

Imam Al-Awzai and his humanitarian ideas (707-774)*

by Ameer Zemmali

Mention of Abd-ar-Rahman Al-Awzai (707-774), the Imam of the people of Syria,¹ is found in many ancient Arabic texts such as Ibn an-Nadim's *al-Fihrist* and Ibn Abi Hatem ar-Razi's *al-Jorh wa at Taâdil*. More recent texts include the work on Al-Awzai by Dr. Sobhi Mahmassani on Al-Awzai (Beirut, 1978). This article gives a brief account of Al-Awzai's life and several of his ideas on the relationship between those who govern and those who are governed, and especially his contribution to the branch of learning of the *siyar* or the law of war.²

I. Al-Awzai and his era

According to most biographers, Al-Awzai was born in Baalbek in 707. In his quest for knowledge he was drawn to the cities of the east – Yamamah, Basra and Kufah—where he followed courses by several eminent scholars. After spending some time in Yamamah and Basra, he went on to Damascus and then settled in Beirut, where he died in 774.

With the second century of the Hegira came the rise of the *fiqh*.³

* This text is the author's adaptation of the original article in Arabic which appeared in the *International Review of the Red Cross*, Arabic edition, No. 4, November-December 1988.

¹ *imam*: title reserved for Muslim scholars who attain a high level of erudition in Islamic studies. In classical doctrine this term also applies to the leader of the Islamic community. In a narrower sense it denotes the person who leads the ritual prayer.

² *siyar*: (plural of *sira*; code of conduct, biography). The term was originally used for all literature relating to the life of the Prophet and his behaviour during his expeditions. It has now taken on the connotation of studies of the law of war in Islam and of "Islamic law of nations" in general.

³ *fiqh*: understanding, intelligence in general. In a specific sense, this term denotes *Islamic law*. A *Faqih* (plural *fuqaha*) is a specialist of the *fiqh*, or doctor of Islamic law. In Sunni Islam, there are four recognized schools of law or juridical *rites*: – the *Hanafi* school, which takes its name from *Abu-Hanifah* (699-767) and developed in Kufah (Iraq);

For the Islamic state it was politically a highly eventful period, the most important event being the transfer of power from the Umayyads to the Abbasids. Al-Awzai experienced these events and was in regular contact with the provincial governors and the caliphs, meeting and corresponding with them. There was keen competition between the doctors of law of the Islamic capitals, for each had its own imams and pioneers. Two canonical schools of law came into being in Iraq and the Hejaz (Arabia) respectively and their influence subsequently spread throughout the Islamic world: the *ra'y*⁴ school of Abu-Hanifah (699-767) and the *Hadith* school⁵ of Malik (713-795).

Al-Awzai, who was not one of their disciples but who had his own "rite",⁶ was one of the great doctors of law of his time. His rite lasted more than two hundred years in Syria and extended west as far as Andalusia until the reign of Al-Hakam Ibn Hicham, third Umayyad caliph there (771-822). After two centuries, however, the *Shafi'i* rite gained ascendancy in Syria and the *Maliki* rite in Andalusia, although that of Al-Awzai was still observed there for another forty years or so. There are several reasons for the impermanence of Al-Awzai's rite, one of the main ones being that little of his writings has been handed down to us and is at most recorded in the works of other authors. His disciples, unlike those of other schools, did not spread their mentor's *fiqh* throughout the Islamic world, particularly since the successive governments of the various states preferred to follow other rites.

Despite the offers he received from governors and caliphs, Al-Awzai never held any official post such as magistrate or minister. But this did not prevent him from showing interest in the duties of governors and the rights of the governed.

II. Al-Awzai and the relationship between the governors and the governed

A great *Hadith* narrator, Al-Awzai closely followed the tradition of the Prophet in all that he said and did. Two terms recur frequently in

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- the *Maliki* school founded by Imam *Malik* Ibn Anas of Medina (713-795);
 - the *Shafi'i* school named after Imam Shafi'i (born in Gaza in 767, died in Egypt in 819);
 - the *Hanbali* school founded by Imam *Ahmad Ibn Hanbal* (780-855) in Bagdad.

⁴ *ra'y* in Bagdad: independent opinion, doctrinal effort (to determine the law) based on independent opinion.

⁵ *Hadith*: sayings, comments. In Islamic terminology the name given to the traditional narrative record of the Prophet's sayings, acts or precepts.

⁶ See note 3 *supra*.

his writings: *shepherd* and *flock*. These two words are used in a famous *Hadith*: "Each of you is a shepherd and each shepherd is responsible for his flock".

