THE DOCTRINAL DEVELOPMENT OF THE PROHIBITION OF INTOXICATING DRINK IN ISLAMIC REVELATION AND LAW

Paul Leventhal

A Thesis Submitted for the Degree of MPhil
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School of History, University of St. Andrews
ABSTRACT

There is the feeling in many quarters, especially as reflected in most general readers on Islam, that the prohibition of wine is an established and simple fact, and may safely be disregarded as a peripheral subject deserving of note, but worthy of little more attention than the perusal of one or two ‘clear’ koranic verses. This view, however, cannot be held by anyone with a knowledge of the interaction between literary analysis and the study of Islamic historiography, religion and law. For the prohibition of intoxicating drinks came about over intensive debate motivated by an apparently inadequate Revelation and characterised by wide-ranging opinion to almost every aspect, every opinion backed up by its own source materials.

My research will describe and analyse the doctrinal development of the institutionalised prohibition of alcoholic beverages in Muslim tradition and law through a developmental approach. I will view the sources and proto-legal rulings as the product of social and moral trends arising from a nascent Community possessing Revelation and defined by their own separate institutions.

This shall be approached first of all by placing wine into a cultural framework by examining its status in monotheistic, polytheistic and pre-Islamic belief and ritual. Through this framework, the material included in the Kur’ān document will be discussed highlighting the prohibition of khamr as coming about through a series of incremental and reactionary steps reflecting social, cultural, religious and legal trends and ideas as noted by the prophetic legislator (or at least as tradition has portrayed).

As a parallel source of divinely guided legislation, the ‘historical’ tradition, the exegetically derived Hadith, will be considered through the lens of theoretical discussions that later became connected to the ‘real world,’ and provided, sometimes successfully and sometimes not, for the socio-religious needs of the earliest Community. The remnants of the discussions between the scholars will be seen in the light of their efforts to understand the Revelation, and in doing so, created prophetic precedent that filled out and
completed the meaning of the Revelation, in effect becoming 'history.' Careful note and analysis will be undertaken of the implications of the alleged drinking habits of the Prophet himself, and the interpretations of a remarkable fact that the Kur’ān promises in the Hereafter a garden containing rivers, one of which is red wine, “pleasant to the drinker.” The fundamental questions arising from these remnants are of course, what is ‘wine,’ what is allowed, what is not, and why?

The crime of wine-drinking, paralleled in severity to no less than idolatry, did not bring with it its own koranic punishment, as the other ‘crimes against God’ (hadd, pl. ḥudūd) should do. Indeed, how did wine-drinking even become connected to the other hadd crimes, and why? Addressed will be the legal problems the jurists were trying to solve, the tools they used, and the extent to which those problems were a product of their own making.

The Islamic materials can be viewed as either sources for the history of the early Islamic community, or as a record of what Muslims of later generations told each other about how the early Islamic community was ‘supposed to have been’. My methodological approach to these source materials is not to try and reconstruct “what really happened” in the lifetime of the Prophet or in the first two generations of Believers who used this material as the basis of their communal ethic. Rather, through analysis and comparison of the different streams of thought within the earliest generations of the Community, I shall attempt to derive from the residues of their discussions how the Muslims reacted to khamr (and sakar) in the Kur’ān, what they were really talking about by circulating the exegetical materials, and why?

Throughout this work the term spelled “Kur’ān” will be used to denote the canonised work published and widely distributed by the “Custodian of the Two Holy Mosques King Fahd ibn al-Azīz al-Sa’ūd (Madīna, A.H. 1405).” The spelled term “koranic” is used throughout, in keeping with the common un-capitalised form of “biblical,” otherwise transliteration conforms strictly to the Encyclopaedia of Islam, new edition (Leiden, 1954-2000).
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i. I, Paul Leventhal, hereby certify that this thesis, which is approximately 39,000 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

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Thanks also to Professor Moshe Sharon, Chair of Baha’i Studies at the Hebrew University of Jerusalem and Dr. Gerald Hawting at the School of Oriental and African Studies, University of London, who in their own different ways introduced me to the problems of critical Islamic studies.

Finally, grateful thanks need be expressed to the School of Modern and Scottish History, the University of St. Andrews for supporting me in this field of study.
A PRELIMINARY REVIEW: SURVEYING MODERN RESEARCH

I will begin this paper with a short review of directly relevant secondary literature. This, to survey the state of research in the field, and how my research can add to it.

Many general readers on Islamic studies do not touch upon the issue of one of the defining characteristics of Islam—the wine prohibition. For example: Bernard Lewis’ *Arabs in History* (Oxford, 1993 edition); Michael Cook’s *Muhammad* (Oxford, 1983); Arthur Jeffery’s compilation *Islam: Muhammad and His Religion* (Colombia, 1958); G.E. von Grunebaum’s two volumes *Classical and Medieval Islam* (Chicago, 1946); Patricia Crone’s *Meccan Trade and the Rise of Islam* (Oxford, 1987), and *Slaves on Horses* (Cambridge, 1980); Alfred Guillaume’s *Islam* (U.K., 1954, 1982); Malise Ruthven’s *Islam in the World* (England, 1984), Goitein’s *Studies in Islamic History and Institutions* (Leiden, 1966), W.M. Watt’s *Bell’s Introduction to the Qur’ān* (Edinburgh, 1970) and his collection of articles *What is Islam?* (London, 1968); Annemarie Schimmel’s *Islam: An Introduction* (New York, 1992), and others. John Burton’s major works (see bibliography), although extremely useful on a conceptual level when considering, amongst other things, the issue of abrogation, likewise surprisingly do not bring up wine (except in passing) and its relevance to that discussion.

Most general introductions to the Islamic religion written by Muslims, either take the wine prohibition simply as a direct consequence of God’s Revelation to the Prophet, omit the matter entirely, and in one notable case, even distort the issue. Muhammad Husein Haykal’s, *The Life of Muhammad* (Beirut, 1983 edition) mention wine only once in passing when he discusses morality in the Kur’ān; Martin Lings’ (Mr. Abū Bakr Sirāḍj al-Dīn) *Muhammad: His Life Based on the Earliest Sources* (London 1983, 1991) does not mention wine at all, and Syed Ameer ‘Ali, in his *Spirit of Islam* (New Delhi, 1922, 1997 edition) even consciously omits the river of wine in his description of Paradise and its raison d’être.

Any serious study of wine in Islam is greatly assisted by the relevant article *(Khamr)* in the Encyclopaedia of Islam (new edition), by A.J. Wensinck and J.
Sadan. However, as broad and qualitative as this survey is, many important facets of the debate are lacking: rivers of wine in Paradise, background precedents of the prohibition, and the critical implications of inner contradiction. Another broad study of wine in Islam is that carried out by Goldziher in his *Introduction to Islamic Theology and Law* (Princeton edition, 1981, with notes by Bernard Lewis, pp. 59-61). However, his four page study concentrates on how the theologians managed to invent materials primarily in order to provide those with an inclination to alcohol with literary materials absolving those drinkers of any real guilt. His rather simplistic study gives us the impression that the scholastic arguments revolved solely around ways to get around the 'clear' koranic prohibition. It is hard to accept this argument, and to some extent its implication that the Kur’an was not at any time authoritative, and that attempts were systematically made to evade or mitigate the kuranic rulings.

A number of general readers containing some reference to wine were consulted to assess how their authors approach this problematic and complex developmental issue. Generally, these references are placed within a discussion of broader matters such as abrogation and social life, and do not devote much time or energy to the subject. Books such as Reuben Levy’s *Social Structure of Islam* (Cambridge, 1957, 1969, p. 164), briefly mentions wine amongst an in-depth discussion of abrogation and off-handedly mentions the simple koranic prohibition of wine without any further reference to Hadīth. In the same way, N.J. Coulson in *A History of Islamic Law* (Edinburgh, 1964, p. 11-12), only takes a few lines to remind the reader that the drinking of wine is declared forbidden, becoming a criminal offence “punishable by flogging.” Others, such as H.J. Liebesny’s *Law of the Near and Middle East* (N.Y., 1975, p. 229) describe wine amongst general offences in Islamic law in a few lines, here, for example quoting Abū ’l Ḥasan al-Mawardi (d. 1058 A.D., Baghdād): “drinking of any intoxicating beverage is forbidden by the Kur’an and according to the classical jurists. The punishment for the offender was forty strokes or lashes.” These are examples of the simplification of a highly complex and theologically significant
issue commonly found in general readers. R. Roberts in his *Social Laws of the Qur'an* (London, 1925, 1971, p.114-5) is one of the few general sources that take issue with the work *khamr* and attempts a definition of its constituent meaning, albeit in a very superficial way.

Articles on wine in Islam are few and far between. Except for the promising sounding "Islam and Wine Drinking" by W.M. Watt (in *La Sapienza*, Rome, 1984, p. 847-850), and "A Muslim Encomium on Wine" by G. J. Van Gelder (in *Arabica*, 42, 1995, p. 222), both found on the CD-ROM version of *Index Islamicus* (ed Pearson, Behn, et. al., 1999), no other article was specifically devoted to the issue. Watt’s survey of wine drinking is interesting from a social anthropological point of view, but in three pages, goes no further than the most surface analysis. Gelder’s introduction to his discussion of a particular post-classical Arabic literary work simply compares wine and water vying for pride of place in Islamic literature through the ages.

It is clear there is ample room for a critical and developmental approach to the issue of wine and its place in Islamic theology and law, over and above the simplistic rehashing of Islamic traditional thought found in most general readers. It is a curious fact that considering the gravity of the crime in religious law and its lack of formal legislation, more work has not been done concerning this topic.

There can be little doubt that connecting the institution of the prohibition of wine, as well as its almost legendary importance in Islam, to other civilizations and cultures, and an examination of the consequences of this connection can add to a field little researched. My approach is critical, and takes the Qur’an as the result of social and cultural influences upon its author/s. However it is not only the Qur’an but the accompanying traditional Islamic scholarship available that allows for a further contribution to the field. I have therefore collected and thoroughly examined *tafsīr* materials (including *hadīth*), and associated them with the issue of abrogation and other tools of the commentators to
understand what they were really talking about in their theoretical discussions, the remains of which have survived. It was not a simple command of God upon His Prophet that brought about this formative institution in Islam. It is my wish in this paper to arouse in the reader an awareness that the prohibition of all alcoholic beverages in Islam came about over a long period and after vigorous and brilliant academic debate over generations, motivated by a pious need to understand the Revelation.
INTRODUCTION: IDEAL VERSUS REALITY

a. One of the most characteristic traits of everyday Muslim public life is the total prohibition of alcohol, for intoxicating liquid (most commonly known in Arabic literature as khamr, and as we shall see, a loan word from Aramaic) is forbidden in the Qur'an as being 'the cause of more evil than benefit':

'They shall question you [i.e. traditionally read as Muhammad] concerning khamr and arrow-shuffling [i.e. according to the Commentaries, gambling and/or use of the arrow as a divining tool]. Say: "In both there is great sin and (also) uses for men, but the sin in them is greater than the usefulness."'\(^1\)

The forbiddance of what we shall call 'wine' (which later jurists have by analogy extended to all alcoholic beverages in Muslim Shari'a law), is absolute and based on those koranic verses branding it an abomination. Yet wine may also be considered the great Islamic beverage, not referring to the day-to-day life of Believers for whom, for example, water and milk are doubtless more essential than alcoholic drinks. In Arabic and Islamic literature however, water and milk, though present, tend to recede when the 'exotic' wine is spoken of. The Qur'an often mentions water as one of God's blessings,\(^2\) but usually because of its ability to revive the earth, and only a few times is water mentioned explicitly:

'We have sent down from the heavens water blessed, with which We cause to grow gardens and the harvest grain, and the high palms with fruited spikes, as a benefit for [Our] servants...'^3

'Let man consider his food. Indeed, We poured rain down, then we plowed the earth as furrows, and made spring out from it grain and grapes, vegetables and

\(^1\) Qur'an, sura 2:219. As throughout this paper, references to the Qur'an refer to the modern Cairo edition, prepared in the 1920s, and parallel the common edition printed in Madina and widely distributed.


\(^3\) sura 50:9-11.
Wine, too, is counted among God’s blessings,\(^5\) evidently reflecting the Persian and Greek heritage (examined presently) which so permeated Islamic cultural, theological and legal development in its formative period of roughly the first two centuries following the Prophet’s death, traditionally held to have been A.H. 11/A.D. 632.\(^5\)

Although elsewhere, the Qur’an expresses the idea that on earth, wine may be forbidden as “some of Satan’s work,”\(^7\) in the Hereafter, the pious may be compensated for this deprivation.\(^8\) In the Koranic Paradise there are four rivers: of water, milk, honey—and free-flowing wine:

> ‘A similitude of the Garden [i.e. what Paradise is like], which those who keep the duty (to God) were promised, in it are rivers of water, not brackish, rivers of milk

\(^4\) *sūra* 80:24-32.

\(^5\) *sūra* 16:67, examined during the course of this paper.

\(^6\) It is a commonly held view amongst modern critical (Western) scholars that only then did the religious group of Believers begin to define themselves communally, doctrinally and institutionally in relation to other religions and cultures. See, for example, the introduction to John Wansbrough, *Koranic Studies: Sources and Methods of Scriptural Interpretation* (Oxford, 1977).

\(^7\) *sūra* 5:90.

\(^8\) As in *sūras* 37:45-47; 52:23; 56:17-19; 76:5-6, 15-18, 21; 78:34; 83:25-28. Notable is the fact that one of the important studies regarding wine in Islam fails to mention the (literary) fact of wine in Paradise, namely A.J. Wensinck, “Khamr”, *The Encyclopaedia of Islam*, New Edition, vol. IV (Leiden, 1997), 994. Hereafter, “Khamr”, *EI*, s.v. (A.J. Wensinck). There is an additional section at the end of the article: “As a Product” contributed by J. Sadan. This source, albeit lacking in some aspects, was used as the structural basis of my research, it being the most detailed examination of wine in Islam that I came across in the secondary literature.
not changing in flavour, and rivers of \textit{khamr}, delicious to the drinkers; rivers too, of honey free-flowing..."^{9}

According to the Commentators' exegeses, seeking to establish an explanation and context for various koranic verses, the wine of Paradise does not inebriate nor give a hangover. Thus, the Persian scholar al-Zamakhshari (d. A.D. 1134) explains in his \textit{Tafsir} regarding this \textit{sura} that:

"By delight...what is meant is that the wine (\textit{khamr}) is a pure pleasure which is accompanied by neither loss of consciousness nor crapulence nor headache nor any other ill-effect of wine."^{10}

This exegetical explanation derives from one verse of the \textit{Kur'an}, \textit{sura} 37:45-7: '(The wine is) brought around to them (in Paradise) in cups from a spring, white, delicious to the

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\textit{sura} 47:15-16.

\textit{9} Majnun ibn 'Umar al-Zamakhshari, \textit{Al-kashshaf 'an haq'ah al-tanazzil} (The Unveiler of Secrets of the Revelation, completed A.D. 1134), ed. W.H. Lees, 2 vols. (Calcutta, 1856-9), vol. II, 69. This Commentary, has a dogmatic foundation as it is based on specifically Mu'tazilite doctrine. It is of less importance than al-Tabari's (d. A.D. 923) \textit{Tafsir (al-djam'i al-bayan...),} probably due to the fact that Zamakhshari omits parts of the traditional material (including some isnads) and only includes what he thinks are important.

On the other hand, in his attempt to explain away the existence of an evidently uncomfortable wine-imbued Paradise, the modern writer Syed Ameer Ali addresses the issue in another way:

"Mohammed was addressing himself not only to the advanced minds of a few idealistic thinkers who happened to be then living, but to the wild world around him engrossed in materialism of every type. He had to adapt himself to the comprehension of all. To the wild famished Arab, what more grateful, or what more consonant to his ideas of Paradise than rivers of unsullied incorruptible water, or milk and honey; or anything more acceptable than unlimited fruit..."^{10}

drinker, no headache (is caused), nor are they intoxicated/crazed.' The explanation that the wine of Paradise has 'no ill-effect' (i.e. probably drunkenness or a hangover) reflects a certain apologetic justification' for the evidently uncomfortable inclusion of the wine of Paradise within the Holy Book. However, amongst al-Tabarî’s exegesis of this verse, a note is appended which briefly discusses the fragrance of the wine—musk or saffron—without any discomfort, nor any reference to intoxication. This apologetic justification may be borne out by an examination of sura 83:23-28 where the Righteous will be:

‘On couches, they will look (around). You will know in their faces the glow of joy. They shall drink an exquisite khamr, sealed, the seal is of musk, and for this, let the strivers [i.e. the Believers?] strive. And it [i.e. the wine] is mixed with (the water of) Tasrîm (which is) a spring in which those approaching (mukarrabûn) [God] will drink (from).’

The question of whether the koranic “glow of joy” is what characterises a resident of Paradise, or simply an effect of the vintage of Paradise, can, of course, only remain speculative. It was questions such as these, arising out of ambiguities within the holy text, that the commentators, the exegetes, felt the need to fill out, explain, and ultimately place within an historical framework. It is my aim to work out what these exegetes were really talking about in their long and detailed discussions of the sources and why.

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11 sura 56:17-19 is similar with the addition that “the goblets, ewers and cups” are brought around by “immortal youths.”

12 An extract from a dictionary (fi al-lisân) under fawh (“diffusion of an odour”) as cited in Muhammad b. Djarîr al-Tabarî, al-dîwān’ al-bayân ‘an ta’wil al-kur’ân (published Cairo, 1954), vol. 26, p. 49, n. 1. The excellence of traditional exegesis is evident in the activity of al-Tabarî, a scholar of Persian ancestry who is known as an outstanding collector of all manner of prophetic reports including those not in keeping with dogmatic positions. In addition to various theological and judicial works, al-Tabarî wrote a world history and huge commentary on the Kur’ân. Its value lies above all in his bringing together the entire breadth of traditional exegesis available to him in his time. He also includes his own comments regarding the validity or probability of an interpretation.
b. Although the traditional accounts of the earliest Muslim community present us with a detailed wealth of information, the character of the early community of Believers may be beyond the reach of non-traditional historical reconstruction. This is because we must rely on non-contemporary (generally from the ninth to the twelfth century ‘Abbāsid), and inconsistent source materials allegedly compiled under the pressure of religious and political forces. Further, Islamic origins must be reconstructed based on chronicles and other written accounts produced internally by the Islamic tradition itself, on the whole projecting its contemporary ideals backwards to the time of the Prophet or his Companions. Obviously reconstructing Islamic origins based on such literary materials is problematic for the critic who desires the use of contemporary sources whenever possible.

Notwithstanding, the development of the prohibition of wine, despite the (sometimes) extensive redaction in particular parts of the traditional material, contains embedded within it sufficient material to reconstruct at least some of the main issues as debated by the early Believers, and the basic attitudes of the main parties to these debates. Furthermore, the development of the eventual prohibition of wine gives us a glimpse into how the later generations viewed the problems faced by the proto-Muslim, whether or not they reflect an 8th century reality, and the way in which early Islam developed as a reaction to its host society through its internal legislation.

c. Most of the basic notions underlying a civil society find a place in the Qur’ān: compassion for the weaker members of society, fairness and good faith in commercial dealings, and a mature approach to the administration of justice. All are seen as desirable norms of behaviour without, however, being translated into any legal structure of rights and duties. The same applies to many precepts that are more particularly Islamic. Drinking of 'wine' and usury (ribā, sûra 2:275) are both simply declared to be forbidden (ḥarām) in almost the same terms. But no indication of the legal ramifications of the practices is contained in the Qur’ān. In fact wine drinking later became a criminal offence.
punishable by flogging while usury was deemed a civil matter, the transaction being a type of invalid or unenforceable contract.

d. The one particular crime appearing in Islamic law defined under the general term *hudūd Allāh* which concerns us here is of course wine-drinking. The term appears in the Kurʾān and was subsequently developed as an integral part of Islamic legal doctrine. In Islamic law, crimes defined as *ḥadd* generally constitute a fixed penalty determined by the fact that they are considered crimes against God, due to the special attention given them in Revelation.

*Hudūd* (the plural form of *ḥadd* deriving from the Arabic root *ḥ.d.d.*) is defined by J.G. Hava in the *al-ferāʿīd Arabic-English Dictionary*¹³ as “limits; ends” with the construct form *hudūd Allāh* defined as “the bounds set by God to human freedom; the Law of God.”

The Hebrew cognate seems to be *ḥaad*, which means “sharp; acute.” In compound phrases it refers to “mono-; one-; uni-,” deriving from the Aramaic. The *ḥaad Gadya* is a folksong sung during the *Pesakh* (Passover) festival based on the principle of Jewish morality, that there is no sin without punishment.¹⁴

The connection between the term and formal Islamic law is not a clear one, as a cursory reading of those instances in the Kurʾān where *hudūd Allāh* are mentioned bear no relevance to criminal law, but rather to the moral relationship between the Believer and God. A cursory examination of the Kurʾān concordance reveals under a dozen instances of the phrase. It would have been expected that the crimes that solidified in Islamic Law named as *ḥadd* crimes—including wine-drinking—would have appeared when the term *hudūd Allāh* was used. This is not at all the case. In fact, it is in separate verses that the

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crimes themselves are mentioned, and without connection to the phrase. Generally each reference to hudūd Allāh is of a polemical or moral nature, without reference to criminal law.\textsuperscript{15}

It is curious that the definition for the “limits” was left vague without exception. Why? Did the composer(s) of the verses have any idea of what these limits should be? Were they left undefined because it was clear they would not have been adhered to? Or, on the other hand, perhaps those limits were obvious enough not to have been stated again. And finally, how did criminal law find connection to the term hudūd Allāh, and under what circumstances did wine-drinking end up connected to those other hadd crimes?

e. The traditionally accepted view of Muhammad’s career as a lawgiver is that, while in Mecca, he acted primarily as preacher and prophet, whereas in al-Madīna the requirements of an ever-growing community forced him to give ‘legal’ decisions from time to time. This view is based on those verses that apparently indicate a belief of the Prophet that the Last Judgement and the end of the known physical world were imminent,\textsuperscript{16} and the Believers needed a code of admission to Paradise.

If so, what purpose was there, then, in expounding an elaborate legal system, when all human beings were to come to an end soon? However, it is true that even the earliest parts of the Kur’ān are not devoid of legal matters. For instance, when the Prophet enjoins

\textsuperscript{15} The sūras in which the term appears: K, 2:187 related to sexual relations during the unspecified “fast period”; K, 2:229-30 relating to conditions of divorce and remarriage; K, 4:13-14 dealing with reward and punishment regarding those transgressing the undefined hudūd; K, 9:97 a polemical outburst seemingly directed against the “Nomadic Arabs”; K, 9:112 defining the perceived ideal Believer; K, 58:4 seeming to refer to compensation for an inability to perform un-stated religious rites, and K, 65:1 which addresses social and family behaviour regarding spouse relationships.

\textsuperscript{16} Amongst other strongly worded warnings to mankind are sūras 101 (‘The Day of Judgement’), 99 (‘The Earthquake’), 84 (‘The Spitting Open [of Heaven]’), 82 (‘The Darkening’), etc.
his audience to keep to their pledges and contracts, to stand by their testimony (ṣūra 70:32-33) and to be just in measure and weight (ṣūra 83:1-3), or when he objects from the outset to usury (ṣūra 30:39). However, these prescriptions, including the prohibition of wine are religious and moral commandments rather than pieces of formal legislation.

f. Muslim tradition asserts that the prohibition of wine came about because of divine intervention and over a relatively short period. In support of this, it might be worth noting the Armenian chronicle apparently written in the 660s, and ascribed to Bishop Sebeos.¹⁷ The part of the story that concerns us here is said to be referring to events towards as early as A.D. 628:

'At this time there was an Ishmaelite called Maḥmet, a merchant; he presented himself to them [i.e. the Arabs] as though at God’s command, as a preacher, as the way of truth, and taught them to know the God of Abraham...Maḥmet forbade them [i.e. his followers] to eat the flesh of any dead animal, to drink wine, to lie or to fornicate...'¹⁸

We see here representation of an early Muslim community with a few fixed precepts that remind us of a recognisable Islam (or for that matter any number of other groups claiming salvation through piety), including the prominence of the prohibition of wine.

