

The Role of the Events of Fadak in the Formation of Differences between the Islamic Sunni and Shia laws

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Abstract

Sunni and Shia law are the two main components of Islamic law. Each of them has its own sources, in accordance with which religious scholars make their legal decisions. Analyzing the history of the emergence of madhhabs, we can see that their formation was influenced by historical, religious, political, social, economic, and other factors. In the first century of the Hijri calendar (Islamic chronology), many distinctive features of Islamic law emerged, and the emerging Islamic society created its own legal institutions. At the same time, one should note the fact that in the early history of the Islamic state and the formation of Islamic law, there were events in which we can see the reflection of certain religious and legal ideas, which later formed the basis of differences both between madhhabs and between whole directions of Islamic law. These events took place almost immediately after the death of the Prophet Muhammad. In this article, we have carried out a retrospective analysis of one such event—debates about the ownership of the lands of Fadak, where interests of the Prophet's companions clashed with those of the members of his family.

Keywords: Islamic Law, Sunni Law, Shia Law, Fadak, Fatima bint Muhammad, Abu Bakr.

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Introduction

There is no consensus among researchers of Islamic law about when the different directions of the Sunni and Shiite factions emerged. We believe that through a retrospective analysis of certain events in the early history of the Islamic state and Islamic law, we can see the prerequisites for the formation of features that later became inherent in the madhhabs of each direction. One such event that we will consider is the debate between Fatima and Abu Bakr about the ownership of the lands of Fadak. For a brief description of this event, let us cite a hadith: ‘A’isha narrated: “Fatima, the daughter of the Prophet, sent someone to Abu Bakr (when he was a caliph), asking for her inheritance of what Allah's Messenger had left of the property bestowed on him by Allah from the Fay’ (i.e., booty gained without fighting) in Medina, and Fadak, and what remained of the Khums (i.e., one-fifth) of the Khaybar booty. To that, Abu Bakr said: ‘Allah’s Messenger said: ‘Our property is not to be inherited. Whatever we leave is Sadaqa (charity), but the family of (the Prophet) Muhammad can eat of this property.’ By Allah, I will not make any change in the state of the Sadaqa of Allah's Messenger and will leave it as it was during the lifetime of Allah's Messenger, and will dispose of it as Allah's Messenger used to do’. So, Abu Bakr refused to give anything to Fatima.” (Bukhari 2007).

In this paper we consider the main aspects of this event, especially in the context of its impact on the legal specifics of each direction of faith.

Materials and methods

A large number of works are devoted to research about Islamic law, only a minority of which is directly concerned with Shiite law. D. Donaldson (1933), H. Halm (1997), M. Momen (1985), N. Calder (1979), H. Modarressi (1984), A. A. Sajedina (1988) and some others have engaged in research on Shiism. Most often the main object of their research was the institution of the imamate and power in Shiite Islam (Sajedina, 1988; Calder, 1980). In this paper, we set out to draw attention to the event that we believe was fundamental to the early formation of differences between Sunni and Shia Islamic laws. These events have been covered mainly in historical and religious works. The most famous among them are the ‘History of Shi`ism’ by G. Kh. Muharrami, ‘Fadak in history’ by Muhammad B. Sadr, and ‘Fadak’ by Seyid Mohammed Wahidi. These authors drew on both Sunni and Shia sources, considering almost all possible aspects of these events. But they did not consider the legal context of these events through the prism of the subsequent

formation of the sources of Sunni and Shia Islamic laws. Therefore, in this work, we will devote our main attention to their legal aspect, appealing to arguments by representatives of both Sunnism and Shiism.

In writing this work, we have deployed the following methods. One is the comparative-legal method. That is why we have previously analyzed such a feature of Islamic law as systematic, since, as some researchers note, the methods of comparative studies can be employed not only for comparing different legal systems but also for study of their components. Thus, the direction of comparative fiqh (Damirli, 2017)—comparative Islamic law—is gaining more and more relevance. It is impossible to study Islamic law without using the hermeneutic method, since theological and philological hermeneutics underlie the study of the scriptures. The peculiarities of using the hermeneutic method are due to the transformation of the concept of hermeneutics from an applied discipline on the interpretation of texts into “a science containing rules for filling in the gaps in codified law and thus having a normative character” (Gadamer, 1988). Mostly we have considered historical events, therefore we also used historical and biographical methods. This second method has been applied to the study of historical figures and their characteristics. The historical method was used in accordance with the criteria given by Dubber, namely a critical analysis of the events in question (Dubber, 2015).

