

The beginning steps toward Full human cloning.

By Dr. Noor Ahmed Shahtaaz

* February 23, 1997: In Scotland, the first successful cloning experiment results in the birth of a lamb named Dolly.

* July 22, 1998: A team of scientists in Hawaii produces 22 mice, seven of which are clones-of-clones, created from the cells of a single mouse

* December 9, 1998: In Japan, eight calves -- four of which die during birth -- are cloned from a single cow

• December 16, 1998: In South Korea, researchers who combined an egg and cell from single donor produce the first stages of an embryo.

All of these startling news bulletins sound like science fiction, but they are reality -- just the beginning steps toward full human cloning.

After the birth of Dolly, the first cloned sheep, a National Ethics Commission was established in the U.S. It quickly urged a three- to five-year moratorium on human cloning research, but the recommendation was not approved. Today, most scientists believe that human cloning is going to happen, sooner or later, whether we like it or not. Until the advent of Dolly, scientists widely believed that the cloning of complete animal or human adults was biologically impossible. Even though it has long been known that every cell in the body shares the same genetic material, it was thought that adult cells are the end result of a gradual process of differentiation that begins right in the womb. This means simply that a brain cell remains a brain cell, a heart cell remains a heart cell, and so on.

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Thus, *Ahl al Ra'i* often used to criticize *Ahl al Hadith* for having little intelligence and less Fiqh-understanding, while *Ahl al Hadith* claimed that the opinions of *Ahl al Ra'i* were based on no more than conjecture, and that they had distanced themselves from the necessary circumspection in those matters of religious significance which could only be ascertained through recourse to the source-texts.

In fact, *Ahl al Ra'i* agreed with all Muslims that once a person has clearly understood the Sunnah, he may not reject it in favour of what is no more than someone's opinion. Their excuse in all those cases in which they were criticized for contradicting the Sunnah is simply that they did not know any Hadith concerning the matter in dispute, or that they did know a Hadith but did not consider it sound enough owing to some weakness in the narrators or some other fault they found in it (a fault which perhaps others did not consider to be damaging), or that they knew of another Hadith which they considered sound and which contradicted the legal purport of the Hadith accepted by others.

Moreover, *Ahl al Hadith* agreed with *Ahl al Ra'i* on the necessity of having recourse to reason whenever a matter occurs for which there is no specific ruling in the source texts. Still, in spite of these areas of agreement, the conflict and tension between the two groups remained acute.

Footnotes

31 Ibn Hajar, *Al Isabah* IV, 112; and Ibn 'Abd al Barr, *Al Isti'ab* (on the margins of *Al Isabah*) p.415.

32 Ibn Abd al Barr *Jami' Bayan al 'ilm*, I, 33.

33 Al Maqrizi, *Rhutat*, IV, 143.

34 This

letter was narrated by al Imam al Bukhari in his *Sahih* without a formal chain of narrators (i.e. *Ta'liqat*, as a *Mu'allaf* Hadith). It was also included by al Imam Malik in his *Muwatta'*; See al Zarqani's commentary, I, 10.

35 Al Musnad: A Hadith with an unbroken chain of narrators, all the way back to the Prophet (PBUH).

36 Al Mursal: A Hadith whose chain of narrators is broken at the end, i.e. one ascribed by a *Tabi'i* as having come directly from the Prophet (PBUH). Essentially, as the *Tabi'i* could not possibly have heard the Hadith from the Prophet (PBUH), the Hadith he related in this manner must have been told to him either by another *Tabi'i*, or by one of the *Sahabah*. But, as the *Tabi'i* scholar had no doubts concerning the trustworthiness of the one from whom he had heard the Hadith, he felt it unnecessary to name him. For the later generations of *Fiqh* and Hadith scholars, however, the question of whether the *Mursal* Hadith could be accepted became a serious issue. The reason for their concern was that the chain of such a Hadith is, after all, a broken one; and there is no certainty that, if the *Tabi'i* narrator had related the Hadith from another of his generation, that the other *Tabi'i* was a reliable narrator. For the *Fiqh* and Hadith scholars of the early generations, however, this was not a great problem, as they were familiar with the *Tabi'i* narrators and the *Shuyukh* from whom they had heard and related Hadith. Thus, both Imams Abu Hanifah and Malik accept the *Mursal* Hadith; while the two later Imams, al Shafi'i and Ahmad, reject the *Mursal*. (Ed.) 37 Summarized with liberty from *Dahlawi*, op. cit., I, 205-308. 38 What the author is saying here is that these were methodological tools unknown to the *Sahabah*, yet widely applied and employed by these two Imams. (Ed.) 39 As each sect strove to outdo the other, and gain converts from mainstream Islam, they took to distorting the meanings of the Prophet's words as recorded in the Hadith, and to manufacturing, and then ascribing to the Prophet, words and meanings designed to suit their own purposes. (Ed.)