However, judging from the volume of ḥadīths preserved in the canonical collections, and by al-Tabarî in his Tafsīr, there is little doubt that the institutionalised ban on drink, as I hope to show, came about over a longer period than most traditional and

¹⁷ Sebeos, Histoire, pp. 94-6 as cited in Patricia Crone and Michael Cook, Hagarism: The Making of the Islamic World (Cambridge, 1977), 6, 157, n. 36. The chronicle ends in A.D. 661 and, according to Cook and Crone, was “clearly written by a contemporary.” The account is “apparently based on testimony of eyewitnesses who had been held prisoner by the Arabs at the time of the Arab conquests.” Ibid., 157, n. 36. Their opinion of its dating, its interpretation, and its value are, however, debatable.

¹⁸ Sebeos, Histoire, pp. 94-6, as cited in Crone and Cook, Hagarism, 7.
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apologetic works attempt to convey. Furthermore the ban was solidified and defined only after much debate arising from the pious need to fully understand the revealed text.

Even then, the prohibition never completely penetrated all strata of Islamic (and here I include, if not emphasise, non-Arab) society, for there was much drinking of fermented mixtures amongst Muslims in certain classes in the heyday of Islamic culture (reflected in the wine-poetry discussed at length below). In the Arabian Nights it tends to be the princes and merchants who indulged, and as attested to in a multitude of miniature paintings from more or less ‘Abbāsid times and especially from the 9th century Ikshīd (“shining, brilliant”) period in Samarkand (which hints as to an even earlier iconography). Indeed, a curious phenomenon—considering the ‘clear’ koranic statement regarding God’s ultimate position on the issue, as allegedly conveyed by the Prophet.

It shall be seen that the most intensive and problematic arguments concerning the koranic prohibition of khamr revolve around constituents—what is allowed and prohibited, and the philology used. As we shall see, some exegetes argued that only fermented liquids made from grapes was banned by the Kur’ān, so it was alright to get drunk on, for example, figs. Whatever its true nature, the prohibition is a vestige of a very early and important theological matter, the development of which did not square well with later orthodox positions banning any and all fermented mixtures by way of analogy.

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19 Robert Irwin, The Arabian Nights: A Companion (London, 1994), 154. It is worth noting the fact that the Nights literature is a compilation containing elements inserted only as late as 200-300 years ago, and are thus of only peripheral importance to the topic at hand.

PART ONE

THE 'SEMITIC' AND INDO-EUROPEAN LITERARY BACKGROUND

a. Several Islamic institutions (including most especially the *hadith*) become more fully understandable only in the light of their parallels or antecedents in more ancient monotheistic literature.\(^{21}\) The Islamic prohibition of wine may thus be looked upon from a wider aspect, as Islam is not the only monotheistic religion that has taken a negative attitude towards fermented drinks.

Wine had been known to the Arabs since the earliest times, and within Arabic literature there is preserved memories of its legendary origin. It takes account, on the one hand, of those traditions linked to biblical characters such as Adam and Noah\(^{22}\) and on the


\(^{22}\) *Midrash Tanhuma*, tr. by John Townsend (N.J., 1989), 1:22, on Gen. 3:22 (ref. to Adam and the "tree of life"), p. 15; 2:20, on Genesis 9:18 (ref. to Noah), p. 50-52. See also "Khams" (part II "As a Product"), *EJ*, s.v. (J. Sadan). The biblical story of Noah's first practical act was to *profanely* (*vayakhel* which also means "he began") plant a vineyard (*vayita karem*), immediately after which he was made to become exceedingly drunk, so much so that he revealed his nakedness. Hence, Rashi's comment: 'Noah made himself profane, degraded himself. He should have planted anything but the vine.' "Scripture, thus shows in this narrative what shame and evil can through drunkenness befall even a man like Noah, who was otherwise righteous and blameless before God. Some commentators, however, explain that as Noah was the first to cultivate the vine, he was ignorant of the intoxicating effect of its fruit" (S.D. Luzzatto [1800-1865] the Italian Hebraist and commentator, as cited in the *Pentateuch and Haftorahs*, ed. by J.H. Hertz, second ed., London, 1971, 34). The question may be asked whether the former prophets' actions contradict the principle of *'ima* (infallibility, immunity from sin), a relatively late principle, according to which prophets could not logically commit a sin, even one which would become a sin only in the days of Muhammad (See: E. Tyan, *Encyclopaedia of Islam*, new ed., vol. IV [Leiden, 1990]). This is, however, beyond the scope of this paper.
other hand, of the Aramaic-Syriac extra-Biblical tradition, symbolising ancient cultures inherited by the medieval Muslim world.23

b. In order to place the Islamic prohibition within a cultural framework—and in so doing, provide prophetic precedent—according to the Hebrew Bible, the Nazarite who had wholly devoted himself to God had to abstain from wine and spirits:

'He shall separate himself from wine and strong drink, and shall drink no vinegar of wine, or vinegar of strong drink, neither shall he drink any liquor of grapes, nor eat moist grapes, or dried. All the days of his separation shall he eat nothing made of the tree, from the kernels even to the husk.'24

The Nazirites were those who consecrated themselves to God, taking the vow of a Nazirite, and the rules for it are set forth in Numbers 6:1-21. During this period of consecration, the nazir was to abstain from all fermented drinks and keep the hair uncut amongst other things. The practice was certainly known in New Testament times. St. Paul was made to complete a vow of this kind at Cenchreae (Acts. 18:18).25 However, the law in Numbers codifies a very ancient custom and also reduces to a contemporary vow something that had originally been a consecration for life.

According to Amos (2:11-12), God raised up prophets and Nazirites in Israel, but it was the people who made the Nazirites drink wine. Here, the Nazirite is not a person who has taken a vow, but a man possessed of God-given qualities, a life-long state resulting from God’s call, whom He separated from the realm of profane things. The external symbols of this separation are the various things forbidden to the Nazirite; in Amos, only abstaining

23 "Kharr" (part II), E1'2, s.v. (J. Sadan). One version links the origin of wine to the two great civilisations that were neighbours to Islam, that of Rum and that of India (al-Mas'ūdī, Abū 'l-Hasan 'Ali [d. 956], Murūdî al-dhahāb, II [Beirut, n.d.], 88-92).

24 Numbers 6:3-4.

from wine is mentioned, but in Numbers 6:3-4 the prohibition extends to everything produced from the vine. The only biblical story which speaks of a particular Nazirite is the story of Samson. Even before he was born, his mother had to abstain from fermented drink, because the child she was to bear would be a ‘nazir of God’; Samson himself was to follow the same rule.

An extension of the usage of the term nazir can be seen in the application of the word to vineyards which were not pruned in sabbatical or jubilee years (to this day in modern Israel) when the seeds were allowed to grow without hindrance (Lev. 25:5-11).

The same rules regarding abstention of fermented drink are applied to the Priest before administering the sacred rites (connected to the Temple ritual):

‘Do not drink wine or strong drink, you, or your sons with you, when you go into the tabernacle of the congregation, lest you die: It shall be a statute forever throughout your generations.’

Maimonides’ (A.D. 1135-1204) relevant comments on wine restrictions in The Guide of the Perplexed, are instructive as they provide an insight into a Jewish philosopher’s reasoning—within an Islamic environment—regarding the status of wine within Revelation. Although Jewish theologians did not copy the ideas found within the Muslim theological realm, it is possible that they adopted various Islamic philosophical ideas if they fitted into internal Jewish theological arguments:

‘The reason for Nazaritism (as referred to in Num.) is obvious. It consists in bringing about abstinence from wine, that has ruined people in ancient and modern times. ‘Many strong men have been slain by it’ (Prov. 7:26). ‘But they also have erred through wine...the priest and the prophet’ (Isa. 28:7). In the law about the Nazarite we notice even the prohibition, ‘he shall eat nothing made of the vine tree’ (Num. 6:4), as an additional precaution, implying the lesson that man must take of wine only as much as is absolutely necessary [probably for medicinal purposes].

Emphasis added throughout texts is always mine, P.L. For him who abstains from

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26 Leviticus, 10:9.
drinking it is called ‘holy’; his sanctity is made equal to that of the high-priest, in
not being allowed to defile himself even to his father, to his mother, and the like.
This honour is given him because he abstains from wine.'

The ideal which the Prophets exalted, but never tried to put into practice was actually
carried out by a group called the Rekhabites. We know of them chiefly through the Book of
Jeremiah. To give a lesson to the people, the Prophet invited the members of Rekhab's
family to the Temple, and offered them a drink of wine. They refused it, saying that their
ancestor Yonadav, son of Rekhab, had given them this command:

'Neither you nor your sons shall ever drink wine, and you must not build houses, or
sow seed, or plant vines, or own property. On the contrary, you are to dwell in tents
all your life, so that your days may be long in the land where you live as aliens.
Thus have we obeyed the voice of Jonadav the son of Rekhab our father in all that
he hath charged us, to drink no wine all our days, we, our wives, our sons, nor our
daughters. Nor to build houses for us to dwell in: neither have we vineyard, nor
yield nor seed.'

This age-old fidelity to the commands of their ancestors is held up as an example to the
Jews who do not obey the word of God.

c. Like the Hebrew priests, the Nabataeans, according to a remark by Jerome of
Cardia, similarly abstained from wine, in the late fourth century B.C., and one of their

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28 Jeremini, 35:5-9.


30 Diodorus Siculus, 19:94, as cited in Kenneth S. Sacks, *Diodorus Siculus and the First Century*
(USA, 1990), 25; Crone and Cook, *Hagarism*, 157, n. 38.
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gods is called in their inscriptions “the god who drinks no wine.” It is interesting to compare the passage of Jeremiah to the remark found in Jerome:

'It is a law among them not to sow corn, or plant fruit trees, not to drink wine or build a house; whoever does so is punished with death.'

In these two very similar passages, one finds the age-old contrast and tension between nomadic life and the life of a settled farmer.

d. The theme of these biblical stories—including Noah, Lot (Genesis 9 and 19) as well as of the book of Proverbs (23:30-35) is opposition to drunkenness. Further, according to the Talmud, Nadav and Avihu were killed because they were drunk (Leviticus Rabbah 20:9 and parallels), drunkenness leads to forbidden sexual relations (Ketuvot 65a and Numbers Rabbah 10:3) and “there is nothing that causes a person greater lamentation than wine” (Sanhedrin, 70b). As a result, it is difficult to fathom the primary talmudic source related to drinking on the feast of Purim (Megillah 7b):

'Rava said: “A person must get drunk on Purim until he cannot distinguish between ‘cursed be Haman’ and ‘blessed be Mordechai’. Rabbah and R. Zeira made a Purim feast together. They got drunk. Rabbah stood up and killed R. Zeira. On the morrow, Rabbah prayed for him and revived him. The following year, Rabbah said to him: “Come, let us celebrate the Purim feast together!” R. Zeira replied: “Miracles don’t happen every day!”’

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31 According to Crone and Cook (Ibid.): “There may also be here a trait of ascetic Judaism (cf. the Rechabites, the Nazirites, and St. John the Baptist), and one which appears suggestively as being adopted by many Jews against the wiser counsels of the rabbis in the period after the destruction of the Temple” (referring to the Babylonian Talmud, Bava Batra, ch. 60b).

32 In Diodorus Siculus, 19:94, as cited in Sacks, Diodorus Siculus, 25.

33 De Vaux, Ancient Israel, 15
Rava’s statement begs an explanation. R. David Abudraham explained that the Sages required drinking on Purim since all of the miracles in the days of Ahashverosh occurred at drinking parties (Sefer Abudraham, pp. 209-210). On the other hand, Rava was a vintner (Berakhot 56a and Bava Metzia 73a) and clearly liked to drink wine (Pesahim 107b).

Whatever the simple meaning is, it is clear that the halakhic authorities throughout the generations felt very uncomfortable with Rava’s demand to get drunk on Purim, and therefore each scholar (posek, “jurist”) tried to circumvent the requirement. Here is a sampling of their rulings:

1. R. Ephraim (North Africa, 11th cent.) claimed that the story comes to cancel out Rava’s statement and therefore one should not get drunk on Purim.
2. R. Alexander Zusslin Hacohen (Germany, 14th cent.) explained that “cursed be Haman” equals “blessed be Mordechai” in gematria (mathematical association with the Revelation) - they both add up to 502! - and it requires less wine to become that intoxicated.
3. R. Yosef Ha’iva (Spain, 15th cent.) wrote that one should say funny things so that the beholders will think that one cannot distinguish between “cursed be Haman” and “blessed be Mordechai.”
4. Maimonides (Egypt, 12th cent.) rules that “he drinks wine until he gets drunk and falls asleep...”, and this ruling was adopted by Rabbi Moshe Isserles in the Shulkhan Arukh (Poland, 16th cent.).
5. R. Natanel Weil (Germany, 18th cent.) explained: “until”—up to and not including, because otherwise he would reach the drunkenness of Lot”.
6. R. Aaron of Lunel (Provence, 14th cent.) commented “that he should drink more than his normal custom in order to rejoice greatly and to make the poor rejoice and he shall comfort them...and that is true joy.” This is the most original interpretation: that the purpose of drinking on Purim is to help us fulfill the mitzvah of mttanot la’evyonim (gifts/alms to the poor) and not simply to get drunk.
7. Finally, R. Menahem Hame’iri (Provence, 14th cent.) said: “In any case, we are not commanded to get drunk ...for we were not commanded to engage in debauchery and foolishness but to have heartfelt joy which will lead us to
the love of God and to gratitude for the miracles which he performed for us".  

As we shall see, both the Jewish and Muslim pious scholars were discussing and debating exactly the same issues and problems stemming from the desire for the full understanding of a problematic revelation and its related Oral tradition/ Hadith.

e. A similar attitude to wine involves that of the Manichaean form of Christianity. Its disciples were divided into two classes; one, the ‘elect’, and the other, the ‘hearers’. The ‘elect’ were compelled to submit to a rigorous abstinence from all animal food and intoxicating drink amongst other restrictions. The discipline appointed for the ‘hearers’ was of a milder kind, reflecting the same type of problems Muhammad was related to have encountered when attempting to impose asceticism upon his own community of Believers.

Similarly, abstention from wine belonged to the rule of many Christian monks, and the abstention from wine—as a form of religious asceticism—is said to have been practised by several of the pagan Kuraysh of Mecca.  

Ṭabarî, in his comments on sura 5:90, narrates that the prohibition (in fact abstention) of women, sleep and meat “upon the Companions of the Prophet was similar to (that of) the (Christian) priests and monks.”

All this has its roots in remote Semitic antiquity that ascribed a demonic character to wine and spirits (combined with the ancient idea that bodily abstinence was regarded as a

34 I am indebted to David Golinkin, for sending me his article “Purim: To Drink or Not to Drink”, Schechter Institute of Jewish Studies, vol. 2, no. 4 (Jerusalem, Feb. 2002).

35 See: G. Bühler (tr.), The Laws of Manu: Translated with Extracts from Seven Commentaries (Oxford, 1986), chaps. IV & V.


means of purification of the soul on its way to Paradise). Doubtless, the same is true for music, especially singing, which was also, we are told, disapproved of by the Prophet.\textsuperscript{38} It is not improbable that feelings of this kind may have worked, with other more local motives (involving discipline and social changes), to induce the prohibition of wine and wine-drinking.

f. However, the Hebrew Bible also speaks of wine as a gift of God to humanity, often along with other products of the soil, corn and (olive) oil. In one such passage (Psalm 104:15) it is described as ‘wine which makes glad the heart of man’. From the New Testament we know that Jesus made use of, if not frequently drank, wine.\textsuperscript{39} Further, both Jews and Christians make use of wine in religious ceremonies.\textsuperscript{40} This appreciation of wine

\textsuperscript{38} That a discordant voice is not good is apparently expressed in sura 31:19: ‘And lower your voice, for the harshest of sounds without doubt is the ‘honking’ of a donkey.’ For an overview of the attitudes of Muslims to music see “Music” in Edward William Lane, The Manners and Customs of the Modern Egyptians (Everyman edition, London, n.d.), especially pp. 359-361, as well as R. Sellheim “Sama’,” EI\textsuperscript{2}, new ed., vol. VIII, Leiden, 1993, p. 1018. There is a similar disposition towards what was interpreted as ‘dancing’: \textit{wa`la yadribna bi`ardfusulhuma li`yu`lma ma yakhfuna min zmatihinna} (end sura 24:31).

\textsuperscript{39} See esp. John 4:46, Luke 7:34, Mathew 11:19, 1Tim. 5:23. Although it may be noted that Jesus is made to frown upon wine in other verses e.g. Mat. 27:34, Mark 15:23, Luke 1:15, Romans 14:21.

\textsuperscript{40} There is also the curious matter of the Nosairis who used wine as an integral part of Islamic liturgy. The sect, later known as the ‘Alawites of French Mandated Syria, traces its roots to the eleventh ‘Alid Imam, Hasan al-‘Askari (note in the name the coincidental derived root s.k.r., sakar, ‘wine!’), who we are told died in A.D. 873. Their religious system combines Christian, pagan and Shi‘a elements. With the Nosairis, ‘All became a divinity. Although Nosairism adopted several Shi‘a festivals, more unexpected, in fact unique in Islam, is their adoption of the great Christian festivals and Eastern liturgy. Included in the sect’s ritual are candles, incense, fragrant plants—and wine. Indeed, some prayers are recited over cups of wine, after which the \textit{imām} mixes a portion of his cup of wine with that of the attendant, and at this signal all the congregation empty theirs, and intone religious chants. The Nosairi liturgy mentions ‘the consecration of the wine’; after which it adds: ‘The greatest of God’s mysteries is that of the body and blood of which Jesus has said: “This is my body and my
is not completely absent in the Qur'an, considering the rivers of wine in Paradise (sūra 47:15), and that in wine there are ‘benefits’ (sūra 2:219, not forgetting of course that the sin is greater).

To an observer it is strange that what was permitted to other ‘Peoples of the Book’ (ahl al-kitāb, i.e. primarily, we are told, Jews and Christians), and indeed seen by them as a gift from God, should have been forbidden to Muslims. Is the prohibition believed to have been derived from punishment for some fault, such as excessive drinking of alcohol and consequent unruly behaviour (for which those of other religions it could hardly have been absent)? This point will be further discussed, but in the meantime we note that there is something queer about a legal prohibition that has no precedent in earlier Revelation (at least that revelation recognised in one form or another by the Qur'an).42

The wine is called 'abd al-nūr, because in it God has revealed Himself. The Nosairis have integrated into their liturgy borrowings and ceremonies eliminated from the religious practices of Islam, not excepting those sects furthest removed from koranic orthodoxy. See H. Lammens, Islam: Beliefs and Institutions, tr. D. Ross (London, 1967), 174-175.


42 In trying to account for the Christian liturgical wine ritual, it is instructive to consider J. G. Frazer, in his classic Golden Bough. He explains why one should desire to partake of the flesh (or blood) of an animal or man whom he regards as divine. “By eating the body of the god, he shares in the god’s attributes and powers. And when the god is a corn-god, the corn is his proper body. When he is a vine-god, the juice of the grape is his blood; and so by eating the bread and drinking the wine the worshipper partakes of the real body and blood of his god. Thus the drinking of wine is not an act of revelry, it is a solemn sacrament.” James G. Frazer, The Golden Bough (New York, 1953, first published, 1922), 578. Little wonder then that Muhammad as portrayed in the Islamic tradition rejected the polytheistic symbolism inherent in the role of wine within Pagan as well as Christian ritual.
Although in ‘Semitic’ culture wine may be considered a blessing, as well as rigorously disapproved of in ritualistic terms, nowhere have intoxicating drinks been elevated to a loftier position of religious significance than among the Indo-Iranian peoples. They knew both a worldly intoxicant known as *sura* in India and *hura* in Iran, and a sacred drink (Indic *soma*, Iranian *haoma*), the latter of which had the status of a deity with a complex set of symbolism. This beverage had a powerful hallucinogenic effect and was an intensifier, which enhanced all human capabilities to any who partake in it. *Soma* and *haoma* were considered nothing less than the universal life essence, the fluid that invigorates all living beings. Moreover, the sacrificial offering of this elixir came to be regarded as the means to effect circulation of life energy throughout the cosmos.43

A consequence of the Christian and pagan traditions partly accounts for the phenomenon that wine comprises a special place within the literary works of the Muslim mystics. There, notwithstanding the Koranic prohibition, it is considered a symbol of ecstasy (noting the same conflict between the blessed and the harmful in the Hebrew Bible). In this point it seems that the mystics took over a combination of the languages (i.e. the institutionalised expression of the Divine) of their non-Christian, and Christian predecessors—for as early as Philo of Alexandria, ecstasy is compared to intoxication.44

Finally, not only did the spread of Islam encounter Persian/Iranian values, ideas and literature, but also encountered Greek philosophy. Indeed, the intellectual life of Islam commonly bowed to the Greek spirit of expression:

Whether the *Kur'ān* is from eternity, I do not enquire.
Whether the *Kur'ān* was created, I do not know...


The drinker, whatever the case,
Has a fresher glimpse of God's face...45

Many values ascribed to the Islamic institutionalisation of the wine prohibition can be traced to Greek philosophy, as of course it was preserved in Arabic texts. A few fragments may suffice to illustrate a Greek 'institution' reflecting on the values of wine (as well as music and women) which, as are easily recognisable, Islam took over, gave an Islamic flavour, and adopted as its own:

1. 'Anarcharsis said: "Vines bear three kinds of grapes: grapes of pleasure, grapes of intoxication, and grapes of folly."'46
2. 'Ammonius said: "Three things alone can harm a ruler, namely, drinking wine, listening to music, and conversation with women. All three ruins the mind."'47
3. 'Sophocles said: "He who achieves power together with authority is like a drunkard if he has no intelligence. He despises beauty, avoids justice, is extremely boastful and vain and does the ugliest things. When he becomes poor and sober again, he knows he was intemperate and had abandoned truth and justice, and he is clearly aware what his intoxication meant."'48

This heritage carried over and was reflected even in the writings of the Muslim rationalist Muhammad Husein Haykal, expressed in the 1930s when he states:

"The Qur'an, seeking to preserve the jurisdiction of reason in morality, thus has kept morality immune to all that might vitiate its judgement on matters of faith or morals. Consequently, it has regarded alcohol and gambling as anathema...Alcohol dissolves reason and wealth, to use the terms of 'Umar ibn al-Khattab when he..."


46 Preserved by Ibn Durayd b. al-Simma (b. 530) in al-Aghānī, ix, no. 28, as cited in Rosenthal, Classical Heritage in Islam, 127.

47 Ibid.

48 Preserved by Ibn Durayd, no. 28, as cited in Ibid., 137.
prayed that God might reveal His judgement in its regard [I shall return to this formulation in the coming pages P.L.]. It is natural for the mind to err in its judgement when intoxicated..."49

Comparative religion is certainly to be thanked for providing us with so many examples of the practice and motivation regarding the prohibition or elevation of wine drinking. However, the concern here is to identify as exactly as possible the literary remnants describing the specific circumstances under which the great institution50 of the prohibition came into being and the role the Prophet, the man who had perhaps the most profound effect of any individual on the history of wine, was perceived to have had in it. This, by use of the Kur'ān (together with its exegesis), traditionally accepted (at least by common consensus/acquiescence, idjīnā') to be contemporaneous with Muḥammad and his early followers, and therefore, we are told, indicative of their beliefs and values.

PRE-ISLAMIC POETRY: PROVIDING THE SOCIAL CONTEXT

a. For the purpose of finding any such meaning, it would be of value to know whether the Arabs had been familiar with abstention from wine before Muḥammad. Any attempt to answer this question is hampered by the fact that, except for the Kur'ān, all information about pre-Islamic Arabs is contained in sources put down in writing at least one hundred and twenty years after the advent of Islam. The real picture might be distorted by the passage of time as well as by the natural inclination of the Muslim pietists to depict the past as they would have imagined it in line with their own pious ideals.

