SOME PRINCIPLES AND CONTINUITIES OF TRIBAL LAW

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Yemen is unusual in having a long written record of a type of law that its adherents and practitioners, as well as hostile critics, distinguish from *sharīʿah* discourse. It is not unique in having texts on "customary" rules, of course. While there is argument to be had over how much of Indonesian *adat* was written and how law-like it was until the Dutch set about it, there is no denying the record of, say, Maghrebi or Daghestani non-Islamic law. (Claims that the Maghrebi version was wholly invented by the French, we should note, withstand little scrutiny). Certain forms of Yemeni tribal law are distinctive, however, showing principles of sociality that are not conspicuous elsewhere, and so is its longevity. What I wish to examine is a tradition, or set of traditions, that is far from changeless but that exhibits specific principles consistently for at least seven centuries, down to our own time.[1]

The present volume focuses on present-day concerns. In doing that, it is always sensible to assess what is new and what is not. Modern political language has a genius for disguising its own long-term roots, which include a rather Hobbesian view of state authority, and for claiming that practices disliked by the world's current powers are "traditional," when in fact they are responses to modern politics. But I am not aiming here for an antiquarian corrective. The Yemeni material on law is of interest in itself, and the lessons it has to teach run deeper than current affairs. While its study suggests seeking "the solace of the past in the unspeakable present" (Mundy 2013), the principles at issue are themselves timeless.

I

At the turn of 1937–38, while based in Ṣanʿāʾ, Ettore Rossi acquired four manuscripts, which he describes in *Rivista degli Studi Orientali* as follows.

> 1) Copy of a *Kitāb al-sinnah* (according to the local pronunciation) *wa-l-ṣāʾibah wa-l-ʿurf al-jārī* attributed to the *naqīb* ʿAbd al-Rabb Ibn Ḥātim Ṣayyāṭ. There are twenty-seven pages copied for me in quasi-dialect Arabic from a manuscript dated 1059 AH [AD 1649] ...

[1] I have discussed recent tribal law in publications over several decades now. Constraints of space mean I must take much of this as read. More regrettably still, I must leave out references to authors such as Muḥammad al-Sudumī whose work deserves notice.

> 2) A miscellaneous MS, not dated, probably from the 12th century AH, containing … eleven folios of an unheaded treatise, whose title cannot be established, the work of *qāḍī* Aḥmad ʿAlī bin Zinbāʿ … At folio 10 there are reported some passages from a *Kitāb al-manʿ* of *qāḍī* al-Ḥusayn ibn ʿUmrān ibn al-Fāḍil al-Yāmī.
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> 3) A MS of 49 folios divided in two parts: the first, unheaded, is titled *Kitāb al-tabyīn fī l-manʿ* and perhaps is the work of one Yaḥyā al-Qaḥṭānī from the region of al-Bayāḍ [38 folios]; the second, incomplete, is entitled *Talqīḥ al-ḥukkām*.
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> 4) A *Kitāb al-aslāf wa-l-aʿrāf wa-l-ṭāghūt* by an unspecified author, copied from an original in the archive of a tribal chief; in all, 37 folios in horrible script, stuffed full of errors ....
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> (Rossi 1948, 17–18)

Rossi knew that he had made an important find, and he quotes from *Kitāb al-tabyīn* at length, reproducing its list of ten major topics: the refugee or protégé; the travelling companion; the ally; the person under safeguard; the namesake; the person connected by brotherhood; the guest; the servant; the affine or in-law; and the inviolability of territory. Unfortunately he did nothing more with these texts before his death in 1955. But he did provide photostats to Bob Serjeant after the latter returned from Ḥaḍramawt.

By then Serjeant had found in Tarīm a much fuller, older and more elaborate text, entitled *Kitāb al-ādāb wa-l-lawāzim fī ḥukm al-manʿ*, which he describes, albeit briefly, in the *Bulletin of SOAS* (Serjeant 1950, 589–91) and which he dates to about AD 1320. For decades, with this and Rossi's material in mind, he referred to a "tribal law corpus" he was editing (see Serjeant 1991). Unfortunately nothing came of it before he died in 1993, and I am now trying to edit all this material before the curse that stopped Rossi and Serjeant dead catches up with me. It has so far been slow work. Locating Rossi's manuscripts in Rome proved oddly difficult, and *Kitāb al-tabyīn*, the text he quotes from most in his article, is now missing; fortunately there exists a transcript of *Kitāb al-tabyīn* in Serjeant's hand, but most of Serjeant's material, including the photostats of Rossi's texts and the original of *Kitāb al-ādāb*, is missing from his archive in Edinburgh.[2] If some department of the Vatican is not behind this, or some remnant of the Knights Templar, it can only be the Order of the Illuminati.

