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## Constitutional Problems in Early Islam

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Constitution is a vast subject. In this study we shall not go beyond the **âm al-jamâ'a** (year of reunification of the Muslim empire by the reconciliation between al-Ḥasan and Mu-āwiya); and some of the more important problems alone will be dealt with.

### Back ground

Islam began in Mecca, in 609. This region was inhabited chiefly by the tribe Quraish, along with some of the slaves and clients (**maulâ**) of foreign origin. But not all the Quraishites lived there a settled life. For many of its branches were still nomads, and passed their time in the surrounding regions. (In 1946 these Quraishite Bedouins still lived near the well of Dhu'l-Majâz, east of Mecca, as I had the occasion of meeting them). The constitutional problems were not the same for both these groups of the population :

There are no precise data as to say how the chief of a nomadic tribe was then elected, especially after the death of a former leader. Probably all the members of the tribe assembled, and at the suggestion of the elders, some of the more valiant and perhaps also the richer member was chosen for life to lead them both in war and peace. He was **primus inter pares**, and exercised only a moral force. There is no data to believe that he even exercised judicial powers of punishing or imposing damages, much less power of life and death. Even the excommunication seems to have depended on the council of elders rather than on that of the chief of the tribe.

As to the Quraishites of the Meccan township, they constituted a City-State<sup>1</sup>, governed by a Council of ten members, each representing one of the ten principal clans of the tribe living in the town. There was no president, and therefore

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<sup>1</sup> Cf in general my article *City State of Mecca*, in *Islamic Culture*, Hyderabad-Deccan, XII/3, July 1938, p. 255-276; and my *Le Prophète de l'Islam*, II, 518 ff.

no monarchy, not even monarchy. The council, as described by Ibn al-Kalbî (cited in the *al-Iqd* of Ibn 'Abd Rabbih), consisted of the following departments:

1. Guardianship of the well of Zamzam (in Banû Hâshim),
2. City banner (**Uqâb**) (in Banû Umaiya)
3. Tribal banner (**liwâ'**), guardianship of the Ka'ba temple and of the **Nadwa** (parliament house) (in Banû 'Abd ad-Dâr)
4. Council of State (**mashûra**) (in Banû Asad)
5. Appraiser of damages to pay (in Banû Taim)
6. Cavalry command and leader of the idol procession during the religious feasts (in Banû Makhzûm)
7. Foreign relations and defence of the reputation of the tribe (in Banû 'Adî)
8. Finances (in Banû Naufal)
9. Divination by arrows in the temple (in Banû Jumah)
10. Arbitration (**hukûma**) and guardianship of the treasure of the Ka'ba temple (in Banû Sahn).

There seem to have been some co-opted members also. One for supervising the rites during the pilgrimage at 'Arafât, another for the rites at Muzdalifa, one more for the calendar and intercalation. These functions although closely connected with the pilgrimage of Mecca, yet belonged hereditarily to non-Meccan tribes. Historical reasons must have been responsible for that. A sort of engineer-architect (**jâdir**) also existed hereditarily in a family of clients living in Mecca, for the maintenance of the building of the Ka'ba.

In the «parliament» all male citizens of 40 and more years had the right to meet, and they decided all the major issues. It is not known if the council of the «ministers» also held plenary sessions, or if each «minister» decided independently. It is said that all decisions were presented to the minister in charge of the council of state, and could be executed only after his approval; details are wanting. The question of the selection of the representatives of the ten tribes is also not clear. The functions remained hereditarily in the same family, yet how the chief of the family was chosen is obscure. For instance 'Abd al-Muttalib was the guardian of the well of Zamzam, and supplied the water to pilgrims. On his death Abû Tâlib, one of his younger sons, held the function yet he had sold that right later to his brother al-Abbâs. At the death of Abû Tâlib, it was his brother Abû Lahab who became the head of the family, we do not know how or why; and it was he who had excommunicated the Prophet, obliging him to seek refuge first in Tâ'if and then in some other tribe of Mecca. Al-Abbâs however continued to be member of the Council of Ten, as the guardian of the well of Zamzam.

The mode of selection or election is not clear, yet one thing is certain: the nomination was for life. Election, and not inheritance, such is the characteristic feature of republics; for the duration of life, and not for a limited period, this is the trait of monarchies. Here both features are combined. Both Arab nomadic tribes and City-States had their particular form of government, which is neither republican nor monarchic. At Mecca, a Council of Ten without a president: this implies that it was an oligarchy, or as we name now-a-days, a collegial government. It may be considered as a democracy, since the sovereignty belonged to man, to members of the tribe or the inhabitants of the city.

We may make a passing remark to Madîna, where Islam found its second fatherland. There was no city-state. An Arab tribe, Banû Qaila lived there, and was divided in two rival factions: Aus and Khazraj, two brothers became enemies. There were several Jewish tribes also, but they lived there as clients of the Ausite or the Khzrajite clans, without any independent existence, although prosperous and exerting economic pressure in the local affairs. There were internecine wars between Ausites and Khazrajites, the last of which was fought at Bu'âth, just before the migration of the Prophet to Madîna, in which the Ausites were decimated, and the remainder did not count more than a third of the strength of the Khazrajites.

We need not be detained long to speak of other regions, some of which had become foreign colonies: Byzantines in the North of Arabia, Iranians in the East and in the South were the overlords. These latter had even preserved Arab kings in their protectorates: in Hîra the Lakhmit dynasty, and in 'Umân first al-Julandâ ibn al-Mustakbir, and at his death a joint rule under his two sons, Jaifar and 'Abd. The case of Dûmat al-Jandal is intriguing: there was a king but who, according to Ibn al-Kalbî<sup>2</sup>, changed from time to time. In fact every year, during the annual fair, the two rival candidates posed riddles to each other, and whoever won the competition became king for a year, sometimes Ukaidir and at others Qunâfa al-Kalbî. Tâ'if, near Mecca, was a big town, where two different tribes lived apparently in peace and harmony, but there were no statal organisations as far as we know.

### Advent of Islam

Muhammad, the future Prophet of Islam, was a Meccan of the clan of Banû Hâshim, but had no share in the government, neither before Islam nor since its commencement, one of his uncles being the representative of the family in the

<sup>2</sup> Ibn Habîb, *al-Muhabbar*, p. 263-4.