Fadak

Fadak was an oasis in the Khaybar area, near Medina, which had an important economic role and brought in large incomes. As a result of the peace treaty concluded between Prophet Muhammad and the Jews who inhabited Fadak, the oasis came under the control of Muslims. At the same time, there is no consensus among researchers whether Fadak became the personal property of the Prophet or the property of the Ummah. The former is the predominant position. At the same time, there are hadiths that suggest that Fadak was bestowed by the Prophet on his daughter Fatima. Sunnis find most of these hadiths to be unreliable. Nevertheless, the fact of litigation between Abu Bakr, the first caliph to take over the power after Muhammad’s death, and Fatima is an undeniable, unquestioned historical fact. After analyzing the above, we can express two main possible reasons for these proceedings and their outcome:

1. Fatima claimed the land of Fadak as the donee party to the oral gift contract. Abu Bakr ordered Fatima to bring two witnesses. Fatima's witnesses

were ‘Ali (her husband and the cousin of Prophet Muhammad) and Umm Ayman (one of the few companions of the Prophet, to whom Paradise was promised during her lifetime. We draw attention to this fact since in early Muslim society piety was deemed the main criterion of a person’s truthfulness).

2. Fatima claimed Fadak as the immediate and only heir to Prophet Muhammad. Abu Bakr responded to these claims with a hadith according to which the prophets leave no inheritance. Fatima disputed this fact, saying that the Prophet said that she would have the leadership of Fadak. In response, Abu Bakr calls on her to bring witnesses, Fatima calls ‘Ali and Umm Ayman.

In all versions of the narrative, Fatima's argument is reduced to the testimony of ‘Ali and Umm Ayman. Consider how this situation was resolved in accordance with one of the hadiths. When Abu Bakr told Fatima that the prophets did not leave an inheritance, she and ‘Ali cited verses from the Quran as counterarguments (we will look at them later). Then Abu Bakr said: ‘A’isha (author's note: Abu Bakr’s daughter and one of the Prophet’s wives) and ‘Umar testified that they had heard from the Prophet, who said: “The Prophet does not leave an inheritance.” She (author's note: Fatima) said: “This is the first false testimony, and for my part there are witnesses of this (testifying) which represent true Islam.” Then Abu Bakr told her to bring her witnesses. Umm Ayman said that she personally saw the Prophet asking her and ‘Ali to witness that Fadak should be ruled by Fatima. In response to the testimony of Umm Ayman: ‘Umar said: “You are a woman, and we cannot admit the testimony of one woman, and as for ‘Ali, he testifies in his own favor (i. e., he is a biased witness).” She (author's note: Fatima) stood up angrily and said: “O Allah! These two have been unjust to the rights of Your Prophet’s daughter, so Intensify Your Trampling upon them both!” Further in the hadith, it is said that Fatima personally turned to several other companions who did not support her and she told her husband ‘Ali not to allow Abu Bakr and ‘Umar (Abu Bakr's successor as caliph) to attend her funeral (Majlisi 1983).

After an analysis of the witnesses of each of the parties, we see that ‘Umar drew attention to the fact that Fatima's husband ‘Ali and the woman Umm Ayman were witnesses, and as is known in Islamic procedural law, the testimony of two women is equal to that of one man. At the same time, it is quite remarkable that the witnesses of Abu Bakr’s hadith were his own daughter ‘A’isha (a woman, and therefore her testimony is also equal to half the testimony of one man) and his closest associate ‘Umar. Thus, one side of the litigation was Fatima, ‘Ali (members of the Prophet's family, referred to as

Ahl al-Bayt in Shiism) and their supporters (Umm Ayman), while the other were the Prophet's Companions who came to power after his death (Abu Bakr, 'Umar) and their supporters ('A'isha, who went down in history as 'Ali's enemy in the Battle of the Camel). It is precisely this division of the parties—into Companions and members of the Prophet's family—that underlies the division of the Islamic Ummah into Sunni and Shia denominations.