A transcript that Serjeant made of *Kitāb al-ādāb* runs to 146 pages. The original comprised 88 folios. There are missing margins and missing pages (the photocopy that he gave me is itself very faint in places), but most of it is there, and at the start is substantially the same list of ten major topics as in Rossi's *Kitāb al-tabyīn*.[3] Indeed these form the headings of well-organized chapters. The list occurs

2 Thanks are owed to Giovanni Canova for locating three of Rossi's texts at l'Istituto per l'oriente in Rome when others there had forgotten they existed. I am also grateful to several people (most recently Marilyn Booth) who, over the years, have asked for me about the Edinburgh archives.

3 To be exact, *Kitāb al-ādāb* lists the ten *uṣūl* as the protégé, the travelling companion, the ally, the person under safeguard, the namesake, the guest, the hired man (*al-ajīr,* where *Kitāb al-tabyīn* has *mutakhaddim*), greeting (*salām*), the affine or in-law, and truce or peace (*ṣulḥ*). In fact, a section on the inviolability of territory comes between that on greetings and that on in-laws (Serjeant n.d., 76–7).

in a much rougher, muddled form in the second of Rossi's finds, the Bin Zinbāʿ text.[4] Probably Bin Zinbāʿ, which is less well written, derives largely from *Kitāb al-tabyīn*, and both of them plainly derive in the end if not from *Kitāb al-ādāb* then from texts very like it. All three are in the nature of treatises or summaries, as is *Kitāb al-sinnah*, a rather crudely composed text (not related directly to any of the above) that dates to the mid-seventeenth century and comes from Khawlān al-Ṭiyāl (Dresch 2017).

Other genres at other dates are a help in reading what Rossi and Serjeant found. For example, eighteenth-century "pacts" (*qawāʿid*) from Jabal Baraṭ (Dresch 2006) contain terms and ideas that occur in early texts, and certain of the terms were familiar to older men at Baraṭ from disputes in their own youth. Parallels and clues to the pacts are meanwhile found in *hijrah* documents (1070/1660 onwards) from Baraṭ that Qadi Ismāʿīl al-Akwaʿ published (al-Akwaʿ 1993). Fragments of the *qawāʿid*, and indeed of *Kitāb al-tabyīn*, have shown up in notes I have seen, and even conversations I have had (sometimes with men who could not read), in several places, and how such fragments may be transmitted I have no idea. They surfaced sometimes in discussions of contemporary disputes in roughly the period 1977–2007, and much that was said and done in such disputes evokes echoes of much earlier reports and texts.

I do not mean by this that nothing changes. Nor do I mean only that particular terms drop out of use and become unintelligible. In the earliest texts, for example, certain wrongs are recompensed twofold (*muthannā*). In the seventeenth-century *Kitāb al-sinnah*, as in Qadi Ismāʿīl's texts, one also finds recompense fourfold (*marbūʿ*), which does not show up in earlier material, and in the Baraṭ *qawāʿid* (mid-eighteenth century) certain wrongs, such as placing a *jidhn* against a fellow-Muḥammadī in Dhū Muḥammad's market, are paid for eleven-fold (*muḥaddash*, sic).[5] Despite the danger of circularity, one is inclined to place texts in sequence by the presence or absence of fourfold penalties and to treat the image of eleven-fold payment as recent.[6] I doubt very much that the changes relate to monetary inflation. Although *Kitāb al-sinnah* carefully specifies which kind of *buqshah* (a small brass coin) is meant for certain payments (Dresch 2017, 12–13), several texts, when discussing blood money, reproduce lists verbatim of how many sheep or bulls are equivalent to how many camels, and how many silver or gold coins equate to each, although the prices of livestock and the value of silver in terms of gold varied over time. More likely the addition of fourfold and eleven-fold penalties represents an "internal" development, stressing certain wrongs rhetorically. As we shall see, the principles that determine when multiple recompense is due at all, and whom it goes to, remain very much the same.

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[4] This is the text that Abū Ghānim (1985, 363–84) reproduces as an unsourced photocopy. He adds to the text a note, for which I see no warrant, that it is known as *qāʿidat al-sabʿīn*.

[5] For the *jidhn*, see Dresch 1987, 2012, 169. The main Baraṭ text here dates to 1211/1796. It derives from an agreement among Dhū Muḥammad in 1177/1763, and behind that in turn lay a market guaranty, demanding payment fourfold. *Pace* Abū Ghānim (1985, 385), Dhū Ḥusayn have no part in it. Because Yemen is inaccessible at present, and the book therefore hard to find, I have placed Dresch 2006 on Academia.edu. For a much broader range of material, see Shelagh Weir's archive (Weir 1996, 2007).