49 Muhammad Ḥusayn Haykal, The Life of Muḥammad (Beirut, 1983), 545.

50 One may consider the matter an “institution” due to the fact that the prohibition of wine is ‘institutionalised.’
b. The pre-Islamic poets\textsuperscript{51} boasted of their feats in wine drinking. Although (as we have seen in the Kur'ān) water is omnipresent in the poetry, it is rarely "merely" drunk, rather, it is used in a far more lofty context representing fertility, or used metaphorically for generosity and blessing.\textsuperscript{52} Indeed, the praise of wine remained an inevitable part of Arabic poetry to such a degree that even Hasan b. Thābit, known as the first Muslim poet and the chronicler of Muhammad and of his victories, is made to say:

'If we commit unseemly deeds—whether a quarrel or railing—we blame the wine (khamr) (which we drank to excess). We go on drinking it, which turns us into kings.'\textsuperscript{53}

As Goldziher points out: "although the genuineness of the poem is, of course, doubtful, the fact remains that wine-drinking, related in a religious poem, was not edited out, perhaps not even considered out of place in the formative period of the development of the Community. Only later attempts were made to explain away the existence of the poem that gave offence to the newly dogmatized Muslim pietists. They were concerned to prove that the effects of wine had changed with the changing times. Thus, they postured, during the period of paganism it might have had those beneficial effects attributed to it by the old poets (surely reflecting those attitudes from pagan society); but since God's law of condemnation it had

\textsuperscript{51} Including here the later (more dogmatic) pious writers tending to project certain ideals of their own time backward (whether these ideals be positive or, as in this case, negative) in order to provide a measure of authority.

\textsuperscript{52} "Khamriyya," \textit{EL}\textsuperscript{2}, s.v. (J.R. Bencheikh).

\textsuperscript{53} Ibn Isḥāq (ca. 85-150/704-67), edited by Ibn Hīshām (d. 218/833), \textit{Sīrat Rasūl Allāh}, ed. F. Wüstenfeld (Goettingen, 1858), 829, column 1, line 6. It should be pointed out that the above 'social comment' is presented in a poem composed about the conquest of Mecca, according to traditional chronology.
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to be the cause of all laxity.\textsuperscript{54} This idea was expressed as a tale, which was probably not unintentionally attributed to the same Hasan, the poet of the transition from paganism to Islam, and thus deemed most suited to be the carrier of the idea of the theologians."\textsuperscript{55}

c. So, Muhammad was allegedly born into one of the Middle Eastern cultures that from earliest times had been depicted as using wine, an idea familiar to the pre-Islamic Arabs.

Although Arabian vintages could never have been of any great quality, wine, locally grown or imported from more fertile regions (Syria, Iraq, or the Yemen), was part of, we are told, the daily life of sixth-century (pre-Islamic) Makka. Since the Arabs had no real tradition of viticulture (including those who settled in agricultural regions), wine was considered a ‘luxury-item’, since due to poor soil quality, wine made from grapes had to be brought from considerable distances, and one may assume, was thus expensive.\textsuperscript{56}

According to what is described as early Arabic poetry, the wine-trade is chiefly connected with Christians and Jews, and one may assume that the places in which this trade was undertaken led to a circulation of Christian and Jewish ideas among the pre-Islamic Arabs. After the birth of Islam, this commerce was must have been practised exclusively by these two communities, as a result of the koranic prohibition.\textsuperscript{57}

\textsuperscript{54} Wine and games of chance were declared by Hadith as “beneficial before the prohibition, but in them was sin (only) after they were prohibited.” al-Ṭabarī, \textit{al-dījāmī al-bayān}, vol. 2, p. 361, line 4.

Here again we meet with the concept of \textit{ʾismā}.


\textsuperscript{56} As W.R. Smith observes, it is perhaps “for this economic reason that opposition to the widespread use of wine found distinguished advocates before Muhammad.” William Robertson Smith, \textit{The Prophets of Israel and Their Place in History to the Close of the Eighth Century} (Edinburgh, 1895), 388, n. 16.

\textsuperscript{57} \textit{Khamr} (part II), \textit{EI}², s.v. (J. Sadan).
It is against both the "Semitic" and Classical backgrounds that one has to evaluate the testimony of the Kur'ān and the "Oral Tradition", the exegetical Ḥadīth, concerning the establishment and institutionalisation of the prohibition of 'wine'.
PART TWO

THE KUR'ÂN AND ITS PLACE IN THE EVENTUAL PROHIBITION OF WINE IN ISLAM

a. In the earliest times of the Muslim community, limitations the divine prohibition of fermented mixtures imposed met powerful resistance from Arabs who, it is said, indulged in moderate drinking as a natural part of pre-Islamic society and culture. It is related by Muslim chroniclers that pre-Islamic Arabs found "nothing less to their taste than asceticism, and sang of their national heroes' use of wine, and of their generosity in sharing it out."58

According to Goldziher, the earliest attempts to introduce asceticism, one of whose manifestations was abstention from wine, to the pagan Arabs were in vain, "not going well with their inherent character." Indeed, it was the prohibition of wine, which he asserts was remembered as what "encouraged virtue, honour and generosity," that was incomprehensible to the true Arabs.59 This may reflect the traditional idea that although "self-castigation is best suited for intercession and for the seeking of God's pardon,"60 the prohibition of wine was not in Muhammad's program at the beginning. In sûra 16:67 we even find "strong drink" praised as one sign of God's grace to mankind, one of the good things of the earth (along with water, milk and honey):

'And of the fruits of the date-tree and the grape (wine), you make (from it) a strong drink (Ar. & Heb. sakar61) and good nourishment. Indeed, in it is a sign for a people who understand.'

58 As cited in Goldziher, Studies I, 29.

59 Ibid.

60 Which, according to Goitein, was well known in Arabia since ancient times. S.D. Goitein, "Ramadân, The Muslim Month of Fasting," Studies in Islamic History and Institutions (Leiden, 1966), 99.

61 I thank Professor Bernard Lewis for this observation. As Dr. Richard Kimber rightly points out, this verse is the only instance in the Kur'an where the term sakar appears. Every other reference to fermented drink uses the term khamr. Sakar is found in Proverbs 31:6 "tu a shakkar l'oved v'yayin
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Based on this revelation, undoubtedly reflecting a continuation of the local custom of fermenting dates and grapes, the Persian-Arab theologian and religious philosopher Fakhr al-din al-Râzi (d. A.D. 1209) in his incomplete Tafsîr recalls that the "Muslims drank such drinks, since they were allowed (to) [or at least not explicitly prohibited]." But, as we shall see, the consequences of drunkenness are said to have led Muhammad to change his attitude.

b. Persons who were aware that the practice of some ascetics forbade their use of wine had, as it appears in the Kur'an, apparently addressed questions on the subject of its consumption to Muhammad. The Kur'an's first answer was a compromise, in which the uses of khamr (which were coupled with "arrow-shuffling" [that may or may not be some form of gambling]) were considerable, though the injury produced by that was great, even greater than the benefit. Thus, though 'wine' had been mentioned as a delight of Paradise, its evil effects were also realised, now in a quasi-legal sense. The first revelation giving vent to these feelings was traditionally sura 2:219:

\[ \text{"lmarai nefesk" ("Give strong drink to the servant [of God] and wine to him that be bitter in his soul").} \]

There is here a clear differentiation between wine and liquor. In Genesis 9:21, Noah "vayashait ma'ha'yayin va'yishakher" ("he [Noah] drank wine and became intoxicated"). In the Talmud, Tractate Ketuvot (chet, 8) it is written "hayu shetotin u'mightakhrin" ("They would drink and become drunk" [equivalent to 10th form Ar.]). In modern Hebrew the construct form translation of "pub" is beit ha'shkhah.


63 On the contrary, the "benefits" of wine-consumption were not specified. It would seem that the advantageous use of wine, for whatever reason, was so obvious to the proto-Islamic audience, that no need was felt to express any further explanation regarding the matter within Revelation.
They will ask you [i.e. Muhammad] concerning wine (khamr), and arrow-shuffling [maysir, i.e. traditionally gambling and/or the seeking of oracles from the deity64]. Say: "In (the two of) them there is great sin and (also) uses for men, but the sin (of the two) is greater than the usefulness (of the two of them')."

It is not possible to know what people actually asked of the Prophet when they questioned him, since it is not dealt with in the Commentaries.65 They may well have asked of the true character and nature of khamr, or whether it is possible to make use of it as a medicine, or whether it is sinful or permissible to drink it.66 It is also interesting that wine and arrow-shuffling are linked—both in sin and in “usefulness.” The usefulness of arrow-shuffling/gambling is a matter the Qur’an (and its exegesis) does not endeavour to explain.

Looking at this particular verse in isolation, it is noteworthy that while wine-drinking is not looked upon as a positive action, neither could it be considered a prohibition of the substance(s). Rather than being a legalistic judgement, the verse is a moral expression suggesting a graduated social movement away from drunkenness, a perceived threat to the new socio-religious order.

This order may have been deemed necessary for the new sense of community (including a clear definition of the theological, ritual and sociological boundaries as distinct from other socio-religious groups) which the Prophet was trying to instil, and evidence of the values prevailing within the earliest community of Believers. However, the prohibition was not (yet) stated outright, nor any details stated expressly in the Qur’an.

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64 In his comments on sura 5:90, al-Tabari defines maysir (as that) “of which you draw lots (tatayāsarīna biḥo),” either a reference to a form of gambling, or to something resembling the use of oracles (although the term should then have been azlān). al-Tabari, al-ğāmi’ al-bayān, vol. 7, p. 32, lines 4-5. However, in his comments on sura 2:219, he defines maysir as kīmār, “gambling.” Ibid., vol. 1-2, esp. p. 357, line 15, and p. 358, line 2.

65 The phrase yasalīnaka occurs only fifteen times throughout the koranic text.

66 Refer to al-Rāzī, Mauṣūf al-ghayb, vol. 6, 35, lines 7-8 for a memory of general questioning of the Prophet. Note must be taken that my source does not refer to the specific medicinal use of wine.
c. Arising from an understanding of this verse that 'wine' was not explicitly prohibited, the commentators on the Kur'an, seeking to understand, and fill out the specific circumstances of the revelations, relate how Muḥammad's companions held drinking-parties which led to faults being committed in the ritual prayer, a defining characteristic of the new Community:

'Abd al-Raḥmān ibn 'Awf produced food and drink, and he called one of the Companions and they ate and drank until they were drunk (ṣukarī). Then they approached the evening prayer and (the Companion) did recite (falsely): "Say; O unbelievers, I worship (instead of: 'I do not worship...') P.L.] what you worship, and you worship [instead of: 'do not worship...' P.L.] what I worship, and I worship what you worship [instead of: 'I do not worship...' P.L.], and to you your religion and to me mine."

'And he did not render this verse well, and did not (even) know what he was reading (due to drunkenness).'

This episode was made to have had an effect upon the new Prophet, considering his traditional sensitivity to political or religious polemics against him. Thus, due to Muḥammad having disagreeable experiences with followers who came drunk to some form of public worship, the first revelation issued expressing this is traditionally connected to sūra 4:43:

'O you of those who are believers, do not draw near to prayer when you are drunk (ṣukara) until you know what you are saying...'

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67 al-Ṭabarī, al-djam‘ al-bayān, vol. 4, p. 95, lines 21-24. In brackets is the incomplete koranic sūra 109 (without verse five: "Nor will you worship that which I worship"). For a variation on the above tradition within the framework of abrogation also see Ibid., vol. 1-2, p. 363, lines 1-9.

68 Ibid., vol. 7, p. 33, lines 21-22. This entire event assumes of course that the koranic verse in question (sūra 109) was indeed originally read as it was later redacted when these hadiths were collected.
Sir William Muir (in characteristic manner) points out rather laconically that this injunction
"...may be viewed as additional evidence of the lax manner in which the devotions of the
Muslims were at first performed." However, on the contrary, it also reflects the
aspirations of the earliest proto-Islamic community, at the outset of its formative period.
One may comment that the inclusion of the above verse into canonised form (i.e. into the
 mushaf, by way of idinā') reflects an historical reality, as it certainly does not reflect well
upon the Companions, whom tradition relies on for their trustworthiness regarding the
conveying of accurate prophetic behaviour.

Although one may comfortably assert that the number of wine-drinkers amongst the
Community decreased after the above revelation was issued, it could still be argued that the
verse allows for alcohol consumption, but not near the 'prayer', of which one could
approach only after one had recovered. After all, according to traditional sources filling
out the circumstances of Revelation, it appears that drunkenness often became a cause of
scandal, alongside gambling which also incurred Muḥammad's condemnation. For
example, Tradition has not refrained from graphically describing how Ḥamza b. 'Abd al-
Muṭṭalib, Muḥammad's uncle, in a fit of drunkenness mutilated 'Ali's camels:

‘Ali b. Abū Talib reported: "There fell to my portion along with the Messenger of
God, an old she-camel from the battle-spoils of Badr. The Messenger of God
provided me another camel...And Ḥamza b. 'Abd al-Muṭṭalib was engaged in
drinking (sakar) in a house in the presence of a singing girl, singing to him. She

69 Sir William Muir, The Life of Mohammed From Original Sources (Edinburgh, 1923, first
published, 1861), 333.

70 Indeed, al-Ṭabarî relates that after the above verse was revealed "they did not cease doing this [i.e.
either coming to prayer drunk, or just generally drinking], until God revealed (the prohibition of sūra
5:90)." Ṭabarî, al-džāmi al-bayān, vol. 7, p. 33, lines 24-25. This prohibition "was revealed not long
afterwards." Ibid., p. 34, line 7. This is in distinction to another of Ṭabarî's hadīths attributed to a
Companion after the warning not to approach prayer while drunk: "O Prophet, we shall not drink it
said: Hamza, raise to slaughter the fat she-camels. Hamza attacked (them) with the sword and cut off (their) humps and tore off their leg-muscles, and then removed the livers (of the beasts)..."71

In all fairness to Hamza, his drinking episode had (it is traditionally reckoned) occurred before the prohibition of alcohol had been issued. Nevertheless, according to traditional chronology, it is suggested that his conduct prompted one important innovation to the Prophet—the partial or absolute abolition of wine and other intoxicating substances.

d. It is traditionally related that Muhammad at last perceived that the sanctions of the new revelation were too weak to enforce a middle course regarding his version of asceticism, for "only some abstained from drinking (wine, khamr),"72 and that the imposition of total abstinence would have been the only means by which the Prophet could seek moderation. To fill out the circumstances of this series of revelations, and provide some logical justification to a set of differing messages the revelations gave, the fuḥahā' connected the disorderly scene in which Hamza and 'All figured (and in which it is likely that the so-called arrow-game was not absent as a possible cause [see n. 80, p. 36). Thus the chronological connection was created between the "earlier" half sanction and the absolute forbiddance.73 The verse reads:

'O believers, indeed wine (khamr) and arrow-shuffling, idols and divining-arrows are filth [i.e. sin], from (amongst) the works of Satan, so avoid it; perhaps you will be successful. Satan only wants to bring enmity and hatred between you regarding

71 Muslim ibn al-Ḥadīḍajī(d. 261/875), Sahih Muslim, volume III, chapter 36: Kitāb al-Ashriba, traditions 1 and 2, (Mecca, n.d.), 1568-9.


73 The date is of course uncertain although the sections of the Qur'ān which traditionally reflect the Prophet's activities in his native city of Makka do not contain any provision concerning abstention from wine, nor of fasting.
wine and arrow shuffling, and to stop you from the mentioning/remembrance of God, and from prayer. Then shall you not refrain? Obey God, and obey the Prophet, and beware..."74

The above verse differs from what are traditionally known as “the early Makkah sūras” in that its outlook is slightly further afield, and the legislation more developed and aimed at communal continuity. Furthermore, one finds here in the final comment regarding authority that Muhammad the Prophet is, along with God, to be considered a source of Law.

It will not pass unnoticed that in this last verse, the Kur’ān includes alcoholic drinks and idolatry in the same category, giving the prohibition a definite religious character (or at least puts the prohibition on a religious level), as opposed to a purely legal character (such as the rules for inheritance and family law).75 Also gone is the uncertain state observed in ‘previous’ revelations on the subject, and which is similarly to be observed concerning the kibla, or the point towards which Muslims should turn during prayer, before Mecca was finally decided upon.

Further, this main verse upon which the prohibition of wine is based, does not speak of intoxication but of Satan using alcohol to cause enmity and hatred between people.76 On this basis, it could be polemically argued that the ground for the prohibition of wine was that it led to hatred and enmity. If so, it could be further argued that where it did not lead to hatred and enmity, there was no need to consider it as forbidden. The fundamental question, of course, is about the ground for the prohibition of wine. It is usually said that the ground

74 sūra 5:90-92.

75 Although it might well be argued that Islamic law is religious in nature.

76 Judging from various koranic statements, such as sūra 36:60-62 where Satan, appointed temporary god on earth, was made to have powers not unlike those of God, and with full freedom of choice (e.g. not to bow to Adam, etc.), it is clear that Satan (the true monotheist!) does not need the help of wine and games of chance, nor of idols and divining arrows.
is that wine causes intoxication, and by analogy this justifies the extension of the prohibition to all other alcoholic beverages.

e. We have seen that the *fuṣḥā* produced and connected certain stories to the koranic revelation in order to fill out the circumstances and thus understand better the particular meaning of any given koranic verse. However, there was no consensus on whether this or that story was the only one whereby the scholars could authoritatively understand the Revelation. For example, in addition to the described unruly incidents connected to the Prophet’s decision to finally ban alcohol, the single verse upon which the prohibition of wine is based, was dictated, we are also told, as a *direct result* of an incident in Madīna when Muḥammad’s disciples were drinking together after dinner.77 One of his Makkan followers began to recite an uncomplimentary poem about the tribe of Madīna, when one of his Madīnan followers picked up a bone from the table and hit the Makkan on the head. Muḥammad was distressed and after prompting from ʿUmar, asked God how to keep his disciples in order, again resulting in the final prohibition as the response:

‘And others said: “This verse was revealed in the case of Saʿd ibn ʿAbī Waqqās when he was quarrelling with a man (while two were) drinking. And his companion hit him a great hit with the jaw-bone of a camel and split his nose...”78

“...Then one of the Helpers struck Saʿd with the jawbone of a camel and wounded him (with) a deep head wound, he (Saʿd) complained to the Messenger of God, and ʿUmar said: ‘God, give us a final statement concerning wine!’”79

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77 Whereas we have previously seen another stream of tradition which states that the prohibition came about as a direct result of the incident regarding the confusion of wording in the prayer ritual. See: al-ʻTabarī, *al-dīnār al-bayān*, vol. 7, p. 33, lines 21-22.


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Thus, a principal characteristic of the Muslim way of life arose out of a quarrel—which may or may not have been drunken.80

Considering 'Umar’s relationship to Muhammad, and his authoritative place in the traditional formation of Islamic Law, one must consider that most important among those revelations revealed to Muhammad as a result of his association with ‘Umar included two with clear consequences in the realm of Muslim law. The first is the final prohibition of wine, which as we see came about after the clear intervention of ‘Umar according to several hadith traditions,81 and the second is the problematic case of stoning (adulterers) which according to ‘Umar was originally part of the “Book of God” (the Qur’ān source, as opposed to the mushaf, the Qur’ān document; or alternatively, the “Torah”).82 Thus,

80 Indeed, Tabari makes reference to this when he writes: And others [i.e. other hadith sources] said: “This verse (ṣūra 5:90, of the prohibition of wine and games of chance) was revealed...due to games of chance, and not due to (the effects of) wine.” al-Tabari, Diwān ‘al-bayān, vol. 7, p. 35, lines 1-2.


82 Muslim, Sahih Muslim, III, ch. 29: Kitāb al-Jihād, bāb 4, tradition 1691, p. 1317. ‘Umar even stated categorically that the Prophet and his Companions used to stone adulterers, and is supposed to have said: “Were it not (for) that people will say that ‘Umar added to the book of God that which does not belong to it—I would have written the verse into the Qur’an.” Ahmad Ibn Hanbal, Musnad (six vols., Cairo A.H. 1313), vol. 1, p. 329. This most interesting episode provides us with a glimpse of sections of the Qur’ān not written into the canonised text we hold today. John Burton examines this case in detail and provides us with the ‘omitted’ wording derived from Malik’s discussion of the penalty for adultery: ‘...the (wording of the) verse (which ‘Umar refers to, is): “the mature male and female, stone them.” ‘Umar insists that, in the lifetime of the Prophet, the Muslims had recited this ‘verse’. Thus, Burton argues, the ‘Book of God’ need not necessarily refer to the Qur’ān. From Shi‘ī polemical analysis of this problem, Burton has shown that it could just as easily refer to “those revelations (i.e. sayings of Muhammad) not recited or written down, part of the sunna of the Prophet.” John Burton, “The Penalty for Adultery in Islam,” Approaches to the Qur’ān, ed. by G.R. Hawting and Abdul-Kader A. Shareef (London, 1993), 273. See also all other major works of Burton’s, and Hava Lazarus-Yafeh, “‘Umar b. al-Khattab—Paul of Islam?,” Some Religious Aspects of Islam: A Collection of Articles (Leiden, 1988), esp. pp. 7-29
evidently only upon 'Umar’s imperative was the final step, and then hesitatingly, issued. Al-Rāzī provides a narrative expressing the frustration of the Believers, and by demanding revelation (primarily on the part of 'Umar), suggests conscious manipulation of the Prophetic power:

“The reason for the prohibition of wine (came about) when 'Umar...said: “Messenger of God, wine plunders the mind and runs off with the wealth. Give us an explanation concerning it!” Thus, they asked for a judgement from God and His Messenger because wine plunders the mind...”

This is not the only instance of apparent manipulation of the prophetic abilities of the new Prophet. In a graphic example of Muhammad’s relationship with God and Revelation, one reads the story of (the Prophet’s wife) 'Â’isha bint Abī Bakr’s nocturnal adventures with one of Muhammad’s Companions. In that tradition one does get the impression that it is perhaps after some measure of “wifely persuasion,” nothing less than a divine verse was induced for her exoneration:

‘By Allah 1 ('Â’ishâ) thought myself too insignificant for Him to send down concerning me a Qur’an which could be read in the mosques and used in prayer, but I was hoping that the Prophet would see something in a dream by which he could

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83 The same may be said regarding the issue of ḥidjāb (veiling of women). In sura 33:53 the prophetic figure instructs those coming into contact with his wives to “sa’alūhuna min warāy hidjābin.” Baydawi’s comment is:

‘It is related that 'Umar said: “O Messenger of God, there come into your house men who may be simple or wicked. It would be well if you commanded the veil for the mothers of believers.” This verse was then revealed.’

This instance can be considered another example of ‘peer pressure’ resulting in the convenient and timely production of prophecy.


clear away the lie from me, because He knew my innocence, or that there would be some communication. As for a Qur'ân coming down about me by Allah, I thought far too little of myself for that...

And by God the Prophet had not moved from where he was sitting when there came over him from God what used to come over him [i.e. a revelatory fit?], and he was wrapped in his garment, and a leather cushion was put under his head...(Muhammad then said) "Good news 'â'ishâ! God has sent down word about your innocence."86

f. It is related that after the final revelation regarding the wine prohibition was issued, the people 'then poured out what was in their jars (i.e. presumably fermented) and they said: "We abstain (from drinking it) our Lord, we (absolutely) abstain, our Lord!"87 According to one account, due notice had been given to the owners of liquor that such a text would be revealed and they were advised to sell while they could; but when the revelation came, it is said that zealous followers went from Muslim house to house and emptied their vessels of all liquor that was supposed to be intoxicating, commonly breaking the vessels themselves; and trading Muslims who brought wine home from Syria after this event were compelled to pour their earnings away.88 The prohibition was extended by analogy to wine made of vinegar, and a categorical denial was given to the suggestion that wine had medicinal

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86 Ibn Ishâk, Guillaume (tr.), The Life of Muhammâd, 496-7.

87 al-Tabari, DJâmi’, al-bayân, vol. 7, p. 34, last line.

88 Ahmad ibn Hanbel (d. 247), Musnad, (six vols.) iv, p. 336 (Cairo, AH 1313). In fact, the wines of Gaza were no longer exported to Europe by the early 9th century, probably due to the koranic prohibition, and not, as Henri Pirenne in his Mohammad and Charlemagne (London, 1968, first published Paris, 1937) posits, as being the result of Islam cutting Mediterranean trade routes. One can say that Islam simply discouraged the manufacture of the good without any consideration of political or commercial factors which Pirenne puts forth.
value\textsuperscript{89}—there was (Muhammad was by this time 'made' to be convinced) no good in it at all.

g. The impression made by Tradition is that wine-drinking was not only known, but also widely practised, even among Muhammad's own followers. Indeed, those of Muhammad's companions who did not want to give up their drinking, may have justified their action (as yet transgression?) with the use of the following koranic verse—sûra 5:93—a continuation of the two verses dealing with the final prohibition of wine:

'Those who believe and do good deeds are not regarded as sinful because of what they eat as long as they trust in God, and believe, and do good works...'