It is enlightening to examine a number of letters sent by Al-Awzai to governors and quoted by Ibn Hatem ar-Razi. Al-Awzai considered that scholars were entitled to express their opinion to the Prince about the situation of the people and to write to him about public affairs. He thus addressed a letter to the caliph asking him to increase public assistance to the inhabitants of the Lebanese coast, reminding him that they are "the flock of the commander of the believers, and he is responsible for them". In this letter he referred to the rising prices and the resultant danger of indebtedness for the families, commenting that the state was therefore duty bound to intervene for the sake of the population.

In a message to Governor Abi Balaj, Al-Awzai defended the "People of the Book"⁷ and urged him to treat them with justice, basing his request on the *Hadith*: "He who harms a *dhimmi* or a protected person or burdens him beyond his means, I shall be his adversary on the Day of Judgment". He pleaded the cause of the Christians of Mount Lebanon when Governor Salah Ibn Ali al-Abbasi of Syria, uncle of the two caliphs As-Saffah and Al-Mansur, decided to impose heavy taxation on them and crushed their revolt. In this case Al-Awzai opposed the assertion that "the mass is answerable for offences committed by individuals", contending that the people expelled from their homes "are not slaves, but free People of the Book". We have found no trace in Al-Awzai's letters of a request for personal advantage, such as a particular post or favour. Thus although he could have held the highest public office, he was convinced that his duty lay in working for the good of the people as a whole. When Prince Abdallah al-Abbasi offered him the post of magistrate, he refused politely by saying: "Your predecessors did not discomfit me in this connection and I would that you grant me the same kindnesses as they did". He was all for social justice and public welfare, values which he felt could but consolidate the foundations of the state and strengthen its power.

At his time the Islamic world extended east to the Punjab and west as far as Andalusia. Within its borders occasional uprisings of varying importance broke out from time to time. As we have said, the Abbasids conquered power by the force of arms, but internal distur-

⁷ *People of the Book, (ahl al-Kitab)*: those who possess the Holy Scripts, i.e. the Jews and Christians who dwell among the Muslims and enjoy the protection (*dhimma*) of the Islamic community. The term *dhimmi* means a person protected by the *dhimma*.

bances nonetheless persisted. Relations with the outside world were marked by the continuing war with the Byzantines. This was one of the reasons for the interest of the *fuqaha*⁸ in rules relating to peace and war and their ramifications. For the rules of war in general they used the term *siyar*, which is equivalent to the “law of war” in our contemporary terminology. Al-Awzai played an important part in this branch of learning.

III. Al-Awzai and the *siyar*

The *Book of the Siyar* is the most famous of Al-Awzai’s writings and gave rise to a major debate between the different canonical schools of law. There is no original text in existence, but its contents can be found in the *Reply to the Siyar of Al-Awzai* by the Cadi Abu-Yusuf (731-798),⁹ a disciple of Abu-Hanifah, which is published in Volume VII of the *Kitab al-Umm* by Shafi’i.

In reality the *Hanafi* school was the first to codify the rules of war in the writings of Shaybani (748-804),¹⁰ the author of the *Small Siyar*. When he heard of its contents, Al-Awzai asked: “Whose is this book?” (i.e. who is its author?) “Mohammed al-Iraqi’s (Shaybani’s)”, was the reply. He then said: “Is it the task of the Iraqis to write on this subject? They do not know the *siyar*. At that time the conquests of the Messenger of God, may God grant him prayers and salvation, and his companions were of Syria and the Hejaz, and not of Iraq, a country which was conquered later” (according to Ibn-Kathir).

This argumentation shows that in any aspect of Islamic law, Al-Awzai adhered to the *Hadith* and tradition. In his work he refers to the first Islamic period and the initial foundations of the Islamic state at the time of the Prophet and his companions. The extension of the Islamic empire, as we have seen, only took place later.

Although the *Hanafi* school preceded the other schools of Islamic law in beginning to formulate the *siyar*, thanks in particular to Shaybani, Al-Awzai, a contemporary of Abu-Hanifah, Malik and other doctors of law, was largely instrumental in its expansion. His opinions in relation to those of the other doctors of law were the subject of debates and comparative studies. In his *Reply to the Siyar of Al-Awzai*,

⁸ *fuqaha*: see note 3 *supra*.

⁹ Abu-Yusuf (731-798), a disciple of Abu-Hanifah and one of the founders of the school that bears his mentor’s name.

¹⁰ Shaybani (748-804), another great disciple of Abu-Hanifah and founder of his school.

Abu-Yusuf shows the points on which his mentor Abu-Hanifah and Al-Awzai diverge; he supports Abu-Hanifah's point of view before expressing his own opinion, which is not far from that of his mentor.

In his book *al-Umm*, Shafi'i has preserved the entire text of Al-Awzai's *siyar*. He sets forth the ideas of Abu-Hanifah, Abu-Yusuf and Al-Awzai and then gives his opinion on the various questions presented. He is often of the same view as Al-Awzai.