[6] The absence of fourfold payments in *Kitāb al-ādāb* and *Kitāb al-tabyīn* is surprising when one remembers how widespread the formula is elsewhere – Jordan (Jaussen 1908), the desert of Egypt (Murray 1935), the Old Testament and classical Roman law. Another absence is a standard amount for minor "shame" or *ʿayb*, which in recent times has been 88 thalers among the central Ḥāshid tribes and 110 thalers in Bakīl.

II

The nature and place of formalized "custom," set out in texts, require noting. Obviously, first, these are partial laws. At no date do they claim to address everything, and we can be fairly sure (for recent centuries we can be entirely sure) that other topics, such as inheritance, were addressed in terms that attach to *sharīʿah* discourse; other topics again, such as grazing and runoff, which may in practice have been distant from learned intervention, were equally distant from the concerns of the Rossi and Serjeant material or the Baraṭ pacts.[7] Obviously, also, learned persons, such as Zaydī imams, often condemned tribal practice as *ṭāghūt*. All too many authors fail to think further. In most literature on most parts of the Middle East, indeed, work on the relation between "Islamic law" and "customary law" is weak, and much of it is pointless, not least because authors fail to see that the usual position in *sharīʿah* discourse is that whatever is not contrary to *sharīʿah* principles is available for the *sharīʿah* judge to use, and "Islamic law" (the practice of judgement through *sharīʿah*) thus encompasses much custom. Still, customary law may be distinct from *sharīʿah* on several grounds.

Early texts say explicitly that in such-and-such circumstance, he of the *sharʿ* (a person following law that attaches to *sharīʿah* discourse) does this, he of the *manʿ* (the person following what I think of as tribal law) does that (Dresch 2012, 159, 160). For example, in the case of someone who in error kills his own guest,

> Among those of the *sharʿ* his blood-money goes to the [victim's] kin. If it is deliberate, [the killer] is killed in return, With he of the *manʿ* he owes the wound-price if [the offense] is in error, and a penalty like the wound-price; as for if he kills his guest deliberately, among those of the *manʿ* there is no absolution for him among the Arabs …(Serjeant n.d., 68)

Those of the *manʿ* are those of tribal standing. Their law, although it is not *sharīʿah*, is not seen as un-Islamic. In fact, *Kitāb al-ādāb*'s opening sections argue, in sophisticated terms, with detailed *ḥadīth*-citation, that law of this kind (*ḥukm al-manʿ*) is that part of Arab law from before Islam that the Prophet of God approved and is therefore right for Muslims of a certain kind to follow.[8] But a great many topics default to other domains of argument. The law discussed in the texts at hand concerns only specific types of relation among specific types of person.

The same is true, although the relations at issue are different, of the non-*sharīʿah* Maghrebi law made famous by Hanoteau and Letourneux, documented in datable form further west by Montagne, and recently examined by Judith Scheele (2014). Such texts in northern Algeria have little to say even about the management of pasture (almost nothing about compensation tariffs between sets of people), but a great deal to say about disorderly conduct within the village. Scheele shows how they carve out from a world of movement and migration a set of bounded identities that center on a *makhzan* or common treasury. Delicts result in a fine that goes to a village council. In Yemeni material, by contrast, it is

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[7] *Kitāb al-ādāb* mentions only obligations that arise from herding one's flocks together; the Baraṭ *qawāʿid* mention only that one needs five witnesses a side if a border is disputed. On the other hand, *Kitāb al-ādāb* does include sections on, for instance, inheritance and trusteeship (*wiṣāyah*), although there seems nothing self-consciously distinct from *sharīʿah*.

[8] This text, unlike others, is replete in its opening parts with citation and with literary echoes. The marginal notes, often hard to read, suggest Serjeant spent considerable effort pursuing these. The striking thing about the text itself, however, is that an educated person thought non-*sharīʿah* law worth serious attention, whereas in recent times, as Rossi makes clear (1948), it was not. Are there parallels elsewhere in the Islamic world?

nearly all recompense to persons, and the word “fine” is usually out of place. As Frank Stewart pointed out some years ago (Stewart 2000, 890), Maghrebi law of a non-Islamic sort is to do with community, Mashreqi law is to do with transaction. What, then, is the basis of transaction?