The traditions show that the prohibition of wine was inevitably a trial to the faith of the Muslims, under which many of them seem to have inevitably failed to uphold. But the Prophet appears at no other time to have been the victim of drunken misbehaviour.

h. A Jewish messianic figure of a slightly later period than Muhammad approached the expression of his Message with a similar prohibition of wine. The relevance lies in the fact that similar messages were promulgated by messianic figures in the turbulent late 7th and early 8th centuries.\textsuperscript{90} Abū 'Isa al-Isfahānī was the most significant Jewish prophet-figure of early Islam, and lived in Iran during the reign of the fifth 'Umayyad caliph 'Abd al-Malik b. Marwān (A.D. 685-705, or according to others under Marwān II, A.D. 744-750). He proclaimed himself a prophet and herald of the Messiah, and is remembered for his doctrine that acknowledged the validity of both Muhammad and Jesus as prophets, but only sent to

\textsuperscript{89} Muhammad ibn Ismai'īl al-Bukhari (d. A.H. 256), 

\textsuperscript{90} Here I particularly refer to the Byzantine-Sassanian conflict, which affected the entire region, including no doubt, also the Arabian peninsula.
their own communities, not to all peoples everywhere. He formed a sect called the 'Isawiyya that survived into the tenth century, and their asceticism is evidenced in their prohibition of both meat and wine.91

Although his proscription of wine and meat was clearly influenced by the passage about the Rekhabites (Jeremiah, XXXV), these rules equally derived from such Rabbinical traditions as those found in the Talmud Sefer Bava Batra, "that meat and wine ought not be indulged in by Jews while they live in exile."92

How far Abū 'Isa was influenced by early Islam, or whether it was even known to him, may only be a matter of speculation, although it is not unreasonable to assume he was aware of the basic outline of Muḥammad's message. It does, however, appear more likely that the koranic Muḥammad was "merely" expressing the universal social standards of the period and region.

In this case both prophetic figures would looked to the same type of universal humanistic ideals for their inspiration, merely prompted in their actions by incidents unfavourable to the smooth running of their own socio-religious community.

TRADITIONAL CHRONOLOGY: ABROGATION TO STABILISE LEGISLATION

a. Each single verse of the Kurʾān is called āya, "sign," "miracle" because it is traditionally believed that Muḥammad brought these verses as Divine signs for differing situations, or when his adversaries asked him for a miracle attesting to his prophethood (an exegetically derived notion rooted in Sūras 16:102, 13:38).93

91 Steven Wasserstrom, "The 'Isawiyya Revisited," Studia Islamica, ex fasciculio LXXXV, 1992, p. 57, 75-76.


However, the difficulty arose involving the fact that abrogations, the eventual prohibition of wine being but one, were nevertheless preserved in the fixed text of the Kur’ân document. Unfortunately for those trying to fully comprehend God’s Word, when sometime after the Prophet’s death, the Kur’ân source (or that which served as such in the earliest period) was compiled, both ‘abrogating’ (nâsîkh) and ‘abrogated’ (mansûkh) verses were included, since traditional logic dictates that no one but the Prophet himself could have decided which was to remain valid. This may have been a factor that led, in certain instances, to seeming contradictions that the commentators and fukâhâ have had to solve. Baydâwî’s comment is illuminating on the significance of the ‘principle of abrogation’ for Islam:

‘The reason for it [i.e. abrogation] is that laws are formulated and verses revealed as they are required, to suit the good of mankind...This varies with the time and the individual; as, for example, the necessities of life, which may be beneficial at one time and harmful at another.’

For the example that Baydâwî gives of the “necessities of life, etc.”, it is reasonable to think he had in mind the prohibition of wine, which as we have seen, had at one time been associated not only with the “healthful nutriment” derived from the palm, but also with the delights of Paradise itself (sûra 78:35, 83:25).

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94 The idea that God might want to change his mind is an example of the fallacy, first pointed out by St. Augustine, of imagining God as a being existing in time: time is a property only of what God had created. Presumably, He knew what He intended when He set it up.

95 Referring to sûra 2:106: “We abrogate any verse, or cause it to pass into oblivion, (then) We bring (a) better (one) than it, or one similar to it (in goodness).”


97 However, of greater importance according to Reuben Levy in The Social Structure of Islam (Cambridge, 1957, reprinted 1969), 163-4, were abrogations on matters of social importance such as inheritance, the penalties for adultery, etc.
The theory of abrogation, a brilliant Islamic mechanism developed to solve problems both internal to the Kurʾān and between the Kurʾān and Sunna, was put forward as a solution for the problem of contradictory verses, explaining that certain verses, although revealed by God, were meant for temporary application only. When their relevance had passed, they were abrogated—but had to be included in the mushaf as they were still of the ‘words’ of God. This theory of their inclusion elegantly explains the apparent inconsistencies between the individual revelations. W.M. Watt confidently states that this attests to the authenticity of the text, proving that nothing was altered by the later Muslim jurists to justify their own conceptions. It does, however, add little enlightenment to the confusing character of many of the contradictory verses.

b. Although an attentive reading of the khamr/sakar passages in question reveals (four) stages of development, it should not be considered that here I am attempting to reconstruct the history of the prohibition of wine during Muhammad’s lifetime, a controversial subject that by its very nature precludes exact results. Indeed, Patricia Crone has written that “if the Kurʾān were to be used on its own, we would know for certain only that a new form of monotheism emerged in Northern Arabia and that it was being preached by a prophet known as Muhammad.” She further adds that “on its own, the Kurʾān is largely unintelligible.”

After all, as Wansbrough says, the Kurʾān “adopted a profoundly ahistorical view of the world and of mankind, because since morality is eternal, the question of historical


99 Compare, for instance, sura 73:1-4 to its abrogation in verse 20.

change is relatively unimportant to the Kur‘ân. "¹⁰¹ So, the question must arise of whether indeed the Kur‘ân furnishes us with ‘information’ about events and conditions in the Hijaz at the beginning of the seventh century. On its own, it is virtually impossible to extract this sort of information from the Kur‘ân in isolation, but nevertheless, it is still the ‘foundation document’ of Islam and as such it must be of a certain amount of historical value to us.¹⁰²

Must we then redefine our meaning of the word ‘historical’ when pertaining to the Kur‘ân? It can however, be a source for our understanding of some of the ideas and materials that went into the foundation of Islam—but only when considered together with its inseparable exegesis—the Hadîth.

Nevertheless, the final verse (surâ 5:90-92) is traditionally thought of as that which abrogates the other verses dealing with alcoholic consumption, and presents a traditional chronology illustrating the Koranic development of the issue as it has come down to us. Together with the explanatory stories surrounding the circumstances of its revelation, the device of abrogation is the only means by which we know that the prohibition of wine in the Kur‘ân was the result of a change of attitude.

A traditionalist explains abrogation by saying that even when an enactment was made, it was not always final; for naturally enough Muhammad and/or God had occasion at times to change his/His mind.¹⁰³ Thus, with each change of mind (or with a developing realisation of an issue that had previously been of no interest to the Believers) came a new

¹⁰¹ John Wansbrough, Koranic Studies: Sources and Methods of Scriptural Interpretation (Oxford, 1977), 1, 29. However, even if history is not important to the Kur‘ân, it may nevertheless be possible for a scholar to use it as a source for history.

¹⁰² I owe this observation to Dr. Gerald Hawking.

¹⁰³ However, this uncertainty in the stability of the revealed code laid the Prophet open to charges which themselves required special ‘revelations’ to be sent down to refute the calumniators, as previously noted.
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'revelation' contradicting some older one already in existence—graphically shown in the case of the wine-drinking prohibition. This idea is illustrated by al-Râzî:

"Al-Kafal said that the wisdom of issuing the prohibition (against wine drinking) in these stages was that God knew that the people were already accustomed to drinking wine and making use of its many uses. And he knew that if he had prohibited them all at once (from the use of wine), it would be too difficult for them. Thus unquestionably (therefore) he made use of these stages and kindness in the prohibition (against drinking wine)."

While we of course have no means to check the order of revelations as (and if) they were actually expressed by the Prophet, it is the above sequence of revelations regarding wine and its eventual prohibition that is the most accepted one (and logical, on the literary level) among the traditionalists and commentators of the Kur'ân, assisted by, and in turn conforming to the sequence of events suggested by the Kur'ân through the 'trustworthy' exegetical traditions. However, this order of revelations is not without discomfort to the traditionalist. It has seemingly allowed for one who drinks wine to perform his prayer (legally) while intoxicated (albeit temporarily):

"The verse (sûra 4:43 ["...do not approach the prayer..."] was (revealed) when they drank the wine...this was before the prohibition of wine was revealed."107

"They [merely...P.L.] avoided strong drink during the time of the prayers. This custom was abolished by the prohibition of wine."108

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104 And as equally dramatic as the abrogations involved in the issue of dîhâd where the "Verse of the Sword", sûra 9:5, traditionally abrogates over 130 other koranic utterances found in the mushaf.


107 al-Tabari, Ibid., vol. 4, p. 96, lines 2-3.

108 al-Tabari, Ibid., line 10.
In an attempt to explain this uncomfortable conclusion (that sura 4:43 was revealed chronologically only after sura 16:69 ["...good nourishment..."]), and sura 2:219 ["...sin as well as benefit..."]), it was added that the second verse (sura 2:219) indeed:

"...reveals the (existence of the) prohibition of wine but we are (still) in need of the explanation of what wine is, and then (also) the (further) explanation of the fact that this verse shows the (existence of the) prohibition of the drinking of wine [emphasis added P.L.]."\(^\text{109}\)

However, in a layer of Hadīth, preserved by al-Ṭabarī, and never integrated into mainstream Islamic jurisprudence, one finds another approach to the problem of drunkenness, and the critical question of 'what wine is' relating to the prayer:

1. 'According to others [i.e. those who do not agree to accept abrogations regarding prayer and alcohol] who said: "The meaning of this [i.e. sura 4:43] is ("drunk") on sleep."\(^\text{110}\)
2. According to al-Dahhak: "It has not the meaning of drunk on wine, in fact it means drunk "on sleep"."\(^\text{111}\)

This stream of thought (represented by a title and two examples with differing isnāds) is one which questions the meaning of "drunk" and by lexical means, removes the problematic sura 4:43 not only from the realm of abrogation, but from the context of the prohibition of wine entirely.\(^\text{112}\) It was never accepted via idjīmā'.

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\(^{109}\) al-Rāzī, Mafāth al-ghayb, vol. 6, p. 35, last two lines.

\(^{110}\) al-Ṭabarī, Dīwān 'al-bayān, vol. 4, p. 96, line 10. The explanation of how one can get "drunk," or perhaps addicted to sleep is not provided.

\(^{111}\) Ṭabarī, Ibid., line 20. See the above comments, which apply also here.

\(^{112}\) Regarding internal inconsistencies to the theory of abrogation, John Burton has pointed out, and I loosely quote: "The Qur'ān nowhere announced a certain verse as being abrogated by another. The scholars did not possess an undeniable indication of dating, and only asserted their allegations without proof. We not even know why some verses come before others in time, nor how it is to possible distinguish a verse which is the sole valid source of an obligatory action from a verse who's ruling was abandoned, given the absence of such a declaration in Qur'ān. There is no agreement even on the
Finally, another approach to the problem of conflicting koranic reports was undertaken by Ibn Hazm (d. Spain, 1064 A.D.). In his attack against the 'Ash'arite doctrine concerning the just nature of God (connected to man's free-will, allowing God to remain Just in a world containing the necessary existence of evil, and the resulting need for God to send prophets), Ibn Hazm, who died in Spain in A.D. 1064, a member of the sect of Zahiris (the "Literalists" who could not accept the existence of any contradiction in the divine text), carried his arguments from the Kur'ân to logical conclusions. Among his polemical/philosophical theories, he asserted that all depends upon God's decree, for an act that may at one time be good, may be bad at another time.\(^\text{113}\) Connected with this point is the question of wine drinking: if a man before its prohibition in the Kur'ân had regarded it as unlawful, he would have been an unbeliever. But after its prohibition, he became an unbeliever if he indeed regarded it as lawful.\(^\text{114}\)

**KUR'ÂN AND AUTHORITY: THE PROPHET'S NIGHT JOURNEY AND ASCENSION**

\(^\text{a.}\) The genesis of the idea of divine abrogation, although later developed into a basis of Islamic religious dogma, could not have had the authority in the period of the origins and earliest development of Islam, to place an authoritative (divine) chronology solidly and uniformly into the minds of the Believers. In order to fill out and explain the new dispensation and its various contradictions, a rare divine event was connected directly to the Prophet himself. Indeed, Muḥammad and his prophethood are very much in the background

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\(^{113}\) Ibn Ḥazm, *Kitāb al-Fīṣal* (5 parts, Cairo, A.H. 1317), III, p. 66.

in the Kur'an,\textsuperscript{115} overshadowed by other figures and themes, although in the Hadith, on the other hand, Muhammad was made the true focus.

Thus, according to traditional exegetically derived chronology, in about A.D. 620 Muhammad was said to have been transported to “the farthest mosque” (al-masjid al-\textit{akṣā}), traditionally (but not exclusively) identified with Jerusalem. This \textit{isrā’} was followed by the \textit{mi’\textit{raj}} (ascension) when Muhammad, mounted on the winged horse-thing Burāk, was accorded a vision of heaven, connected with the complex problem of the exegesis of \textit{sūra} 17:1:

\begin{quote}
‘Glory be to Him who caused His servant [i.e. Muhammad] to travel by night from the holy mosque [\textit{al-masjid al-harām}] to the farthest mosque [\textit{al-masjid al-\textit{akṣā}}, the surroundings of which We have blessed, that We might show him some of Our signs. He is all-Hearing, all Seeing.’
\end{quote}

Insofar as our present literary evidence goes, it was only in the first part of the second century that the biographer of the Prophet, Ibn Ishāk (A.H. 857-151), connected this night-journey with the no less complex ascension of Muhammad. It was he who claimed that \textit{al-masjid al-\textit{akṣā}} was in Jerusalem, and that it was from there the Prophet ascended to heaven. However, this chronicler, genealogist, and traditionalist precedes his account with expressions indicating that these stories are not necessarily accepted as dogma.\textsuperscript{116}

Because most scholars of early Islamic Jerusalem (including al-Bukhārī and al-Ṭabarī\textsuperscript{117}) agree that the sacralization of the rock by the Umayyad caliph ‘Abd al-Malik, on which the Dome of the Rock was completed probably in A.H. 72, was not linked to the

\textsuperscript{115} This does not necessarily hold true for prophecy \textit{per-se} where former prophets appear on many occasions, generally for moral purposes.


\textsuperscript{117} See: Oleg Grabar, “The Umayyad Dome of the Rock in Jerusalem,” Reprinted from \textit{Ars Orientalis}, III, 1959, 37, n. 28.
activities of the Prophet, and especially not to his night journey, it is held to suggest that *at the time of construction*, Muslims had not yet come to associate the rock itself with the night journey. Or more relevant to this discussion, that at that early point (either the figure of Muhammad and/or) the Qur’ân document had not yet become fully formed.

The narrative of Muhammad’s ascension to heaven developed to include two important elements that were not dealt with in any formal legalistic sense (that which can be used as a source of legal precedent and guidance). These are the fixing of the number of prayers,¹¹⁸ and the *divine* judgement concerning the evil nature of wine, separated from any temporal concerns of Companion drunkenness and the like:

‘His [i.e. Muhammad’s] companion [i.e. the archangel Gabriel] went with him to see the wonders between heaven and earth, until he came to Jerusalem’s temple. There he found Abraham, Moses, and Jesus assembled with a company of the Prophets, and he prayed with them. Then he was brought two vessels: one containing wine (*khämr*) and the other milk...Then the Messenger of God took the bowl of milk and drank it, and he left the wine. And Gabriel said to him: ‘You have been (rightly) guided to the *fitra* (usually understood as the natural religion)¹¹⁹ and so will your people be, Muhammad, and wine is (now) prohibited upon you.”¹²⁰

¹¹⁸ See: al-Bukhârî, *Saḥîh al-Bukhârî*, book I, Kitâb al-Şalâ, bâb 1, tradition 349-350, 131-2. The account about the introduction of the daily prayers is of course exegetically derived, and is reminiscent of Genesis 18:26-33, where Abraham argues with God, until the number of righteous men required to save sinful Sodom is reduced from fifty to ten.


¹²⁰ Ibn Hishâm, *Sirat Rasûl Allâh* (Cairo, n.d.), vol. 1-2, p. 212, lines 10-15; al-Bukhârî *Saḥîh*, book IV, Kitâb al-Asârûb, bâb 1, tradition 5576, p. 1791; bâb 12, tradition 5603, p. 1797. The parallel to the *aggada* (exegetical Rabbinic legend) of the child Moses being forced to choose between gold and hot coals before Pharaoh is particularly striking in this case. Here again, it was the archangel Gabriel who guided the child’s hand to the coals. The child plucked out a burning coal and put it to his lips, and for life remained “heavy of speech and heavy of tongue” (Ex. 4:10). See: J.H. Hertz (ed.) *Pentateuch and Haftorahs*, 219.
The story of Muhammad's Night Journey and Ascension was exegetically derived to serve various purposes, including the legitimisation of the five daily prayers, on which nothing definite is found in the Kur'an, and the strict prohibition of the drinking of wine of which, as we have seen, only contradictory proto-legislation is found. Further, the story was also to serve as the tangible proof of Muhammad's prophethood, which by its very existence gives us a glimpse into how the early commentators perceived the prophet figure, as opposed to the unquestionably authoritative status the Kur'an gives to itself.

c. One can connect two points here: 1. Legal material in the Kur'an is, for the most part, treated in a very general and tentative sense, and 2. A miracle was sought to define Muhammad's prophetic skills. Putting these two together would indicate that although Muhammad's prophetic word carried a measure of weight in moral circumstances, his authoritative prophetic status in the Kur'an had not yet been developed sufficiently to deprive his audience of an ingrained cultural habit such as 'wine'-consumption. This condition meant that drafting Law, at least Law that did not derive from existing Arab custom itself would have been nearly impossible. Indeed, the drafting of legal punishment (the so-called hadd crimes), as we shall see, was conspicuously avoided here.

121 "Isrâ, " EL2, s.v. (B. Schrieke).

122 The Kur'an "contains comparatively little legal matter, and the little it contains is entirely unsystematic and haphazard", or at least as an article on the subject puts it: J.N.D. Anderson, "Recent Developments in Shari'a Law," The Muslim World, 40 (1950), 245: "It is evident that Muhammad himself made no attempt to work out any comprehensive legal system, a task for which he seems to have been singularly ill-suited; instead, he contented himself with what went little beyond 'ad hoc' amendments to the existing customary law." Contrast this with the subject of ritual cleansing, containing minute details of purification before prayer, as expressed especially in sura 5:6, as well as the detailing of laws of marriage and inheritance.
It is evident that the Kur'an lacked singular and authoritative legislation regarding the important institution of the prohibition of wine. Important, because it was one of the most obvious social traits separating the proto-Muslim from his Jewish, Christian, and pagan Arab neighbour. It was the koranic exegesis, most especially the Hadith literature that was to deal with the practical application of the prohibition in the same way that the ban on figural representation in Islamic art was dealt with there—in far more stringent terms than in the Kur'an itself.¹²³

¹²³ Considering the character of the mosaics on the likes of the Great Mosque at Damascus (A.D. 715), where one finds entirely naturalistic depictions, one may similarly ask when did the ban on representation of living figures, which is generally believed to be characteristic of Islamic art, arise? Indeed, like the question of the prohibition of wine, it would seem that in the early days of Islam there was no widespread veto; there is certainly no passage forbidding representational painting in the Kur'an itself. The Hadith on the other hand did take up a hostile attitude, though it is questionable whether this hostility was actually formulated before the ninth century. But the fact that no figures whatsoever are included either in the Dome of the Rock or at Damascus does suggest that in mosques the ban was in force by about A.D. 690.
PART THREE

THE HADITH: EXPLAINING AND COMPENSATING FOR AN INADEQUATE REVELATION

Goldziher considered the problem of contradictions between individual hadiths the result of internal political competition between early Islamic polito-religious factions, and as a result of different groups of scholars justifying their own local theological positions—long after the Prophet’s death. However the picture was more complex. It was Schacht who went further, examining the content (matn) and isnāds (chains of authority) of the hadiths dealing with legal questions, and categorised regional groups of scholars (formed into legal “schools”) working out a program of Islamic Law as they understood them to be in their separate areas and as a result of pressures exerted by “orthodoxy.” Through an examination of the increasing reliance and resultant sophistication of the isnād (and perfection as it found its way back towards the Prophet himself), Schacht demonstrated that “the isnād itself had consciously been seen and exploited as a weapon of debate in its own right.”

Circumstances obviously called for the regulation of matters not dealt with in any satisfactory way in the Holy Book. This supplement, explaining and expanding the deficient Revelation, was prophetic tradition. The use of such material is what Muhammad

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126 Burton, *Hadith*, 148. The approach of Schacht was continued by G.H.A. Juynboll, who asserts that it seems likely that many sayings attributed to Muhammad were originally sayings of early (in his words) “holy men” (fukaha) from the first or second centuries A.H., sayings that were subsequently “raised” to the status of hadith of some Companion of, or Muhammad himself. G.H.A. Juynboll, *Muslim Tradition* (Cambridge, 1983), Chapter 1, 51-52, 59-60, 74-76. Schacht’s conclusions that the kormic text did not serve as a basis for Muslim law before the ninth century was used as a basis for John Wansbrough’s *Quranic Studies* (London, 1977), see esp. p. 44.
al-Shāfi‘ī (d. A.H. 204/A.D. 819), an Arab student of Mālik ibn Anas, called “non-recited revelation.” In other words, divinely inspired human actions and words utilised in order to fill out and explain the general provisions of the Kur‘ān,\(^{127}\) in this case compensating for the lack of clear instruction on almost every aspect of intoxicants in the Kur‘ān.

This material, although written in time and place is, for the most, certainly not to be treated as reflecting history. This was material composed in order to solve certain problems the koranic text did not for one reason or another deal with. It is a record of what Muslims of later generations told each other about the early Islamic community, and from this perspective, makes it possible to work out from the residues of their discussions what they were really talking about by circulating these materials, and why.\(^{128}\)

a. Hadith on the Status of Wine and the Degree of Sin

Not only was there a lack of fixed legislation regarding the punishment for wine-drinking in the Kur‘ān, but no clear indication of its status within the hierarchy of the most serious of sins exists (the worst being of course polytheism [shirk]). It was, therefore, necessarily the many utterances attributed to the Prophet within the Hadith regarding the inherent evil of wine that was to provide guidance and explanation—it being judged among the gravest of sins:

1. ‘He who drinks wine (khamr) in the (this) world, then does not repent from (doing) it, it will be prohibited (to him) in the Hereafter.’\(^{129}\)

2. ‘God has cursed the wine, and its drinker, and its server, and its seller [and its buyer], and its presser, and the one for whom it is pressed, and the one who conveys it, and the one to whom it is conveyed (brought).’\(^{130}\)

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\(^{127}\) See the chapter “The Study of Hadith” in Burton’s Introduction to the Hadith (p. 55-92).

\(^{128}\) I thank Dr. Richard Kimber for these remarks.

