theft while ignoring altogether the traditional preconditions for effecting amputation, such as *niṣāb*, and *shubha* averting the *ḥadd* punishment. Although the Mahdī is fully aware of the procedure of abrogation (*naskh*), to the extent that he does not hesitate to abrogate a Qurʾānic verse by *sunna*, he does not seem to apply this procedure to the Qurʾānic verses that ordain making a will in favor of the testator's close kin; according to the jurists' conventional view, these verses have been abrogated by later verses dealing with intestate succession.

The Mahdī uses his legal methodology as an instrument for promoting his political and social agenda. Thus the policy of denouncing his political adversaries as apostates (*takfīr*) is intended to consolidate his position as the head of a theocracy; the confiscation of excessive *mahr* is intended to cover the expenses of launching a *jihād* against the "infidels"; and the seclusion of women to promote public morality. Broadly speaking, some of the Mahdī's legal reforms — such as prohibition of *mahr* beyond a certain limit, ignoring preconditions for effecting amputation and making a will in favor of legal heirs — are not compatible with the orthodox *sharīʿa*. The Mahdī anchored his reforms in proclamations that for all practical purposes may be regarded as statutory legislation, and reenforced them by a variety of sanctions that have no basis in the positive law of the *sharīʿa*.

The Mahdī's legal experiment is unique in the sense that it was strongly influenced by Ṣūfism, the most important manifestation of which is the elevation of Prophetic inspiration (*ilhām*) to a central source of law (in addition to accommodating Ṣūfī organizational mechanisms to the Mahdist movement). The Mahdī's experiment is also unique in having been elaborated outside the *ʿulamāʾ*'s control. Actually, it was meant in the first place to deprive the *ʿulamāʾ* of their historic role of elaborating and developing the *sharīʿa*. It is doubtful, however, whether the Mahdī's legal methodology and its application have left any substantial imprint on contemporary Islamic legal theory or positive law. Moreover, it has made almost no impact on the position of the *sharīʿa* in modern

Sudan. The legal methodology of Ḥasan al-Turābī, who played a decisive role in Jaᶜfar al-Numayrī's legal experiment of reinstating the *sharīᶜa*, was inspired by a combination of traditional Islamic legal theory and Western legal doctrines, a combination that can by no means be reconciled with the Mahdī's legal methodology (Layish and Warburg: 89-90, 286).

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