The position adopted by Shafi'i (767-819), the founder of the third great Sunni rite, was midway between the two *Hanafi* and *Maliki* schools, but like Al-Awzai he drew considerably on the *Hadith*. It is also of interest to note that in his *Ikhtilaf al-Fuqaha* (divergence of the *fuqaha*)¹¹ Tabari presents the opinions of the doctors of law as regards the rules of war, showing the points on which they converge and diverge. They include the opinions of Al-Awzai, who emerges as one of the most important scholars.

In Al-Awzai's thinking the practical aspects predominate, whatever the subject under consideration. In his *siyar* he enlarges on an important aspect of the law of war, namely the treatment of *enemy persons* and *enemy property*. In view of the fact that the present law of armed conflict largely gravitates around this pole, it is evident how elevated Al-Awzai was in his views and convictions that in war, although people serve as instruments they remain first and foremost human beings. The bearing of his short treatise is limited, but this is because it is devoted to the new problems arising from the Islamic conquest and does not give an overall concept of the Islamic state's external relations. Thus he deals with the spoils of war and the rules relating to them, with captivity of the enemy's women and children, the consequences of the enemy's conversion to Islam, the position of renegades, protected persons, prisoners of war and spies, etc. On examining the rules set forth by Al-Awzai for the treatment of enemy persons and property, it is striking to see the extent to which he advocates respect for the human being and upholds the most tolerant of precepts.

1. Enemy persons

a) According to Al-Awzai, enemy *women and children* may not be killed as long as they are not taking part in the fighting. If they are captured, they may not be put to death.

¹¹ Published by J. Schacht, Leyden, 1933.

b) In conformity with the commands of the first caliph Abu-Bakr (632-634)¹² to the military leaders, Al-Awzai is opposed to *labourers, peasants, shepherds, hermits or old people* being put to death. The same applies for the mentally deranged and for people suffering from an incurable disease (for instance blindness). This point of view is shared by Abu-Hanifah and his disciples.

c) The situation of *spies* varies according to whether they are Muslim, People of the Book, or enemies.

When asked about the penalty applicable to a Muslim spy, Al-Awzai replies that he must repent or is otherwise liable to imprisonment. This is, generally speaking, the opinion of Abu-Hanifah and Shafi'i. Like Al-Awzai, they ban executions of Muslim spies.

If a spy belongs to the People of the Book and is providing the enemy with information about the Muslims or sheltering enemy spies, he is violating his pact and the Prince can order his execution. If he is bound by a *sulh* (peace) pact to the Muslims, their protection will not be granted to him and his pact will be openly denounced, in conformity with the teaching of the Koran's Sura VIII (Spoils of War).¹³

Conversely, according to Abu-Hanifah and Shafi'i the death penalty will not be applicable to him but he will be liable to severe punishment. His pact will not be broken.

The enemy who enters the territory of Islam (Dar-al-Islam) without *aman*,¹⁴ in order to engage in espionage, is liable to capital punishment. If he converts to Islam this penalty, according to Abu-Hanifah, will not be applicable; if he enters the territory of Islam without *aman* for a purpose other than trade and is proved to have engaged in espionage, the Prince orders his expulsion to a safe place in enemy territory, whereas if he enters with a *aman* for trade and is proved to be a spy, he will be punished then sent back to enemy territory. It can be seen from these early opinions of the *fiqh*, compared with the severe rules of modern penal legislation on wartime and peacetime espionage, that moderation and tolerance played a decisive part in the solutions defined by the first *fuqaha*, who advocated extreme solutions only for a limited number of cases.

¹² Abu-Bakr: first caliph of Islam (632-634).

¹³ "If thou fearest treachery from any group, throw back (their Covenant) to them, (so as to be) on equal terms; for God loveth not the treacherous", Surah VIII (Spoils of War), Verse 58, the *Koran*.

¹⁴ *aman*: security, protection, safe-conduct, promise of protection.

d) **Prisoners of war:** from the earliest days of Islam the *fuqaha* took an interest in the fate and treatment of prisoners of war. To remain within the scope of this article, we shall limit our account to the opinions of Al-Awzai and to the standpoint of the *Hanafi* school, since it was the first to have studied and defined the laws of war and peace in Islam.

According to Al-Awzai, the Prince has the choice of several solutions: he can ask the prisoner to convert to Islam (if he consents, he becomes a slave of the Muslims), he can have him executed; he can release him without anything in exchange, or he can exchange him for a Muslim prisoner. To announce his conversion, all the prisoner needs to say is: "I swear that there is no other god but God". He will thereafter receive the necessary instruction. Shafi'i's opinion is not much different, but he stresses the higher interests of the Muslims. According to Abu-Hanifah and his disciples, the Prince can choose death or slavery for the prisoners of war and must opt for the solution that best meets the Muslim interests; the death penalty cannot, however, be applied to the elderly, the infirm, to people with incurable diseases, to women or children. But the weight of opinion among the *fuqaha*, including the disciples of Abu-Hanifah, leaves the Prince a margin of choice, for the captive's life is not in the hands of the Muslim combatants. Thus Al-Awzai considers that the person who kills a prisoner must be punished and pay a "ransom" (blood-money), whereas most of the *fuqaha* do not demand a ransom.