City Council. When he began preaching Islam, which was against the prevalent local paganism and idolatry, there was opposition which increased as time passed. But there were also converts who increased daily. Most of these were young men, teen-agers or in their twenties. The resentment of the elders became the more vehement since their own children deserted them and rallied to iconoclasm. In spite of persecution, Muhammad did not want to leave his town. And in fact where to go? Like passport visas of today, the consent of a foreign tribe was necessary before going there. The result was that a State in a State came gradually into existence at Mecca: Muslims referred their affairs exclusively to the Prophet, who was their legislator, judge, and leader in general. They also boycotted local cult of paganism. (The Ka'ba as the House of God was, however, common to both: Muslims and non-Muslims prayed there, each according to his manner, and this lasted until the pagans denied to the Muslims the access to the Ka'ba. Then the Muslims celebrated their service of prayer in their houses<sup>3</sup> yet in the direction of the Ka'ba).

A Prophet is nominated by God, but that does not suffice; he is to be recognized by his fellow men individually. In fact whenever someone embraced Islam he made a personal pact (**ba'ia**) with the Prophet, pronouncing the creed and promising to obey him in weal and woe, according to his possibilities. Sometimes a representative brought the conversion of a whole group. Before the migration of the Prophet to Madîna, we see people coming from distant places to embrace Islam and return to their respective countries: Abû Dharr<sup>4</sup>, from Badr, Tufail ad-Dausî<sup>5</sup> from Hadramaut, others from other regions, such as Tamîm ad-Dârî<sup>6</sup> (the sailor). By the **ba'ia** a sort of social contract was concluded between the ruler and the ruled. They obeyed the Prophet in all that he laid down, be that in matters of dogma, morality or social behaviour; and since the **zakât** is mentioned several times in the Meccan **suras** of the Quran, it is possible that these Muslims even brought their **zakât**, in the form of a voluntary contribution, to the Prophet to be disbursed by him in charity and for the welfare of the community. The «state in the state» presided over by the Prophet at Mecca had all the traits of a State except that it had no separate territory. Independence there was, and also organic links between the ruler and the ruled; and there was also a separate law in the making.

<sup>3</sup> For the mosque in the house of Abû Bakr, cf Ibn Hishâm, p. 246, al-Balâdhuri, *Ansâb*, I, 206; also the house of al-Arqam where the Prophet lived for considerable time, and where Umar too had embraced Islam, cf. Balâdhuri, index, s.v. Dâr al-Arqam.

<sup>4</sup> Muslim, *Sahîh*, 44, N° 132-3.

<sup>5</sup> Ibn Hishâm, p. 252-4.

<sup>6</sup> Muslim, *Sahîh*, 52, N° 119-122.

After 13 years of effort the Prophet had to emigrate and settle in Madîna where at least twelve tribes had rallied to his call, since he had to nominate 12 **naqîbs**, each for a tribe; and one of them as the **naqîb an-nuqabâ**<sup>7</sup> (chief of chiefs). Arriving at Madîna, he found there not only anarchy but even absence of all organized civic life. He convened a meeting of all the tribes of the region, both Muslim and non-Muslim, (including idolatrous Arabs, Jews and Christians), and proposed to them the establishment of a city-state for the sake principally of order inside and defence against outside invasion. Those who accepted drew a document containing the rights and duties of the ruler and the ruled. It has come down to us in toto, and constitutes the earliest written-constitution of a State in the world, promulgated by the sovereign, and talked of all the requirements of the political life : independence vis-a-vis the rest of the world, religious tolerance for the different groups of the population, organisation of justice, social insurance, defence, foreign relations, legislation etc. Non-Muslim subjects enjoyed autonomy not only for personal status but also for justice, law and naturalisation etc. (I have contributed a special monography on the subject)<sup>8</sup>.

At first it was a tiny city-state covering only part of the town of Madîna, but it expanded rapidly, by conversion chiefly, by conquests also in certain cases. So the constitutional set up for the administration was far from being uniform. At first it was direct rule in Madîna. When the territory expanded, governors were to be nominated. In many cases, for nomadic tribes, either old chiefs were retained on their conversion, or else new ones were nominated, thus ruling indirectly; and these delegates had the obligation to lead the prayer, collect the zakât-tax (with some liberty to spending it on the spot) and applying Muslim law in general, including voluntary military service. When the Negus of Abyssinia died, the Prophet celebrated a funeral service **in absentia** at Madîna;<sup>9</sup> was that not a sure indication that to the Prophet, the late Negus was a Muslim? But there was rather a personal attachment, and there is no proof of Abyssinia's being administratively linked in some way or other with Madîna. The case of 'Umân is clearer. It was formerly a Persian protectorate, and was under a joint-rule of two brothers, Jaifar and 'Abd. On the invitation of the Prophet, they embraced Islam. The Prophet sent an official from Madîna in the person of 'Amr ibn al-'As, as a Resident, let us say, and he attended to the affairs of the Muslims of the region, those of non-Muslims being left to the rulers<sup>10</sup>. In this case there was

7 Balâdhurî, *Ansâb*, I, 254.

8 *The First Written-Constitution in the World*, ed. Lahore, 1968. Cf also my *Le Prophète de l'Islam*, I, 123-137.

9 Bukhârî, *Sahîh*, 63/36; Suhailî, *ar-Raud al-Unuf*, I, 216.

10 Ibn Sa'd, *Tabaqât*, 1/ii, p. 18.

not only an indirect rule, but even partition of powers. More significant is the fact that the major port, Dabâ, site of an international annual fair «which was attended by traders from China, from Hind, from Sind, by people from the East and the West»,<sup>11</sup> and belonged to the kingdom of *Umân*, saw a new governor sent from Madîna<sup>12</sup>. In Bahrain (the modern Alhasâ province) there was no kingdom, but the former Arab governor of the Persian empire, al-Mundhir ibn Sâwâ embraced Islam, and was retained as governor by the Prophet, cutting relations with Iran<sup>13</sup>. As to Najrân (in Yaman), it was a Christianized region. Their delegation came to Madîna, and found it prudent neither to incur **mubâhala** (Muslims and Christians invoking mutually Divine malediction on the liar), nor war. So they concluded a treaty of peaceful accession to the Islamic territory<sup>14</sup>: they paid an annual tribute, but retained autonomy even to nominate their own religious and secular chiefs; and it was at their demand that the Prophet sent a delegate from Madîna, as a judge as it seems. Aila (Eilat), Jarbâ and Adhruh, in Palestine, were also Christian regions, and consented to pay tribute and obtain protection of the Islamic State. Maqnâ on the Gulf of *Aqaba* did the same<sup>15</sup>. It is not intended to exhaust the list of the multifarious kinds of regions in the Muslim State of the time of the Prophet, yet what has preceded would suffice to illustrate the complexity of the constitutional situation even at this early epoch when we see among the delegations coming to Madîna to declare their conversion to Islam one even from Ghassân<sup>16</sup> (Damascus); the Byzantine governor of Ma'ân (in Jordania) embraced Islam, but was arrested and crucified by order of Heraclius<sup>17</sup>.