The school of *Ahl al Hadith* became widespread in the Hijaz for many reasons, of which perhaps the most important were the great number of Hadith and other narrations known to the people of that area, and the fact that the region was more stable after the seat of the *Khilafah* had been moved, and most of the political activity had been transferred, first to Damascus, then to Baghdad. The Imam of Madinah, Sa'id ibn al Musayyab (d 94 AH), once noted that the people of Makkah and Madinah had not lost much of the Hadith and Fiqh, because they were familiar with the *Fatawa* and reports of Abu Bakr, 'Umar, 'Uthman, 'Ali (before he became *Khalifah*), 'A'ishah, Ibn Abbas, Ibn 'Umar, Zayd ibn Thabit and Abu Hurayrah, and thus did not need to use *Ra'i* in order to derive law.

The school of *Ahl al Ra'i*, on the other hand, gained currency in Iraq. The scholars of this group thought that legal interpretations of the Shari'ah should have a basis in reason, should take into account the best interests of the people, and should be backed by discernable wisdom. Indeed, these scholars felt it their duty to uncover these meanings and the wisdom behind the laws, and to make the connection between them; so that if the reasons for any law were to lose relevance with the passing of time and the changing of circumstances, the law would no longer be valid. If they found the reasons behind the law, they would sometimes prefer to cite arguments based on an analytical treatment of those reasons. Thus, in many cases, reason would be accorded legalistic preference when such reasoning conflicted with the evidence of certain categories of Hadith.

The spread of this method in Iraq was helped by the numbers of *Sahabah* influenced by the methods of 'Umar. Among them were Ibn Mas'ud, Abu Musa al Ash'ari, 'Imran ibn Husayn, Anas ibn Malik, Ibn Abbas and others. The spread was also assisted by the transfer of the *Khilafah* to Iraq, and the settling there of 'Ali and his supporters.

When the sects, like the *Shi'ah* and *Khawarij*, appeared in Iraq, conflict arose and the fabrication of Hadith became widespread³⁹. Consequently, the legal scholars of Iraq were forced to lay down conditions for the acceptance of Hadith, according to which only a few of the reports given by the *Sahabah* living in Iraq were acceptable. Moreover, the great number of legal problems and the constant increase in unprecedented legal issues in that area were more than could be dealt with on the basis of reliable Hadith.

So, it was in this way that the Ummah, those who had not become involved with either the *Shi'ah* or the *Khawarij*, was divided into two groups, *Ahl al Hadith* and *Ahl al Ra'i*; and the conflict between them intensified.

It is well known that there are various approaches to Fiqh; and each of the Imams adopted a different approach to the subject. It is not a simple matter to claim that these were drawn from the Sahabah and the Tabi'un. Consider, for example, Malik's taking the customs and practices of the people of Madinah as a (secondary) source for legislation; or Abu Hanifah's use of al Istihsan and al 'Urf.³⁸

Moreover, neither of them based their arguments on the Fatawa of the Tabi'un, but rather competed with them, saying: "They were men [of knowledge] and so are we."

In addition, unlike anyone before them, each had laid down his own set of conditions for accepting Hadith as authentic.

Moreover, the incidence of an increased circulation of Hadith in those times, in addition to the appearance of Hadith that had never been circulated at all, led, in some cases, to legal rulings and positions quite different from those held by the Sahabah.