The famous modern Salafi scholar Sheikh Uthman al-Khamis wrote that from reliable versions of the story of Fadak it follows that when Fatima came to Abu Bakr for her inheritance, Abu Bakr refused her, justifying his refusal with the words of the Prophet, which he had personally heard from his lips: “We (Prophets) have no heirs and whatever we leave behind is charity” (Bukhari 2007). And in Imam Ahmad’s version, it is told that the Messenger of Allah said: “Indeed, we, the prophets, do not leave an inheritance” (Ahmad 2012). From the versions cited in the *Sahih* books, it follows that Fatima was angry with Abu Bakr for this. Further, Sheikh Uthman tried to prove the specific mistakes made by Fatima, justifying the correctness of Abu Bakr’s position and drawing attention to the misinterpretation of the verses of the Quran, which narrated stories of inheritance after the prophets. He pointed out that all the cited verses refer to the inheritance of knowledge, not property (Khamis 2012). Among these verses were:

“And Solomon inherited David. He said, ‘O people, we have been taught the language of birds, and we have been given from all things. Indeed, this is evident bounty’.” (Quran 27:16)

“And indeed, I fear the successors after me, and my wife has been barren, so give me from Yourself an heir Who will inherit me and inherit from the family of Jacob. And make him, my Lord, pleasing [to You].” (Quran 19:5-6)

Fatima referred to these verses on the advice of her husband 'Ali, who after the Prophet was considered the most knowledgeable among his Companions about the Quran—a fact recognized by all researchers. However, none of his works devoted to exegesis has survived to this day, with the exception of certain passages in the sermons and letters of the imam, collected in *Nahj al-Balagha* (The Way of Eloquence) (Jibouri 2013). As widely believed, no one among the Companions after 'Ali ibn Abi Talib knew the Quran better than Ibn 'Abbas. He was called Tarjuman al-Qur'an (Interpreter of the Quran). He himself admitted that he borrowed much in understanding and commenting on the Quran from his mentor 'Ali ibn Abi Talib (Khorramshahi 2016). Thus, in

this discussion we also see different exegetical concepts (namely, authorities for interpretation), which later became characteristic of different areas of Islamic religion and Islamic law.

At the same time, the main argument given in Sunni sources in favor of the correctness of Abu Bakr's contention is the hadith in which Abu Bakr claimed that he personally heard Prophet Muhammad say that the prophets do not leave an inheritance (various versions of this hadith were given above). That is, Abu Bakr became the only person who had heard this hadith. M. Baqir Sadr questioned the veracity of this hadith, pointing out a number of reasons:

1. There are several other hadiths in which Abu Bakr nevertheless agreed to recognize Fadak as the property of Fatima, but for a number of reasons changed his mind.

2. How is it possible that the Prophet stated his position on the inheritance to Abu Bakr personally, without telling his other Companions or relatives and heirs, especially taking into account the fact that the Prophet had a warm relationship with his daughter?

3. 'Ali was considered the guardian (keeper) of the Prophet. Shiites see this as a prerequisite for 'Ali's imamate, while Sunnis believe that 'Ali was the custodian of the Prophet's knowledge. Even considering the latter fact, how is it possible that the opinion of the keeper of the knowledge of the Prophet is not heeded? (Sadr 2006)

Thus, we see that Shia scholars question Abu Bakr's words, while some Sunni sources doubt Fatima's testimony. They write that "in the conflict with Fatima, the truth was on the side of Abu Bakr because he relied on a reliable statement of the Prophet. Therefore, no one can accuse Abu Bakr of mistakes or violation of Islamic law. On the contrary, Muslims recognize the correctness of the decisions made by Abu Bakr and consider him the best person and leader in the Muslim community after the Prophet in its entire history" ('Asqalani 1379)

One should also pay attention to the Sunni understanding of *ijtihad* because quite often in the Sunni literature we can see a similar formulation "someone exercised his *ijtihad*, then if his *ijtihad* was correct, he will receive a double reward, if not, then one." Thus, in the book *al-Munjar fi-l-'alam* 'Aqqad said that Abu Bakr could get approval from some of the Companions of the Messenger of Allah, including Fatima. However, he did nothing of the kind, and preferred *ijtihad* ('Aqqad 2016). That is, if the Shiites consider the

“nationalization” of Fadak as a violation of the rights of Ahl al-Bayt and the Prophet’s daughter, then the Sunnis consider this only as one of the possible options for *ijtihād*. By the way, it is in this way that Sunni scholars “justify” the conflicts that existed between different Companions of the Prophet, all of whom are recognized as righteous in accordance with the Sunni religious doctrine. Shiites do not recognize this concept and consider only members of Ahl al-Bayt (Family of the Prophet) and their supporters to be truthful and pious. On this position, the details of this discussion as a whole become clear. That is, for the Sunnis, Abu Bakr is an indisputable authority, while for the Shiites Fatima is such. Let us examine this issue in more detail.