### Relations with Mecca

Let us not pass in silence another fact of considerable technical importance. We have mentioned above that there was a Council of Ten which ruled Mecca. When obliged to leave his native town, the Prophet established a State in Madîna; whenever he set out to meet a Meccan army, he confided the Muslim banner to a convert of the same tribe as held at Mecca the function of

11 Ibn Habîb, *al-Muhabbar*, p. 265-66.

12 Balâdhuri, *Ansâb*, I, 529.

13 cf my *Le Prophète de l'Islam*, I, 251 ff.

14 *idem*, II, 412 ff; my *al-Wathâ'iq as-Siyâsiya*, N° 94.

15 cf *Le Prophète de l'Islam*, I, 399-408; *al-Wathâ'iq*, N° 32-34.

16 cf *al-Wathâ'iq as-Siyâsiya*, N° 38-40; Ibn Sa'd, ch. *wufûd*.

17 Ibn Hishâm, p. 958.

standard-bearer, viz. Banû 'Abd ad-Dâr, both in Badr and Uhud<sup>18</sup>. Again when he wanted to send an ambassador to negotiate with the pagan Meccans, he asked 'Umar —formerly entrusted with the function of ambassador-delegate in the Meccan Council— and it was only when 'Umar asked to be excused for personal reasons and suggested the name of 'Uthmân that this latter was sent<sup>19</sup>. Does that not mean that the Prophet considered himself as the *de jure* government of Mecca in exile, the *de facto* rule remaining with the pagans on the spot? On the conquest of Mecca, he confirmed the guardianship of the Zamzam well to al-'Abbâs, and the key of the Ka'ba to the Banû 'Abd ad-Dâr; he searched even those who held functions at 'Arafât and Muzadalifa<sup>20</sup>, to confirm them in their hereditary rights, but none was found. Some functions of the Meccan Council, incompatible with Islam, were also abolished, such as the divination by arrows etc.

### Technical Aspects of Muslim State

The government of the Prophet, was it an autocracy, a democracy or something else?

It was certainly not an autocracy, because the Prophet not only consulted his companions in all sorts of questions, even in matters of religion, such as the method of information of the time of prayer (*adhân*)<sup>21</sup>, but also he repeated always that he was as much subject to what he taught as any other Muslim, and even much more as far as the supererogatory acts of piety, such as fasting and prayers were concerned. In the Quran (69/43-47) God says that even if the Prophet failed in the faithful transmission of God's commandments and attributed to Him something false, He would at once punish him and destroy him. And in another passage (8/68), when the Prophet had decided something in consultation with his companions —since there was no precision in the Quran— and his decision did not please God, at once a revelation came to correct him. (There are several cases of this kind in the Quran). Further, the Prophet did never feel himself above the law; and there are at least a dozen cases when he heard a plaint against his own self and gave satisfaction to the plaintiff, be he a Muslim or a non-Muslim<sup>22</sup>. There are even elements of referring his own case

18 Ibn Hishâm, p. 432, 560.

19 Ibn Hishâm, p. 745.

20 Ibn Habîb, *Mukhtasar al-Jamhara* (MS.), fol. 41/b, cf my *Le Prophète*, II, 535.

21 Ibn Hishâm, p. 347.

22 cf. my *Muslim Conduct of State*, 4th ed. § 257-9.



to a third person to arbitrate<sup>23</sup>. Even in the matter of polygamy he was not behaving contrary to the law laid down in the Quran for general Muslims; (he in fact contented with four wives, and the rest, married to him before the promulgation of the restrictive law, became honorary espouses, without conjugal relations).

It was also not a **democracy**, because the final word, the sovereignty did not belong to the people, to Man, but to God. One had to apply in the first instance the Quran, which no human being can change or modify. In the silence of the Quran, the Prophet made deductions with common sense and logical reasoning, be that in consultation with his companions or else. He also let the old customs continue unless he found in them something inadmissible, which he rectified as the occasion arose. Human element there was yet in a secondary place: God did order in the Quran, but the understanding of the Quran was human; unabrogated customs were also of human origin; in the silence of the revealed law, questions were decided by the effort of reasoning. Human element was completely absent when the divine order was clear. The twofold principle is simple and logical: Firstly: No inferior authority can abrogate the law promulgated by a superior authority. If a common Muslim, a judge for instance, deduced some rule, either he himself or the Prophet could abrogate it and replace it by something else. But if the deduction was Prophet's, no common Muslim could modify it; the Prophet himself could do that, or God through a revelation. If the order was God's, not even the Prophet had the right to change it; God alone can do that if He willed. Since there is no possibility in Islam of a man's receiving divine revelations after Muhammad, who was the last of the prophets, no human agency can change the Quran without going outside the pale of the Islamic community. **Secondly**: The old order will be maintained, as ever valid, unless initiative is taken by the Legislator to modify it.

Was that a **theocracy**? The term is tempting etymologically. But the significance is not the same in its historical context. In the old Jewish theocracy, the heads of the community, the so-called «Judges» received divine revelations; in Islam that is true of the time of the Prophet, but it cannot apply to the caliphate. Both civil and religious affairs did fall under the purview of the government in the time of the Prophet, but, as we have just seen, there was also a large place for human elements provided there was silence in the divinely revealed Text of the Quran.

Human affairs may be divided in three categories: civil, religious, and spiritual. In the West, spirituality is amalgamated into the practice of religion; in Islam the practice of the religion forms part and parcel of the political (civil) affairs and depends on the political caliph, and for spiritual affairs there are

<sup>23</sup> *ibid.*, § 259/j.

other authorities, the spiritual caliphs or heads of *tarîqas*. In his *Kitâb al-Umm*<sup>24</sup>, the imâm ash-Shâfi'î for instance describes the constitutional law, of who can be a caliph, under the discussion of the imâm of the prayer: the imâm is as much the leader in the mosque as in the citadel and government house (*dâr al-imâra*). But he is subject to the law, to the Quran in both the fields. In our humble opinion, it is better to reject all foreign terms to qualify Islamic constitutional conceptions, be that of the time of the Prophet or the caliphs, and consider them as something *sui generis*.