A number of early texts from Yemen use the phrase *ḥukm al-manʿ,* which Ibn al-Mujāwir records *circa* AD 1200. As Rossi notes, the term *manʿ* (or *manʿah*) already appears in al-Hamdānī (soon after AD 900) with what looks to be the relevant sense, which is not “forbidding” or “prohibiting,” but “protection” or “defense”; it works like French, in fact (*défendre* and *se défendre*, as well as *défense de*), and when the *Ṣifah* praises tribesmen of Baraṭ as *anjad hamdān wa-ḥumāt ul-ʿawrah wa-manaʿat ul-jār*, it plainly means “defenders of the protected person” (Rossi 1948, 9).[9] In law texts the word is sometimes used in a general way, such as when the only people who can swear as witnesses are specified as those who “act on” or “value” the *manʿ* by keeping their word and rejecting evil, but usually it attaches to specific persons and signifies a capacity (both a right and an obligation) to defend others.[10] Tribesmen have *manʿ*. Hereditary servitors, for example, do not. The law primarily governs relations among persons of tribal standing, and where others are concerned, it is with reference to such persons.[11]

Some of the relations are symmetrical, so the duties of protection that I owe to my in-laws or my sworn ally are the same duties that they owe to me. Others are asymmetrical. If I, as a tribesman, am protecting a non-tribal servitor (a market-person, let us say) and then wrong him by wounding him or taking his goods, I owe him the usual recompense twofold; if he wrongs me, by contrast, he owes me just the usual recompense. But protégés (*jīrān*, pl. *jār*) can also be morally my equals. The cases that most interest me as an anthropologist, and that I think are distinctive, are those where the roles of protector (*mujawwir*) and protégé (*jār*) are contextual and can be reversed, such that, in theory, I can protect you in my space today – as my guest, for example – and you can protect me in your space tomorrow.[12] I would owe you twofold for a wrong in the first case; you owe me twofold in the latter, and texts are explicit that this is because of “protection right” (*jiyār* or *jiwār*). It is mutual recognition of our capacity to protect that makes us tribesmen. Each of us recognizes, also, that if some third party wrongs a protégé then they owe not only compensation to the protégé but also amends to the protector.

What makes us members of specific tribes is that specific sets of people are implicated in our exercise of protection, and we in theirs. “The neighbor / protégé (*jār*) of one of them is the neighbor / protégé of them all,” as Bin Zinbāʿ says (Abū Ghānim 1985, 365). Or, “a man gives escort by his tribe, from them

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9 Rossi also provides a citation from al-Masʿūdī. Dozy gives an example, and Lane’s supplement mentions it. Obviously the meanings of “forbidding (to others)” and “protecting (from others) ” overlap, but the early Yemeni meaning seems not to be all that widespread. The term is very prominent in *Kitāb al-ādāb* and *Kitāb al-tabyīn* but not in Bin Zinbāʿ, although the last appears to draw heavily on *Kitāb al-tabyīn*.

10 An interesting use occurs, midway between generality and a personal attribute, in *Kitāb al-tabyīn* (Rossi n.d, 22) when passing a traveler on to another escort*: in yusallim-hu ilā manʿah mithla-hu lam yalzam-hu shay fī-mā jarā ʿalay-hi.*

11 This is not (*pace* Weir 2007, 156) “exoticizing” tribal law. The status of guest, for instance, may be conferred by an invitation from a woman, an immature youth, a dependent protégé or even a servitor or slave, but the duty of protection devolves on an adult male of tribal standing. Among those excluded from giving oaths in questions of blood debt are not only Jews and Christians but also the coward and the merchant (Rossi n.d., 73).

12 Pitt-Rivers (1977) attaches this idea of alternating roles to “the law of hospitality.” His ideas on “women and sanctuary” are also relevant. Martha Mundy (2013, 5) relates how her own work in Yemen (1995) was informed by the idea of the state “vouchsafing” the “internal governing” of households, a pattern which recurs in many traditions, as in Western Europe. The question then becomes how such spaces relate to each other, which is where we encounter tribalism as distinct from other forms of sociality where domestic space is recognized.

and on them" (*min-hum ʿalay-him*), meaning he is answerable for wrongs by them and against them that concern an escorted traveler, as they are with respect to him (ibid., 367) "And likewise the protégé, the in-law, the namesake …" and so on through the list. But this is a radically decentered system, with no one person or group in charge. Enforcement of the rules is thus addressed in a language not of power and obedience but of reputation and loss of standing.

If a member of my tribe robs or injures my protégé, he owes twofold (in later material often more than that), as I would myself – unless, that is, the offender can swear he did not know the person was under my protection. In that case, he owes just the usual recompense. But if, in either case, members of my tribe refuse to make reparation, they have committed shame (*iʿtābū*). In fact they are *dughmān* (sg. *adgham*, presumably meaning "blackened"), as they would be if they deliberately, knowing who he was, killed my protégé, or as I would be if I did so, and *adgham* meant in effect "outlaw," someone with no right to give or take protection (Dresch 2014, 117). The only absolution (*naqā*) for someone who deliberately kills a protégé is that he kill himself. Failing that, his own group must kill him or hand him over to the dead man's kin, and if they do not, then they themselves are guilty of shame, and on its goes. If this all sounds too dramatic to be plausible, we should nonetheless note the logic. Protection is what, following Jeremy Waldron on American law, I have elsewhere called an "archetype" (Dresch 2012, 156), something on which other laws depend. We should also note that plausibility is no safe guide to anything.[13] If we had only scattered ethnographic reports that elsewhere in the world people are executed with a cocktail of chemicals one would not use on a sick cat, we might wrongly assume that the reports were false.