RATIONALISTS AND TRADITIONISTS: *AHL AL HADITH AND AHL AL RA'I*

Perhaps this truth may become all the more intelligible when we mention the emergence of two informal schools of legal thought, the rationalists or *Ahl al Ra'i*, and the traditionists or *Ahl al Hadith*, and the appearance of differences between them concerning both source methodology, and issues of case law. While it is true that both of these schools had their roots in the approaches of the preceding two generations, it was at this time that their differences in matters of Fiqh become clear; and it was at this time that people began grouping themselves on the basis of their differences in deriving legal points from the sources.

Writers on Islamic legal history emphasize that the rationalist school of *Ahl al Ra'i* was an extension of the school of 'Umar and Abd Allah ibn Mas'ud who, among the *Sahabah*, were the most wide-ranging in their use of *Ra'y* (lit. opinion). In turn, 'Alqamah al Nakha'i (d. 60 or 70 AH), the uncle and teacher of Ibrahim al Nakha'i, was influenced by them. Ibrahim then taught Hammad ibn Abu Sulayman (d 120 AH) who, in turn, was the teacher of Abu Hanifah.

The same historians stress that the traditionist school of *Ahl al Hadith* was a continuation of the school of those Sahabah whose fear of contradicting the letter of the source texts *Nusus* made them circumspect to the point where they never went any further than the texts. This was the case, by and large, with 'Abd Allah ibn 'Umar ibn al Khattab, 'Abd Allah ibn 'Amr ibn al 'As, al Zubayr, and 'Abd Allah ibn 'Abbas.

the prevailing practices among people. Leave the people of each town with the choice they have already made.'

The same story is told with reference to the Khalifah, Harun al Rashid, that he wanted to obligate the people to follow the Muwatta'.

But Malik said to him: 'Do not do that, for the Sahabah of the Prophet used to differ on the Sunnah. Then they scattered and settled throughout the Muslim world; and now their different ways are firmly established.'

... Malik was the most knowledgeable about the Hadith related by the people of Madinah from the Prophet (PBUH), and Malik's chains of narrators were the most reliable. He was also the most knowledgeable about the judgements of 'Umar and the legal pronouncements of 'Abd Allah ibn 'Umar and 'A'ishah and their companions from among the seven Fuqaha'. The sciences of Hadith narration and Fatawa were based on the knowledge of Malik and those like him.

Abu Hanifah was the most devoted to the legal interpretations of Ibrahim al Nakha'i and his colleagues, and would very rarely transgress their arguments. He was excellent at producing decisions based on Ibrahim's method, exact in employing that methodology in order to deal with details of case law.

If you wish to know the truth about what we have stated, then summarize the teachings of Ibrahim and his cohorts as recorded in the following works: Al Athar "Traditions" by Muhammad al Shaybani, the Jami' "The Compendium" of Abd al Razzaq and the Musannaf "Compilation" of Ibn Abu Shaybah, and compare them with Abu Hanifah's formal opinions. Indeed, you will find that Abu Hanifah departs only rarely from their way, and even then his opinion will not differ from the opinions of the jurists of Kufah." 37

In fact, al Dahlawi's comments need to be considered. He was very eager to stress that al Imam Malik and Abu Hanifah, and their companions, were more or less conforming to the opinions of the Tabi'un and the Sahabah before them (as opposed to generating their own Ijtihad), and had not transcended the jurisprudence of their predecessors. This, however, is a conclusion with which it is difficult to agree.

grandfather and the brothers [of the deceased], 'Alqamah (d 62) asked him, "Is any of you more knowledgeable than Abd Allah (ibn Mas'ud)?"

Masruq answered, "No, but Zayd ibn Thabit and the people of Madinah share the inheritance between the grandfather and the brothers..."

Thus, if the people of Madinah agreed on a matter, the scholars of the generation following the Tabi'un adopted it resolutely. This is what Malik meant when he said: 'The Sunnah concerning which we, the people of Madinah, have not differed is such-and-such.'