The result of the separation between the political and the spiritual is that there are two parallel and simultaneous States in the Muslim State, yet without least conflict, rather complementary, each helping the other: The outer State, with its politico-religious caliph, takes care not only of the outer defence of the territory and inner order, but also of the establishing of the more significant elements of the Islamic religion (since it is the caliph who leads the prayer in the mosque, decides the day that the fasting month of Ramadân should begin or end, presides in person or through a deputy over the pilgrimage at Mecca, and applies all the civil, criminal and international laws of the Quran). The caliph is the successor of the Prophet in part of this latter's prerogatives. It was Abû Bakr, who as a matter of fact held that post at the death of the Prophet. Multiplicity of heads was not admitted there<sup>25</sup>, only one caliph for the entire Muslim world. This on the one hand. Simultaneously and on the other hand there was an inner caliphate, for the spiritual guidance of Muslims, and there was no limit to the number of such «caliphs»: Abû Bakr, 'Alî and many other companions held that rank simultaneously. The Qâdirîya, the Suhrawardîya etc. recognize 'Alî as the immediate caliph of the Prophet; the Naqshbandîya learning the same teaching from Abû Bakr. One can even have more than one affiliations in this realm: the Mujaddidîya for instance recognize both 'Alî and Abû Bakr as their final guide linking them simultaneously with the Prophet. These inner «caliphs» tried to polish morals and inculcate true Islamic solidarity and human fraternity with tolerance and charity as their motto. They were useful to curb ambitions of adventurers and to nip in the bud the rebellions and civil wars. Even the political caliphs did not mind to pay homage to these spiritual caliphs, and treated them even as superior to themselves.

In the discussion of the constitutional law, it is not the form but the spirit that counts. Justice and rule of law on the part of the caliphs were more important than the question whether he was democratic or autocratic, whether

24 I, 136-40, 143-4 (cf *al-imâma al-'uzmâ*).

25 Bukhârî, *Sahîh*, 62/5, N° 9; Tabarî, *Ta'rikh*, I, 1823; Ibn. Sa'd, III/i, p. 151; Diyârbakrî, *Ta'rikh al-Khamis*, II, 168-9.

he had the right to veto the decision of the majority of his council or not, whether the counsellors were selected or elected, but that these latter were really representatives of groups of interests and were honest and wise, searching not personal or particular interests but the common weal.

It is not possible, in the present state of our knowledge, to say categorically whether the Prophet or his immediate caliphs exercised the right to veto. The question of the Prophet is a bit particular, since if he had said: «such is the commandment of God revealed to me», no further discussion was possible, and every Muslim willingly acquiesced in. But in matters where there was no revelation, and the Prophet had to rely on his personal, human opinion, there are instances where he conceded to the majority opinion against his own personal preference, for instance, he left Madîna to meet the enemy at Uhud, in spite of his preference to defend from inside the town and incur a siege. Even a saying is attributed to him: «If Abû Bakr and Umar are unanimous, I won't go against them».<sup>26</sup> The principle is well described in the Quran (47/21): «An obedience and a sincere word (advice); thereafter when the resolution is taken for a matter, it would be better for them to be truthful with regard to God» (abide by the promise of obedience). Sincere and independent opinion at the time of discussion, yet solidarity and full collaboration even against one's opinion when the decision is made! There was no egoism, and the interest of the community was of prime importance.

Votes are rare in the time of the Prophet. The only instance known seems to be the one<sup>27</sup> when some people agreed to liberate gratis the prisoners of the tribe of Hawâzin who were already reduced to slavery and distributed as booty, and others would not. By means of decurions, all the army was consulted, and it was found out that all were for and only two were against. The Prophet decided that all prisoners should be liberated, and the two recalcitrant soldiers should be compensated from State treasury for the liberation of the prisoners in their possession.

As we shall see in more detail later, the same system continued *mutatis mutandis* in the time of the Orthodox caliphs. Autocracy there never was, legality was the principle.

### Succession to the Prophet

The Prophet had left no son to survive him; and of his daughters only Fâti-

<sup>26</sup> Ibn Kathîr, *Tafsîr*, I, 420 (on Quran 3/159, citing Ibn Hanbal).

<sup>27</sup> al-Kattânî, *at-Tarâfîb al-Idâriyâ*, I, 235, citing Bukhârî (cf kitâb *maghâzî*, bâb 56, N° 5 and Kitâb *Ahkâm*, bâb 26).

ma was living when the Prophet breathed his last. So the question of succession was agitating many minds.

Had the Prophet left a son, probably the community would have accepted him as the successor, without difficulty, and dynastic rule would have become obligatory among Muslims. As to a daughter, the Quran does not preclude the possibility of a woman ruler, and many a pious Muslim jurist has referred to the story of the queen of Saba, who according to the Quran<sup>28</sup>, had «embraced Islam in the company of Salomon» (whom Islam considers as a prophet). Arab tradition saw no objection against it either; Umm Qirfa and Umm Ziml of Ghatafân, Sajâhi of Tamîm tribes are well-known examples of female chiefs. The Prophet had even nominated a woman, Umm Waraqa, a hâfiz of the Quran, as the imâm<sup>29</sup> of a mosque in Madîna where she led the prayer even with men as followers. Nevertheless the Prophet seemed not to like women entrusted with supreme power. For not long before his death, when he had learnt that the Iranians had selected a woman to be their ruler, he had exclaimed: «a people that has entrusted its supreme power to a woman shall not prosper». Further the Quran (13/18) had said that women are not very good for war purposes. Even if Fâtima had had political ambitions, there was little chance of her succeeding to the power of her father, the Prophet, more so since her husband, ‘Alî himself was a candidate for the post.