\(^{129}\) al Bukhārī, Sahīh, book IV, Kitāb al-Ashrība, bāb 1, tradition 5575, p. 1791.
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3. 'A person, at the time of drinking wine, is not a Believer.'\textsuperscript{131}

4. 'The Prophet forbade its use [i.e. \textit{khamr}, alcohol] and disliked/expressed hatred that it be prepared. He [the questioner, al-Diq̲a'if] said: ‘I prepare it as a medicine’, then [the Prophet] said: “It is no medicine, but an ailment.”'\textsuperscript{132}

The gravity of the act of drinking \textit{khamr} is reflected in Zamakhshâri’s \textit{Tafsîr} regarding \textit{sûra} 44:3-4 (‘We sent it down [i.e. the Qur’ân] on a blessed night [i.e. the “Night of Power”, of \textit{sûra} 97:1-2, traditionally connected with a night in Ramadân, and commemorated as such] because we want to warn (man) on this night (that) every matter of wisdom is by command from Us.’):

‘Forgiveness occurs on this night [in Ramadân]. The Prophet said: “In this night God forgives all Muslims excepting the soothsayer, the sorcerer, the quarrelsome one, the drinker (of intoxicating beverages), the one who is disobedient to his parents, and the unchaste one.”'\textsuperscript{133}

By utilising a literature that came into existence in order to fill out, explain and complete the Revelation, it an be seen that the jurists of later times, dictated that the early community accorded drinking wine the status of one the most serious of sins: ‘In drinking and gambling are the biggest of sins.’\textsuperscript{134}

However, \textit{hadîths} were also produced and accepted which counteract the absolute condemnation by lexicographical means:

\begin{enumerate}
\item[\textsuperscript{130}] Abû Dâ’ûd al-Siqjistâni, \textit{Sunan Abî Dâ’ûd} (Beirut, 1950), vol. II, Kitâb al-Ashi'iba, bâb 2, trad. 3674, p. 446.
\item[\textsuperscript{131}] al-Bukhârî, \textit{Sahîh}, book IV, Kitâb al-Ashi'iba, bâb 1, tradition 5578, p. 1792.
\item[\textsuperscript{132}] Muslim, \textit{Sahîh Muslim}, III, ch. 36: Kitâb al-Ashi'iba, bâb 3, tradition 12 (also listed as no. 1984), 1573.
\item[\textsuperscript{133}] al-Zamakhshâri, \textit{Al-kashshâf}, ed. Lees, 2 vols., vol. II, 32.
\item[\textsuperscript{134}] Note here that \textit{shirk} (polytheism) is not even mentioned as one of the worst of sins. Tabarî, \textit{Djâmi‘ al-bayân}, vol. 2, p. 360, line 15.
\end{enumerate}
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'My community will, in days to come, drink wine. They will not call it [i.e. fermented drink] by its proper name, and their princes will support them in what they do.'

*Hadîths* were likewise produced showing that such people are threatened that God will turn them into apes and pigs like past koranic transgressors:

‘The Prophet said: “Indeed there will be, from my followers, kinsfolk regarding as legal sex, silk (-wearing), wine (*khamr*-drinking), and music, and kinsfolk will stay (near) to the side of a mountain, one (shepherd) will go to them with his sheep—meaning in the evening—in order to obtain something he needed, and they shall say: “Return to us tomorrow”. And God destroyed them and the mountain fell (on them), and He changed others (of them) into apes and pigs until the Day of Resurrection.”’

In time, a blending of the traditions took place whereby times will become ever worse, and eventually there will be people who declare ‘wine’ allowed, and so it will be drunk by the generation of the last days:

‘The Prophet said: “Of the signs of the Hour: ignorance will appear, and (there shall be a) decrease of knowledge, and (improper) sex will appear, and wine (*khamr*) shall be drunk, and men shall decrease, and women will increase until there shall be fifty women cared for by every one man.”

From the remnants of their discussions dealing on the one hand with an explanation of the koranic text, and on the other hand, with determining fixed legislation, we learn that the scholars were forced to take into account a certain *reality* of wine-drinking amongst the

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135 Ibn al-Aflârî, *Al-Kâmil*, Ed. C.J. Torberg. 14 volumes (Leyden, 1876), vol. V, 12. This is a type of apocalyptic tradition in line with that of the more well known Bukhârî’s (see note 114). The issue of *nabîdh*, an intoxicant going under ‘another name’ will be covered below.


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Faithful. They thus applied the idea of the gradual decrease in quality of the pious Islamic community, and in this way, brought forward the Last Day.

Evidently, a need was felt by other scholars to produce and take into account viable hadiths which minimised the effects of harsh prophetic statements too drastic for an emerging 'civil society' based on a just as well as practical system of regulation:

'Umar narrated that during the lifetime of the Prophet there was a man called 'Abdallah whose nickname was Donkey, and he used to make the Prophet laugh. The Prophet lashed him because of drinking (alcohol). And one-day he was brought to the Prophet on the same charge and was lashed. On that, a man among the people said: "O Allah, curse him! How frequently he has been brought (to the Prophet on such a charge)!" The Prophet said: "Do not curse him, for by Allah, I know for he loves Allah and His Apostle."' 138

So, we find the persistent drinker 'mildly' punished by a solid group-beating, but in no other way stigmatised or outcast, a precedent expressed by the first set of hadiths which reflect a theoretical standpoint relating the Law to Revelation without, however, accounting for (the problematic) human nature in a just society. This is further expressed in the following hadith which again removes the religious implication from the practical application of the Law:

'Abû Hurayra narrated that a drunk was brought to the Prophet and he ordered him to be beaten (lashed). Some of us beat him with our hands, and some with their shoes, and some with their garments (twisted in the form of a lash). When that drunk had left, a man said: "What is wrong with him? May Allah disgrace him!" The Prophet said: "Do not help Satan against your (Muslim) brother."' 139

In these two traditions that reflect a stream of scholarly debate, it is seen that the position of the persistent drinker is not at all in keeping with other harsher expressions cursing the

138 Bukhārī, Sahīh, IV, Kitāb al-Ḥudūd, bāb 5, tradition 6780, p. 2117.
139 Bukhārī, Ibid., bāb 5, tradition 6781, p. 2117.
drinker, and this more moderate explanation of the koranic code results in a diluting of the severity of the act itself—an act which after all, God has shown is part of Satan's work.

Nevertheless, no fixed penalty was expressed in these remnants of scholarly debate which concentrates on measuring the moral aspect of the crime itself. Fixed legislation did, however, develop in an attempt to standardise the status of the crime in a physical sense, as well as create a practical application of the Law. The next sub-section will examine the debates concentrating on the legal status of wine-drinking and its resultant punishment within the framework of the so-called hadith crimes.

b. CRIME AND PUNISHMENT: SEARCHING FOR A FIXED PENALTY BY KORANIC INTERPRETATION

The Kur'ân prohibited 'wine'-drinking and portrayed it as one of the most serious of sins, but aside from moral sanction, did not enact any penalty for transgressors. This penalty was decided only at a later stage of the development of Islamic law, for by taking the Kur'an alone as evidence, during the Madinan period the principles of the koranic legislation were developed in genesis by the inspired Prophet only as far as was required by the practical problems confronting his embryonic Community.

It was slightly later however, that in the newly subdued territories, the Community came face to face with civilisations vastly superior (at least in numbers) to their own, but about which their Revelation said little or nothing. Having no comprehensive guide either in political emergencies, or when social or legal problems arose, the Muslim governors were driven to adopting local usage, or else to applying their own reason and common sense as a way out of their local difficulties. We shall see how the punishment for wine-drinking conforms to this model.

In order to place the Kur'an-defined crime of wine-drinking into a legal framework, it is worthwhile to examine how 'crimes' are generally treated in the Kur'an. Offences are
defined as forbidden acts which God punishes by a legal penalty (*hadd*) or discretionary punishment (*ta'zīr*). The importance to Islamic penal law is the distinction between these offences, where the punishment is determined in the Kur'ān, and offences for which the punishment may be established by a (God-guided) judge using his personal discretion.

In the context of Islamic law, *hadd* refers to ‘boundaries’; divine statutes and punishments contained within the body of the *Shari'a*. It is elaborated through the discipline of *fiqh*. In a narrower sense, *hadd* has become the technical term for the punishments of certain acts which have been forbidden or sanctioned by generally fixed punishments in the Kur'ān and have thereby become crimes against religion. The *hadd* is a right or a claim of God (*hakī Allāh*), therefore no pardon or amicable settlement is possible once the case has been brought before the *kādi*. In actual fact however, active repentance (*tawba*) is taken into account (especially in the cases of theft and crimes against the Community/State).

In the Kur'ān, criminal law did not exist in the technical sense of a comprehensive set of offences. Murder (and mutilation), for example, was regulated in detail, but treated as

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141 Defined as the ‘path to a water-hole’; a name given to the sacred law of Islam governing all aspects of a traditional Muslim’s life.


144 “*Hadd*”, EI², s.v. (De Vaux/Schacht).
a private, not public offence. Nevertheless, the vagueness of the koranic language about the alternative to revenge, and the recommendation given to mercy, give the Muslim scholars ample room for discussion and debate.

For the remaining offences, criminal doctrine was largely confined to six offences—sexual relations outside of marriage (fornication), false or slanderous allegations of such, theft, wine-drinking, crimes against public order/armed robbery, and, although not mentioned as such in the Kur'ân, apostasy. In these crimes the notion of man's obligations towards God predominate, and most prominent as, according to traditional legal sources as they solidified, God Himself had 'defined' the punishments in His Revelation.

All the hadd offences but theft (including murder) are punishable by death, and in theory only if the accused is guilty of one of the specified offences, is it legal for a Muslim to be put to death by the Muslim authorities, where no discretion is given to the judge. However, the only hadd crime which does not bring with it its own punishment sanctioned by the Kur'ân is that of wine-drinking. It is the Tradition that was forced to interpret and thus fill in the deficiency, Tradition that only in some of its expressions, called for death as the legal penalty.

Noteworthy is the fact that never are the so-called hadd crimes mentioned within the specific context of the koranic hudûd Allah.

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145 In this case, two points are worthy of remark. Firstly, there is expressed the notion of equivalence in the eyes of the Law. Indeed, this is the classic condition for a hadd punishment. This means that if one of the stated groups kills someone in another, punishment by death cannot be used. Secondly, arrangements are to be made for compensation to the injured parties, and punishment by death, unlike what we are told was widespread in the pre-Islamic period, is thus discouraged.

146 See Levy, Structure, 352.

147 A cursory examination of the Kur'ân concordance reveals under a dozen instances of the phrase hudûd Allah. It would have been expected that the crimes solidified in Islamic law named as hadd, would have appeared when the term hudûd Allah was used. This is not at all the case. In fact, it is in separate verses that the crimes themselves are mentioned, and without connection to the phrase.
In the early period of the Islamic community, those looking to meet legal challenges used their own judgement without any hesitation. This exercise of judgement or opinion is known in Arabic as \textit{ra'\textordmasculine{y}}, and it has become a technical term in Muslim jurisprudence.\textsuperscript{148} It is undoubtedly because of the lack of uniformity arising from personal judgement or opinion, that penal law is that area of the Law that was least developed by the Muslim jurists, and where local administrative regulations found broad application.

c. \textbf{H\textordmasculine{A}d\textordmasculine{D}th AS DOCUMENTATION IN SETTING AND JUSTIFYING PUNISHMENTS}

It is readily seen that a challenge was faced by the early scholars of Islamic law (and their heirs) regarding various questions of legal practice that found no connection or precedent in the \textit{Kur'an}: discussions on the fast of \textquote{\textit{'Ash\textordmasculine{r}a}}'; opinions on temporary marriage (which may or may not be a reference to the (tenth) form \textit{istamta'um} in \textit{sûra} 4:24); washing or wiping the feet, or simply the shoes, in the \textit{wudhū'} (\textit{sûra} 5:6, the ritual ablution for

Generally each reference to \textit{huđdûd All\textordmasculine{h}} is of a polemical or moral nature, not of an especially legal nature, and certainly without any reference to criminal law. It is curious that the definition for the \textquote{limits} was left vague without exception. Why? Did the composer(s) of the verses have any idea of what these limits should be? Were they left undefined because it was clear they would not have been met? Or perhaps the Prophet did not have the legal authority to solidly define what the limits of God should have been, and thus only gave them a moral character. Or on the other hand, perhaps from a cultural point of view, those limits were obvious enough not to have been stated again.

\textsuperscript{148} The free and unrestricted use of \textit{ra'\textordmasculine{y}} or arbitrary opinion was checked by the introduction of a rule that such \textit{ra'\textordmasculine{y}} must be controlled by reference to the \textit{Kur'an}. If the latter should contain no precedent on any particular point, then correct inferences could be drawn—\textit{h\textordmasculine{y}âs}, "measurement" and hence "analogy" between koranic the verses which became a cornerstone of the \textit{Hanafi} school.
worship); shortening the ritual prayer (salāt) on journeys; combining certain ritual prayers in certain conditions; and the penalty for the crime of wine-drinking.

In solving this dilemma, the early scholars were obliged to take account of another, but no less problematic source, the Sunna, which tended to be highly susceptible to regional differentiation and contradictions as reflected in the Hadith. This literature was developed around the Kur’ān as a companion source to fill out and complete the divine text. Indeed, it was a body of literature developed in order to provide full understanding of that text—the classic definition of tafsīr.

By its very raison d'être, the legal material in Hadith is more developed than that of the Kur’ān—that is, each individual account (khabar, pl. akhbār) is likely to focus more sharply on specific details of a particular practice than does the Kur’ān, whose ‘legalistic’ verses often limit themselves to laying down broad guidelines of practice.

Although al-Shāfi‘ī attempted to reduce use of the authoritative Hadith material exclusively to sayings and deeds allegedly of the Prophet himself, defining Sunna as ‘the model behaviour of the Prophet’ as against ‘past custom’, arising from his attempt to document and ‘prove’ the current state of the Law, the Hadith was applied also, if not equally, to the sayings of the Companions and their Successors. In this problematic source of jurisprudence one finds little uniformity with “Companion reports” often clashing—the

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149 See Burton, Introduction to the Hadith, 24-29

150 The Kur’ān, for example, provides many exhortations to perform ritual prayer (salāt), but gives no clear description of how prayer is to be performed or even of how many prayers are required daily; it is the Hadith literature, in its role as tafsīr that spells out in detail just how and when ritual prayer is to be conducted.

reason Shafi'I wanted to reduce the material as much as possible down to the Prophet himself. The solution contrived by Shafi'I is also addressed by al-Razi:

"The traditions of the Companions of the Prophet contradict and refute (each other). (Therefore) leave them and have recourse (only) to what is evident in the Book of God and the sunna of the Messenger."\(^{152}\)

The divergence of Companion reports is well, if not best illustrated in the punishment of the wine drinker. These punishments range from no fixed penalty, to death, and each finds precedent in sunna. For example, the penalty for drinking was first ‘fixed’ at forty lashes, we are told, by Abu-Bakr, and later at eighty lashes by ‘Umar and ‘Ali, the latter being forced to draw a rough parallel (kiyās, ‘analogy’) with the offence of kadhf (alleged false accusation of unchastity, i.e. slander), another hadd crime (sūra 24:4) for which the Qur’ān had fixed the same penalty.

To understand the variety of Koranic interpretations in its legislative role, one must group together sets of traditions that convey differing streams or schools of thought/debate as they relate to the critical question of punishing the wine-drinking transgressor. The traditions are the remains of discussions between scholars attempting to understand and explain the Qur’ān and its meaning, and come to some sort of general agreement. The traditions do not reflect chronological history, although they are doubtless rooted in some form of historical precedent in the period and society in which those scholars were working. Whether or not they are “true” or not, the stories contained in the hadith serve as a vehicle not only to understand the Qur’ān, but to authoritatively supply legal precedent.

That there is to be a painful and humiliating punishment is made clear in the following stream of tradition indicating that the punishment is undertaken on more than a purely physical level, in keeping with the Koranic spirit of the crime:

\(^{152}\) al-Razi, Mafātīḥ al-ghayb, vol. 6, 38, lines 24-25.
‘Abd al-Rahmân said I can still picture myself looking at the Prophet...when a man who had drunk wine was brought before him. He told the people to beat him. Some struck him with sandals, some with sticks and some with fresh branches of the palm-tree (*mitakha*). Ibn Wahb said: “This (*mitakha*) means green palm fronds.” Then the Prophet took some dust from the ground and threw it on his face.\(^{153}\)

The fact and problem of no fixed divine punishment is illustrated by the following *hadîth* where it is asserted that it was not the Prophet who instituted the legal penalty, but rather the Companions, or their heirs:

‘Âli ibn Abî Talib said: “I would not have felt sorry for anyone dying (from receiving the legal punishment for a crime), except the drunkard, for indeed if he would die I would pay the blood-price (*diya*), and that is because the Prophet did not fix it [i.e. the punishment for the drunkard].”\(^{154}\)

From the above no fixed penalty, it is yet another stream of *hadîth* which tells us that Muhammad and his immediate successor Abû Bakr tended to inflict a fixed forty blows by means of palm branches or sandals:

‘Ibn Mâlik said: “The Prophet struck a drunkard with palm-stalks and shoes, and Abû Bakr flogged forty (times).”\(^{155}\)

A report has it that Khâlid b. al-Walîd reported to ‘Umar that people were indulging in prohibited drinks. Then, ‘Umar consulted the Companions, who advised him to fix the number of blows, not at the customary forty, but at eighty—a number suggested by the Kur’ân (*sûra* 24:4) although for a separate instance and used here in analogy:

‘And those who accuse honourable women, then do not bring four witnesses, then whip them eighty stripes, and do not accept them as testimony. Because of all that, they are the evil-doers.’


A parallel was thus drawn by the precedent set by the above verse traditionally accepted as connected to the false accusation of fornication, but soon transferred to a separate issue, one not adequately dealt with in the Qur’an, indeed, of a situation of which it evidently had no conception:

‘The population swelled in Umar’s day, and drinking became a common habit among the people. ‘Umar consulted the Prophet’s Companions and ‘Abdul Rahman b. ‘Awf suggested use of the ‘lightest penalty’, so ‘Umar adopted eighty lashes.”

Whether “common habit” suggests a previous period of wine-abstention is not clear. It more likely indicates that wine-drinking permeated all strata of society as Islam spread, rather than only those who could afford the expensive intoxicant found in non-wine producing regions such as the Hijaz.

The above remnant of scholarly discussions indicates that the koranic prohibition did not take hold in the period of which this tradition is purported to refer. The following suggests the same problems:

‘When ‘Umar consulted the Companions on this problem of a penalty for drinking, Ali spoke up: “A man drinks, he gets drunk; he gets drunk, he rants; he rants, he is bound to slander somebody (falsely). I think you should flog them eighty strokes of the lash.” ‘Umar adopted the suggestion. [Malik adds]: “The sunna in our region is that whoever consumes any intoxicant, whether or not he gets drunk, [emphasis is mine P.L.] incurs the flogging penalty.”

156Abu Dawud (al-Tayalis, d. 819/820 AD), Minhaj al-Ma’bud fi tartib musnad al-Tayalis Abi Dawud (2 parts in 1, Cairo, 1952), Part I, p. 302.

157Malik ibn Anas, al-Muwatta, Kitab al-Ashriba, bilb 1, al-hadd fi al-hamar, tradition 2 (Cairo, 1999), 642. The revolt of Madina, the stronghold of hadith against the free and arbitrary use of ra’iy and kiyas, was led by the local Malik ibn Anas, who died there in A.D. 795. His name is connected to the school later developed under his name. Contrasting Abu Hanifa’s later approach, Malik used the tradition of the Prophet, or local custom as sources of Law after the Kur’an. If hadiths differed, he gave preference over them to local practice (‘amal) and only when both hadith and local Madinan custom failed to provide him with authority in deciding a point, did he resort to his own “opinion”; preferring even a doubtful hadith over that. If custom contradicted hadith, since it could not be
The 'eighty lashes' stream of tradition by *kiyās*, analogy, is partly contradicted by the following stream of *hadīth* that illustrates a more complex stage in Islamic legal thinking. It also suggests that the society in which this tradition was composed had a more mature legal system—indicated by degrees of guilt, or at least aspired to such:

Ibn Yazīd said: "We used to carry out (the following punishment), regarding the drunkard, until the time of the Messenger of God, and (under) the authority of Abū Bakr and the beginning of the reign of ‘Umar, and impose upon him with our hands, our shoes and our clothes (bunched up) until it was late in the reign of ‘Umar, who struck with forty blows, until (only) when (the drunkard) was insolent and acted immorally (again?), he would strike him eighty blows."\(^{158}\)

So here we have an expression of forty being increased to eighty only when the offender has re-offended. Or, alternatively, ‘Umar's punishment was made to undergo the transformation after adoption of the developing legal notion of *kiyās*, analogy, which came to the fore only in the early ‘Abbasid period. Certainly contradictory interpretative accounts that the *fukahā* had to sort out.

We see a natural lack of uniformity in the *hadīth* literature as it pertains to explaining, defining and documenting the source of the legal punishment for wine-drinking which developed under the influence of local values and conditions. This is illustrated by the following *hadīth*:

‘Uthmān invited ‘Alī to punish a breach of the ban on drinking wine. ‘Alī delegated the actual application of the penalty to another and counted out the strokes as they

fell. He stopped at forty. The Prophet had applied forty lashes; Abū Bakr had applied forty lashes. "Umar had imposed eighty lashes, and each is sunna." 159

As a natural extension of interpretative discussions which never came to any authoritative conclusion, the process of fixing the penalty was made to continue even into the Umayyad period:

"Abd al-Rahmān ibn al-Azhar said that..."Umar in the beginning of his caliphate inflicted forty stripes and at the end, eighty stripes. "Uthmān (after him) inflicted both punishments, eighty and forty stripes, and finally Mu'āwiya established eighty stripes. 160

In direct contrast to the above representations of social values as reflected in their punishments, yet another stream of hadith showing the sheer diversity of discussions is illustrated by the fact that repeated drinking of wine was punished by death—taken all the way back to Muḥammad's order:

1. "Mu'āwiya b. Abī Sufyān reported the Prophet as saying: "If they drink wine, flog them, again if they drink, flog them, (yet) again, (then) flog them. Again, if they (still persist and ) drink it, kill them."")161

2. "The (above) tradition has also been transmitted by Ibn 'Umar through a different chain of narrators to the same effect. This version has: "I think he said for the fifth time: If he drinks it, kill him." 162

3. "Abū Hurayra (and Mu'āwiya) reported the Prophet as ordering the flogging of drinkers. For a man's fourth such offence, the Prophet ordained execution." 163

159 al-Tayālisī, Minhat, part I, p. 302.


161 Abū Dā'ūd, Ibid., book IV, Kitāb al-Ḥudūd, bāb 37, trad. 4482, p. 228, lines 17-19.

162 Abū Dā'ūd, Ibid., trad. 4484, p. 229, lines 2-3.

163 al-Tayālisī, Minhat, I, p. 303.
In a developing society, it was inevitable that a reaction to punishment by death appeared, to counter the harshness of the Prophet’s decree. Thus, it is added in some traditions that the death punishment in such cases is not according to the *sunna* of the Prophet:

‘Ibn Dhuwayb reported the Prophet as saying: “...If he does it [i.e. drink] a third or fourth time, kill him.” A man (who) had drunk wine was brought [to him, repeatedly] and he gave him lashes. Abandoned was the punishment of killing, and a concession was allowed. Abu Sufyan said: “Take this tradition as a present to the people of Iraq (!).”’

Difficulties arose when both the *Kur’an* and, thanks to Shafi’i, the *Hadith* literature became two authoritative sources for the derivation of Law, towards the mid-second century of Islam. The difficulties arose as old customs everywhere in the Muslim empire were found running counter to the authoritative *Hadith*.

Arising from the problem of inconsistency and contradiction derived from the scholarly discussions, and telescoped back to the time of the Prophet and Companions, a device to smooth out contradictions in prophetic precedent (and indeed of *kifāäs*) developed: ‘agreement’, ‘consensus’ (*idfima*). This developed as a tool to verify the state of the Law, and was still very much alive until after the time of Shafi’i. Although Mālik had inconsistently linked *sunna* with the *Sunna* of the Prophet, Shafi’i was responsible for linking the *hadith* back to its ‘roots’, the age of Muḥammad in a consistent and systematic way.