If the early scholars at Madinah had differed concerning any matter, the later scholars would follow those opinions which were stronger and more dependable either by virtue of their having been adopted by a majority of the early scholars, or of their having been the result of sound legal analogy, al Qiyas, or which were derived from some text in the Qur'an or the Sunnah. It is to this process that Malik refers when he says: 'This is the best that I have heard.' Then, if the later scholars could find no solution to a problem in the work of their predecessors, they would themselves turn to the relevant texts in order to formulate their own legal opinions.

At this stage, the scholars were inspired to start recording things in writing. So Malik (d 179) in Madinah, Ibn Abu Dhi'b (d 158), Ibn Jurayj (d 150?) and Ibn 'Uyaynah (d 196) in Makkah, al Thawri (d 161) in Kufah, and Rabi' ibn Subayh (d 160) in Basrah, began to write things down, and they all followed the same method.

When the Khalifah, Mansur, performed Hajj and met al Imam Malik, he said: 'I have decided to order that copies be made of these books which you have written. I will send a copy to every region of the Muslim world and order the scholars to act in accordance with them and not refer to any other works.'

Malik said 'O Amir al Mu'minin, do not do that! Already the people have heard different legal opinions, and listened to Hadith and narrations; and they have accepted whatever reached them first, so that this has contributed to differences in

who had, for fear of misquoting, not dared to attribute the Hadith to the Prophet (PBUH).

2. The other likelihood is that such opinions were derived by the Sahabah from the texts of Hadith, and represented their own understanding of the Sunnah.

In this respect, of course, the Sahabah were better than those who came later, because they had known the Prophet (PBUH), and were thus more capable of interpreting what he had said. Therefore, their judgements and opinions were accepted as authoritative, except in cases where they themselves differed, or where their pronouncements were in clear contradiction to sound Hadith of the Prophet (PBUH).

On the other hand, in cases where two or more Hadith conflicted, the scholars would refer to the opinions of the Sahabah in order to determine which of the two Hadith was the correct one. Thus, if the Sahabah said that a Hadith had been abrogated, or was not to be understood literally; or if they did not expressly say anything about a Hadith, but had ignored it, and had not acted in conformity with it, thus indicating that the Hadith was in some way defective, or that it had been abrogated, or that its interpretation was other than the literal, then the Mujtahid Imams would accept their opinions.

When the pronouncements of the Sahabah and Tabi'un differed on any matter, then each Faqih would follow the rulings of those from the same region as himself, and his own teachers, because he would be more able to discern the authenticity, owing to his familiarity with the narrators, of the opinions and sayings that reached him on their authority. Likewise, the Faqih would be better acquainted with their legal methodology.

The legal school of thought based on the opinions of 'Umar, 'Uthman, Ibn 'Umar, 'A'ishah, Ibn Abbas and Zayd ibn Thabit, and their companions from among the Tabi'un, like Sa'id ibn al Musayyab (d 93 AH), 'Urwah ibn Zubayr (d 94), Salim (d 106), Ata' ibn Yasar (d 103), Qasim ibn Muhammad (d 103), 'Ubayd Allah ibn 'Abd Allah (d 99), al Zuhri (d 124), Yahya ibn Sa'd (d 143), Zayd ibn Aslam (d 136) and Rabi'at al Ra'i (d 136), was the school most acceptable to the people of Madinah. It was for this reason that Imam Malik based his legal arguments on their teachings.

In the same way, the legal opinions of 'Abd Allah ibn Mas'ud and his companions, the judgements of the Khalifah 'Ali, Shurayh (d 77), and al Sha'bi (d 104), and the Fatawa of Ibrahim al Nakha'i (d 96) were the most acceptable to the people of Kufah.

Commenting on this phenomenon, Wall Allah al Dahlawi wrote:

When Masruq (d 63 AH) followed Zayd ibn Thabit's opinion concerning sharing out the inheritance between the

heard what I heard; but when I was confronted with matters concerning which I had not heard anything, I compared them, by analogy, with matters which I had heard about."³¹

Among the significant features of this period was the emergence of differences of opinion between legal scholars on a variety of matters. This was underscored by two decisions taken by the *Khalifah* of the times, 'Umar ibn 'Abd al 'Aziz.