It is important to note that the Koran contains no text ordering that prisoners of war must be put to death or enslaved. It is beyond doubt that all the *fuqaha* found the atrocious treatment reserved for Muslims in enemy territory intolerable, for torture, execution and slavery were common practices among the nations and peoples before, during and after the eighth century. But despite the brutality to which Muslim prisoners were exposed before being put to death or reduced to slavery, no *faqih* called for ill-treatment of enemy prisoners. The *fuqaha* were even unanimous in their views that good treatment must be given during captivity and that it is forbidden to separate a child from its mother when they fall into Muslim hands. Al-Awzai did not confine himself to answering theoretical questions about the situation of prisoners of war. He also intervened in actual situations by writing, for example, to caliph Al-Mansur (713-775) to call for the release of Muslim prisoners held by the Romans at Calicla in Armenia.

2. Enemy property

According to Al-Awzai, "it is unlawful for Muslims to perform an act of destruction in enemy territory, for that is corruption and God

loveth not corruption.” This applies to enemy property such as cattle, trees, inhabited dwellings and places of worship. The Islamic army is not entitled to go beyond military necessity. Furthermore, spoils of war do not mean that looting and vandalism are allowed; such spoils are on the contrary subject to rules that determine who shall possess them and how they shall be distributed. The rule generally applied is to divide spoils of war into five parts: one for the state and four for the combatants.

The theft of part of any war booty is unanimously prohibited by the *fuqaha*, in accordance with the Koranic rule. “If any person is so false (to this trust), he shall, on the Day of Judgement, restore what he misappropriated” (Sura III, verse 161). Before the spoils of war are shared out, the combatants may take nothing other than what they need to feed themselves or their livestock. According to Al-Awzai, an object without value may be taken, whereas he who steals from the spoils of war is denied his share and his equipment is burnt; he must return what he has stolen or its equivalent. Al-Awzai is firm on this point, to avoid anarchy within the troops because of war booty.

The doctors of law laid down rules governing the theft of war booty which differed from those applicable for ordinary theft. They were not unanimous, however, as to the penalty incurred by a person who steals booty. Unlike Al-Awzai, Abu-Hanifah, Malik and Shafi’i were opposed to that person’s equipment being burned.

According to the *fuqaha*, if Muslims retrieve part of the property taken from them as spoils of war by the enemy and if the initial owner identifies his property before the booty is shared out, he is entitled to reclaim it. If the sharing out has already taken place, he must pay the equivalent. The doctors of law gave long consideration to the question of spoils of war and studied the rules applicable to the movable and immovable property of the enemy. Al-Awzai, drawing on the Koran and the *Sunna*,¹⁵ was one of the first to give his opinion on these and all other related questions.

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In conclusion, we can say that Imam Al-Awzai was one of the great *fuqaha* of the second century of the Hegira (eighth century A.D.). From the time the Islamic state came into being, he observed the various phases of its development and his attitude was that of a

¹⁵ The *Sunna*, or tradition of the Prophet, is the second source of the Islamic legal order.

neutral scholar, declining the official duties offered to him under the Umayyads and Abbasids, even the most important among them, the magistracy. In every case he was guided by the words and deeds of the Prophet and his companions. He defended the rights of the state's subjects and did not hesitate to uphold just causes.

Although Al-Awzai's *fetwa*¹⁶ were compendious, according to historians, no collections of writings have preserved them for us. But the known part of his *fiqh* is evidence of great erudition and considerable conviction. The essence of his legacy to us is doubtless contained in his small but extremely useful book on the *siyar*. He was one of the precursors of this branch of Islamic law which studies the rules of law, the conduct of combatants and the protection of non-combatants.

Al-Awzai's opinions and those of the other *fuqaha* should be viewed in their own context and historical circumstances. We could speak of another *faqih* or Islamic military leader renowned for his humanitarian views, but the choice of Al-Awzai was prompted by more than one consideration. Al-Awzai belonged to the first generation of *fuqaha* and showed great interest in the laws of war while simultaneously expressing deep humanitarian feeling, even though the Hanafites preceded him slightly in research on the *siyar* and produced a wealth of literature which has been handed down to us. In Lebanon in particular, Al-Awzai's attitude of defending and helping the oppressed in all circumstances was well known. To this day, his last dwelling place in Beirut has remained a place of pilgrimage. Perhaps more than anyone else, the Lebanese today need men like him!

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¹⁶ *fetwa*: legal opinion formulated by a *faqih* on a specific subject. The *mufti* is the authority who issues such an opinion.