Shafi’i was the first to admit that custom and long-established usage had to be taken into account in any code of Law, and placed them solidly amongst its ‘roots’. This he did using the principle of *idfima*, or the consensus of general—including non-Arab—Muslim

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164Abū Da’ūd, *Sunan*, IV, Kitāb al-Hudūd, bāb 37, trad. 4485, p. 230, lines 1-6. Exclamation mark is mine, P.L. This may refer to the Ḥanafi school deriving from Kūfah, and dealing with a more theoretical approach to the problems of Islamic jurisprudence.

learned opinion (that Malik had earlier applied by way of the opinions of Madinan scholars) which reflected the will of God. Thus, three of Shafi'i's roots of jurisprudence were the Kur'an, the Sunna, and idjmā' to which he added a fourth root, that of kiyār. It was through ‘agreement’ that the scholars, under the challenge and influence of Shafi'i, took the view, based on the Prophet’s summa, that the death penalty had been repealed for technical reasons—including perceived isnād weaknesses:

‘Shafi'i had heard the Prophet’s report from only one man—a man of virtue who transmitted hasan (very acceptable) reports. He is uncertain whether, in this instance, the man’s memory was to be relied upon. He knew of a second report mentioning either death or banishment, in a parallel to which a man was brought to the Prophet charged with the fifth offence of drinking, yet was merely sentenced to be flogged. If any of the previous hadiths are, in fact, ‘sound’, this last report suggests their repeal. Those other reports on the subject are mursal. Further, ‘Uthmān had conveyed from the Prophet a celebrated general statement on the penal law: “No Muslim may be put to death except for one of three causes—apostasy, adultery and unjustifiable homicide.” As to the ‘soundness’ of this report, the Hadith specialists are in no doubt. The attempt may be made to argue that this general statement does not contradict the reports on the death penalty for persistent drinking, but Shafi'i knows of no scholar who calls for other than repeated flogging of the repeating drinker, on the fifth or sixth charge. No drinker was ever executed. So, if the reports on the Prophet’s institution of a death penalty for persistent drinking prove to be sound, it must have been rescinded [emphasis is mine, P.L.]. In the Kur'an, God has specified which acts merit killing and which flogging. Killing may not replace flogging except based on information ‘soundly’ reported from the

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166 Levy, Structure, 177-179.

167 That is, when a link is missing in the isnād, or when the name of a companion of the Prophet is missing in the isnād.
Prophet,\textsuperscript{168} in the absence of contrary Prophet statements or an indication of abrogation.\textsuperscript{169} Shāfī‘i’s references to the principle of \textit{idjmā’} showed his inconsistent attitude towards the unquestionable value of a particular \textit{hadīth} of the Prophet. In this case, on the question of the treatment of the persistent drinker, he used the principle as a tool to dismiss a certain \textit{hadīth} report from the Prophet which allegedly advocates the death penalty. It had been \textit{idjmā’} that he had used to decide between the two inconsistent reports from the Prophet.\textsuperscript{170}

So, in his intellectual muscle-flexing, Shāfī‘i is shown to consider the value of certain Prophet \textit{hadīths} according to what the general body of scholars decides, and not necessarily by their pedigree.\textsuperscript{171} But from the moment when \textit{kīyās} gained general approval, it was attacked and opposed most notably by a pupil of Shāfī‘i, namely Ahmad ibn Ḥanbal (d. 241/855). According to him, \textit{rationalist interpretation} of the Kur‘ān and tradition is permissible, and he refused to recognise the ‘innovation’ (\textit{bid‘a}) of the \textit{idjmā’}. He was mainly concerned however with sources of \textit{Hadīth} rather than jurisprudence.\textsuperscript{172} The so-called “Gate of \textit{Idjtiḥād}” (supreme effort and endeavour [to arrive at a complete knowledge of the Kur‘ān and traditions]) was closed after the death of Ibn Ḥanbal, the founder of the last of the four ‘orthodox’ \textit{madhhab}.

\textsuperscript{168} Here Shāfī‘i may have had in mind a similar problem—that of the Prophet’s alleged stoning of adulterers, in contradiction to the Kur‘ān’s flogging and/or imprisonment punishment.

\textsuperscript{169} Footnotes in al-Shāfī‘i, \textit{Risāla} (Cairo, 1949), bāb al-	extit{idjtihād}, p. 575-577. I was referred to this statement by Burton in his \textit{Introduction}, 150, ref. n. 584, according to his Cairo edition of the \textit{Risāla}, 1940, p. 244.

\textsuperscript{170} Burton, \textit{Introduction}, 159-160.

\textsuperscript{171} That is, their \textit{ismāl}. \textit{Ibid.}, 153.

Although numerous earlier treatises are included, a certain solidification of Islamic Law is presented by the famous treatise of al-Mawardi, *Kitâb al-Ahkâm al-Sultâniyya* ("Book of the Rules of Government"). This is a work that deals with the matter of the types of legal punishment in considerable detail. Al-Mawardi was born in Baṣra in A.D. 972 and died in Bağhdâd in A.D. 1058. He became a very learned teacher of law and was appointed kâdï.¹⁷³

In his work, al-Mawardi includes wine-drinking in the category of those offences that God himself had ‘defined’ the punishments thereof by a legal penalty (*hadd*), as opposed to a discretionary penalty (*taʾzîr*) depending on the decision of a judge: drinking of any intoxicating beverage is forbidden not only by the Kur’ān but also according to the classical jurists (i.e. by *ijmâʿ*). The punishment for the offender was to be (the conciliatory) forty lashes.¹⁷⁴ He found the authority to include wine-drinking within the *hadd* offences from such statements as early as Malik’s, that the crime was to be punished with a fixed punishment.¹⁷⁵

So, what of the mass of contradictions, and who followed what punishment, which in itself was derived from *tafeir*, in the form of *hadîth*? Only the Shāfî’ites cling to the practice ascribed to Muḥammad and Abū Bakr; with them the number of blows is consequently (as we have seen) forty or even twenty. The other three legal schools¹⁷⁶ have

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¹⁷⁶ School (of thought)—rite (Ar. *madhhab*). All together, one may say the four “sects” of Sunni Islam, designated the Mâlikî, Ḥanafî, Shâfî’, and Ḥanbalî, after their respective founders. No Muslim is considered “Orthodox” unless he conforms to the doctrines of one or the other of the principle doctors.
adopted ‘Umar’s view; drinking wine is punished with the eighty blows; if the transgressor is a slave this number is however reduced to forty, because in the Kur’ān (by use of kiyās) the punishment of the Muslim female slave/concubine/handmaid (‘what your right hands possess’) is fixed at half the amount of blows with which the free woman is punished (ṣūra 4:25). In short, idlimā’ via kiyās won the day over the individual debates based on finding a definitive statement of the Law through hadīths.

In summary, the scholars dealing with problems of law and morality incorporated and accounted for the existing and present state of the Law within their current society. In searching for ultimate authority, the fikāhā’ attempted to forge a seamless and consistent link to the great and reliable personalities in the Community’s past.

Responding to the challenge of apparent inconsistencies, Shāfi‘ī attempted to unify the process by “tracing the present state of the Law, wherever possible, to a single personality of the past, the Prophet himself. In doing so, he destroyed the remnants of any smooth chronological line from the Prophet on to the latest period. He rejected what happened in the years following the Prophet’s death (in the time of ‘Umar), in favour of ‘turning the clock back’ to what was reported as having been a ruling issued by the Prophet himself.”177

As a result, he and the Schools brought into line a practical application of the Law with the actual ways of society, that the inadequate law of Makka and Madīna might be adapted to larger circumstances arising from the fact that requirements arose that the letter of the Law could not easily accommodate.

The search for the legal punishment of wine drinking graphically highlights the necessary usage and adaptation of hadīth to supply a legal need where none is supplied in the Kur’ān. This literature is in itself derived from a need to interpret, understand and place

177 Burton, Introduction, 153.
in history the prophetic figure and connect him to the Revelation he was perceived as being the receptacle of. It, through the very debated issue of wine, equally shows the process of deriving legal formulae through the imperfect mechanisms derived by the Islamic jurists themselves—nashīh, kiyās, and idjmā', and the way in which these tools were found inadequate.

d. KHAMR AND NABIDH: HADITH ON THE NATURE OF WINE

A critical issue among Muslim jurists is the raw materials of ‘wine’ production, of which the writers argued through their definitions. The term khamr as it is used in its koranic context is usually translated as ‘wine’ or ‘grape-wine’, although in the Kur’ān there is no attempt at definition, nor of defining the limits of fermentation from juice to ‘wine’. There is no absolute reason why we should equate the term khamr with what we call ‘wine’, except out of ease of expression. There is, after all, no such thing as the prohibition of “wine” in the Kur’ān. There is a prohibition (more or less) of khamr, but precisely what khamr means is the prominent, if not the whole point of the examined discussions.

There are references to khamr in the Hebrew sources. In Deuteronomy 32:14 one finds: “ve’dam aynav tışteḥ khamer” (“and from the blood of the grape you (will) drink wine”). In Aramaic the term khamara’ (with an alif as the last radical) is translated as wine, and is found in the Talmud, Bava Kama (97, 7 [tzaddik-bet-zayyin]): “khamra lemareh, tivota, lešhakey” (“Wine belongs to its owner [God], but gratitude goes to the one giving it [to you, the drinker]”). In modern Hebrew, the literary term for wine is kheimer, and khamarmorei has the meaning of “hangover”.

According to Lane’s Arabic-English Lexicon, itself derived from classical Arabic dictionaries as well as popular usage, the term means, “what intoxicates, of the expressed juice of grapes when it has effervesced, and thrown up froth, and become freed therefrom,

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178 The modern word for ‘pub’ is ‘bett shikhar’ (from sakar, ‘hard alcohol’).
and still." Or it has a common application to "intoxicating juice of anything or any intoxicating thing, which clouds or obscures the intellect." Lane continues by saying that, according to the traditions, khamr was "forbidden when there was not in Madina any khamr of grapes; the beverage of its inhabitants being prepared only from dates in their green and small state, or full grown but unripe, or fresh and ripe, or dried..." (The term), he continues, "is also applied to the enigmatic beverage called nabîdh (examined below) as nabîdh is sometimes applied to wine expressed from grapes." Nabîdh has no apparent precedent in Aramaic or Hebrew.

However, a finer distinction needs to be made between khamr and nabîdh, whose definitions change from author to author and in various periods and various circles. This derives from, again, the multitude of conflicting tafsîr-hadîths (which shall be examined).

We will start with, for example, an abstract definition of khamr provided by al-Râzî who (probably intentionally) steers well clear of any problematic definition of the constituents of wine and its relationship/contrast to what may make up nabîdh:

'The lexicographers maintain that the basic meaning of the root kh-m-r is 'to cover'. The head veil (of women) is called khimâr because it covers the head of the woman, while khamâr may be a shrub, or a ground depression or hill, which conceals somebody...The etymology shows that by 'wine' is to be understood that which 'veils' (satara) the mind, just as one designates wine as an intoxicating drink (muskir) because it closes (sakara) the mind...'

Interestingly enough, Râzî combines the two koranic terms usually translated as "wine": khamr and sakar—which is used only once in the Kur'ân.

179 He is referring to Bukhârî, Sahîh, book IV, Kitâb al-Asâriba, bâb 2, tradition 5579, p. 1792.

180 E.W. Lane, Arabic-English Lexicon, book I, part II (England, 1865), 808.

As we have seen, the prohibition of wine, although unanimously accepted, produced dissension between the judicial schools, dissension deriving from traditionally authoritative hadith, which itself was the result of scholars' attempts in understanding and explaining the Kur'ān. Although we have had recourse to examine the relative position of wine within the hierarchy of sin, and the connected issue of defining the punishment for the sinner, the discussions necessarily start from the question: what is wine?

As the Law developed, the word *khamr* eventually became applied not only to wine but through *hiyās*, to any intoxicating and fermented drink. And it is generally agreed that the word as used by Muhammad is to be understood in this general sense. The remnants of scholarly discussions show this point to be a part of their agenda, deciding that *khamr* was forbidden by the Prophet when there was not *khamr* of grapes in Madīna, the beverages of the inhabitants being prepared from dates:

1. 'Ibn 'Umar said: “Indeed wine was prohibited when there was not anything of it in Madīna.”
2. 'Anās said: “Wine was prohibited to us when it was prohibited, and there was not to be found—meaning in Madīna—wine of grapes, except only a little, as most of our wine was made from unripe and ripe dates.”

However, this claim propagates a distortion whose purpose was to polemically attack the Ḥanafite view, a form of reasoning connected with the name of a Persian scholar born in

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183 Ibid., tradition 5580, p. 1792.

184 Where the Ḥanafites represent the holders of the provincial point of view, particularly that of Iraq verses those of the holy cities of Arabia, particularly Madīna where prophetic tradition as perpetuated by numerous accounts justified local usage. As Levy states (Structure, 170), “The learned of Madīna...compelled by circumstances to supplement the legal provisions of the Kur'ān, did so not as the provincial Muslims had done, by an avowed resort to reason, but be deliberately inventing hadiths of the Prophet to justify their new regulations, or fresh ways of applying koranic laws.”
Kūfa, Iraq, known as Abū Ḥanīfa, who died in A.D. 767. For if the verse prohibiting wine was revealed Madīna, it clearly referred in the local jargon to drinks not made from grapes, and this would undermine the entire Ḥanafite view on intoxicants based on the grape. Clearly the Ḥanafite school could not agree to this obviously theoretical argument about Madīna.*

Obviously, it was recognised that any meaning of the term *khamr* was lost very early on. Needing to understand the meaning of the koranic text, it was in the early developmental period of Islamic law, that a need arose to represent the authoritative ‘Umar as delivering a *khutba* (religious sermon) meant to settle the question of defining what constitutes ‘wine’. This question arose from the multitude of conflicting exegetical opinions that derived from koranic ambiguity:

‘Umar stood upon the *minbar* (raised pulpit), and said: “Now to our topic, the prohibition of wine (was) revealed, and it is from five (things, kinds of fruit): the grape, and the date, and (the) honey, and (the) wheat and (the) barley, and the wine is what possesses (the) reason (of man).”†††

The absolute and detailed certainty of ‘Umar’s speech shows that *khamr* was a local intoxicant derived from unknown ingredients, only the vaguest memory of which survived.

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* Although he himself left no systematic work of jurisprudence, his disciples compiled his sayings. In these records the school developed and evolved the view that *’iṣla* (analogy, in the Kur’ān) for determination of legal precedent was not enough. He desired to penetrate the wording of the koranic text to the *’illa*, or cause, motive, of the provisions made which would then be relevant for the legal question at hand. Thus, where the Kur’ān forbids wine on the grounds (or *’illa*) that it causes intoxication; therefore when by analogy fermented date-juice is forbidden it must be on the same grounds. As opposed to some of those representing his school of thought, it appears that Abū Ḥanīfa held that the basic text contained some, but by no means all, of the regulations and laws required by society. From the basic text and laws, these fresh ordinances were to be derived from *’iṣla*. See Levy, *Structure*, 166-7.

††† I thank Prof. Sadan for this observation.

after the time of the Prophet. It was a relevant term with specific meaning only in the koranic period, for its production was not maintained when Islam began its movement out of its local environment. Al-Râzî emphasises the fact that what ‘Umar was made to say, regarding the five types of ingredients, became wholly insufficient as Islam achieved further spread and encountered more complex techniques such as in wine-production:

‘Al-Khaṭṭâbi said: “(The use of the word) ‘wine’ (khamr) was used [i.e. by the Prophet] for these five things (only, was) not because wine is made only from these five (raw materials), but that these are specially mentioned because they were well known at that time. Thus, “these five” apply to all that are like them, such as millet, barley, and tree-sap...”

There can be little doubt that the wine locally produced in Arabia was more of a narcotic stimulant than the refined vintage which modern connotation applies to the term ‘wine’. The question however, then widened to include whether non-stimulating beverages prepared from grapes in a different ‘non-fermented’ way, or for medicinal purposes, were included in the Prophet’s prohibitions. The following separate traditions illustrate the discussion of this problem:

1. ‘Ā‘ishah the wife of the Prophet reported that the Prophet used to stay with Zaynab, daughter of Djahsh, and drink there honey. (She said): “I and Hafsa counselled each other that if the Prophet enters upon any of us, let her say: “I find the (unpleasant) smell of gum on you.” He then entered upon one of them; she said that to him. Then he said: “No, I drank honey at (the house of) Zaynab, daughter of Djahsh, and I will not do it again.” Then the following verse was revealed (to the Prophet): “Why do you (consider to be) forbidden what God has made lawful to you (sūra 66:1)...”'

188 That is, by analogy, kiyās.
189 al-Râzî, Mafâtîh al-ghayb, vol. 6, 36, lines 15-17.
2. "...When 'Umar went to Syria, some Syrians complained to him about the bad climate of their country and its heaviness. They said: "Only this drink helps." 'Umar said: "Drink this honey preparation." They said: "Honey does not help us." A man from the people of that land said: "Can we give you something of this drink that does not intoxicate?" He said, "Yes." They cooked it until two-thirds of it had evaporated and one-third of it remained. Then they brought it to 'Umar who put his finger in it and then raised his head and extended it. He said: "This is fruit juice concentrated by boiling. This is like the distillation that you smear on camels' scabs." 'Umar ordered them to drink it. Al-Samit said to him: "You have made it halāl, by Allāh!" 'Umar said: "No, by God! O God, I will not make anything halāl for them that You have made harām for them! I will not make anything harām for them that You have made halāl for them!""\(^{192}\)

It can easily be seen that the difficulty concerning ingredients was caused by the fact that people were accustomed to preparing drinks from all kinds of dates, from raisins and other fruits, drinks which only became inebriating if they were preserved a long time, and probably also if they were prepared after certain special methods. This situation made it impossible for jurists to create a line of demarcation between the allowed and the prohibited. They ended up prohibiting the lot.

Throughout the Hadīth, even the Prophet's favourite wife, 'Ā'isha, is made to represent a scholarly opinion theoretically questioning the forbiddance of alcohol, usually by way of questioning ingredients, amounts and potency. Was it only wine that was forbidden, or intoxication? Did nabīdā count? How was khamr to be defined? In attempting solutions to these problems which constitute the remnants of pious debate over

\(^{191}\) The Qur'ān ascribes healing power to honey (sūra 16:69): 'There comes out from their bellies (of the bee) a drink diverse of shade, in which is healing for man.' Likewise does the Hebrew Bible (II Kings, 20:7), where the Prophet Isaiah administered honey as a cure to King Hezekiah.

\(^{192}\) Mālik, al-Muwatta', Kitāb al-Ashriba, bāb 5, trad. 14, last line, p. 645.
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the interpretation of the Kur’ān, the scholars mentioned nabīdh among the drinks normally prepared by Muhammad’s wives and allegedly drunk by him:

1. ‘Ā’ishah reported: “We prepared nabīdh (nanbidhii) for the Prophet in a water-skin, the upper part of which was tied, and it (the skin) had a hole (in its lower part). We prepared the nabīdh (nanbidhü-hü) in the morning and he drank it in the evening and we prepared the nabīdh in the night, and he would drink it in the morning.”

2. Ibn al-Daylāmī said: “We came to the Messenger of God and said to him: “O Messenger of God, do you already know who we are, from where we are and to whom we have come?” He said: “To God and His Messenger.” And we said: “O Messenger of God, indeed we have grapes, what should we do with them”? He said: “Make them into raisins.” We (then) asked: “What should we do with raisins”? He said: “Prepare the nabīdh (inbidhü-hü, i.e. process them, ferment them) in your morning and drink them in your evening, and prepare them in your evening and drink them in your morning. Prepare them in skin vessels and do not prepare them in earthen jars, indeed if it is delayed in its pressing, it turns into vinegar.”

3. ‘Ā’ishah said: “(Dates) were prepared (yanbadhii) for the Messenger of God in a skin tied up at the top and had a mouth. (What) was prepared in the morning, then he would drink it in the evening, and what was prepared in the evening, then he would drink in the morning.”

The question is of course what is the meaning of the root n-b-dh. There is no clear answer to this question, but, as we shall see, what is constant in all of the traditions dealing with this daring subject is that fermentation of some sort was involved.

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193 Muslim, Sahih, book III, ch. 36: Kitāb al-Ashrība, bāb 9, tradition 85, p. 1590.


In one of Muslim’s traditions, Ibn ‘Abbās\(^{196}\) is made to say that the Prophet used to drink *nabīḍh* even on the third day of fermentation, but what was left then was poured out:

‘Ibn ‘Abbās reported that *nabīḍh* was prepared for Allāh’s Messenger in the beginning of the night and he would drink it in the morning and the following night and the following night and day and the night after that up to the afternoon [i.e. until advanced signs of fermentation?]. If anything was left out of that he gave it to his servants, or he gave orders for it to be poured out.’\(^{197}\)

‘Abū Dā‘ūd said [in addition to the above tradition preserved in his work, P.L.]: “...given to the servants to drink...” means it is being used before it is spoiled (*γνηράκ*).’\(^{198}\)

We are told that Muḥammad was made to drink this evidently fermented mixture until the point that it resembled alcohol. However, curiously it was discarded due to personal taste, rather than to any divine injunction, as the Prophet was made to have given the fermented mixture to those closely associated with him.

As according to the above traditions then, Muḥammad drank *nabīḍh*, some sort of fermented mixture made from dates. What does this tell us about an historical Muḥammad? From its content, is obviously purports to tell us about such a Muḥammad, and equally obviously (since it has been preserved) was accepted by at least some Muslims as likely to do so. At the very least, it is possible to identify an earlier layer of ḥadīth, whether or not it relates to an historical Muḥammad:

‘Abū Saʿīd came from a journey and his family gave him meat. He asked if it was meat from the sacrifice. They said that it was from it. Abū Saʿīd said, “Did the Prophet of God not forbid it?” They said, “Already there has been a new command

\(^{196}\) The chief authority on the exegetical ḥadīth was said to have been Muḥammad’s cousin ‘Abd Allāh ibn ‘Abbās (d. around 688). He is therefore traditionally held to be the actual originator of traditional exegesis.


from the Messenger of God, after you (went away).” Abū Saʿīd then went out and asked about that. He was told that the Messenger of God said, “I forbade you meat of the sacrifice after three (days), but now eat, give sadaka, and store up. I forbade you before to make nabīdh, but now make nabīdh, but remember that every intoxicant (miskir) is ḥarām...”199

This most interesting tradition contains an indication that in a very early period, nabīdh was indeed prohibited (as one might have expected). It also contains the discussion regarding “meats of the sacrifice,” clearly prohibited in the Qurʾān,200 the prohibition of which is strangely disregarded here.

As if to emphasise the popularity of nabīdh, in a matter-of-fact way, not only ‘Umar, but apparently others in Mecca appear to have drunk this mixture, or one under that name:

‘...al-Mukhtārī had some nabīdh with him, which he was then taking to Mecca. Al-Aslam said to him, “‘Umar loves this drink.” He therefore carried a large drinking bowl and brought it to ‘Umar and placed it before him. ‘Umar brought it near to him and raised his head and said, “This drink is good.” ‘Umar drank some of it and passed it to a man on his left...”201

There were, then, some quite daring reports claiming that the Prophet and ‘Umar drank nabīdh. Religious ideologists made every effort to explain a posteriori, that what they drank was a kind of fermented juice, a kind of cider which underwent an extremely short fermentation. However, this effort does not seem to tally with the logic of modern wine production research. It is doubtful however, whether the commentators really cared about the alcoholic strength of nabīdh, pointed out by Lammens, who found a poetic fragment

199 Mālik, al-Muwatta’, chap. 23, bāb 4, trad. 8, p. 386.

200 Sūra 5:3, if the sacrifice is “to any other (divinity) than God.” Although there is found an alternate attitude in Sūra 22:36, where one is encouraged to partake of the sacrificial camel, once “God’s name has been invoked” over the beast.

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according to which nabīḏh was so strong that it could make the skin of the face drop. So where is the historical truth? Was there a purpose for the circulation, persistence and acceptance of these hadīths which connected the Prophet and ‘Umar in one way or another with fermented drinks? Was it circulated and preserved as merely an interesting bit of information about the founder of Islam, or did it somehow contribute to a pious discussion, perhaps purely theoretical, that Muslims, much later, thought important?

It is not unreasonable to conjecture that the “nabīḏh device”, here considered a strictly literary motif, was developed out of the need to solve problems related to the disparity noticed between the Law and contemporary usage, and where the Law was being made to conform.

Surprisingly, all this could not, however, persuade the majority of the religious lawyers (fukahā') to declare nabīḏh allowed—three of the schools and also the Shi'a prohibit the use of nabīḏh (only the Hanafi school [examined below] allows it, when used with moderation, for medicinal purposes etc.). This is reflected in al-Rāzi:

‘Abū Dā’ūd related the following according to ‘Ā’ishah: “The Messenger of God was asked about (the drink) bita’, and he said: “Every drink that makes one drunk is prohibited.” Al-Khaṭṭābī said: “Bitā’ is a drink that one makes from honey. And in it [i.e. the above statement of the Prophet] is a refutation of the interpretation of those who say that a small amount of an intoxicating drink is allowed. The Messenger of God was asked about a single kind, the nabīḏh, but answered with a


203 I thank Dr. R. Kimber for pointing out these questions.

204 However, I do recognise that certain hadīths on the subject of ‘wine’-drinking by the Prophet, uncomfortable as they are, are deserving of notice and the substance of them may well be genuine without any other legalistic considerations.