The nearest male relative of the Prophet was an uncle, al-Abbâs, and several cousins (sons of uncles), including ‘Alî. According to the Muslim law of inheritance, uncle inherits to the exclusion of cousins. When the Prophet was on his death bed, al-Abbâs<sup>30</sup> went to ‘Alî and said: The Prophet has made no testament for his succession; let us go and ask him: if the political power is to remain with us, we shall know that; if not, we shall be the witnesses of his testament. But ‘Alî declined and significantly said: «I won't go, for if he denies that to us now, nobody would ever give it to us later». (This shows clearly that nobody believed in the automatic inheritance of the rulership). Al-Abbâs had personally no great ambitions, but he was politically-minded. A few days after the above conversation, when the Prophet died, he went again<sup>31</sup> immediately to his eminent cousin, ‘Alî, and said: Proclaim thy succession and I pay thee homage the first, others will follow. ‘Alî refused again, and wanted that instead of a **fait accompli** imposed on others, there should be a public deliberation; and thought

28 Quran 27/44.

29 Ibn Hanbal, *Musnad*, VI, 405; Abû Dâwûd, kitâb 2, bâb 62; Ibn ‘Abd al-Barr, *al-Isfîcâb*, ch. kunâ an-nisâ’, N° 107.

30 Bukhârî, *Sahîh*, 64/83, N° 15 and 79/29; Ibn Hishâm, p. 1011; Tabarî, *Ta’rîkh*, I, 1823; Balâdhuri, *Ansâb*, I, § 1180.

31 Balâdhuri, *Ansâb*, I, § 1185.

that nobody would raise objection against him (more so since his uncle also was renouncing in his favour).

The Madīnan Ansār were also preoccupied with the question. But their's was a dead-born ambition, for they were divided among the Ausites and Khazrajites, no one group tolerating the caliphate to go to the other. The Khazraj, the more numerous clan did effectively meet in the club (*saqīfa*) of the Banū Sâida to deliberate how to get their candidate accepted by the others. (They were the original inhabitants of Madīna, may be the majority of the population of the capital. The Prophet had taken refuge in their country, and was even related to them, since the mother of his grand-father 'Abd al-Muttalib, was a Khazrajite, even as the host in whose house he had passed his early weeks in Madīna. And the Prophet had consented to become the *naqīb* of this tribe, when the one nominated at the time of the pact of 'Aqaba had died.)<sup>32</sup> But an Ausite brought the news of the separate deliberations to Abū Bakr<sup>33</sup>, who took it so seriously that without demanding other eminent persons to come along with him, he went, accompanied by 'Umar and Abū 'Ubaida who were with him when the news came to him. His intention seems to have been to use his influence to persuade the Khazrajites to postpone the discussion till after the burial of the Prophet, and even then along with all the Muslims and not factionally. Abū Bakr introduced himself in the club without being invited there. He was received politely, but was nevertheless told why the Ansār thought that the succession to the power of the Prophet should go to the Ansār. Abū Bakr replied that if the caliph was not a Meccan, he would not command respect in Arabia. The Ansār proposed a compromise: a joint-rule, «one emir from you, one from us». (According to a report, which seems to be a further compromise: «let us institute a tradition that the caliph should alternately be from the Meccans and the Madīnans».)<sup>34</sup> But it was rejected even by the Ansār, or by the more extremists from among them. An eminent Ansārite then rose up and addressed to the members of his tribe: Don't try to snatch power from the Meccans, for you all know that the Prophet had himself said that «the *imāms* are from among the Quraishites». (This according to al-Wāqidī; according to Ibn Ishāq, it was Abū Bakr who had reminded that.) There was a suspense; then Abū Bakr said: I propose to you

32 Ibn Hishām, p. 346; Tabarī, *Ta'rikh*, I, 1261; Balādhurī, *Ansāb*, I, 254, § 584 says that this person, As'ad ibn Zurāra was not only the *naqīb* of the clan of Banu'n-Najjār, but also the *naqīb an-nuqabā*. It was the same clan from which the mother of 'Abd al-Muttalib had hailed.

33 Ibn Hishām, p. 1016.

34 Bukhārī, *Sahīh*, 62/5, N° 9; Ibn Hishām, p. 1016: «one emir from among us and one from among you». According to Ibn Sa'd, *Tabaqāt*, III/i, p. 151, they proposed a joint rule (*qarīn*). According to Diyārbakrī, II, 168-9, the succession was to alternate, one after the death of the other.

two names, select anyone of them, viz. ʿUmar and Abû ʿUbaida. ʿUmar was taken by surprise and he jumped to say: No, it is not me but solely to Abû Bakr that you should pay homage; He wanted to force Abû Bakr's hand, when an Ansârîte roared: No, no, wait, let it be me the first to pay homage to Abû Bakr! (What a fine example of selfless and true Islam in these Ansârîtes! Professional enemies of common sense would say that the Ansâr had no political maturity; they ought to have indulged in a civil war and fratricide).

That Abû Bakr had come only to ask for postponment and not for a decision, is confirmed by the fact that immediately after the burial of the Prophat he convoked a general assembly of the Muslims of Madîna and explained in what conditions and how against his own will he had been elected, and added: You are not at all obliged to confirm, and the question is open: you may now elect anyone you like anew in all calm. But nobody would change the previous decision, and everybody renewed his pact of allegiance. On learning the news and the decision of the metropolis, the provinces also confirmed the election and sent in their homage through the local governors.

ʿAlî was absent from the general assembly of Madînans (and later he said that he was busy collecting the Quran). So Abû Bakr himself went to him, and said that all had decided a thing, so he too should do the same. ʿAli replied: I am not at all against you; the only thing I resent is that things have been decided without asking me to be present at the consultation. Abû Bakr explained in what circumstances and for what purpose he had hastened to the club of the Ansâr, and that if he had known that ʿAlî was desirous of the caliphate, he would not have accepted to be chosen as such. Soon they reconciled; and I need not study here the conflicting reports, one saying that ʿAli paid homage forthwith, the other affirming that it happened sometime later. It is however to note that a few individuals retarded the offering of their homage, and at least one individual refused to do that and never paid it during all his life. Abû Bakr left them to their choice and never resented, much less harassed or punished them. These «recalcitrants» also did nothing to disturb order, on the contrary they collaborated with the government and participated in the expeditions it despatched.