The word *adgham* is no longer current. The same idea, however, is apparent, for instance in the Baraṭ *qawāʿid*, in the way the verb *dakhkhana* is used ("blackening," as with smoke from a fire), and one doubts that the effects of such blackening by *bayḍā' wa-khiyār* in recent centuries would have come as a surprise to early students of *Kitāb al-ādāb*.[14] Again, *manʿ* in the Baraṭ material is not used in Rossi's sense and the root gives us only *manūʿ*, meaning people of a locally specific status who bear arms but depend on Dhū Muḥammad for their right to do so, and in-laws (even that last meaning was obscure to younger people when I worked there). Yet if we trace the word *sinnah*, we find it tracking the same concerns as *manʿ* does in texts from centuries before. Those who commit shame lose their *sinnah*, their right to take and give protection,[15] just as they lose their status in, for instance, the Bin Zinbāʿ text. "As for one who commits shame," says Bin Zinbāʿ, "protecting him is not valid. If a protector gives him protection, [the protector] is shameful like him" (Abū Ghānim 1985, 363). Even the famous "return of greeting" – *al-salām ʿalaykum, ʿalaykum al-salām* – which normally makes one safe, is not valid (*lā yajūz*). The same is true today, although judgements of who has really committed shame vary, as

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[13] There are certainly unfamiliar ideas in the early material. For example, payments are due for attempts to bury a man alive. Other passages raise problems of interpretation, as where amends are specified in the case of *man ramā ṭāyiran l-rājil ʿalā dāri-hi* (Abū Ghānim 1985, 380). In a marginal note, Serjeant has the highly unlikely heading of "Throwing poultry" crossed out in favor of "Shooting birds". Even then, I am not yet sure what the passage means.

[14] *Bayḍā' wa-khiyār* is a process of summonsing persons who have defaulted on a serious obligation such as escort, and if they fail to respond, they become liable to wounding or killing without recompense (Dresch 1987, 2017, 15–16). For a lively account of such "blaming" see Glaser (1913, 76–7, 86, 103–4).

[15] The French translation of Ḥabshūsh (1995) I think slightly misunderstands the basic meaning of "something right because established practice," thus, for instance, right payment for a wrong. For the argument beyond this, where the term attaches to a person rather than an action, see Dresch (2006, 75–7).

presumably they always have done. One man's wronged soul who deserves our support may be another man's villain. The salient cases of shame, however, as opposed to mere wrong, or even oppression (*ẓulm*), are those in breach of obligations such as escort and hospitality.

All our material, at whichever date, shows a concern for protected space. Physically this may be anything from the territory of a tribe to the house of a tribesman, each of which determines who is liable for what degree of payment or payment of what sort. However, space of a more abstract kind is at issue, too, in that responsibility for escort, for example can be exchanged, passed on, or rejected among members of the same tribe (Dresch 2012, 149). Also, several such spaces may be at issue simultaneously, so "If a man offends against three obligations (*malāzim*), for example he offends against a man who is under safeguard, and is another man's guest, and is in the guaranty of a group's market, he owes [for] three obligations" (Abū Ghānim 1985, 376).[16] In each case the offender owes amends to the protector, or set of protectors, and these cases are to be distinguished from the give-and-take of compensation.

Interestingly, one finds a moral imperative to separate asymmetric relations from symmetrical claims. As we suggested earlier, the asymmetric responsibility of protector (*mujawwir*) for protégé (*jār*), whether permanent or contextual, is an archetype, a pattern or principle on which other laws depend. To sanction the use of violence against, say, one's guest or refugee, would, in effect, be self-contradictory. Indeed, if someone, for whatever reason, is my protégé and wrongs me and refuses to make restitution, then it is only after his "sending away" (*tarḥīl*) that I can claim against him (Dresch 2012, 156). So long as he is with me I must protect him against others and cannot enforce a claim I have against him personally. Once he is out of my moral space, I do so as I would against *sā'ir al-nās*, that is, anyone on earth.