Righteousness of the Companions

Sunni religious doctrine recognizes the concept of the righteousness of the Companions, who were considered the best people after the Prophet. Any Muslim, regardless of gender and age, who at least once saw the Prophet, and a blind man, if he spoke to him, is considered a Companion (*Sahaba*). All of them had to follow Islam until their death. One who was not a Muslim during the life of the Prophet, but became one after, could not be considered a *Sahaba* (<https://islam-today.ru/obsestvo/raznoe/sahaby-spodvizniki-proroka/>). Others believe that the very word “*sahaba*,” which comes from the Arabic word for “communication,” implies the continuity of contact with the Prophet and the narration of *hadith* from him. Thus, it is argued that one or the other of these criteria, namely a long companionship or frequent narration of *hadiths*, must be fulfilled in order for a person to qualify as a Companion (Kamali 2003).

Abu Bakr, in turn, was considered the best among the Companions, which is why he was elected Caliph. So, in one of the Sunni books we see the following lines: “The best of people after the Messenger of Allah and other prophets and messengers, peace be upon Him, is Abu Bakr al-Saddiq, then ‘Umar ibn al-Khattab, after him ‘Uthman ibn ‘Affan, after which ‘Ali ibn Abi Talib, may Allah be pleased with them” (Book of Clerical Board of Ukraine's Muslims 2012) It was in this sequence that they occupied the posts of caliphate, although each of them became a caliph for different reasons—Abu Bakr was elected by the decision of the council, ‘Umar was appointed by Abu Bakr, ‘Uthman was appointed by the decision of a council created by ‘Umar, ‘Ali was chosen by the majority of Muslims.

As we indicated earlier, all the Companions were truthful, but at the same time they had conflicts with each other (including the Fadak events), therefore the Sunnis argue that each of the companions exercised their own *ijtihad*, which most often manifested itself in the derivation of Sharia norms from the Quran and Sunna (they are called texts, *al-nass*) mainly on the basis of their own judgments. In this respect, the work of the well-known Shia scholar of the twentieth century Sharaf al-Din al-Musawi al-‘Amili, *Al-Nass wa-l-ijtihad*, is very interesting. It lists hundreds of cases where the first caliphs, rulers and some of their companions deployed “*ijtihad*,” contradicting “*al-nass*” (that is, they expressed their personal opinion contrary to the obvious words of the Prophet). Sharaf al-Din expresses his scholarly, critical views on each of these cases. He divided these contradictions into two types: some are generally incompatible with any principle (even according to Sunni views), and others arose due to ignorance of the present solution, which was corrected after studying the past solutions. Thus, in the first chapter of the book, Sharaf al-Din lists the cases where the first caliph Abu Bakr expressed his personal opinion contrary to the words of the Prophet, including the refusal to join the army of Usama b. Zayd, rejection of the share of “relatives,” struggle with those who could not pay *zakat* to him, overlooking Malik b. Nuwayra being killed at the command of Khalid b. Walid, an agreement with some polytheists who wanted to reclaim their slaves who had converted to Islam, and many others. Among these acts were the events of Fadak that we are considering. That is why the use of *ijtihad* was strongly condemned by Shiite imams and scholars up to the twelfth-thirteenth centuries, when, thanks to the activities of Shia scholars, the Sunni concept of *ijtihad* was transformed into the Shiite term “*ijtihad*”—deductive derivation of legal norms from primary sources; that is, exclusively rational methods of interpretation took the place of possible use of personal judgments.