We have remarked above that the election of Abû Bakr was for life. He was no prophet, and so there was no question of his receiving divine revelations. But he was not even the sole successor of the Prophet for all the rest of the functions of the Prophet: politoco-religious affairs were amalgamated and went to the «outer» caliph, and Abû Bakr was the first such successor; spiritual affairs did not require monopoly and centralization, and there were very many companions of the Prophet, spiritually-minded and having learnt many things from

the Prophet and continued in all independence to transmit and teach to whom desirous of learning the same. These «inner» caliphs were all simultaneous and immediate successors of the Prophet. There was not even the discrimination of class : Abû Bakr was the outer caliph for all Muslims and was at the same time the inner caliph for those Muslims who chose him as such. ʿAlî was not the first outer caliph, but was one of the inner caliphs, living in the same town as Abû Bakr. If one considers that things of this world are ephemeral and not worth disputing on, and that the importance attaches to matters of the next world, falling in the spiritual dominion, there is the possibility to unite all Muslims. Sunnis and Shīʿas, all agree that ʿAlî was an immediate successor of the Prophet in the spiritual kingdom (and most of the *silsilas* that exist today are affiliated to him).

This aspect is further confirmed by some sayings of the Prophet. He had said : «Those who demand a public function, we won't give that to him!»<sup>35</sup> He wanted to discourage political ambitions. His family had to give example. ʿAlî had momentarily cherished such a desire; he must now be happy that he did not push it through, and thus the Prophet's real desire was fulfilled by ʿAlî's not being elected to the post of the outer caliphate on his own demand. Another important point is that the election of ʿAlî to the caliphate immediately on the death of the Prophet would surely have instituted a dynastic rule, and later Muslims could not have easily gone to other forms of government such as the republic. The universality of Islam's call, and elasticity of its law would have suffered by the obligatory monarchy, and limitation to a single family till the end of the world, as the only possible form of its government.

### ʿUmar's Nomination

On his death bed, Abû Bakr asked his secretary, ʿUthmân, to take down his testamentary will, saying that «he designated for the post of caliph...» At that moment Abû Bakr swooned, and the selfless ʿUthmân completed the phrase by adding the name of ʿUmar<sup>36</sup>. Soon Abû Bakr recovered; and when he learned what ʿUthmân had done, he praised him and said : You could as well have written your name, since you too merit it. After completing the dictation, the document was sealed, and the «police commissioner» was asked to take it out and declare in public : Here is the will of Abû Bakr who asks you to pay homage to the person named in the document. The prestige of and confidence in Abû

<sup>35</sup> Bukhârî, 37/1, N° 2; Abû Dâwûd, 23/2.

<sup>36</sup> Ibn Saʿd, III/i, p. 142; Ibn Hanbal, I, 27 (N° 259).

Bakr were such that without knowing the name, everybody willingly paid homage to the heir-designate. After the death of Abû Bakr, the envelop was opened, and the *bai'a* for 'Umar was renewed. Naturally this constituted no election. We know that even in case of dynasties, *bai'a* has always existed. So the *bai'a* alone cannot make 'Umar as an **elected** president of a republic.

### 'Uthmân's Selection

The form of government instituted by Abû Bakr did not change under 'Umar. 'Umar could not decide until his death as to his successor. Grievously wounded by an assassin, he on his death bed recalled: The Prophet had one day named ten persons as those who would surely go to Paradise. Of the survivals, six were present in Madîna. 'Umar said: Let these six deliberate and select one of themselves as the caliph. He added a seventh member to vote in case of tie, but who was expressly excluded from the possibility of being selected as caliph, and it concerned his own son 'Abdallâh ibn 'Umar. (The sagacity and piety of 'Umar cannot be too much praised).

In the meeting, four members said that they were not candidates. So only 'Uthmân or 'Alî had to be selected. Then everybody agreed that 'Abd ar-Rahmân ibn 'Auf should decide. For several days he consulted the public opinion and talked not only to the permanent inhabitants of the town, but also to traders and tourists who had recently come to Madîna, and even school children, even women<sup>37</sup>, and found that the immense majority —let us say 99.9 % — were for 'Uthmân, only a few individuals were for 'Alî. He had recourse to another final test before pronouncing his decision. He asked publicly 'Uthmân: If I nominate you, are you prepared to follow the Quran, the Sunna and the precedents of Abû Bakr and 'Umar? He said: Yes. One the same question 'Alî replied: The Quran and the Sunna yes, the precedents of Abû Bakr and 'Umar not necessarily: I can make my own *ijtihâd* (effort of reasoning). From above the *minbar* of the mosque 'Abd ar-Rahmân ibn 'Auf then said: O God Thou knowest full well that I am seeking nothing but well-being of Thy community. Thereafter he declared that he had chosen 'Uthmân to be the caliph. Everybody consented and paid unanimous homage to 'Uthmân. (This is also no election, but a nomination by the precedent ruler, not direct but indirect, by means of intermediaries). As in previous cases, the provinces ratified the decision of the capital.

37 Ibn Kathîr, *al-Bidâya wa an-Nihâya*, VII, 146.



### Alî and Mu'âwiya

According to the great historian Tabari<sup>38</sup>, there was a non-Muslim plot long prepared, well laid and well executed to discredit 'Uthmân and murder him. A handful of simpletons from among the Muslims were also lured in unwittingly. Without entering here into the details, let us describe the final stage. Rightly or wrongly there was some complaint against the governor of Egypt. 'Uthmân readily agreed to change him and nominated the person which the complainants had suggested, a son of Abû Bakr. Receiving the letter of nomination he set out at once for Egypt. The caliph sent also a letter urgently to the governor in Egypt, informing him that he had been replaced by such and such, on the arrival of whom he should give him charge. Naturally this official postman travelled faster to reach Egypt before the arrival of the governor-designate, and crossed him. This latter got suspicious, and wanted to see the message, which he opened and read it: «Such and such has been appointed governor of Egypt, when he comes to thee **قَاتِلْهُ** (as the Arabic script did not much employ then the diacritical points, the word could be read **قَاتِلْهُ** = «welcome him», or **قَاتِلْهُ** «kill him»). The historian of Egypt, as-Suyûtî<sup>39</sup> who reports it, adds that it was a tragedy that the governor-designate in his suspicion read it the wrong way, got furious and returned to Madîna to create a scandal in the town. The caliph swore to affirm that he meant welcoming and not killing, but that was of no avail. In the meanwhile the plotters sent an army from Egypt to menace Madîna. The caliph could easily crush the insurrection, but he was too kind-hearted to believe that there was possibility of a plot. He even allowed the members of the Madinan garrison to proceed to Mecca for Hajj; and he rejected with thanks the offer of the governor of Syria to send reinforcements for his defence. There was no particular grudge in Madîna against the aged caliph. It sufficed that al-Ḥasan and al-Husain go, at the demand of their father 'Alî, and patrol awhile the house of the caliph to discourage all frontal attack by the rebels. The plotters were bent upon executing their plan, so they jumped inside the house of the caliph from a back wall, and assassinated the caliph while he was fasting and reading the Quran; they even wounded grievously his wife who was alone in the room to intervene.