III

Collective moral space turns on the "inviolability of territory" (*ḥurmat al-watan*). Not only must the members of a tribe resist armed incursions by another tribe across its borders, but they must respond to wrongs done within the border to third parties by persons unrelated to themselves.[17] Such persons owe the tribe amends. "The tribe," of course, may subdivide, with one part taking sides with party A in some dispute, another with party B, but whichever divisions are invoked, the logic is always the same. It is shameful to give help to those who themselves have committed shame, and to refuse help to those who have not. Around this turn legal specificities such as those of escort. Given the inherent pluralism of the tribal world, questions of right and wrong often produce divided views, but the presumption is that protection is valid unless reason exists to deny the protectors' own legitimacy.

Rulers are supposed to protect their subjects, to protect what these days are spoken of as their subjects' rights. Tribal shaykhs may be spoken of in the same terms. The householder, meanwhile, is

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[16] Also Rossi (n.d., 68). This should be distinguished from multiplying amends fourfold or eleven-fold. The safeguard (*dhimmah*) might be from one set of people, the host from another, and the market guarantors from a third. In each case the person or persons whose protection was violated would be owed amends equivalent to the cost of the damage, theft or wound, in other words payment twofold.

[17] For parallels to this concern with moral sovereignty, not just vulnerability to aggression, see Jaussen (1908, 208–14) and Murray (1935, 315). In the Yemeni case, the phrase *ḥurmat al-waṭan*, with the meaning outlined above, recurs at all dates. For an example, see Abū Ghānim (1985, 364, 371).

supposed to protect his guest. But the difference between centralized and decentralized ideals has long attached to different parts of Yemen, and at the start of *Kitāb al-ādāb* we are told that

> it will not do to reject the laws of protection (*lā yajūz al-qadaḥ fi aḥkām al-manʿah*) because through them are preserved safeguards, strongholds, markets, caravans, sanctuaries (or women, perhaps; *ḥurum*) and houses, especially in the highland areas (*nujūd al-buldān*). As for the lowlands (*tahā'im*), God has given through authority (*sulṭān*) what is not given through the Qur'ān [alone], for they [sultans or rulers] have political influence and detailed control over their subjects' affairs. (Serjeant n.d., 3)

In the former type of case (the imagined "highlands"), we find claims of tribal solidarity built around common protection of markets, *hijrah*s and dependent people, as well as territory,[18] and breach of such protection by members of the tribe or by outsiders demands amends. However, while disagreement between tribes leads to conflict of a kind one needs only a map to follow, disagreement may as easily occur within a tribe. In cases of intransigent conflict with fellow tribesmen one could move elsewhere, of course. That is implicit in a good deal we find about "one seeking refuge" (*al-mutajawwir*). But claims to refuge can be divisive, as when a man who had wronged a Jew under Nihm's protection in the nineteenth century took refuge with Khawlān al-Ṭiyāl and the two tribes were placed at odds until Nihm convinced Khawlān he was in the wrong (Ḥabshūsh 1995, 70–71). How, then, does such morality play out to different constituencies?

If someone is seen locally to have behaved abominably in local terms, they will be refused protection and told to move on, but there are very few circumstances in which anyone but a family of tribal status who themselves have been wronged directly can demand that a "foreign" refugee (one not from the protector's own group) be handed over. Even this is a delicate subject, comparable perhaps to dealing with a serious offence by a hereditary protégé. "Protecting him is disgrace, and sending him away is absolution", says Bin Zinbāʿ; "it is said that handing him over (*taslīm-hu*, i.e., to the offended party's kin) is valid. The more correct thing (*al-aṣwab*) is to send him away" (Abū Ghānim 1985, 363). When the claim is made in non-tribal terms, perhaps by persons outside the tribal world, there is often trouble. Enraged sultans and imams are easy to find in the chronicle literature. The civil war of the 1960s was colored by this kind of issue, and the beginnings of "the Ḥūthī rebellion" some fifteen years ago were an object lesson to any government, though obscure to ʿAlī ʿAbdullāh Ṣāliḥ, in how not to act.[19] One could go on multiplying cases.

Relations with the outside world only highlight issues that inform both argument and agreement among the tribes themselves. Suffice it to say that a tribe that cannot offer refuge is not a tribe. No more is a man who cannot take in guests a tribesman. The details of law on escort, refuge, and hospitality all

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[18] The salience of refuge and protection generally are well documented, as is the importance of agreements to protect in common certain places and persons (see e.g. Weir 2007, 82, 123–4, 127 and *passim*). The Baraṭ *qawāʿid* (Dresch 2006) provide a condensed example. They also discuss, more unusually, the need to retrieve one's own tribesmen if they feel aggrieved and seek refuge elsewhere.

