KISSING HANDS AND KNEES: HEGEMONY AND HIERARCHY IN SHARI'A DISCOURSE

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Two categories of Muslim legal texts are utilized in Yemen. In the methodological literature I examine conceptions of common sense and consensus, and the relation of knowledge and ignorance. In the applied literature, I review egalitarian and hierarchical themes. The hegemonic qualities of such texts derive from their appropriation of ordinary wisdom and from the shifting polyvocality of the texts themselves.

I. SHARI'A TEXTS[1]

Only a few men must know the law, attend the funeral service, perform the Jihad and respond to greeting, while the others are exempt. So those who know the law, perform the Jihad, attend the funeral service, and respond to greeting will be rewarded, while the others do not fall into error since a sufficient number fulfill the collective duty (al-Shafi'i [d. 820], 1961).

Knowledge is the understanding of that which is known as it is in reality; ignorance is the imagining of a thing other than as it is in reality (al-Juwayni [d. 1085], n.d.).

A man exercising a lowly profession is not a suitable match for the daughter of a man in a more distinguished profession. Thus a sweeper, a bloodletter, a watchman, a shep-

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[1] The legal texts I refer to are mainly from the Shafi'i "school," one of the four principal schools of Sunni Islam. These include a treatise by al-Shafi'i (1961), a brief method manual by al-Juwayni (n.d.), a concise statement of "positive" principles by Abu Shuja' (1859), which is also embedded in a commentary by al-Ghazzi (1894); and a longer abridgement of similar material by al-Nawawi (n.d.; 1882-4). I also refer to an important Shi'i manual of the Zaydi school by al-Murtada (1972). For reasons of space I have not provided full page citations to these works, and I provide only limited references to the large secondary literature on Islamic law.

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> herd, or a bathhouse operator is not a suitable match for the daughter of a tailor; and the tailor is not suited for the daughter of a merchant or a cloth seller; nor they, likewise, for the daughter of a scholar or judge (al-Nawawi, [d. 1277], n.d.).

II. SKETCH: JUDGE AND CLAIMANT

It is September 1975, mid-afternoon, in the small highland town of Ibb, Yemen Arab Republic.[2] A man from a rural village makes his way along stone paved alleys and through the central market street to the shari'a judge's house near the Great Mosque. Formal court is held only in the mornings, but judges also receive people in their residences after lunch. Arriving at the house, the man pauses to greet two soldier-retainers lounging on benches just inside the front entrance and then climbs the steps to the semi-public, first floor sitting room. His loosely wrapped turban, soiled and open shirt, bare feet, and rough, cracked hands indicate he is a modest tiller of the soil, perhaps a tenant on terraces owned by an Ibb landlord.

Inside the sitting room, the judge is relaxing after his meal. He is dressed informally in a white skull cap and herringbone vest over a long, pure white gown buttoned up to his neck. His dagger, in an elaborate metal sheath and embroidered dagger belt, his scholar's turban, and his long outer coat and shawl hang from hooks on the wall. The fingers of the old judge's hands are long and smooth, accustomed to the discipline of the pen.

Uttering an initial greeting at the door, the man enters and advances across the room toward the seated judge, and then abruptly stoops to kiss the judge's hand and knee. In a nearly simultaneous gesture, the judge brushes off the kisses and raises the man up to a seated position before him. Sitting back on his haunches, the man says to the judge, "I am a weak country person. I am in your hands."

III. A GRAMSCIAN PROJECT

An important advance in the study of what Marx called "ruling ideas" has been to complement an understanding of the forceful imposition of such ideas with analyses foregrounding their consensual acceptance. Gramsci was among the initiators of this move, asserting (in the words of his biographer) that a "system's real strength does not lie in the violence of the ruling class or the coercive power of its state apparatus, but in the acceptance by the ruled of a 'conception of the world' which belongs to the rulers"

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(Fiori, 1973: 238). One problem for Gramsci was understanding how ideas originally articulated by an intellectual elite came to constitute the quietly constraining, received wisdom of ordinary people. "The philosophy of the ruling class passes through a whole tissue of complex vulgarizations to emerge as 'common sense': that is, the philosophy of the masses, who accept the morality, customs, the institutionalized rules of behavior of the society they live in" (Ibid.).

In the meantime, Foucault (1980: 92–102) has advocated a diffused notion of power that is located "everywhere," and that emanates "from below," while Eco (1986: 248) has made light of the simplistic old conception of dominance represented by "an evil boss with a moustache who, at the keyboard of a maleficient computer, taps out the perdition of the working class." Given these sorts of decentered understandings of the locus of power relations, what analytic place remains for authoritative, mandarin-produced textual doctrines? In examining the hegemonic quality of law, how do we now situate and reevaluate that classical source of apparently ruling ideas, i.e., law on the books?

In considering the relation of elite and vernacular knowledge, we must go beyond an emphasis on either "trickle-down" or "trickle-up" effects (Gordon 1984: 121) and stress instead dialectical interconnections. Each type of knowledge should be thought of as standing in a complex, constituting/constituted relation to the other. In such an analysis, however, ordinary knowledge is likely to be slighted, unless it can be provided substantial theoretical weight. This can be accomplished, I suggest, by tying a developed conception of common sense to a de-centered understanding of hegemonic power.

What I am advocating is a refinement of an analytic shift from culture to ideology already under way among anthropologists concerned with the law (e.g., Merry, 1985; Yngvesson, 1985). The thrust of the shift in progress has been to foreground the constitutive power implications, the ideological qualities of shared cultural understandings. The refinement I propose requires, as a first step, the invocation of an essential theoretical substratum of the influential work by Geertz (1973; 1983) on the concept of culture, namely, his conception of common sense. This taken-for-granted, unself-conscious level of everyday social notions is precisely the level of thought addressed as his interpretive method taps the "native's point of view." Anthropological accounts of this type actually represent interpretations of interpretations (1973: 15), inasmuch as the indigenous common sense on which an account is based is itself already "an interpretation of the immediacies of experience" (1983: 76). Aside from the fact that such everyday understandings constitute the essential site of interpretive departure for his method in general, Geertz (1983: 73–93) has also discussed common sense as a special type of "cultural system." He treats

common sense "as a relatively organized body of considered thought," despite the fact that it is "an inherent characteristic of common-sense thought precisely to deny this and to affirm that its tenets are immediate deliverances of experience, not deliberated reflections upon it" (1983: 75). First among the other characteristics he adduces for common sense is a decisive air of "naturalness" imparted to what is, in fact, a highly particular, historically constituted rendering of reality; in turn, this ordinary wisdom takes the givenness of the world it has constituted as its indisputable authority.