Shia religious doctrine, unlike the Sunni, does not recognize the concept of the righteousness of all Companions, considering only a few of them worthy. Shiites believe that only those who did not show hostility towards Ahl al-Bayt (the Prophet's family) were worthy Companions. Thus, where Sunni hadith scholars recognize as authentic all the hadiths dating back to the Companions of the Prophet, the Shiites do not do this, narrowing the circle of reliable hadith transmitters. At the same time, the main distinguishing feature of Shiism is the concept of the Imamate, in accordance with which Allah appointed imams from among the descendants of the Prophet, who were sinless, omniscient and appropriate to rule the Islamic state. But the first caliphs usurped the power for

various reasons, depriving the most worthy candidate of power in the person of ‘Ali. So, proceeding from the concept of infallibility, which also exists in Sunni Islam and according to which only prophets are sinless, the Shiites consider the chosen members of Ahl al-Bayt as such. A large number of polemical and theoretical works of Shiite scholars are devoted to the support of this position. Here is just one of the most popular hadiths. ‘A’isha said: “The Prophet went out one morning wearing a striped cloak of black camel hair. Al-Hasan b. ‘Ali came and he enfolded him in the cloak, then al-Husayn came and he enfolded him in it, then Fatima came and he enfolded her in it, then ‘Ali came and he enfolded him in it, then he said: ‘Allah wishes only to remove *al-rijs* (evil deeds and sins) from you, O members of the family, and to purify you with a thorough purification”” (Muslim 2007). All Shia and some Sunni scholars hold that being pure from sins means infallibility.

Who Belongs to Ahl al-Bayt?

Now the question arises: Who belongs to this Ahl al-Bayt? The Great Ayatollah Makarem Shirazi (2011) in his work *Cognition of Shiism* gives a short biography of fourteen sinless (*ma’sum*) persons—Prophet Muhammad, Fatima al-Zahra and the twelve Shiite imams. Thus, it was this factor that influenced the expanded understanding of the Sunna as a source of law in Shiite legal schools. I. Goldziher (1912) wrote that there is a misconception that the Shiites do not follow the Sunna. The reason for this error is the existence of the antithesis “Sunna-Shia,” which does not correspond to the truth, because Shiites follow the Sunna of the Prophet. But since, in addition to the Prophet, the Shiites also consider Fatima and the imams to be sinless, their actions and statements are also included in the concept of “Sunnah.”

Thus, we can say that from the Shia point of view, Fatima did not even need to provide evidence, since all her actions are automatically considered godly and she was not subject to sins and injustice. However, in conditions in which she found herself, she had to bring evidence and witnesses that were not accepted by Abu Bakr, who had opposite views on the position of Fatima and the issue of inheritance after the prophet. Still, the procedural features of this whole discussion are quite interesting. Sayyid Muhammad Wahidi (2005), in his work on the issue of Fadak, by way of comparison, has pointed to the situation with the famous Companion Jabir. First, it should be clarified what exactly happened to Jabir. The hadith states “Jabir says: ‘His Grace the Messenger of Allah, addressing me, said: ‘When property will come from

Bahrain, you will receive a certain part from it. The property had not yet arrived in Hijaz when the Messenger of Allah left this mortal world.’ When it (author's note: property) arrived, Abu Bakr announced: ‘Anyone who has anything in this, let him come to me.’ Then I went to Abu Bakr and said that the Messenger of Allah had promised me a certain amount from this property. Abu Bakr gave me the promised amount, after which he said: ‘Take twice more!’” (Nasa’i 2007). Jabir is a respected Companion in both Sunnism and Shiism, but Wahidi drew attention to this narrative for two main reasons:

1. Abu Bakr did not require Jabir to bring witnesses of what the Prophet had promised to the latter, while he had demanded them from Fatima, the Prophet's daughter, whose reputation is beyond doubt.

2. Ibn Hajar ‘Asqalani, citing this story in his book, writes: “This story indicates that the speech of the Companions is an argument and their opinion must be accepted, even if they say something to their advantage. In this tradition, Abu Bakr did not require Jabir to bring witnesses for his claim. In addition, this story is used for a fatwa.”

Based on the second point, we see that ‘Asqalani, one of the most prominent Sunni scholars of hadith, points out that the testimony of the Companion, even in his own favor, is acceptable and permissible, while we have seen that ‘Umar emphasized that ‘Ali was beneficiary in giving a testimony in favor of Fatima. Having analyzed all the above information, we consider it necessary to focus on one more fact. This issue involves a large number of contradictions, which lead to the fact that in subsequent times, the decision of Abu Bakr was canceled by some subsequent caliphs (‘Umar ibn ‘Abd al-‘Aziz, al-Ma’mun), who believed that Abu Bakr by his decision encroached on the rights of Fatima, so they gave Fadak to descendants of Fatima. Thus, Fadak passed from hand to hand, since the successors of the above two caliphs, coming to power, nationalized Fadak.