[19] Demands that persons be handed over were one aspect of protection and tribalism encountering statist authority, another was the offer of protection on the state's behalf. I cannot forget Mujāhid Abū Shawārib in 2004 suggesting that "al-Ḥūthī" come to Ṣanʿāʾ under Mujāhid's safe conduct and the suggestion being snorted aside. ʿAlī ʿAbdullāh preferred a fight. In the catastrophe that grew from there, it is striking how often "tribal values," "tribal governance," or simply "tribalism" turn on the claim that refuge should be respected (Weir 2007, Brandt 2017).

turn on the same archetype, and the principles whereby morality and protection are equated outlast the specific terms used. Martha Mundy, a very scrupulous author much concerned to distinguish the present from the past, thus mentions the term *manʿ* (1995, 29, 54, 248 ff.) and forgets to stress that it is archaic, the meaning unknown to most people these days in most parts of Yemen.[20] Only a small-minded person would complain. She is surely right to mention the idea, which is not obscure and is a large part of what tribalism itself is about.

IV

By "tribe" I simply gloss *qabīlah*.[21] In many parts of Yemen the Arabic term is used of, among other things, rather large sets of people, each distinct from other sets of the same kind, such as Arḥab or Khārif, or Bakīl and Ḥāshid, and one of the topics the present volume highlights is variation in the forms of tribal identity. It really is about time we addressed this. The "follow-up" to early work somehow never happened, and monographs (mine, Steve Caton's, Martha Mundy's, to name a few) have sat unchanged on the landscape like so many fossil coprolites. That is not, I am sure, what any of us wanted, but in the absence of further thought, it is easy for readers unfamiliar with Yemen to assume that one account must be right and another wrong. Life is not that simple.

It is no use popping up at seminars to say that, for example, Jabal Rāziḥ is different from Sufyān.[22] One would hardly expect it not to be, with terraced cultivation and trade routes in one, barren scrub in the other. Sufyān and Banī Ṣuraym are different again. Caton's account (1990) suggests that Khawlān al-Ṭiyāl may differ from what I lived with; Andre Gingrich on Munabbih (1987) is different from both. But what we all find, wherever we work, is that one cannot reduce tribes to solidary groups or the product of authority. For one thing, they are too long lasting. Were they simply groups of a kind that might derive from biology or from predatory alliance, then demography, famine, and sheer entropy would make the present-day map very different from that of Qāsimī or medieval times. In fact, they are strangely similar, and changes seem to have occurred by discrete quanta (Dresch 1989, chap. 9).[23] But some obvious forms of politics move to different rhythms.

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20 As Serjeant notes (1950, 591), Landberg's *Glossaire* includes *manaʿa* with the meaning of "to place [oneself] under protection." Weir (2007, 158) reports *manʿ* in Rossi's sense from Rāziḥ. I never encountered it spontaneously used in this sense anywhere between Ṣaʿdah and Ṣanʿāʾ or in the Upper Jawf.

21 The English term tribe has certain patterns of use, of course, as do German *Stamm*, Latin *tribus*, Arabic *qabīlah* and so forth. The patterns are not congruent. *Tribus,* for example*,* was used of the Romans themselves (and of sundry defunct Italian peoples), while other groups might be *populi* or *gentes*. If one browses the Loeb parallel text of Pliny, however, one finds "tribe" used on the facing page quite arbitrarily. Much general academic talk of tribes strikes me as akin to examining the Roman world through the English translation.

22 One can safely take Rāziḥ as a point of reference because we now have Weir's fine account of the area (Weir 2007). If we are looking for a simple explanation of relative degrees of practical hierarchy, we do not have to look very far – "just add water" – but the way in which a single set of terms encompasses different views of right order has hardly been examined yet. The suggestion that "Dresch … explicitly denies the relevance of ecology" (Weir 2007, 2) is too extreme. Were that my view, I would not have discussed different forms of territoriality at length (1989) or provided such tedious detail on Baraṭ (2006). What I would deny is that tribalism can be reduced to ecology.

23 In what al-Hamdānī depicts as the heroic age, there is an imagery not only of shared descent but of movement and conquest. See Mahoney (2016), Heiss (2018). Later such imagery recedes, although there may have been as many people moving from place to place, particularly in times of famine. Nor is change uniform. The area around al-Bawn, for instance, takes its present form later than do areas nearby.

We all know that before Islam Hamdān was the name of a dynastic line, and only late in the day did it become the name of a set (a tribe) comprising Ḥāshid and Bakīl. We know of great family powers in al-Hamdānī's time. We know, more recently, that several important shaykhly houses first appear in the record at the time of the Qāsimī expansion into Lower Yemen, and their prominence depended on wealth from beyond tribal territory (Dresch 1989, 204–12). Great shaykhs, in short, are an essential part of political history. Marieke Brandt (2019) has worked on the murder, in 1972, of Nājī al-Ghādir, whose prominence in the civil war depended on external funds, without which people starved. While Nājī rose and fell, however, Khawlān remains, and, whatever the political fortunes of its members, when disputes arise with members of Murād or ʿAbīdah, or Bal Ḥārith in the other direction, or further afield, it matters that Khawlān and its constituent tribes exist.