The second step in my suggested refinement is to work toward a linkage between common sense and the consensual power it embeds. The analytic move underway from culture to ideology can be developed, in short, by a further move from common sense to hegemony. In my view, the overall task is to complement our understandings of centered, coercive, and explicitly elaborated forms of power, by means of analyses of de-centered, consensual and implicit ones. Hegemonic efficacy owes as much to what is held to be ordinary wisdom as to what is held to be doctrine and depends on the connection between the two.

The Gramscian project I want to undertake is concerned with a particular conception of the world, located, in its most elaborated version, in a corpus of legal texts, the jurisprudence of Islamic law. Comprehensive in its sweep of subject matter, the shari'a contains matters public and private, civil and criminal, and includes, among other things, a full spectrum of ritual rules, a wide range of contract forms, institutions of taxation and charity, and principles concerning procedure and punishment; it is "sacred" in that it is derived from the Quran (the Word of God) and the Sunna (sayings and doings) of the Prophet Muhammad. Thus the shari'a comprises a detailed and authoritative image of the Muslim social order.

As I focus mainly on texts, I make no claim to be fully implementing the overall task outlined earlier. Approaching mainstream works of the Muslim "discoursive tradition" (Asad, 1986), I am concerned with the implicit foundations and unstated implications of explicit textual formulations. I am specifically interested in textual strategies relevant to the construction and exercise of hegemony in the social world. The body of the paper is divided into two sections dealing with two levels of Muslim jurisprudential texts, one methodological, the other applied. Referring to the methodological branch of this literature, I examine the relationship developed there between knowledge and ignorance, and associated theories of received wisdom and consensus. Such texts reach out powerfully to *represent* the common sense of the ordinary person, legitimizing it on the one hand while characterizing it as deficient on the other. At the same time, they assert an author-

itative claim to a more precise and restricted method of defining the categories and contours of reality.

Referring to manuals of applied law, I consider the problematic treatment of social hierarchy, which is also central to the enacted relations of the Yemeni social order. I argue that despite its internal positivism and logical form the textual image presented of Muslim society is deeply ambiguous, variously emphasizing contradictory hierarchical and egalitarian doctrines. Subverting itself at every doctrinal step, the textual discourse offers the means of its own critique. And yet ultimately, in my interpretation, this polyvocality works effectively to hamstring any penetrating or sustained critical effort.

Since their respective provenances are far removed from Yemen in both time and place, the shari'a texts in question might appear to be of questionable relevance to contemporary society in the town of Ibb. The conventional western scholarly wisdom concerning the shari'a is, in fact, that it was largely irrelevant, principally because it has been understood by observers as set in place and immutable from an early date (e.g., Anderson, 1959). Although the texts I cite were (with one exception) written by non-Yemeni jurists, men who lived between six and eleven centuries ago in Egypt, Syria, and Iraq, until the late 1950s, when the old style schools were closed in towns such as Ibb, several of them were committed to memory and interpreted, with the guidance of teachers and the aid of an accompanying commentary literature. The majority of Yemen's contemporary judiciary, including the Ibb judge in Part II were formed in this old instructional system.

The relevance of these texts further depends, however, on their distinctive, but little appreciated qualities as texts. There was no period of western colonial rule in Yemen, and there has been no imposition of western law: officially the shari'a remains the source of all laws. Until it began to undergo a fundamental transformation in the process of being promulgated in a new, restated, and abstract legislative form by the Republican state more than a decade after the Revolution of 1962, the shari'a was not law in the western sense. Likewise, this jurisprudence was located not so much on the books, that is, in written form, as it was embodied in men, transmitted in the old pedagogy from scholar to scholar in exclusively oral-recitational links. This pedagogical style was part of a wider, epistemological valuation of the spoken word and a devaluation of (despite heavy practical reliance on) written forms (Messick, forthcoming). The text lives not only in its human embodiers but in its interpretive articulations, that is, in social relations.

As a counterpart to this living, embodied and recitational quality, the texts are characterized by an insufficiency, because of their extreme (and thus memorizable) concision and their implicitness, which necessitated interpretation. If they were, in a sense, immu-

table, that is, conservatively preserved through generations of teacher-to-student recitational links, their insufficiency amounted to a mutable instability, a radical openness to the world, and a continuing requirement of commentary and interpretive intervention (both by non-precedent setting formal judging and by unofficial but authoritative opinion giving by jurisconsults known as *muftis* (Messick, 1986)).

IV. THE TERRAIN OF KNOWLEDGE

From the perspective of the Muslim jurist/scholar, society is divided into two general categories of individuals, the *'alim* (pl. *'ulama'*), the individual who has knowledge (*'ilm*), and the *jahil* (pl. *juhhal*), the individual without knowledge, an "ignorant person." The acquisition of knowledge, the centerpiece of which is the shari'a itself, is an activity securely hedged about with socially vested honor. A student, such as the Ibb judge in his youth, who began committing to memory the basic local shari'a manual authored by al-Nawawi, soon encountered the statement that working to gain knowledge "is among the finest of pious deeds." The opening words of the text are that an individual who becomes knowledgeable in shari'a jurisprudence is one God "has shown favor to and chosen among the believers." Numerous early Muslim traditions, studiously collected, memorized, and repeated by generations of jurists, articulate related ideas: that seeking knowledge opens a road to Paradise; that knowledge accrues to individuals as a sign of divine grace, etc.[3] In the Quran there are related statements: "God raises up by degrees [*darajat*] those among you who believe, and those who are given knowledge" (58: 11; cf. 39: 9); and, "Say: My Lord, increase me in knowledge" (20: 114).