1. He ordered that practices attributed to the Prophet (PBUH) should be collected and written down. Accordingly, the people of every locality wrote down in books whatever they knew to be a part of the *Sunnah*.³²
2. He restricted the authority to issue *Fatawa*, in most districts, to a few named individuals, as he did in Egypt, when he named only three people for this purpose. Interestingly, two of them were freedmen, Yazid ibn Abu Habib and Abd Allah ibn Abu J'afar, and the third was an Arab, Ja'far ibn Rabi'ah. When the *Khalifah* was questioned about appointing two freedmen and only one Arab, he answered : "What fault is it of mine if the freedmen are improving themselves and you are not?"³³

In his letter to Abu Bakr Muhammad ibn 'Anr ibn Hazm al Ansari, the *Khalifah* explained his reasons for ordering that the practices attributed to the Prophet (PBUH) should be written down. He wrote: "Look for whatever Hadith of the Prophet (PBUH), or *Sunnah*, or practice you can find. Then write these down for me; for I fear that this knowledge will pass away with the passing of the scholars."³⁴

AFTER THE TABI'UN: THE TIME OF THE MUJTAHID IMAMS

This period was described by Wali Allah al Dahlawi as follows:

"The Fuqaha' of the period took the Hadith of the Prophet (PBUH), the decisions of the early judges, and the legal scholarship of the Sahabah, the Tabi'un and the third generation, and then produced their own Ijtihad."

This was the way the legal scholars of those times worked. Basically, all of them accepted both the *Musnad*³⁵ as well as the *Mursal*³⁶ Hadith."

Moreover, it became their practice to cite the opinions of the Sahabah and Tabi'un as evidence. Essentially, there were two reasons for this:

1. Such opinions were actually Hadith of the Prophet (PBUH) which had been narrated by one of the Sahabah or the Tabi'un

USUL AL FIQH: METHODOLOGY FOR RESEARCH AND KNOWLEDGE IN ISLAMIC JURISPRUDENCE

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(Contd.....from Vol.1. Number.2)

LEGISLATION AFTER THE TIME OF THE SAHABAH

The time of the *Sahabah* came to an end between 90-100 AH, and was followed by the time of the *Tabi'un* whose scholars became responsible for *Fiqh* and giving *Fatawa*. The last of the *Sahabah* in Kufah died in 86 or 87 AH. The last one in Madinah, Sahl ibn Sa'd al Sa'idi, died in 91 AH. The last one in Basrah, Anas ibn Malik, died in 91 AH (some say 93 AH). The last one in Damascus, 'Abd Allah ibn Yusr, died in 88 AH. The last one of the *Sahabah*, 'Amir ibn Wathilah ibn 'Abd Allah (Abu Tufayl), died in 100 AH.

Thereafter, those who became responsible for issuing *Fatawa* were the freed men *Mawali*, most of whom had lived with the *Fuqaha'* among the *Sahabah*, such as: Nafi', the freed man of Ibn 'Umar, 'Ikramah, the freed man of Ibn 'Abbas; 'Ata' ibn Rabah, the Faqih of Makkah; Tawus, the Faqih of the people of Yemen; Yahya ibn Kathir, the Faqih of Yamamah; Ibrahim al Nakha'i, the Faqih of Kufah; Hasan al Basri, the Faqih of Basrah; Ibn Sirin, also of Basrah; 'Ata' al Khurasani in Khurasan, and others. Indeed, Madinah was unique in having a *Faqih* from Quraysh, Sa'id ibn al Musayyab.

These *Tabi'un* very rarely altered the *Fatawa* of the *Sahabah* from whom they had gained their knowledge; hence it is difficult to find differences between their methods of deriving judgements and those of their predecessors. Even so, the methods of deriving judgements were, at this stage, starting to evolve and, in the process, to become clearer than ever before.

It is narrated that Hasan ibn 'Ubayd Allah al Nakha'i said: "I asked Ibrahim al Nakha'i: 'Did you hear from others all the *Fatawa* which I hear you giving?' He said, 'No.' I asked him: 'Then you give *Fatawa* that you did not hear?' He said: 'I