The way in which it matters is apparent not only from ethnography in recent decades but from Ḥabshūsh's account (1995) and, beyond Khawlān, from Glaser (1913). When somebody commits a wrong, others are implicated. Quite who is implicated in which way is a matter of claims and counter-claims, with rights of protection (mutual or asymmetric) being asserted, denied, or changed in form. Both Ḥabshūsh and Glaser show what happens when a path to agreement is not evident. When sets of people find collective honor at stake, then ordinary life becomes impossible, and members of one set simply cannot be seen in the space of the other set. Many of us will have encountered instances where the alleged wrongdoer therefore has to disappear from view, either staying inside his own house indefinitely or moving outside the immediate moral world. Lower Yemen and the western mountains are usually far enough.[24]

In all of this, in all our sources, there is an appeal to "customary" law, *ḥukm ʿurfī*. The law is not identical from place to place, nor is it changeless over time; least of all does it provide means to predict what happens. The early texts themselves, meanwhile, provoke historical questions. They ascribe to shaykhs greater prominence than one would now expect, they refer to sultans, who may be figments of wishful thinking or may denote a reality lost to other sources, and they mention *ahl al-amr wa-l-nahy*, people concerned with Islamic righteousness, but give no indication who they may have been.[25] Through all of this, however, they are consistent on protection. They are consistent on the principle that if I wrong my protégé, I owe him at least twofold; if you wrong my protégé, you owe to him recompense and a multiple of that recompense to me. We are defined by the spaces we control. And although new "custom" can come into being, these principles are treated as timeless, as given by the order of things, not by anyone's decision.

Law texts such as *Kitāb al-tabyīn* by themselves are merely philological puzzles. Some cannot be dated at all; others may reproduce concerns that do not change, precisely because no one but an antiquarian ever found them important.[26] Two things makes them interesting: one is the set of assumptions

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[24] Elsewhere (Dresch 2006, 199) I mentioned a friend from Baraṭ living in Lower Yemen as the result of an intractable dispute, and pointed out that if I knew where he was, then so did others. (Since then he has been killed, but by a close kinsman, not his declared enemies). The principle at issue was "out of sight, out of mind." The same is true of seeking refuge with a nearby tribe. A contrast may be drawn with current absolutism and its insistence that enemies be hunted to the world's end (Dresch 2014, 124).

[25] In both *Kitāb al-ādāb* and *Kitāb al-tabyīn* there is discussion of *dīwānī*s, plainly mercenary soldiers in the employ of sultans or chiefs. Their rights and duties, too, are encompassed in *ḥukm al-manʿ*. I can see no clue as to where and when they might have been employed.

[26] Nearly all the treatise material I have mentioned, as distinct from pacts and signed agreements, lacks explicit dates of

they embody; the other is their congruence with other types of source. The details and the terms shift, but I doubt there is anything in the principles I have tried to set out that one could not illustrate, at any period, from fragmentary accounts in chronicles, in "lives" of imams, or in *tarājim* literature, quite apart from dispute documents of the kind that we usually have only for recent centuries. They reflect the assumption that tribalism is a matter of mutually recognized, yet indefinitely divisible, moral spaces.

V

As soon as one turns to law, somebody will say, "Yes, but what *really* happens?" At best this is an uninteresting question, and at worst it is wrongheaded. Demands for supposed "realism" ignore the local categories at issue and assume a world of asocial individuals who must somehow be disciplined through power. In reality, there are no such creatures. Yet the ideology of the North Atlantic states works as if such creatures were entirely real. This is so not least in law, where, despite the salience of "corporate persons," the dominant theme, increasingly, is of isolated natural persons answerable to state authority and protected by state authority from their equally asocial fellows.

I began by saying that modernist political discourse disguises its own longevity. The current global empire, like older empires of more limited extent, retains the assumption that somebody must be in charge. Empires, no doubt, tend that way. But the sheer naturalness of the assumption in the present case is buttressed by an enormous literature that identifies morality and law with centralized authority, regardless of political form; the idea seems equally natural in the work of J. S. Mill, in Hobbes and Locke, and in theorists of monarchy who preceded them, as if life could not be otherwise. The obvious question from within such a view of life is always, "Who is in charge? Who makes the rules here?" Usually it is not the question one needs to ask in rural Yemen. More to the point is, "Who are your guests, and why?"

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composition or copying. Most of these texts, though not all, have parts missing, particularly at the start and finish. For the moment, I doubt the lack of dates has any great significance. There is little doubt, however, that passages may be copied from other works without necessarily being understood.

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