Scholars elaborated the opposing social categories of 'alim and jahil and their characteristics, knowledge and ignorance, in a methodological literature (in Ibb, al-Juwayni, n.d.). Related collective social categories frequently used in scholarly discussions are "the special people" (*al-khawas*) v. "the ordinary people" (*al-'awamm*, or *al-'amma*; sing. *'ammi*, an "ordinary person"), and "the scholarly people" (*ahl al-'ilm*) versus "the people of the mundane world" (*ahl al-dunya*). Yemeni scholars served not only as judges but also as heads of state, local governors, and military commanders. Unlike most other historical societies in the Middle East, where there was a marked division of labor between the wielders of the pen and the sword, scholars in Yemen (like those in contemporary Iran) have had combined intellectual and political-military identities.

Within the categories of scholar and ignorant person there were further subdivisions. Among scholars themselves, there were long-standing debates and deep intellectual rifts concerning what

[3] See Wensinck (1971), s.v., "knowledge"; Rosenthal (1970: 78ff).

properly constituted knowledge. Some, the mainstream individuals Hodgson (1974) has referred to as the "shari'a-minded," emphasized straight jurisprudence, although their ranks were subdivided into several major and minor interpretive "schools." Others, such as the Sufis, advocated various types and combinations of mystically oriented forms of knowledge and associated esoteric understandings of the Quran and the Traditions. In Ibb, however, the basic shari'a manuals were the point of academic departure for the scholarly of all intellectual bents. Aside from such vertical cleavages within the elite, there were also horizontal or hierarchical ones. Within the "shari'a-minded" jurist category, for example, a range of attainment levels was identified, from individuals complete in their knowledge to others who were deficient. Such differences of intellectual status among shari'a jurists had a direct bearing on qualification for, as well as social responsibilities resulting from, the crucial activity of legal interpretation.

At the base of the scholarly treatment of the category of jahil and the condition of ignorance is an old understanding of human nature. "A human is an essentially ignorant being [jahil] who acquires knowledge," Ibn Khaldun (1968, vol. 2: 887) wrote in the fourteenth century, summarizing an earlier Muslim (and Greek) philosophical tradition. In the sphere of ignorance, some jurists identified simple and complex versions. Relative ignorance was also defined in terms of differing sorts of knowledge, the necessary and the acquired. Acquired knowledge, the type marking the scholar, is based on the learned skill of rational deduction. Necessary knowledge, by contrast, characterized by the absence of any capacity for or intervention of deduction is based on understanding derived from the five senses, supplemented by what is known as *tawatur*, the "knowledge of received wisdom."

Conveyed as uninterrupted tradition, tawatur knowledge can be understood as an integral part of what Geertz refers to as the common sense level of culture. According to the Muslim jurists, this common wisdom is not necessarily mistaken, especially inasmuch as it represents an authoritative, if rudimentary, acknowledgment of a given world. Two examples jurists give of the soundness of such wisdom is, "the knowledge ('ilm) of the existence of Mecca," site of the Muslim pilgrimage and scene of the earliest historical events of the Islamic era, and also the recognition that there was a Prophet named Muhammad. Some of the characteristics of tawatur knowledge connect this Muslim conception to Geertz's usage. As a type of necessary knowledge, the received wisdom collectively held as tawatur is classified with knowledge derived from sensory perceptions, which directly imposes itself on the intellect without having been arrived at through reflection or deduction. Also as are sensory perceptions, tawatur knowledge is not subject to doubt as to its accuracy, but is taken instead as sim-

ply given in the order of things (cf. Zysow 1984 for further discussion).

Tawatur knowledge, of course, represents a scholarly, conceptual rendering of the nature of common sense rather than the sense itself. To this extent, Muslim jurists reflecting on tawatur knowledge share an analytic posture with Geertz on common sense. The object of tawatur theorizing is narrower however. The Muslim scholars were exclusively concerned with an area of common sense containing kernels of historically significant received wisdom or widely held ordinary knowledge of legitimizing relevance. In the Muslim tradition, tawatur is a collective and popular version of another related type of transmitted knowledge, known as Traditions. With the Quran itself, Traditions are one of two basic sources of formal jurisprudential authority.

Creativity is at issue in the differentiation of necessary and acquired types of knowledge: from the point of view of scholars, ordinary people are equipped, in a passive sense, for following or affirming known and established ways, but they are not properly prepared for actively ascertaining correct courses of action in novel circumstances. Such is the analogical reasoning-based interpretive task of the trained scholar. The advanced manual by al-Juwayni provides definitions of knowledge and ignorance that have been cited at the outset. According to these definitions, the contrast of 'alim and jahil is one of disciplined reason v. undisciplined imagination, and what is at stake is an accurate and developed knowledge of "reality" (*al-waqi'*). The link of this reality with Islam is at least indicated by the scholarly efforts to pin down its precise nature. As one commentator notes, "some say it [reality] is what God Almighty knows," while for others it is what is inscribed on the celestial "Hidden Tablets." To acquire knowledge, then, is not only to more completely realize human potential, but also is to gain active access to an understanding of the world as constituted by God. Such authoritative classificatory thought has powerful consequences. A necessarily passive commonsensical wisdom of the untutored is definitively represented as the characteristic mentality of ordinary people (although, by definition, it must be known to scholars as well). The condition of having this sort of wisdom alone is then juxtaposed with a more complex, active, and analytic wisdom of the scholarly, which is portrayed as providing its practitioners with more secure and definitive access to a knowledge of reality.

Language is a model for this knowledge and power relationship. Arabic is subdivided by its speakers into a classical or literary language, called *al-fusha*, or simply "the language" (*al-lugha*), and a purely spoken language known variously as *al-'ammiya* ("ordinary language," i.e., pertaining to the 'ammi, the "ordinary person"), *al-darija* (a word related to the d-r-j root, which is also used to indicate a "degree" of status difference in the previously cited

Quranic text), or *lahaja* ("spoken dialect," a word carrying a literal association with the tongue). There is an identification of scholars with the classical written language and of the uneducated ordinary people with the spoken dialects (although, again, scholars know dialects as well). The most perfect example of the language is the Quran, "an Arabic Quran," as it describes itself. In the manuals some words are first introduced in terms of their meaning in the language, and this is followed by their meaning "in the shari'a." Shari'a discourse represents a specialized subset of formal Arabic usage in the same way that jurisprudence is a specialized subset of all knowledge.