It is easier to win a war, much more difficult to win a peace. The insurgents got afraid of their folly. They were well aware of the different currents that were working in the body politic. In order to legitimate their action the

38 anno 33 H., re Ibn Sabâ, alias Ibn as-Saudâ'.

39 *Tadrîb ar-Râwî*, p. 151.

leaders of the hypocrites went to ʿAlī and insisted that he declared his caliphate and accepted their paying him homage. ʿAlī refused first and said :

«Leave me and seek someone else because perspectives are dark and things are bewildering. You must know that if I give you a favorable reply, I shall lead you to what would seem right to me, and I shall hear no intercession or recommendation against the right. In fact I as a supporter (*vazīr*) am better for you than as an emir»<sup>40</sup>.

The insurgents vainly searched others and nobody was willing to take the risk of being accused of the complicity in the murder of the innocent caliph. The insurgents returned to ʿAlī and so much insisted that he at last gave way; and addressing to two of the most eminent companions of the Prophet who also suggested ʿAlī to accept the caliphate in those difficult conditions, he said :

«By God! I have no desire of the caliphate, and the kingship has not the least importance in my eyes. It is you who invite me to accept it and push me to do that»<sup>41</sup>.

ʿAlī had then no independent army of his, and it was the insurgents who «protected» him as their prisoner. The Madīna garrison was away at Mecca for pilgrimage. When the news arrived in the provinces, it was a shock and everybody demanded that the culprits should be punished. The near relatives of ʿUthmān were naturally more vehement and pressing, but ʿAlī was helpless and asked them to wait until he is able to get the real liberty of action. He committed some political mistakes also : He left Madīna for Iraq (thinking that he would thus get rid of the «protection» of the Egyptian insurgents; he dismissed certain governors, including Muʿāwiya of Syria who was a near relative of ʿUthmān, etc. Talha, Zubair and Muʿāwiya began coveting each the saliphate, and they persuaded ʿAʿisha the venerated wife of the Prophet also to take active part in politics: as the «Mother of the Faithful» she demanded the justice against the murderers of ʿUthmān; and a sizable army began to assemble. ʿAlī also prepared to meet the new menace, but since all were good Muslims, it was easy to arrive at a peaceful settlement, and nobody denied the eminence of ʿAlī in the circumstances. In fact full agreement was reached after negociation. But Ibn Sabā, a non-Muslim (or hypocrite) was there. As Tabarī<sup>42</sup> reports, his men treacherously made a night attack on the camp of ʿAlī, coming as if from the camp of ʿAʿisha. The Battle of Jamal began in misunderstanding. Talha and Zubair were killed, and ʿAʿisha made prisoner, but the pious ʿAlī sent her with great respect

40 Ash-Sharīf ar-Radī, *Nahj al-Balāgha*, I, 182, khutba N° 88.

41 Idem, II, 210, khutba N° 200.

42 anno 41 H.

back to Madîna, When she later knew the real facts, her regret was great, and she suffered from the shock all through the rest of her life.

After the victory over Talha-Zubair-A'isha group all had not finished. The Syrian army led by Mu'âwiya was advancing. The battle of Siffin had to be faced. Meanwhile letters were exchanged between 'Alî and Mu'âwiya, preserved by the Shî'ite work **Nahj al-Balâgha** of ash-Sharîf ar-Radî, and have great constitutional importance. The Shî'ites affirm that the Prophet had nominated 'Alî as his successor. Strangely enough 'Alî himself never refers to this decisive and unopposable argument. If 'Alî did not push his claim during the caliphate of Abû Bakr, 'Umar and 'Uthmân, one may perhaps consider that 'Alî made a sacrifice and attached not the least importance to worldly ranks. But when he not only claimed the caliphate but went so far as to use armed forces to vindicate his claim, against Mu'âwiya in particular, the complete absence of the reference to this argument leads one to believe that it is a later production. In fact in the exchange of letters just referred to, 'Alî insists only on the fact<sup>43</sup> that he is a near relative of the Prophet, that he has rendered more service to the cause of Islam in the past than his rival, and never to the argument that he had been nominated as successor by the Prophet.

Supposing that the **Nahj al-Balâgha** has omitted the letter or the passage of the letter, of 'Alî to Mu'âwiya in which this argument was employed—which is scarcely possible—let us analyse the argument itself, which later writers put forward. It has two elements :

- a) In the very early days of Islam once the Prophet convened a meeting of his clan at Mecca, and said: Whoever embraces my religion would be my successor. 'Alî alone rose up, and he was a minor then. Some of those who were present laughed and ironically said to Abû Tâlib: Now you are subjected to your own little son!<sup>44</sup>
- b) During the last months of his life, when the Prophet returned from his Farewel Pilgrimage and was camping at the lake of Khumm, he supported 'Alî in a quarrel that had arisen between him and some of the soldiers that had gone along with him in an expedition, and said: To whomever I am **maulâ**, 'Alî is his **maulâ**<sup>45</sup>.

There are other reports that explain the conversion of 'Alî in quite different manners<sup>46</sup>. Even supposing the the above report is the correct one, it is clear

43 *Nahj al-Balâgha*, III, 8, N° 6.

44 Tabarî, *Ta'rikh*, I, 1183-4.

45 Ibn Hanbal, I, 118, 119, 152; IV, 281, 368, 370, 372, 373; V, 370.

46 Tabarî, I, 1164-5.

that many persons, besides 'Alî, could then declare their conversion; although that did not happen, but supposing that that had happened, could all of them become simultaneously the political successors of the Prophet? Further it is not to neglect that at that time the Prophet had no political power, no State; his was then the spiritual kingdom. He could have offered succession in that realm alone. This seems to be the more plausible since in this realm there is no jealousy, and many kings or caliphs could simultaneously succeed to the master and teacher. As we have seen above, the Muslims have separated the politico-religious caliphate from the spiritual one, and in this last one 'Alî was in fact the immediate successor of the Prophet, recognized in the Qâdiriya and other *silsilas*; all Sunnîs admit that. The celebrated saying of the Prophet, to console 'Ali during the campaign of Tabûk: «Art thou not satisfied to be in the same relation with me as was Aaron with Moses?» (Ibn Hishâm, p. 897) implies the same thing. In fact Moses was occupied with the political, legislative and administrative matters of the Jewish community, while Aaron was entrusted with the cult and other religious affairs.