Testifying in One’s Own Favour

Also, when analyzing the arguments of each of the parties, we found ‘Umar's assessment of ‘Ali's testimony very interesting, namely the words “as for ‘Ali, he testifies in his favor.” We will not give an assessment of this statement, since this issue is more of a religious nature than a legal one. We would like to emphasize that it is possible to see the relationship between this statement of ‘Umar and some judicial decisions of modern Sharia courts. One of these can be found in the study by Shahbaz Ahmad Cheema (2014) “Socially Abhorrent

but Legally Acceptable: A Study of Alleged Conversions of Sunnis and Shias in Cases of Inheritance in Pakistan.” The study examines cases in which the heirs, trying to get their share of the inheritance, proclaimed the deceased testator to be a Sunni or Shiite in order to obtain the maximum personal benefit according to the right of the latter's personal status. Thus, in the case of Mr. Qamar Sultan vs. Ms. Bibi Sufiadan (2010), after the death of the testator, his mother, sister and collateral claimed the inheritance. Believing that the deceased was a Shiite, his property was distributed completely in favor of his mother and sister, and a collateral was excluded from the number of heirs in accordance with the norms of Shia law. After that, the collateral filed a lawsuit in court, in which he noted that the deceased was a Sunni Muslim, therefore, this relative is entitled to one-sixth of the inheritance. Both sides put forward evidence and presented witnesses in court to support their position. According to the court, there was not much difference between the reliability of the evidence provided by the parties, except that the evidence presented in the court by the mother of the ownership of her son (deceased) was motivated by the financial benefit of her daughter (sister of the deceased) and the exclusion of collateral from among the heirs. Given the mother's financial interest in her daughter's enrichment, the court refused to rely on this evidence, and the deceased was declared Sunni; therefore, that relative was entitled to his share of the inheritance. This decision of the Lahore High Court was appealed to the Supreme Court, where the last court in 2012 upheld the decision of the first on the same basis. Thus, in fact, we see that the Pakistani courts used the same reasoning as ‘Umar, giving advice to Abu Bakr in the latter's decision.

Conclusion

The events of Fadak led to a confrontation between the opinion of the Companions and the opinion of the members of the Prophet's family. There was also a certain specificity in the interpretation of the Quran and in following the various exegetes of the Quran. In general, we propose to consider all the features considered during the study in the concept of sources of law in brief.

The Quran is the main religious source of Islam and the absolute authority for all Muslims so much that the recognition of the distortion of the Quran leads a person out of Islam. Sunnis and Shiites recognize the Quran in the form in which it has survived to this day since its text has not undergone changes. But there are differences in the interpretation of the Quran between the two main Islamic denominations. The main one is that the Shiites recognize Ahl al-

Bayt as the only correct interpreters of the Quran. This comes from the hadith *Thaqalayn*, in which the Prophet said: “O people! Indeed, I have left among you, that which if you hold fast to it, you shall not go astray: The Book of Allah and my family, the people of my house” (Tirmidhi 2007).

The Sunna is also the main source of Islamic law for both denominations, but based on the differences discussed in the article, we can highlight the following distinctive features inherent in the two denominations:

- Sunnis recognize the concept of the righteousness of the Prophet's companions; that is, the first generation of Muslims. They accept hadiths from any of the companions, while presupposing the possibility of some of them exercising an incorrect *ijtihād*, which in turn does not divest them of “righteousness.”

- Shiites follow the members of the Prophet's Family and their supporters and recognize the infallibility of all twelve imams and Fatima. The Shiites also recognize hadiths of the infallible Imams as equal to those of the Prophet, since the former complement and in some cases elaborate the latter. In addition, they do not consider those companions of the Prophet who were hostile to ‘Ali and *Ahl al-Bayt* to be reliable transmitters of hadiths.

Thus, this event influenced the formation of various differences in Islam and in Islamic laws, but this influence can only be detected in retrospect.

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