Grammar and the other language sciences pertain only to the written language. It is not that dialects have no grammar, of course, but that grammar, the recognized formal discipline, is associated exclusively with what is defined as the language. Likewise, to become articulate means to become so in the formal language, while the important moral-educational transformation summarized in the concept of *adab*, entails both a learning of appropriate, restrained behavior and an acquisition of the literate skills. A Yemeni scholar (al-Akwa' 1980: 11) writes that a particular strength of the old instructional system, in which the Ibb judge was formed, was that it allowed students the opportunity to "train their tongues" with grammar. Aside from what this tells us about the ideally disciplined nature of scholarly discourse, it also implies that the speech of the uninstructed is as unruly as the individuals are themselves irrational.

As a group, jurists came to exercise a decisive form of consensual legitimation that was basic to the development of the shari'a. "Consensus" (*ijma'*), departing from the two fundamental sources (Quran and Traditions), and based on interpretive efforts undertaken, was the final determinant of doctrine. As al-Juwayni says, "consensus is the agreement of the scholars of an era on a matter." This conception of the locus of the consensus-giving group is narrower, however, than the idea attributed to the Prophet Muhammad in a well-known Tradition (quoted by al-Juwayni), which serves as the textual authority for ijma'. The Tradition simply states, "My community will never agree on error." This original expression of the fundamental infallibility of the Muslim community anchored the legitimacy of doctrinal elaborations in the consensus of the collectivity.

This methodological literature, exemplified by the cited work of al-Juwayni studied in Ibb, demonstrates a complex awareness of the legitimizing potential of common sense and consensus. Common sense is both appreciated and appropriated for its authority-giving qualities and also denigrated for its irrationality and vulgarity of expression. Consensus is recognized as a decisive force, even as its ground of determination shifted from the populace to the scholarly elite. Exemplifying a strategic hegemonic sophistication,

this jurisprudence makes analytic distinctions among different levels and sources of knowledge, and problematizes their interrelations.

V. SHARI'A SOCIETY

At the base of the shari'a image of the world is a valued egalitarian ideal, contained in such frequently encountered constructs as the notion of the *umma*, the "community of Muslims"; the *'ibad*, the "believers"; *al-muslimin*, "the Muslims"; and the institution of the mosque, locus of collective prayer gathering. As its basic social feature, Islam launched a novel form of egalitarian community of the faithful, which stood opposed to both the tribal and urban hierarchies of seventh century Arabia. This egalitarianism, an "insistence that all men [are] on the same level before God" (Hodgson, 1974, vol. 1: 281; cf. Rahman, 1968: 3, 19), is the fundamental presupposition running through the shari'a discourse and is conventionally considered the hallmark of Islam itself.

The central predicament of the ideally egalitarian society is that there is an inevitable degradation as the divine plan is humanly grounded, an inevitable falling away from an initial approximation of perfection (the ideal community of the Prophet's day). As one element in a more general move from an original to its supplement (Derrida, 1976), the predicament of Muslim social history is also analogous to the transit of knowledge from the singular, oral, divine, and perfect Quran, considered both the Word of God and the ultimate source of the shari'a, to the plural, written, humanly-constituted, flawed, and disputed version of this Truth, which is the jurisprudence of the shari'a manuals. The relation, and associated movement, of God to human is also that of the Word to writing, and of equality to hierarchy. If the Word itself is egalitarian, its interpretation is hierarchical; in being read the text is hierarchized. In a fundamental act of power, Muslim interpretation has necessarily entailed both social-order inequalities and an ingrained sense of progressive intellectual and moral decline in history.

Another problem for an egalitarian society is associated with the valuation of knowledge. This is the potential conclusion that, as Rosenthal (1970: 2) has bluntly put it, "*'ilm* [knowledge] is Islam." Rosenthal observes, however, that scholars "have been hesitant to accept the technical correctness of this equation." Their hesitancy is based on more than philosophical grounds, however, for the equation of knowledge and Islam, and thus of 'alim with Muslim, entails exclusive and divisive hierarchical implications in a society where knowledge has always been far from universally accessible or socially distributed. Implicitly, however, the relation of God to human is reproduced within the human sphere as that of 'alim to jahil.

If instruction is the avenue for acquiring the distinctive style of intellectual discourse, the absence of such instruction means that an individual remains, technically, in Ibn Khaldun's state of ignorance. In Ibb, children before the age of maturity and discernment (both legal statuses) are known as juhhal (pl. of jahil), literally, ignorant ones. Children are wild, animal like, not fully human. For the scholarly, the achievement of maturity and discernment do not in and of themselves produce a change in jahil status. Rural people, such as the claimant of the sketch, ordinary townsmen (the *'amma*), and women, all of whom did not usually receive instruction, therefore remained, in the view of scholars, in a quasi-childlike condition of ignorance. All are conceived of and are still occasionally referred to as *juhhal* by older scholars, such as the judge.

It is just these sorts of discerning but untutored adults who pose the following societal contradictions: Is the community fundamentally egalitarian, stressing the cohesiveness of equals, or rather, is it hierarchical, emphasizing differences, among them levels of knowledge? Is simple faith a necessary, but insufficient credential? Is there, in fact, an equation between knowledge and Islam?

Addressing the problem of rural people who reportedly did not carry out such Islamic "pillars" as prayer, fasting, and pilgrimage, the noted early nineteenth century Yemeni scholar/jurist Muhammad al-Shawkani (1969: 39–40) states that such people have the legal/moral status of people of the pre-Islamic age of ignorance, known as *al-jahiliyya* (from the word jahil). They were beyond the reach of both the state and the faith, and thus of the shari'a. Townspeople, residents of state-controlled centers, represented a still more problematic category, however. While a negative conclusion concerning the imagined or actual non-Muslim conduct and status of populations entirely beyond the pale may have come easily to scholars, a more troubling assessment was required in connection with the more intimately known, uneducated urban 'amma, the ordinary populace. In Yemeni historical writing, which is explicitly devoted to the lives of the "honorable ones," the 'amma figure only rarely as the faceless mob that rises up at junctures of political disarray. According to Shawkani, these people are mostly juhhal, and yet he notes that they are frequently observant, and willing to receive instruction (Ibid.). They are the majority, the backbone of the town-based Muslim community, and yet, as Muslims, in the view of the scholars, they are marked by their ignorance.