As to the second argument, does *maulâ* really signify a successor? There is no proof. The term is used in the Quran very many times, in different senses, but never in the sense of heir-apparent or successor designated by the actual ruler. The Quranic uses are the following:

1. Your *maulâ* is the Hell, and it is really your *maulâ*. (57/15).
2. God is your *maulâ*, the best *maulâ* and the best helper. (8/40).
3. (the slave) ... who is dependent on his *maulâ*. (16/76).
4. To each We have assigned *maulâs* in what the parents and near relatives leave (as heritage; i.e. the quality of *maulâ* or client is part of the heritage to be divided among the heirs). (4/33).
5. If you do not know the name of some Muslim's father, his is your brother and *maulâ*. (33/5).
6. I am afraid of my *maulâs* after me while my own wife is sterile; so give me on Thy part (O God) a *walî* who should be my heir. (19/5).
7. The Day on which no *maulâ* would save in the least his *maulâ*. (44/41).

Only the last use, in the sense of friend, seems to apply to the report on the incident of Khumm, more so since 'Alî was declared to be the *maulâ* of the Prophet forthwith, and not that he would become his *maulâ* at his death.

The essential argument put forward by 'Alî in his letter to Mu'âwiye says:

«Those who have paid me homage are the same as had paid homage to Abû Bakr, then to 'Umar and then to 'Uthmân, and that also in the same conditions as were for those. Other people (in provinces) have

no choice, and no right to reject the decisions of the Muhâjirûn and Ansâr of the metropolis. If anybody goes out of their decision, one would by force of arms compel him to re-enter in the fold of the faithful. You know that I am innocent of the blood of 'Uthmân, and it is your passion which pushes you to calumnation.»<sup>47</sup>

When negotiations failed, a battle took place at Siffin. It was stopped mid-way, and people agreed to have recourse to peaceful means, to decide the *casus belli*. Each party had to nominate a representative, and the two referees should arbitrate according to the Quran as to who should be the caliph.

The arbitrators seem to have had all the liberty of decision. First they agreed to declare the two pretenders as deposed. One arbitrator then proposed the name of a very pious Muslim, 'Abdallâh ibn 'Amr ibn al-'As, but unfortunately he was the son of this arbitrator, and so there was legitimate suspicion on the part of the other arbitrator who proposed another prestigious name, that of 'Abdallâh ibn 'Umar, but his colleague did not agree. In the absence of documents as to the proceedings of the deliberations of the arbitration it is presumed that both agreed to depose both the pretenders and to invite the public to a fresh election. This is not at all sure. The known fact is that on the day of award, the representative of 'Alî declared that he deposed both the pretenders and asked people to make a new election; and the representative of Mu'âwiya said that he confirmed Mu'âwiya, and that his colleague had no right to depose except the one who had nominated him.

There was naturally confusion. 'Alî had right not to accept the award since it was not unanimous. Both sides prepared for a new war, but in the meanwhile another complication arose, and a group of anarchists succeeded in mortally wounding 'Alî and grievously wounding Mu'âwiya but who recovered after some treatment.

On his death-bed 'Alî made a testament: According to the Shî'ite<sup>48</sup> version, he nominated his eldest son al-Hasan to succeed him; according to Sunni<sup>49</sup> historians, he replied on a question: I neither command you to pay homage to al-Hasan nor prevent you from doing that.

If the Shî'ite report is correct, then nominating one's own son as heir-apparent becomes a *sunna* of the Orthodox Caliphs; Mu'âwiya would in that case only copy this precedent and nominate his son Yazîd (who at the time of nomi-

47 *Nahj al-Balâgha*, III, 138-9.

48 Ibn 'Abd Rabbih, *al-Jqd al-Farîd*, ed. Bulâq, II, 351; cf also Mas'ûdî, *Murûj*, citing but refuting it.

49 Ibn Kathîr, *al-Bidâya*, VII, 327; al-Hâkim, *al-Mustadrak*, III, 79.

nation had no bad name at all: he was generous, intelligent, never drank wine<sup>50</sup> nor neglected prayers and fasting.) Only novelty was that the nomination of Yazîd took place not at the death bed but many years before, and the people were asked to pay homage to Yazîd as an heir-apparent, and they knew before hand what would happen. Reverting to ʿAlî, when he succumbed to the wounds, al-Hasan was unanimously acknowledged caliph by those who acknowledged ʿAlî, but soon they became so undisciplined and uncontrollable that they looted<sup>51</sup> even the tent of their caliph al-Hasan, who could escape with difficulty. He was so disheartened that he preferred making peace with Muʿâwiya. Al-Hasan abdicated in favour of Muʿâwiya on condition that he should be the heir-designate<sup>52</sup>. This was a happy conclusion and history names it «the year of Reunification» or of «Reconciliation». (Al-Hasan died before Muʿâwiya, and so the clause of succession had no relevance, and as just said, Muʿâwiya, in the interest of stability and to avoid wars of succession decided to nominate a successor and got it ratified by the public, a precaution which does not prevent people from neglecting and behaving as if they were free to claim caliphate).

We see that in case of ʿAlî there was a sort of election, resembling partly to the case of Abû Bakr; Muʿâwiya was not offered the caliphate but demanded of his provincial people to accept him as caliph, and being very popular in his province, he obtained their consent and by the help of his army and his diplomatic talents became the uncontested ruler of the vast Muslim realm. Al-Hasan's case is complicated by sectarian difference: according to Shîʿites he was nominated, and not elected; according to Sunnis he was elected, yet all agree that as a matter of fact he was recognized only by a part of the Muslims, not by all the provinces.

50 Ibn Kathîr, *al-Bidâya*, VIII, 233, on the authority of Muhammad ibn al-Hanafiya, brother of al-Hasan and al-Husain, son of ʿAlî from a wife other than Fâtima.

51 Tabarî, anno 40 H.

52 Ibn Kathîr, *al-Bidâya*, VIII, 41; Abu'l-Faraj al-Isbahânî, *Maqâtil at-Tâlibîyin*, I, 58.