205 ‘All b. ‘Umar al-Dabūsī, Ta’sīs al-Nazar, as cited in Wheeler, Authorization and Maintenance of Interpretive Reasoning in Hanafi Scholarship, 148-149.
prohibition against the (entire) group (of intoxicants). This includes not only a large amount of it but also a small amount.\textsuperscript{206}

The divergence and conflicts in the Hadîth literature gave ample opportunity for the exegetes/\textit{fukahà} to debate the definition of fermented mixtures. For example, Ṭabārî in his \textit{Tafsîr/collection of hadîths} preserves indications that the “strong drink” (sakar) of \textit{sûra} 16:67 was defined in different \textit{hadîths} both as the prohibited \textit{khamr},\textsuperscript{207} but elsewhere as \textit{nabîdh}.\textsuperscript{208} Furthermore, it was commonly asserted that sakar was indeed allowed, but only before its abrogation in \textit{sûra} 2:90-91.\textsuperscript{209}

The situation is further complicated by the remnants of discussions indicating that excepting wine made of grapes, it is not strong drink as such that is forbidden, but only intoxication. Some schools claimed that only \textit{khamr} (of grapes) was forbidden. Other fermented beverages are simply \textit{sharab} (drink) or \textit{nabîdh}, but not ‘wine’:

‘And others said: “Strong drink (sakar) has the (same) rank as wine in (its) prohibition, although it is not wine (\textit{khamr}), because they said it is the juice of the date and the raisin when it ferments/strengthens and becomes strong drink causing drunkenness.”’\textsuperscript{210}

According to this view, apple wine, date wine, and so on (happily including whiskey) could be declared legal by lexical means. This went as far as to water \textit{nabîdh} down to a far simpler form:

\textsuperscript{206} al-Râzî, \textit{Masâ\textit{fi\text{\`i}h al-ghayb}, vol. 6, 36, last paragraph.}

\textsuperscript{207} al-Ṭabārî, \textit{al-djâmi’ al-bay\text{\`a}n}, vol. 14, p. 134, line 2; 135, line 8; 136, line 2, 24; 137, line 22.

\textsuperscript{208} al-Ṭabārî, \textit{Ibid.}, p. 137, lines 2, 6, 18, 23, 26.

\textsuperscript{209} al-Ṭabārî, \textit{Ibid.}, 135-7.

\textsuperscript{210} al-Ṭabārî, \textit{Ibid.}, 136, lines 24-5.
Early jurists already attempted to arrive at a definition which would prohibit intoxicants of all kinds and to maintain that “every intoxicant is forbidden” (*kull muskor harâm*). Then came the Ḥanafites and agreed, but changed the vocalisation of the second word to *muskar*, which grammatically is a kind of infinitive, so that the meaning of this legal maxim became, not that all intoxicants were forbidden, but that what was prohibited was becoming drunk: “Every drink that causes intoxication is forbidden”;212 “The sin of wine is that man shall drink and get drunk”;213 “Every intoxicant is *khamr* and every intoxicant is forbidden.”214

Of the special traditions discussing the prohibition of fermented drinks, there may be mentioned the following. It is forbidden or disapproved of to sell raisins if they are used for preparing *nabiddh*, and it is prohibited to mix different kinds of fruits so that the mixture should become intoxicating:

‘Ibn Katāda said: “The Prophet prohibited the mixing up between dates, unripe dates, and dates and raisins, so let him prepare (the drink/mixture), every one (of the two ingredients) separately.”215

Although this tradition occurs frequently, each of these ingredients may be used separately for preparing a non-fermented drink:

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'Do not prepare nabîdh by mixing nearly ripe dates and fresh dates together, and do not prepare nabîdh by mixing grapes and dates together, but prepare nabîdh from each (one of them) separately.'

The Ḥanafites define khamr (which is forbidden in their view) as a product of the grape, while nabîdh is defined as an intoxicant made from any fruit or material other than fresh grapes (raisins are subject to a different set of rules which we shall not discuss here) and one may drink it, but not to the point of becoming drunk. All other schools of Law made the rules of khamr apply to all intoxicants which are indeed all defined as such in religious jurisprudence; nabîdh and the technical details concerning it are considered to be a matter of production techniques, with no legal implications.

What we have in all of these traditions is not a reflection of the real world, but an attempt at answers that arose out of the need to understand the koranic text. However, this pious controversy among the exegetes and jurists had the effect of distorting most of the religious and historical picture of the most ancient times, so much so that it is impossible to know what it was really like.

The Kur'ān does not, of course, answer all of the important questions that its rulings on khamr raised in the minds of the exegetes, so they had to look elsewhere for their answers. They asked theoretical questions because they occurred to them, and out of the need to understand what God indeed wanted. We should not be surprised that different questioners found different answers. For example, even within the various legal schools themselves, conflicts existed as a consequence of their differing local interpretations of

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217 Muslim, Ibid., trad. 24, p. 1585; Malik, al-muwatta', chap. 42, bab 3, trad. 7 (until the word “but prepare from...”, p. 643.


219 I thank Dr. R. Kimber for raising these points.
language usage in specific cases. Often, as al-DabūṣT\textsuperscript{220} shows, for the Ḥanafī school, the authorities' divergent evaluations of specific circumstances are the result of their different local experiences. Although the authorities may agree in the broad outlines of a particular practice, they disagree simply because they regard certain details to refer to different things.

This divergence in how the authorities understand specific things is illustrated by al-DabūṣT in the discussion of the constituents of intoxicating fruit juices:

1. 'According to Abū Ḥanīfī and Abū Yūṣuf,\textsuperscript{221} all juice extracted with water and then cooked or used in cooking, in a small amount, is not an intoxicating liquor, and is allowed, like treacle and pulp.'

2. 'Abū Ḥanīfī and Abū Yūṣuf say that the infusion of dried grapes and dates, when it is cooked, is allowed to be drunk for medicinal purposes and for spicing food. (While) according to (the Prophet) Muḥammad and al-Shāfiʿī, it is not allowed to be drunk, when it is strong, for medicinal purposes and for spicing food.'

3. 'Abū Ḥanīfī and Abū Yūṣuf say that grape juice, when it is cooked so that two-thirds evaporate but a third remains, or a third evaporates than water is added to it and it is boiled on the fire, or it does not boil but the fire is hot enough for it to boil, and it is then strong, it is permitted to be drunk for medicinal purposes and for spicing food because the remaining is that to which water was added until the mixture became under the regimen of dried grapes and dried dates. Abū Yūṣuf specifies this. According to Muḥammad and ash-Shāfiʿī it is not allowed to be drunk.'

4. 'Abū Ḥanīfī and Abū Yūṣuf say that the skin of grapes, after the juice has been drained, when water squirts from them after the juice has been extracted with water, and they are cooked over a fire, and are left until the mixture becomes strong and boils, if it boils a little it is not considered an

\begin{footnotes}
\textsuperscript{220} al-DabūṣT, Taʾsīs al-Nazar as cited in Wheeler, Reasoning in Ḥanafi Scholarship, 148-149.

\textsuperscript{221} The thinking of the Arabian Mālik b. Anas (d. 179/795) was represented by his students, particularly Muḥammad b. al-Ḥasan al-Shaybānī who died about ten years after his teacher. His fellow pupil was Yaʿqūb b. Ibrāhīm, better known as the Kāfīr Abū Yūṣuf. Both are instructive for their views of the Iraqi scholars, especially Abū Ḥanīfī (d. 141/758). John Burton, The Sources of Islamic Law: Islamic Theories of Abrogation (Edinburgh, 1990), vii.
\end{footnotes}
intoxicating liquor. According to Muhammad, in either case it is forbidden.\footnote{Ali b. 'Umar al-Dabûsî, Ta'sîs al-Nazar, 40, as cited in Wheeler, Applying the Canon in Islam, 148-149. Also see Abū Yūṣûf, Kitâb al-Kharādi.}

Here, in these remnants of their discussions, the authorities disagree because of their different assumptions regarding what produces intoxicating liquor made from fruit juice, when it is used for medicinal or cooking purposes. Abû Ḥanîfa and Abû Yûṣûf allow certain concoctions not considered sufficiently intoxicating, which Muhammad does not allow, based on their particular experiences. This is another example of \textit{idjma’} taking precedence over a prophetic \textit{hadîth}.

Tradition, which is the best source for understanding the origin of several institutions,\footnote{Or, as G.W. Anderson puts it: “The study of tradition history is the attempt to go behind the written record and to discover the factors which moulded the traditions which it contains.” \textit{A Critical Introduction to the Old Testament} (Great Britain, 1962, first published 1959), 55.} shows that the question of the definition of wine belongs to the much-debated ones. When one considers the related question of liquid containers, one meets the same regional differentiation met in the question of constituents. The flexibility of local \textit{hadîths} may be illustrated in one that is found very frequently in the classical collections, which runs, in this case according to Muslim, as follows:

'Some (men of [the tribe of??]) 'Abd al-Kâis went to the Messenger of God and said: “O Prophet of God! indeed (we are a) tribe from Rabî’a. And between you and us are the polytheists of Muḍâr. So that we cannot reach you except in the sacred month. So give us a command (concerning) what we have to order from our tribes (-people) so we will enter Paradise if we accept it.

'The Messenger of God said: “I order you four (things). And I forbid you four. Serve God and do not associate with Him anything. And perform the \textit{salât}. And pay the \textit{zakât}. And fast the (month of) Ramadān and deliver the fifth (part of booty). And I forbid four (things). \textit{Al-dubba, al-hantam, al-miizaffat, and al-nakîr.}”' They said: “O Prophet of God! What do you know of the \textit{nakîr}? He said: Well, (it
is) a palm-trunk that you hollowed. Then you pour small dates in it. Then upon them water. When the fermentation is finished, you drink it. (With the effect that) one man hits his cousin with the sword.” He said: “And among these men was one who received a blow in this way.” He said: “And I concealed it out of shame from the Prophet of God.” So he (?) said: “And from the vessels we drink, O Messenger of God?” He said: “In “leather” skins, which are smeared upon their mouths (with pitch).” They said: “O Messenger of God, indeed our land has many mice, so that no skin can be (kept) complete.” Then the Prophet of God said [three times! P.L.]: “Even if the mice eat...”

Although these containers were said to have been used for the preparation of fermented drinks, it is said that the ansâr (helpers, or those the Prophet found in Madîna) or other people, complained of their difficulty in finding the (expensive) skins necessary for preserving drinks without their becoming fermented. Then, the Prophet was made to have withdrawn his prohibition, wholly or partly:

1. ‘Djâbir said: “The Prophet of God prohibited (this type of) container,” then the Anşâr said: “We cannot get around it,” and he said: “then do not (do without it), in that case.”

2. ‘Abdullah ibn ‘Umar said: “When the Prophet prohibited (using) the containers, it was said to the Prophet: “Not all the people will find skins,” then he allowed them (to prepare) in clay jars, not pitched [probably meaning sealed].”

The above traditions can be looked at from another perspective for if the matter of the prohibition of wine drinking is looked at in a general way, other—more practical—grounds could be suggested for it. Wine appears to have been imported Syria, and so must have been a luxury article. The wine was kept in skins, which once broken, would have spoiled

224 Muslim, Sahîh, I, Kitâb al-imân, chapter 1, tradition 26, p. 48-9.

225 Bukhârî, Sahîh, IV, Kitâb al-Ashriba, bâb 3, tradition 5592, p. 1795.

226 Bukhârî, Ibid., tradition 5593, p. 1795.
the wine unless drunk at once. This may have been a factor leading to excessive drinking and becoming drunk.227

Since the issue was dealt with inadequately in the Qur'ān, understanding the prohibition of fermented drinks was of interest to the fuḥahā', precisely because it was directly linked to fascinating and challenging philological and literary matters suited to their way of arriving at conclusions. But as a by-product of their theoretical debates, already in the second century, although the sanction of grape-wine was out of the question, the theologians of Kūfah228 allowed for such wide interpretation of the critical question of what constitutes wine that even “well-intentioned people widely availed themselves (of intoxicating substances).”229

However, from this mass of material, the remnants of evidently highly intense and diverse pious discussions, there is no way we know the true state of affairs with respect to agriculture and the consumption of intoxicants in Madīna and elsewhere, both during and well after the time of the Prophet. But we learn from these materials at least the questions that the pious were asking in the first two centuries of Islam. In their discussions, they created stories connected to the life of the Prophet as they saw him, long after his death. These stories were the tools from which we can reflect the nature of the pious debate,


228 Al-Kūfah was an “active intellectual centre in the early Islamic period, close to the large Jewish communities of central Babylonia, with their famed academies, which continued to operate (or, perhaps, came to operate once again) during the early Islamic period. These communities, which concentrated on traditional Jewish learning had sophisticated traditions of theology and communal history, that could have served as a ready source of information for the early Muslims.” Fred Donner, Narratives of Islamic Origins: The Beginnings of Islamic Historical Writing (Princeton, 1998), 159.

ultimately derived from the need to completely understand Revelation: Does God prohibit khamr because it is khamr, or because it has some quality that might also be found in other drinks? Or, does He prohibit khamr simply as an arbitrary test of our obedience, or because He knows that abstaining from khamr is good for us. These, according to Richard Kimber, are fundamental theological questions, not trivial matters of whether we can or cannot drink while pretending to be good Muslims. Indeed, Judaism discusses exactly the same issues with exactly the same seriousness—like the Muslims, always have done. The hadîth materials are the residue of the discussions of the first generations.
PART FOUR

THE SOCIAL CONTEXT: MEDICINE, PHILOSOPHY, AND POLEMICS

a. In the cultures of the Mediterranean where vines grow, wine is usually drunk, and is part of ordinary life—mostly it is not drunk to excess.\(^{230}\) In the Arabia of Muḥammad’s time, however, because wine was a luxury, and as we have seen came in skins, it would not have been the drink of whole families.

On the contrary, wine-drinking was associated with social get-togethers, and as we have preserved in the sources, often led to drunkenness, at least as the later jurists portrayed. This may well give some justification for its prohibition in Arabia, but it may be argued to some degree, not for lands where it is a family beverage and not liable to such abuse. Since wine is so much part of the culture in those parts of the world where vines grow easily, the question presents itself whether the prohibition of wine may essentially belong to cultures in lands where the vine does not grow—such as in the deserts of Arabia.

In fact, as we have seen, the Rekhabites (Jeremiah 35, see page 13), whose members all refused to drink wine, were also commanded to live in tents and not to cultivate cereals or vines. In other words, avoidance of wine is there portrayed as one aspect of nomadic life. This gives some grounds for arguing that “the Islamic prohibition of wine is extended to all cultures what is certainly a feature of only one particular type of culture.”\(^{231}\)

Nevertheless, Islam claims to be a universal religion.\(^{232}\) This could mean that it is suited to many different races of people living in many kinds of culture. There are many peoples,

\(^{230}\) Note the amusing remark in Samuel where at the feast of Tabernacles/Tents (i.e. the modern festival of Sukkot), the ‘holiest and the greatest of Hebrew feasts’ (Josephus Ant. VIII, iv:1), Eli suspects that Anna was tipsy (I Sam., 1:14-15) which shows that drinking of the new wine was not unknown.


\(^{232}\) However, the fact is that the “People of the Book” were exempted from Islam provided they paid the poll tax. Thus, one may conclude that the Prophet had recognised the impossibility of turning
however, who have cultivated the vine for centuries, and who have found the drinking of wine beneficial and indeed health-giving. How can the Islamic faith be recommended to such people when it includes the prohibition of wine drinking? If it could be shown that the results of wine drinking were entirely or mainly bad, there would be grounds for prohibition. The experience of peoples who normally drink wine, however, shows that its effects are on the whole beneficial (or at least not harmful).

Even from the early Islamic period, Arab physicians were thrown into a quandary by the prohibition of their principal medicine. The great Islamic doctor-philosopher Ibn Sīnā (Avicenna) (d. Bukhāra, A.D. 980-1037), in charge of the hospital in Baghdaḍ, brought together much of the medicinal knowledge of the ancient Greeks, with observations of his own on the effects of wine in different persons under different conditions. In the Kitāb fi 'l-ṭibb, book V, his rule 860 concludes with a thought that might have some bearing on the success of the prohibition in desert lands: “Wine is borne better in a cold country than in a hot one.”

Nor did the great doctor neglect the benefits of wine to his own person:

“If a problem was too difficult for me, I returned to the mosque and prayed, invoking the Creator of All Things until the gate closed to me was opened and what had been complex became simple. Always, as night fell, I returned to my house, set the lamp before me and busied myself with reading and writing. If sleep overcame me or I felt the flesh growing weak, I had recourse to a beaker of wine, so my energies were restored.”

At around the same time, Saadia Ben Joseph (“Saadia Gaon”, b. Egypt, A.D. 882-942) was head of the celebrated Babylonian Talmudic academies of Sīra and Pumbeditha. His Book

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233 Translated by Cameron Grüner as the *Canon of Medicine* (England, 1930), 89.

of Beliefs and Opinions constitutes the first systematic presentation of Judaism as a rational body of beliefs, doubtless influenced by his Islamic environment. Saadia’s treatment of wine, here as a medicine, is likewise wholly positive:

‘The cause of the patient’s illness is an overabundance of blood. Now if one were to say to him: “Do not eat meat and do not drink wine”, he would thereby be contributing to his recovery.” 235

Obviously there was constant contact between Jewish and Muslim scholars within the ‘Islamic world’. Indeed, Islamic notions and approaches which formed over centuries in the developing civilisation of Islam, impacted greatly upon Jewish theology and philosophy. Thus no need was apparently felt by Saadia to go into any detail of defining wine as a fermented drink, nor its constituents. However, Saadia, in an almost anti-Jewish polemic, continues his examination of wine-drinking by noting the negative side:

‘As for wine, they say, it is beautiful in colour, goodly in fragrance, and pleasant of taste. It renders him that is sad joyful, the miserly generous, the cowardly brave. Scripture pays tribute to these sundry virtues [of wine] when it says: “And wine that maketh glad the heart of man, making the face brighter than oil, and bread that stayeth man’s heart (Ps., 104:15).” Now I studied this theory of theirs carefully and I found it to be, for the most part, fal-fetched. Also they regard only the good consequences of addiction to eating and drinking and overlook the ill-effects.’ 236

There are two possible readings of this polemic: 1. that the philosopher is arguing against the Jewish use of wine and its biblical precedent, and 2. that he is suggesting that wine was in widespread use in tenth century Iraq within his Muslim environment. He continues:

‘They forget also that wine, when it is drunk raw, has the effect of making the brain dry, and when it is drunk mixed, that of rendering it moist. It also constrains the mind and does injury to the intellect, as Scripture says: “Wine is a mocker, strong


drink is riotous; and whosoever reeleth thereby is not wise (Prov. 20:1)."

Furthermore, excessive drinking produces a softening of the nerves, tremors, agitation of the blood, chronic fevers, progressive weakness of the stomach, and feebleness of the liver, besides causing intense pains, as Scripture says: 'Who crieth: “Woe”? who: “Alas”?...They that tarry long at the wine (Prov., 23:29-30).”237

The above described use of wine is a somewhat conciliatory attitude towards the Islamic position, on the one hand recognising the benefits of the evidently widespread use of wine, and on the other, justifying the koranic existence of it prohibition. Saadia after all had to work in an Islamic environment, and the prohibition of wine, as a defining factor, was then quite well developed, at least as legitimate topic of scholarly debate. But his use of Jewish source material also points to an apologetic attitude, in response to Islamic polemics attacking the Jewish use of wine in the Hebrew Scripture.

Likewise, Maimonides, a Jew from Cordoba in Spain, who became personal doctor to the Sultan Saladin/Salah al-Dîn in the 12th century, had to find a middle road between the beneficial usage of wine within the framework of its prohibition. He wrote:

'It is well known among physicians that the best of the nourishing foods is the one that the Muslim religion forbids, i.e. wine...It is rapidly digested and helps to digest other foods...The benefits of wine are many if it is taken in the proper amount, as it keeps the body in a healthy condition and cures many illnesses. But the knowledge of its consumption is hidden from the masses. What they want is to get drunk, and inebriety causes harm.'238

Elsewhere, Maimonides proscribes wine (and song) to improve the sultan’s mood, despite the forbiddance. In A.D. 1195, in response to a letter from Sultan al-Afdal (the eldest son of

237 Saadia Gaon, Beliefs and Opinions, “Ideal Human Conduct,” 370. Curiously, one may see an almost exact rendition of this Opinion in Shakespeare’s King Henry IV (Part II, Act 4, Scene 3), where Falstaff enlightens us on the qualities of Sherry.

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Saladin), Maimonides wrote "The Regimen of Health" (based on Galen's *De Sanitate tuenda*), and soon after, "The Treatise of Accidents." Although in Jewish *Halakhic* Law, it is possible to proscribe any treatment to the dying, even if it contravenes the Law, there is no evidence that the Sultan was in any such state. Maimonides was simply aware that the Sultan would have been only too happy to drink wine and hear songs, had they not been forbidden. When he was sick, Maimonides could thus 'dare' to advise such treatments in the form of a medical prescription backed up by some quite doubtful philosophy.239

b. The problems faced by Jewish and Islamic philosophers regarding the question of wine, its prohibition or permissiveness, and its moral value were very similar. The philosophical value or detriment of wine, derived from contrasting attitudes in both Jewish and Islamic Revelation, is used in polemical and philosophical writings by both sides. Ahmad ibn 'Abdullah al-Ma'marī (b. A.D. 973, near Aleppo, Syria, d. 1058 A.D.) used wine as a polemical device in order to belittle Jewish Revelation (of which a Muslim claims to be a faulty doctrine):

"Although your mouths hymn Allah One and Peerless,
Your hearts and souls from that ye owe Him shrink.
I swear your Torah gives no light to lead us,
If there 'tis found that wine is lawful drink."240

Taken out of context, the verse might be read as a Muslim's expression of the authority of the Kur'ān, which forbids wine drinking, against the 'corrupted' Jewish Pentateuch. However, Ma’arri’s objection to wine drinking, as we learn from poems in the *Luzām*, is non-religious:


1. ‘Say to wine, which is contrary to Reason and ever causes the
warrior’s sword to be unsheathed,
‘If thou wert interdicted by nothing but pain (after pleasure),
Thou wouldst have been allowable to the drinker;
But thou art banned by Sovereign Reason, so get thee gone into
the dusty soil!’
241
2. ‘Men say wine destroys old griefs that bide in the breast;
And were it not destructive to the intellect, I should have been
a friend of wine and jollity.’
242
As Nicholson has pointed out, his polemical meaning is: “If the Torah sanctions wine
drinking, the Torah misguides us: we must obey Reason, not Revelation.” Nicholson
continues by saying the fact that in this instance he happens to agree with Muhammad
leaves the general principle untouched. All religions are mixed with falsehood and, so far,
stand on the same level when he says: “Follow Reason and do what it deems good…”
243

NON-RELIGIOUS POETICAL WORKS DEALING WITH RELIGIOUS THEMES

a. The examination of religious topics and materials such as wine-drinking in books
which are not religious per se can occasionally provide elements of great importance
parallel to those that appear in the religious literature itself. This is because in the latter, as
we have seen, facts have often been interpreted, changed, taken out of context or even
deleted (this is, of course, not true of all writers of religious books). In books outside the
domain of religious writing, however, whole chapters may appear which the author would
not have dared to even mention in a religious context.


242 Al-Ma’arrī, al-Luzūm, II. 312, 14, as cited in Nicholson, Ibid. Also see II. 361, 12: “If wine were
lawful, I would not drink it as it makes my reasonableness weigh light in the scale” (Ibid.).

243 Al-Ma’arrī, al-Luzūm, I. 394, 8, as cited in Ibid., 167.
b. Considering the favourable position wine traditionally held in Iranian culture, it is perhaps unsurprising that in early Islamic poetry, prompted by the meeting of the Arabs and Persians, wine (and love) still figured as a major theme expressing the beauty and character of the contemporary world. To highlight this connection, I would here like to survey the range of Persian poetry and literature that features wine as a central theme.