The association of knowledge and Islam also contributed to defining the secondary status of all women. Beyond the well-known shari'a-defined restrictions on women regarding such matters as marriage and divorce, inheritance, and witnessing, there was a more subtle social positioning that resulted from the fact that

knowledge and Islam were not only associated with each other, but also with being male. Among Yemeni men it is commonly understood that women are juhhal. In the Quran, the term *daraja*, already mentioned as meaning a "degree" of status difference based on knowledge, also refers to a "degree" of difference based on being male as opposed to female.

An important articulation of the egalitarian/hierarchical contradiction is contained in the principle of "collective duty" (*fard kifaya*) elaborated by the early jurists. According to this doctrine, the Muslim community as a whole is kept on a legitimate and observing basis as long as a sufficient number of individuals performs the necessary collective duties imposed on the community by God. Among these duties, succinctly summarized by Muhammad al-Shafi'i (1961), are the undertaking of the funeral prayer and the Holy War and being knowledgeable in the provisions of the shari'a. While legitimizing a necessary form of social difference in passing, al-Shafi'i nevertheless seeks and manages to foreground a higher value: the identity, responsibility, and cohesiveness of the collectivity. As a resolution in favor of an egalitarian principle the doctrine must be considered imperfect, however, in that it envisions special status gained (or anticipated) through the mechanism of unequally distributed ultimate reward (in the afterlife).

Shawkani (1969: 2) sought to refine the 'alim/jahil distinction. In his discussion of what he refers to as the "two statuses" he speaks of their respective "responsibilities." Despite the fact that the 'alim, because of knowledge acquired, carries additional societal burdens that set him apart from the jahil, Shawkani argues forcefully that in many important respects there are no differences between the two categories of individuals. "The 'alim," Shawkani writes, "is equivalent to the jahil as concerns legal and devotional responsibilities" (Ibid.). Thus he endeavors to reassert fundamental equality, especially as regards basic Muslim obligations, while at the same time recognizing and differentiating the "two statuses."

Witnessing[4] is an example of a key doctrinal area in which a predominant, egalitarian formula, namely, that all Muslims are by definition persons whose legal testimony is admissible (*al-muslimun 'udul*), is subject to qualifications that open the door to the concerns of a hierarchical society. In Nawawi's manual, there are five general conditions listed for a witness: he (or she) must be a Muslim, free (not slave), discerning, of "irreproachable character" (*'adl*), and serious. In a briefer manual by Abu Shuja' (1859) also used in Ibb, these separate conditions are summarized in the single requirement of *'adala* (from 'adl), that is, "justness" or "probity,"

[4] For recent anthropological discussions of Muslim witnessing see Rosen (1979; 1980–81) and Geertz (1983: 190ff.); on the problematic status of written documents as evidence, see Messick (forthcoming).

based on irreproachable character. The absence of any requirement bearing on knowledge or instruction is notable: the technically ignorant appear to be as good as any other witnesses. For a potential judge, to be sure, there are knowledge requirements, but in witnessing, the linchpin institution of legal processes, all (free, sane) Muslims, regardless of intellectual attainments, are equally eligible to give testimony.

Even the normative concern for what is to constitute irreproachable character is tempered by a sensitivity to acceptable differences of person, time, and locale. Grave sins aside, respectable character is actually considered contextually relative, being exhibited in "one who models his conduct upon the respectable among his contemporaries and fellow countrymen." In this Muslim version of the doctrine of the "credible witness," the concern is not so much with absolutes as with deviations from local societal or even personal norms, which are taken as indicative of an instability of character thought to bear on one's capacity as a truthful witness. Discussing concrete behaviors that can put a reputation in question, Nawawi gives a number of examples. While most of these pertain to the common people, in one instance there is a specific reference to jurists. This is the hypothetical case of a jurist (*faqih*) who wears a particular type of gown and raised turban, in a place where these are not customary for jurists. Nawawi's other equally culturally-specific examples of an individual lacking in the requisite seriousness are one: "who eats in public and walks there bareheaded"; "who embraces his wife or his slave in the presence of other persons"; "who is always telling funny stories"; or "who habitually plays chess or sings or listens to singing, or who dances for an excessively long time." These examples are concluded, however, with the cautionary statement that "it is well to take into consideration that these matters differ according to individuals, circumstances and places."

Following the relatively egalitarian orientation of this initial discussion of the qualifications of witnesses, Nawawi then briefly raises a further issue, and in doing so touches on hierarchical concerns of a different order than have been discussed so far. The issue in question is the occupation of the potential witness. "Base occupations, such as blood-letting, sweeping, and tanning," Nawawi writes, "practiced by one of high social position for whom it is unseemly," disqualify the individual as a witness. Although social levels and conceptions of honor and dishonor are certainly involved here, there is no crude assertion that those involved in the "base" occupations are for that reason alone simply unqualified as witnesses. It is rather the mismatch of social position and occupation, the lack of conformity of background with work activity that cause a question to be posed about an individual's character. This is clear from Nawawi's next statement: "if [such an occupation] is customary for the person, and it had been the craft of his father,

then there is no disqualification." That truthfulness is thought to pertain to individuals of differing statuses, insofar as they are engaged in suitable activities and do not deviate from appropriate and established personal norms, is part of a larger, distinctive conception of justice as consisting of a balanced equilibrium of diversity. "Injustice" (*zulm*), Mottahedeh (1980: 179) observes, citing early Arabic dictionaries, is not so much oppression as "putting a thing in a place not its own" or "transgressing the proper limit."

A. Wider Hierarchy: Further Problems of Mismatch

The brief reference to "base" occupations in the discussion on the qualification of witnesses provides an opening to a wider field of inequality. It is relevant to cite a Quranic text employing a generic notion of *darajat*, or "degrees" of ranked difference. God says (Quran 43: 32), referring to the people of the world, "We have apportioned among them their livelihood in the world, and we have raised some of them above others by degrees, so that they may take others in service." This general recognition of the social fact of hierarchy in worldly circumstances and of God as its author is immediately followed, however, by a powerful undercutting qualification, which reaffirms an ultimate and countervailing egalitarian principle: "[But] the mercy of your Lord is better than that which they amass."

Occupations figure importantly in textually established rules concerning suitable marriage partners. Within the extensive discussion of marriage rules there is a subset concerned with *kafa'a*, or "equivalence" (cf. Ziadeh, 1957). Such rules about the status or honor equivalence of marriage partners entail as their active consequence a form of stratum endogamy. Profession is one of five criteria to be taken into consideration in determining if a suitor is an appropriate match. The other four are physical defects, free status (as opposed to being a slave), character, and status according to "descent" (*nasab*). This last criterion, descent, is dealt with in numerous places in these shari'a manuals; it is an element of the hierarchical context in which Islam emerged that was not fully revised by communitarian principles. In this context, at the highest level of generality, descent difference means that "a non-Arab is not the equivalent of an Arab woman," but it can also mean that an individual not of the Prophet Muhammad's extended "tribe" is not appropriate for a woman of that tribe, or, more narrowly still, that one not of the Prophet's immediate descent lines is not suited for a woman of those lines. A variety of status honor is derived from descent, and this is an issue in determining appropriate marriages, both in general and with respect to the exemplary and specific case of individuals who were known as "descendants of the Prophet" (*sada*). In Yemen and elsewhere in the Muslim world these blood descendants of the Prophet typically have historically

represented the highest layer of society, the purest realization of honor through lineage. In practice, in places such as Ibb, strict endogamy has been frequently violated among the sada themselves, while endogamy has generally occurred on the level of the elite as a whole considered in relation to the lower social ranks.

Occupation is a separate, but often in practice, related matter. Nawawi's statement (quoted in Part I) on marriage equivalence according to profession provides a concrete image of an entire stepped hierarchy structured in occupational terms alone. Marriage mismatches here involve a man of a lower rank seeking the hand of a woman whose father's occupation places her on a higher rung. The resultant social hierarchical steps run from a bottom occupational level (sweeper, bloodletter, watchman, shepherd, bathhouse operator) through the level of the tailors to the level of the merchant and cloth seller, and finally to the highest level, that of the scholar and judge.

Still another, analytically separable sort of ranking underpins the Muslim philanthropic institutions, which are also treated in the shari'a manuals. In this doctrinal area, there is a presumption that the social world is composed of a spectrum of levels of wealth. God differentially "apportions" to individuals their "livelihood in the world." The chapters on paying the tithe concern one end of the relation—those who have the property to be taxed or the wealth to give as charity. Related chapters concerning philanthropic acts and implying wealth deal with such unilateral dispositions as gifts and the creation of family foundations and charitable trusts. And a separate chapter deals with the other end of the relation, the legitimate recipients of such official distributions and private charity. The poor and the indigent, separately defined statuses in this jurisprudence, are among the categories of individuals earmarked for the appropriate receipt of alms.

While wealth and social honor are not coterminus in this system (cf. Weber, 1946), as wealth alone is of ambiguous social value, there is nevertheless a connection between wealth and other types of status rankings. In the definition of the "poor," for example, the concern with mismatches of status and occupation is restated, with special reference to scholarly endeavors. "One may be legally called poor," Nawawi states,

> . . . even though [one is] able to gain a living by some work not suitable for one. Thus a learned man may be called poor though able, strictly speaking, to provide for his own needs by exercising some trade that would prevent him continuing his studies.

All the strands of rank discussed thus far—knowledge/ignorance, gender, marriage equivalence, descent, occupation, and wealth—concern only the mainstream population of the legally-imaged Muslim community. In addition there are two other, still wider, social categorizations that entail further hierarchical impli-

cations and that may be combined with some of the already discussed ranking issues. These global categories are "free" as opposed to "slave" and "Muslim" as opposed to "non-Muslim" statuses; both are covered in manual chapters. Slavery was not highly developed in Yemen, but a large Jewish population made the shari'a sections on the "non-Muslim" extremely relevant. As is characteristic of all status systems (according to Weber, 1946), there is detailed consciousness of all of these complexly interrelated hierarchical strands. Some individuals, depending upon their divine allotments in life and their strands of identity, are "raised up" by "degrees," and a layered quality of social levels, known as *tabaqat* (e.g., in Ibn Khaldun, but also in Yemeni conceptions) is the envisioned social product.

B. Egalitarian Crosscurrents

Aside from the general, and constant, reiteration of such potent egalitarian categories as the believers, the Muslims, and the community, not only in the first quarter of the manuals devoted to Muslim ritual but throughout the other chapters as well, there are particular doctrinal areas where egalitarian themes are further developed and seem to predominate. Perhaps the most important, since it has implications for more than half of the shari'a's actual contents, concerns the capacity to contract. If such features as technical "ignorance" (jahil status), or "base" occupation, or non-noble descent, or gender, etc., had been taken to constitute an impediment in capacity to contract, social life would have been heavily impaired, as significant blocks of individuals, including the overwhelming majority of the population, would be unable to make legal acts. In this dimension of the jurisprudence, however, there is a strong egalitarian emphasis based on the central but largely implicit construct of the individual. "Contractualism," according to Hodgson (1974, vol. 2: 352), through which "ascriptive status was minimized, at least in principle,"[5] is considered the characteristic thrust of the shari'a, and of Islamic society in general.[6]

Being an adult and of sound mind (slavery is a special case) are all that are required of an individual to enter into a binding shari'a contract. The "mind" that enables the ordinary, sane adult, male or female, to contract may not be fully rational in the developed, reasoning sense defining the status of the educated, but it is taken to be rational enough for the routine conduct of affairs. As a form of necessary knowledge, common sense may be an imperfect rendering of reality, but for the purposes of legal undertakings

[5] Hodgson says elsewhere (1974: 348) that "there were *traces* of inequality both in shari'a and in custom" (emphasis added).