As early as the eighth century a school of Persian-Arabian Bacchic poetry (i.e. wine-poetry, the modern critical terminology for the Ar. *khamriyya*) grew up, in which wine became the focus of a romantic philosophy. Prohibition took on quite a different aspect as Islam conquered lands whose wines had long been their pride and joy. It was one thing to give up the ‘headache mixture’ of Arabia (in reference to *sūra* 37:47), quite another to throw away a cellar of treasured vintages from Syria or the Lebanon.

The poems treat of wine and love in complex and elegant allusions. In the *Early Persian Anthology* compiled by R.A. Nicholson, he renders into poetical English some representative examples of the Persian-Islamic wine-song composed during the ninth and tenth centuries. He includes, among others, the following fragments:

1. Choice wine, whose bitter strength can sweeten best
   the embittered mind, and flood the air with colour.\(^{245}\)

2. So bright 'tis, when it trickles—You’d say from pearls is trickling
   —So clear 'tis, when you pour it—...how sweet and fair to see!
   Therein the radiant shower, and golden-yellow rays
   —and poppy and saffron flower.
   —Down from the goblets mouth, cornelian red and fine;
   in the hollow of your palm, would know, nor cup from wine.\(^{246}\)

3. They drank of wine so pure and old, Its body seemed to be ensouled;

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246 Al-Kisā'ī of Merv [latter half of the 10th century], *Lubāb*, II. 34, 20, as cited in *Ibid.*, 11.
And through them flowed that essence fine,
As fire bright through coal doth shine.²⁴⁷

However, al-Hasan Abû Nuwas; the ninth-century poet who was patronised by the Barœcicid
clan and later became the nadim of the Caliph al-Amin (ruled Baghdad, A.D. 809-813), was
the greatest of the poets who celebrated both the joys of wine and the beauty of the boys
who served it. Already in A.D. 800, he had written: “To the Persians, Paradise is called
Khoullar”—a village in the mountains beside Shîrâz, the region that supplied Baghdad with
wine under the caliphs.²⁴⁸

c. There is also another kind of intoxication derived from the Persian literary tradition,
the intoxication of the intellect, which Arberry calls the “Philosophy of Unreason.” He
believes this to be the most likely implication of the wine-vocabulary of those such as
‘Umar Khayyâm.²⁴⁹

No poet has ever treated wine as such a central theme as has this Persian poet. His
Rubâ'îyat (sing: rubâ‘î), a long set of individual four-line groupings, were linked by Edward
Fitzgerald to form a single poem in which wine takes on an almost living character:²⁵⁰

1. You know, my Friends, how long in my House.
   For a new Marriage I did make Carouse:
   Divorced old barren Reason from my Bed,

²⁴⁷ Halila [composed before A.D. 1050], Lubâb al-Albâb, II. 65, 19, as cited in Ibid., 10.
²⁵⁰ ‘Umar Khayyâm (d. 1131 A.D., Persia) could, perhaps, be dismissed as a poet of little account in
the history of Islam, were it not for the fact that he was also one of the greatest mathematicians and
astronomers of the Middle Ages. He led the thought of his time in algebra, physics and geography, as
well as calculating the most accurate calendar yet devised, with a measurably smaller margin of error
than the Gregorian calendar of 500 years later, which is the one we use today.
And took the Daughter of the Vine to Spouse.\textsuperscript{251}

2. The Grape that can with Logic absolute,
The Two-and-Seventy jarring Sects confute:
The subtle Alchemist that is in a Trice,
Life's leaden Metal into Gold transmute.\textsuperscript{252}

To 'Umar, the koranic promise of wine deferred until the Afterlife is a sham:

I must abjure the Balm of life?
I must, Scared by some After-reckoning taken on trust,
Or lured with Hope of some Diviner Drink,
When the frail cup is crumbled into dust\textsuperscript{253}

d. One may directly connect the Indo-Iranian attitudes toward wine with the spirit of the corresponding (Persian) Sufi attitude as expressed by literature in its ecstatic and poetic forms. The development of this school of poetry is not altogether free of difficulties and complexities, for several Sufi poets were simultaneously earning their livelihood by courting kings and princes. Many of their lyrics must be regarded as double allegories—the reference is made simultaneously to the Divine and to the earthly patron whose favour was no less difficult to win.

Among the Sufi mystical allegories, the allegory of wine raises its own separate problems. There are those who take every reference to wine as intending spiritual intoxication (even 'Umar Khayy\textae m has sometimes been interpreted after this fashion). But it is a difficult position to maintain consistently.


\textsuperscript{252} \textit{Ibid.}, quatrain XLIII, 58.

\textsuperscript{253} \textit{Ibid.}, second translation quatrain LXIV, 77.
While one can be confident that the austere mystics were wholly innocent in their use of this curious imagery, others were evidently accused of drinking wine themselves. In defence of those mystical poets; Muḥsin Fayd, a Persian Šūfi author of the A.H. 11/A.D. 17th century wrote a pamphlet entitled Risāla-yi Mishwāk. This, in order to clear the Šūfis of charges made by their orthodox critics based on too literal an interpretation of their technical vocabulary, much of which revolves around the themes of intoxication through love and wine. Arberry has conveniently compiled a list of wine-terminology in this work that came to represent nothing less than the ultimate religious experience:

- *sharab* (wine): the ecstatic experience due to the revelation of the true Beloved, destroying the foundations of reason.
- *Saki* (wine-bearer): reality, as loving to manifest itself in every form that is revealed.
- *Sabu* (pitcher), *khun* (jar): the revelations of (Divine) Names and Qualities.
- *khumkhana* (vault): the whole seen and unseen world is like a vault containing the wine of Being and the inborn love of God;
- *paymana* (goblet): where each atom of the world, according to its receptivity and particular aptitude, is a goblet of the wine of His love, and the goblet is full of this wine.
- *Kharabati* (tavern-haunter): the true lover who is freed from the chains of discrimination, knowing that all acts, and the qualities of all things, are obliterated in the Divine Acts and Qualities.\(^{254}\)

The fact is that the most famous of the great poets who rebelled against Islamic domination of their heritage and their lives were the Persians, who made liberal use of wine in their romantic expressions: Abū 'l-Ḵāsim (Mansūr) (“Firdausi”, A.D. 935-1020), composer of the Persian national epic, the Book of Kings, the *Shāhnāma* (*Shah Nameh*); ‘Umar bin Ibrāhīm

\(^{254}\) As cited in Arberry, *Sufism*, 113-114.
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al-Khayyāmī ("Omar Khayyām", d. A.D. 1123), one of the profoundest scholars of his day; Musharrif al-Dīn ("Saḍī", A.D. 1184-1292), influenced by Sufism, and died in Shīrāz, we are told, at the age of 108; and Šams al-Dīn Muḥammad ("Hāfīz," b. Shīrāz, d. A.D. 1389), whose wine-poems are "quoted by Persians more than Shakespeare's are by the English."255

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CONCLUDING REMARKS

a. This paper has touched upon a number of issues arising from an examination of the remains of theoretical debates which derived from what is traditionally portrayed as a clear koranic prohibition of *khānr*, intoxicants. Factors motivating this study included questions such as what kind of religious background precedents acted upon Islamic Revelation, the exegetically derived *Hadith* and related legal materials to cause such a drastic prohibition? Why did a situation of long and tiresome debate develop? Did ‘current practice’ force the Law to conform to existing social positions? How was no punishment ever uniformly agreed upon for such a serious ‘crime against God’? How did the *Hadith* literature act together with the *Kur‘ān* document, and where and how were problems found and solved when conflict arose within and between the two sources of jurisdiction? Moreover, the mere fact that the debates and their sources have been preserved leads us to approach the fundamental question: How did the early generations respond to the references to *khānr* (and *sakar*) they found in the *Kur‘ān*?

b. To address these fundamental questions, the cultural context was taken into account. In the Indo-Iranian cultures, intoxicating drinks had been elevated to a lofty position of religious significance. In *distinct continuation*, the praise of wine, not uncommon in pre-Islamic poetry, remained a favourite topic of Muslim poets and mystics. And at Court, wine was drunk at revelling parties as if no prohibition existed at all—especially noting the court life as represented in the “Arabian Nights” collection.²⁵⁶ Even caliphs—the highest rank of ruler—anticipated Paradise by giving parties in gardens that closely resembled the Promised Land of the *Kur‘ān*—neither running streams nor soft couches, nor “wide-eyed houris,” nor

²⁵⁶ E.W. Lane, *The Arabian Nights Entertainment* (London, 1841), 1, 214. Alongside alcohol, drugs, music and dance are presented in this literature as normal behaviour, without any expression of disapproval.
fruit nor wine were wanting. We read of wine parties given in sumptuously decorated rooms, and of a class of courtly participants in these activities, the mudamā, or cup-companions.

Poems were written in praise of intoxication, good fellowship and beautiful cup-bearers—a reality in literature at least. Sūfī poets wrote poems in praise of wine and beautiful boys. Perhaps images of the cup of wine and the beautiful boy were intended as metaphors for the intoxication of divine ecstasy and divine beauty, but many Muslims were doubtful, and controversy raged over whether the verses were to be read literally or not.

c. Only after considering the favourable attitude of poets, philosophers, theologians and the ruling classes throughout the periods of Islamic history towards wine—as khāmr—quite clearly ‘prohibited’ in the Kurʾān—should one attempt an objective examination of the circumstances of the prohibition in the earliest times of the proto-Islamic community.

Islam, in both its religious and literary expressions, represents a continuation of two important and contrasting institutions of the Semitic and classical civilisations. Within the present context, this is represented in an uncomfortable relationship of the forbiddance of wine in a formal, legal and ritual sense, as well as its elevation to a position of social necessity as represented in some Muslim literature and poetry.

While there can be no doubt that the rise of Islam does mark a turning point in history, the tendency—inherited from the Islamic tradition’s own Origins stories—to see this change as an abrupt one coming suddenly with the career of the Prophet Muhammad and the Islamic conquests that followed, is one that is very misleading. This is because it obscures important historical continuities spanning the supposed ‘divide’ between the Islamic and pre-Islamic ‘eras’. Like fasting and pilgrimage, the institution of the prohibition of wine was a clear remnant of a pre-Islamic practice slightly varied by the spirit of the new religion.
Islam consciously developed as a new religious community distinct from Pagans, Christians and Jews. Thus, at the same time were introduced the prohibitions of various pagan customs such as the drinking of wine and the eating of ḥāzār (pig), the observance of which was perceived as conducive to the cultivation of a general attitude of religiosity.

These prohibitions served as an occasion for a far wider ruling: the Muslims and the adherents of other religions had to have different laws altogether. Law was part of the prophetic Message, with the consequence that the followers of different prophets could be properly judged only by those who believed in their respective revelations. In pagan times, we are to understand that people did not care what religion their judges had, as long as they were competent and inspired men. With Islam—according to the new conception—Law, even civil law, had become part of the Message contained in one heavenly Book, but was sent in different forms to different peoples.

But why was the Qurʾān at odds in this case with the Jews’ and the Christians’ own scriptures? The result of these debates was, as Donner says, that the “broader identity as Believers gradually gave way to a more sharply defined identity as Muslims, that is, as confessonals separate from Christians, Jews, and other monotheists. The distinctive markers of this new confessional identity were acceptance of the Qurʾān as their scripture, and Muhammad as their Prophet,”257 together with the social and legal system that was related to him, and thus, to the Qurʾān and God.

d. In the Qurʾān (the stable book form which we know and designate by this name), one can perceive a traditional development of the prohibition of wine in a fairly logical and clear manner—one step following another. However, the Qurʾān can be seen to be profoundly ahistorical; it is simply not concerned with history in the sense of development

and change as we today conceive the term. Nevertheless, to impose a chronological order to the Revelation, an exegetical tool known as abrogation (in three distinct forms\(^{258}\)) developed.

It is allegedly based on several koranic verses, especially sura 2:106: “Such of Our revelations (āya) as We abrogate or cause to be forgotten, we bring (in place) one better or the like of.” This verse was taken by early Muslim commentators to refer mainly to inner contradictions between koranic verses, or separately, between the Kur'ān and the Sunna (‘custom’, later connected exclusively to the life of the Prophet by al-Shāfi‘ī), and led to much effort in establishing the exegetical cum historical chronology of koranic revelations—one being the sura.\(^{259}\)

The prohibition of drinking wine in sura 5:90, the verse considered the last revealed among others, could only then be accepted as the binding law against chronologically earlier ‘abrogated’ verses (prohibiting only excessive drinking or approaching prayer while under the influence of intoxicants, such as sura 4:43).

It was the Islamic Tradition had to formulate and document the institution of the prohibition of wine, which was not adequately dealt with in the Kur’ān. Why did the absolutely authoritative Kur’ān not provide definitions for the hudūd, “limits” that God imposed in this case? This certainly does not imply that the Kur’ān did not exist in one form or another as a ‘text’ for inspiration, guidance, as a “Clear Warner” regarding the End

\(^{258}\) The three forms are: C al-ḥukm wa al-tīlāwā: suppression of both the koranic wording & its ruling; Naskh al-ḥukm dīna al-tīlāwā: suppression of the ruling but not its wording; Nasā‘ al-tīlāwā dīna al-ḥukm: suppression of the wording, but not its ruling (the type justifying the stoning penalty for adultery in the fīkh, as well as the issue of the number of sucklings required to ban a particular type of relationship). See Burton, *Collection*, 230-1; J. Burton, “Nasā‘”, *Encyclopaedia of Islam*, new ed., vol. VII (Leiden, 1993), 1011

\(^{259}\) However, the term āya may refer to something other than the replacement of koranic verses one with another—such as social or legal innovations, if one reads the particular verse together with the context of its discussion. See Burton, *Ibid.*, 232.
of Days (ṣūra 11:2-3) and defining the Majesty of God (the two prominent themes running through the Message). Indeed, although no evidence exists for the survival of any Kur’ān datable earlier than the ninth-century, ever more evidence has emerged affirming the traditional accounts that describe the existence of the Kur’ān in the earliest time of the nascent Islamic community, possibly even ‘codified’ by ‘Uthmān and his appointed commission. Through the caliph’s efforts, we are told, the definitive Kur’ān was made available to his successors as an instrument to help weld the diverse peoples of the rapidly expanding empire into a relatively unified policy, although never really achieved considering the existence of the ‘Seven Readings’ traditionally attributed to different Companion sources.

However, it can readily be seen that the use of the koranic text led to great variations in the early Believers attempts to apply the new-found koranic code in everyday situations. For example, when the Kur’ān says (ṣūra 2:219): “In both (khamr and games of chance) is sin and profit to men,” some maintained that it is only excess in these that is forbidden. Indeed, from the eighth sūra (especially verse 5), and from various stories reported in the Hadīth, there were some who had aḥwā’, “bad inclinations”, i.e. took a liberal, or even critical attitude towards the Kur’ān’s proscriptions.

c. If one accepts the placing of the literal Kur’ān into an historical context by way of abrogation together with tafsīr in the form of hadīth, one may say that early in his career, Muhammad had not regarded his judicial activities as part of his prophetic office. In the same way, it may be said that the prophetic figure, a thorough pragmatist, caused changes to come about in the wake of some practical problem that he had to solve.


The Kur'an undoubtedly places restrictions on khamr, but in this respect, it has to be asked how far these restrictions were due to the new socio-religious outlook, and how far by the development of an urban society. In general it seems that the Kur'an was not innovating in this respect, but simply moving towards positions towards which the 'better elements' in society may have been moving due to inevitable social changes. The social differentiation may be reflected in the various hadiths, remnants of pious discussions, regarding the varying punishment for wine-drinkers, and the differing components which make up intoxicating liquor, what the Kur'an vaguely calls khamr, in one case sakar, but never nabîdh, and what all modern writers on the topic call "wine". They show streams of conflicting values and tendencies of the Believers dependant upon region and custom, and are an echo of the debates within the Community of Believers during the first and second centuries of Islam, before the Law was solidified and documented.

The contradiction between what was known to be good and what the Kur'an outlawed continued in a state of uneasy coexistence for at least 1,200 years, on the whole, due to the affects of widespread theoretical debates, with no real and certain connection to the real world in which the fukahâ' lived. This situation is most prominently seen in the proto-Islamic penal system. In it, hadith discussions report that the Prophet was inspired to apply a penalty for drinking wine that had not been supplied by the Kur'an, and although Muḥammad is stated to have imposed forty lashes, the Companions have been imitated by the fukahâ' in their preference for the analogy with the penalty supplied by the Kur'an for the slander of believing females.262 The Kur'an stipulates 80 lashes as the hadd, the penalty for the latter; therefore curiously by idjmâ', the wine-drinking penalty was connected to this irrelevant action, and should therefore carry the same sanction, regardless of sahih reports from the Prophet.

262 Burton, Introduction, 166.
The penalty, one may note, is not for exceeding the speed limit, it is merely for driving the car at all: "The *hadd* is imposed for drinking wine even if it does not cause intoxication."263

In another stream of tradition, undoubtedly reflecting the social values of a different region and/or period, Muḥammad is further suggested to have inclined both towards forgiveness, or towards the execution of the persistent drinker. However, continued flogging for the forth and subsequent offences has been preferred by consent, *idjmāʿ* over death. By contrast, execution by stoning for the offence of adultery prevailed, overwhelming the objection that no such penalty is mentioned in the Qurʾān, and that, indeed, it runs counter to the penalties established there (in *sūras* 4:15 and 24:2).

The legal regulations that depart from the meaning of the relevant koranic statements were rationalised, as we have seen, on the argument that there were two historical bases for documenting and filling out the Law: the Qurʾān, and the second source of the Law, the ‘*Ṣunna*’, which came to be defined not so much as the *Ṣunna* of the Muslims or the Community, but as the *Ṣunna* of the Prophet exclusively. This important differentiation was developed by Shāfiʿi to greatly reduce the problem of inner contradictions, and justified by the belief that the angel Gabriel invested the Prophet with two forms of Revelation, one to be recited (the Qurʾān) and one to fill out that document by human input, the Prophet’s inspired, but not recitable, example.

The penalty for the agreed crime of wine-drinking was provided by this second inspired source, itself a form of *tafsīr*, which even when reduced to the Prophet’s alleged instruction, still proved to be a problematic source, reflecting regional differentiation of the scholars debating the issue. In this case, despite being designed as a tool for just this type of purpose, *idjmāʿ* never got to the bottom of what the Prophet really instructed, and general agreement was never achieved in the issues of divinely instructed punishment, nor

constituents and definitions for the terms describing alcoholic beverage. This inevitably led to an array of personal interpretation which at least to some degree led to the natural distorting and destruction of the Prophet's now forgotten original intent, for reasons of innocent intellectual curiosity, inter madhhab scholarly polemics, or as a conscious misrepresentation whose motives cannot now be definitively understood.

f. Although there is no absolute proof, one may comfortably assume that the Kur'an document, as the traditional view has it, is a literary artefact emanating from the earliest Community of Believers, and probably edited together definitively sometime during or up to the quarter-century following Muhammad's death in A.H. 11/A.D. 632. It may or may not have had the Prophet's stamp of approval as there can be little doubt that it is an incomplete record of the full Revelation, and may represent a blending of texts from several different congregations.

If we take it that the koranic text reflects the conditions of the earliest community of Believers, the discrepancy between the Kur'an and the interpretative Hadith is quite understandable. As the believers moved out of Arabia, they found it necessary to define their own institutions, including the forbiddance of wine in relation to other civilisations, and Christian, Jewish, Zoroastrian, and other practices and prohibitions. This was perhaps partly because new Believers originating in those communities brought knowledge of such ritual practices into the community of Believers, and partly because of the sheer proximity of Believers to well-established Christian, Jewish, and Zoroastrian congregations in the "sectarian milieu" (to use John Wansbrough's classic phrase from his controversial Qur'anic Studies [Oxford, 1977])264 of the Fertile Crescent.

264 Wansbrough's views were convincingly challenged by Donner, Islamic Origins, 25-31, as well as in Whelan's conclusions in "Forgotten Witness," American Oriental Society, 8-10. In a different way, they are also challenged, generally polemically, by almost every Muslim scholar writing on Western
The \textit{Kur'ān}'s incomplete descriptions and vague allusions thus came to be complemented by precise definitions and limitations, necessarily cast as Prophetic hadīths, and derived from the need to understand the \textit{Kur'ān}. Sometimes Muslim tradition even admits that in certain cases, prophetic tradition, not only fills out, but can prevail over the \textit{Kur'ān} (especially referring to the five daily prayers instead of the two or three mentioned in various koranic verses, as well as the complex problem of the stoning penalty for adultery in the \textit{fiqh}), as with the interjected punishment for the wine-drinker. However, another element, \textit{idāra}, regional custom in the problematic (and unverifiable) form of 'consensus', also occasionally took precedence not only over Companion reports, but over prophetic precedent itself: the Prophet's death penalty for the repeated drinker was repealed by 'agreement'.

The issue of defining the parameters of wine show us a classic case of the \textit{Hadīth} literature filling out, even completing the circumstances of Revelation, and providing an historical framework for the formation of the institution of the prohibition. But the \textit{hadīths} only act as a reflection of their authors own understandings of how the origins 'must have been', based on the conditions and ideals of their own age. Our traditional sources indeed tell us of the values existing in the time of their composition, and only theoretically describe and debate the conditions in the time of the Prophet.

\textbf{g.} Although it is stated in the \textit{Kur'ān} (which gives us enough to draw some general conclusions), the prohibition of intoxicants was interpreted to suit the values of those concerned at a particular point during the development of Islamic Law. It may be seen that the Word of God provided no solid basis during the period of the earliest Community, to enact a blanket ban on all and every form of intoxicant. Thus, the problematic nature approaches to Islamic studies (refer to the numerous sites available on the Internet under “Wansbrough”).
stemming from the koranic expressions of wine as a substance came to be defined, analysed and divided into myriad forms which have been highlighted even up to the modern period.

Indeed, from the origins and early development of Islam, one finds an uneasy coexistence between the koranic prohibition, and the persistent continuance of alcoholic stimulants. The Muslim scholars who, by use of philological logic (especially including the ‘nabidh device’), gave theoretical justification to those who, whether for theoretical, polemical or less lofty reasons, wished to limit the Prophet’s ‘clear wishes’, as reflected in the Kur’ān and in accompanying Ḥadīth literature.

An ultimate consequence may be seen in Egypt, where the Turkish Mamlûk élite used to get drunk on kumiz, a potent brew of fermented mare’s milk, until E.W. Lane’s Cairo, where he made the remarkable observation in his classic The Modern Egyptians that “a kind of wine, formerly called nabidh (a name that in no way denotes prohibited kinds of drink), may be lawfully drunk” by the modern Egyptians of his time, around 1836.

We have seen that this drink was presented as made for and drunk by the Prophet, but not when it was more than two or three days old, the consequences of which carried through to the contemporary period, providing a moral and legal precedent for consumption of a mixture consumed in one stage or another of fermentation. The indecisive nature of the interpretative Ḥadīths when describing this matter had consequences at least into the nineteenth century.

But why did the pious scholars create this curious, but brilliant class of drink? The answer will partly lie in the view that it was a practical device serving to differentiate between intoxicating drinks, and an historically ill-defined lightly fermented, or pre-

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266 Lane described nabidh as an infusion of dry grapes or dry dates, and added that the Muslims used to keep it until it had slightly fermented. Edward William Lane, The Manners and Customs of the Modern Egyptians (London, n.d.), 96.
fermented mixture having a certain narcotic effect but could not have been considered *khamr* or *sakar*. It will also partly lie in the view that the scholars were debating a theoretical situation brought about simply through the intellectual need for academic stimulation.

h. The total prohibition of wine and spirits (according to three of the four orthodox schools/sects/systems of jurisprudence) is one of the distinctive marks of the Muslim world; its consequences can hardly be overrated. This is not seriously affected by the fact that transgressors have been many, according to our literary evidence. Even the common people could not always and everywhere refrain from their national drink, which was, we are told, a date mixture of several kinds.

Upon analysis of the Islamic prohibition of 'wine' and its widespread use in different forms and for differing purposes, a final summarising point may be added: Even to the modern period, it was a less serious offence to break one of God's commands, than to say that a command was not really God’s. Resulting from the detailed and unreal scholarly debates, drinking wine became, therefore, a less serious offence than to say, as none have done, that God has not forbidden it.

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267 As we have seen, only the Hanafi school allows the moderate use of *nabidh* for medicinal purposes only. Like the other three schools, the Shi'a forbid the use of alcohol under any circumstances.
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