[6] Contractual and related idioms (exchange, bargaining, negotiation) have figured prominently in recent anthropological accounts concerned with Morocco (e.g., Geertz, 1979; Rosen, 1979; 1984).

it is considered sufficiently accurate. An egalitarian principle slices through the structures of difference.

Another way this may be understood, of course, is that far from serving to reduce or counteract hierarchical tendencies found elsewhere in the jurisprudence, the egalitarian/individualistic principles underpinning contractual capacity worked to mask, and indirectly support, actual inequalities between the parties engaging in the contract in much the same manner, for example, as similar assumptions in the capitalist wage-labor contract.

The same sort of individualism is also behind unilateral dispositions in the shari'a. Thus making a will is an act radically open to all, including non-Muslims (but not slaves). It is a capacity, Nawawi states, "accorded by the shari'a to everyone, whether Muslim or not, without distinction of sex, [in as much as the person is] adult, sane, free." Unstated here is the fact that making a testamentary disposition implies having an estate to dispose of: the circumstances that are assumed and addressed are those of the few, a wealthy elite.

C. Hierarchy Resisted, Hierarchy Affirmed: Court Procedure

Hierarchical mismatches in court drew particular attention from the jurists. The manual sections on legal procedures before the shari'a court judge represent both an acknowledgment of the existence of social differences and a determined effort to reduce their impact, at least in this specific institutional setting. The key principle all manuals articulate is that in this forum the judge must treat disputants equally. Immediately, within the same phrase articulating the rule of "equality" (*taswiya*), however, a major qualification is stated. Unequal, preferential treatment by the judge is appropriate if the two disputants are a Muslim and a *dhimmi*, a "protected" person of the Book, that is, a Jew or a Christian. The Muslim can be legitimately raised above the dimmi in the attentions of the judge.

One manual says that the required egalitarian treatment of Muslim disputants is to be embodied in three things: space, word, and regard. The disputants should be seated together, in the same row before the judge; they should be addressed in an equivalent manner and be given the same opportunity to speak and be heard; and the judge should not look at one of the parties and not at the other. Nawawi adds that the judge should treat the two parties equally in such detailed matters as standing up (or not) when one of them enters the court and in returning greetings. Judges are specifically forbidden to favor one side by providing suggestions as to how to make a claim or word testimony, or to formally hear one party without the other being present.

A further, recommended practice for the judge is couched in the language of "weak" (*da'if*) and "strong" (*qawi*), a social vocab-

ulary used in Yemen and elsewhere to characterize not physical, but rather status or honor differences between claimants. It is thus suggested that the judge advance or give precedence to the claim of the weaker of two individuals competing to be the initiator of an adversarial proceeding. Directives sent to a judge in the early centuries of Islam advocate similar measures. Both equal treatment and advancing the cause of the weaker party are summarized in one version: "Act impartially between people in your audience-room and before you, so that the man of noble status (*sharif*) be not greedy for your partiality and the man of inferior status (*da'if* [lit. "weak"]) despair of justice from you." Another, probably earlier letter says, "admit the man of inferior status (*da'if*) so that his tongue may be loosened and his heart emboldened" (Serjeant, 1984: 66, 69).

This idiom of weak and strong also figures in one of the manuals in connection with a discussion of the physical place where a judge should hold court. This place should be in the center of the town and well known, the jurist writes, so that both "the local person and the outsider and the strong and the weak" will have access. To facilitate this open access, the judge should post no guards at the outside door to block or regulate entrance. To counterbalance the gender-specific inequalities that might constrain the behavior of women seeking access to the judge, special rules are established. In one manual it is said that the judge should give priority to hearing women's cases, while another recommends that the judge set aside a separate session for women's claims.

All such measures to reduce hierarchical influences focus on the relationship between the parties in a dispute. It is in this relation that a mismatch of status is considered especially problematic and where formal equality helps create the aura of judicial impartiality that legitimizes judgments. Some of the apparent clarity of the strategies to bring about the desired "equality" begins to dissolve, however, as one reads further in the more expansive commentary literature. One commentator says, "the judge should seat the two parties before him (lit., 'in his hands'), if they are equivalent in honor (*sharaf*)." This ambiguous statement is only partially resolved as the commentator goes on to give as an important exception the case of a Muslim and a dhimmi appearing together as adversaries. A commentator in another manual follows the rule of "equivalence between the two parties," with this note: "except for the difference between the 'high' (*rafi'*, lit., 'raised up') and the 'low' (*wadi'*), or between the believer and the sinner (*fasiq*), due to his [the judge's] respect for Islam. The privileging of the believer over the [Muslim] sinner is not what is at issue in the principle of equivalence in the judicial session." Issues of high and low status are simply reinserted in the discourse, while in separating the righteous from the sinners, difficult problems, similar

to those previously discussed in connection with identifying the just witnesses, are raised.

If hierarchy in the relationship between the claimants seems to subtly slip back in despite the strong egalitarian principle advanced to control it, another form of hierarchical relation in the courtroom remains unexamined, unquestioned. This is the relationship between the judge and the claimants, evoked in the sketch and then discussed as the relation of 'alim and jahil. One manual recommends that the judge have other local scholars present at his court and that he consult with them before arriving at a decision. While the forum is to proceed on the basis of an egalitarian attitude regarding the claimants, a necessary but unstated form of hierarchy is nevertheless essential to its overall organization.

D. Kissing Hands and Knees

While recognizing the thoroughly Muslim, and at times and places egalitarian character of Yemeni society, western students of Yemeni social structure (e.g., Gerholm, 1977) have also debated whether "caste" might be the appropriate designation for some of the sorts of hierarchical relations found in the highlands.[7] Yemenis themselves have understood their own social order with both communitarian and a diversity of "layer cake" type conceptions, the latter replete with elaborated social categories and associated strata terminology. A modicum of social mobility has always been part of the system, however. Achieved status could be attained through the acquisition of either knowledge or wealth. Limited possibilities of advancement along both avenues serve, in practice, to defuse some of the outward rigidity of the social ranks. The social order is, in any case, far more flexible and complex than the indigenous "layer cake" type of theory would have. For example, while descent groups of descendants of the Prophet, scholars, and tribal elites seem uniform and enduring, there has always been considerable variation among individuals, sloughing off of unsuccessful segments, and long-term processes of rise and fall among the "leading families."

On the level of interpersonal relations, status differences are played out as in the posturing sketched in the encounter between the judge and the self-described weak villager. The term *haiba*, meaning "awe," "fear," or "respect," refers to the sensations aroused in one individual by another, and to the social atmosphere that is found in interactions between superiors and inferiors. Kissing the hand and knee is the correct gesture of status behavior

[7] For reasons of space, I have not attempted here to discuss such ongoing transformations as the new egalitarian category of the "citizen," or the dissolution of old status relations and the emergence of class relations. These are associated with the new legislated form of the shari'a and the new character of the Yemeni state.

when a subordinate confronts the haiba not only of scholarly judges, but also the differently constituted haibas of teachers, imams, Sufi mystics, descendants of the Prophet, tribal shaykhs, powerful landlords, and fathers. There are structural analogies linking these several haibas, but in another sense each represents a separate strand of hierarchical identity and a distinct type of encounter. A scholar's haiba is specific to his knowledge: it is the haiba of the text the scholar embodies and interprets.

Scholars, such as judges, consciously strove to cultivate their haiba by such means as their attire and demeanor, both of which receive comment in the legal literature. A proverb, "a tribesman's brain is in his eyes," was cited to me by a judge to explain why he had to present himself in public as an imposingly attired figure. Shawkani (1969: 29), speaking critically of abuses in the early nineteenth century, however, mentions the type of judge who wears a "turban like a tower." But he nevertheless refers in admiration to one of the noted judges of his era saying, "his haiba was great in [people's] hearts" (1348 A.H.II: 333). Sternness and distance in comportment, learned as part of a scholar's formative disciplining, are also required. The haiba of a judge served positively to create the properly serious atmosphere of the tribunal. But the haiba imbalances of opposing claimants had to be counteracted to insure that the "truth" would emerge. The "equalizing" procedures functioned, in part, to reduce haiba effects. Thus the "weak" man's claim should be given preferential treatment so that "his tongue may be loosened and his heart emboldened."

A South Arabian proverb speaks, however, to the other side of the haiba behavior of respectful kissing: "a kiss on the hand means hatred of it." The basic gesture of respect comprises a silent hostility. For those of subordinate status who live the ambiguity of inclusion and exclusion, of equality as members of the community of Muslims and inequality with respect to the relations of hierarchy among the same Muslims, an unvoiced resistance is embedded in the very recognition of stature. While haiba behaviors underline the conscious, calculated and constructed quality of status interaction in the view of the elite, they also illustrate the ambivalent combination of rejection couched in acquiescence on the part of the subordinate.

VI. THE GROUND OF RESISTANCE

Among the subordinate, the expected sorts of critiques are directed at individuals and processes, at specific or stereotypical judges or scholars, and at particular negative personal experiences with the courts. To an important extent, however, the jurisprudence provides the terms of such critiques in its rules for how things should be, including those (not referred to above) against such frequently objected to practices as corruption, conniving, de-

laying, etc. What is significant is that all such critiques fall within an area of the shari'a already open to questioning, even specifically constituted for critique, while another, deeper level of the shari'a lies beyond this, unquestioned, unquestionable. At this level, where shari'a principle is virtually indistinguishable from consensual and collectively held common knowledge, are located, for example, the largely implicit construct of the individual, the general social form of the contract, the recognition of hierarchy and the egalitarian concern for mismatches, and assumptions concerning the existence and the importance of knowledge. The position of scholars and others of high status vis-à-vis the subordinate is implicitly fused to the entire dialectic of the God to human relation, especially as this relation is replicated within the social order and throughout history. This is the shari'a as a societal discourse that saturates and is saturated by a given reality, that articulates the nature of a particular world, that is the possibility of thought itself (Williams, 1977). As Gramsci said of bourgeois ideas in workers' minds, this deeper level of the shari'a discourse is "waiting in ambush"[8] for those who would attempt to carry out social critique and reform.

What I have focused on in my reading of the applied manuals concerns a further impediment to resistance: the polyvocality of the texts themselves. The egalitarian/hierarchical theme I have examined illustrates that, as an ideology, the shari'a is a kind of moving target. Shifting and elusive in the social image it advocates, it clouds its connections to the interests it might serve. As it encompasses and provides an open space for intellectual debates and rifts, it enters into the social fabric, taking on the diversity of the scholarly individuals who have embodied, transmitted, and interpreted it. The openness of the text is that of a hollow center that swallows up diverse points of view. Despite its own internal positivism, viz., a manual definition of an element of "text" (*nass*) as "that which carries only one meaning," the further and unstated hegemonic strength of the discourse is its textual, and lived heteroglossia (Bakhtin, 1981). Subverting and dissimulating itself at every doctrinal turn, the discourse is effectively protected from sustained critique.

From the perspective of the 'amma, the only discourse there is appears mightily fortified with impenetrable defenses. Their ultimate assent, despite ventings of resistance, is inevitable as the discourse created and carried by jurists is confused with and assimilated to the divine plan and a naturalized "reality." But the further problem of the ordinary populace, those who most directly live the contradictions of the shari'a, is that their world is forcibly embraced in the discourse, while at the same time, in the same

[8] Quoted in Boggs (1984: 167).

process, it is silenced.[9] Representation is a fundamental act of power as it acts to deprive those represented of their voices. Their resistance, their ideological "fighting it out," does not touch the representations themselves: the contours of reality are not easily called into question. In the authoritative definition of the ordinary characteristics of ignorance, common sense, dialect, etc., a decisive level of hegemonic control is asserted. Constituted as objects, ordinary people are excluded from the discourse in the very moment of their incorporation. "Only a few men must know the law. . . ."

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[9] Two interrelated analyses are briefly suggested here: one concerned with the structure and meaning of silence, as in the haiba behavior mentioned above and as discussed by Santos (1977: 29–38); and a second concerned with the process of silencing, as in the work of Said (1978) and Spivak (1987: 241–268). I have dealt with these issues in connection with different material in Messick (1987).

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